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### Deference DA

#### Judicial deference is stable now but the plan’s precedent collapses it

John O’Connor 7, Former officer in the Marine Corp and Judge Advocate; JD, U Maryland Law School. Statistics and the Military Deference Doctrine: a Response to Professor Lichtman, 66 Md. L. Rev. 668, Lexis

As I have written elsewhere, one of the most important aspects of the military deference doctrine, and one that many commentators misunderstand,176 is that the military deference doctrine is not a venerable doctrine that has existed since the early days of the Republic. 177 Indeed, a review of the Court’s military deference jurisprudence could lead one to the conclusion that the doctrine was more or less the brainchild of Chief Justice Rehnquist, who wrote virtually every important military deference decision that the Court has issued.178 While notions of stare decisis may militate against a retreat from the military deference doctrine by the Court, the fact remains that the doctrine is one of fairly recent vintage, which was developed and perpetuated mainly through judicial opinions written by a Justice who is no longer on the Court. Moreover, while stare decisis is a nice concept in the abstract, that doctrine did not prevent the Court from radically changing its approach to constitutional challenges to military practices twice before. Therefore, it is not out of the realm of possibility that the military deference doctrine could recede in importance with personnel changes on the Court. This could occur through an express overruling of the doctrine, through decisions narrowing the doctrine’s application, or through a more subtle process whereby the Court continues to pay lip service to its need to defer to political branch judgments but nevertheless accords little or no actual deference to the policy determinations of Congress and the President.

But early indications from the Roberts Court, with Chief Justice Roberts and Justice Alito replacing Chief Justice Rehnquist and Justice O’Connor, respectively, provide reason to believe that the military deference doctrine will continue to be a robust feature of the Court’s military jurisprudence, at least in the near term. In FAIR, the first “military” case decided by the Roberts Court, the Court upheld the Solomon Amendment against a constitutional challenge and, in so doing, began its constitutional analysis by extolling the virtues of the military deference doctrine when Congress legislates pursuant to its constitutional power to raise and support armies:

The Constitution grants Congress the power to “provide for the common Defence,” “[t]o raise and support Armies,” and “[t]o provide and maintain a Navy.” Congress’ power in this area “is broad and sweeping,” and there is no dispute in this case that it includes the authority to require campus access for military recruiters. That is, of course, unless Congress exceeds constitutional limitations on its power in enacting such legislation. But the fact that legislation that raises armies is subject to First Amendment constraints does not mean that we ignore the purpose of this legislation when determining its constitutionality; as we recognized in Rostker, “judicial deference . . . is at its apogee” when Congress legislates under its authority to raise and support armies.179

While it is always dangerous to draw conclusions from a single case, all participating members of the Court—Justice Alito did not participate—joined Chief Justice Roberts’s opinion, which invoked the military deference doctrine as its first step in constitutional analysis once the Court resolved what the statute in fact provided.180 Moreover, this is a case that could have been decided on a number of grounds, such as a pure Spending Clause or First Amendment basis, 181 without invoking the military deference doctrine, and the Court’s prominent reliance on the military deference doctrine to support its decision suggests that there is no move afoot to eradicate the doctrine, explicitly or through subtle narrowing. For his part, Justice Alito noted prominently in his confirmation hearing that he had joined a conservative Princeton alumni group because, as an alumnus who attended Princeton on an ROTC scholarship, he was unhappy that the school had decided to abolish the campus ROTC program.182 While, again, predicting judicial attitudes based on personal history is always a risky proposition, Justice Alito’s background makes him seem like an unlikely candidate to take up the sword against the military deference doctrine, particularly when every other member of the Court joined an opinion applying it in FAIR.

V. Conclusion

This Article is by no means an attempt to catalogue every military deference case decided by the Court, or to discuss every nuance in its application. n183 It is important, however, that the doctrine be understood, both in terms of the facts surrounding its development and the limited scope of the doctrine as evidenced by the framework in which it is applied. Professor Lichtman's article on the military deference doctrine is thought provoking in that it challenges the orthodoxy by which the military deference doctrine is viewed - through the lens of time rather than through the lens of subject matter irrespective of time. n184 Ultimately, however, I have come to the conclusion that Professor Lichtman's analysis of the military deference doctrine is flawed in several important respects, all of which result in a fundamental misunderstanding [\*706] of the doctrine. In my estimation, the principal flaws in Professor Lichtman's analysis include: focusing on "win-loss" records rather than on the analytical framework in which those wins and losses occurred; failing to perceive that the military deference doctrine should - and does - apply only to a narrow category of "military" cases; incorrectly casting the military deference doctrine as a longstanding and relatively stable doctrine that has only subtly evolved since the early twentieth century; determining that subject matter, rather than timing, is the proper variable around which to organize an analysis of military deference decisions; and concluding that the military deference doctrine does not - and should not - apply to statutes and regulations burdening civilians instead of military personnel.

The military deference doctrine is, at once, both historically immature and limited, yet potent when applicable. After the disruption that occurred in the course of the Court's prior rejection of the doctrine of noninterference, the Court ultimately landed on the military deference doctrine as an appropriate analytical framework, where applicable, in the mid-1970s, and the Court has largely remained in the same place with its military jurisprudence ever since. The Court's rejection of its noninterference policy beginning in the mid-1950s likely came about as a result of what the Court perceived as overreaching by the political branches in subjecting persons - military and civilian - to courts-martial in a willy-nilly fashion. If the military deference doctrine were to recede in importance in the future, it would be a good bet that it happens because some collection of Supreme Court Justices perceives that Congress and the President are overreaching in the exercise of their constitutional powers to raise armies and regulate the armed forces. At present, though, there is no sign that such an upheaval is anywhere on the horizon.

#### Deference is vital to effective executive crisis response --- solves terror, rogue states, and prolif

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

### T Prez Power

#### T – NOT PRESIDENTIAL AUTHORITY

#### A. The plan is not presidential authority

#### Detention requires congressional authorization - Executive does not have the authority to detain

Gonzalez 4 ARTURO J. GONZÁLEZ, counsel et al April 2004 Supreme Court of the United States On Writ Of Certiorari

RUMSFELD, v. PADILLA BRIEF AMICUS CURIAEOF FRED KOREMATSU, THE BAR ASSOCIATION OF SAN FRANCISCO, THE ASIAN LAW CAUCUS, THE ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA,

ASIAN PACIFIC ISLANDER LEGAL OUTREACH, AND THE JAPANESE AMERICAN CITIZENS

LEAGUE IN SUPPORT OF RESPONDENTS April 2004 <http://jenner.com/system/assets/assets/5417/original/18.pdf?1321652398>

The history of the detention of Japanese American citizens during World War II, and the legislation that followed, demonstrate that the Executive Branch does not have the unilateral power to detain an American citizen indefinitely, without charges or access to counsel.

The internment of 120,000 American citizens of Japanese descent during World War II was one of the darkest moments in American history. The American people have recognized that the indefinite detention of these citizens, without charges, was not justified. Indeed, to prevent such acts, Congress repealed the Emergency Detention Act of 1950.

#### B. This is a voter

#### Limits are necessary. Presidential authority is an essential limit. Otherwise, everything related to war is topical

### Cap K

#### The continued existence of capitalism forms the basis for all inequalities and oppressions. We do not deny that racialized violence happens and is important to address, but absent a rejection of the class system racism will continue to be deployed as a means to divide and rule the working class and to preserve increasingly wide material disparities.

Taylor 11 [Keeanga-Yamahtta Taylor, doctoral candidate in the department of African-American studies at Northwestern University, Race, class and Marxism, January 4, 2011 http://socialistworker.org/2011/01/04/race-class-and-marxism]

Marxists argue that capitalism is a system that is based on the exploitation of the many by the few. Because it is a system based on gross inequality, it requires various tools to divide the majority--racism and all oppressions under capitalism serve this purpose. Moreover, oppression is used to justify and "explain" unequal relationships in society that enrich the minority that live off the majority's labor. Thus, racism developed initially to explain and justify the enslavement of Africans--because they were less than human and undeserving of liberty and freedom. Everyone accepts the idea that the oppression of slaves was rooted in the class relations of exploitation under that system. Fewer recognize that under capitalism, wage slavery is the pivot around which all other inequalities and oppressions turn. Capitalism used racism to justify plunder, conquest and slavery, but as Karl Marx pointed out, it also used racism to divide and rule--to pit one section of the working class against another and thereby blunt class consciousness. To claim, as Marxists do, that racism is a product of capitalism is not to deny or diminish its importance or impact in American society. It is simply to explain its origins and the reasons for its perpetuation. Many on the left today talk about class as if it is one of many oppressions, often describing it as "classism." What people are really referring to as "classism" is elitism or snobbery, and not the fundamental organization of society under capitalism. Moreover, it is popular today to talk about various oppressions, including class, as intersecting. While it is true that oppressions can reinforce and compound each other, they are born out of the material relations shaped by capitalism and the economic exploitation that is at the heart of capitalist society. In other words, it is the material and economic structure of society that gave rise to a range of ideas and ideologies to justify, explain and help perpetuate that order. In the United States, racism is the most important of those ideologies.

#### The unchecked spread of neoliberal capitalism necessitates extermination in the name of profit – ensures poverty and environmental and cultural destruction, culminating in eventual extinction.

Cole 11 [Dr. Mike Cole is Emeritus Research Professor in Education and Equality at Bishop Grosseteste University College Lincoln, Lincoln, UK. His most recent book is Racism and Education in the U.K. and the U.S.: towards a socialist alternative (New York and London: Palgrave Macmillan, 2011 RACISM AND EDUCATION IN THE U.K. AND THE U.S. Palgrave Macmillan (June 7, 2011), pgs. 180-182]

Neo-liberal capitalism, in being primarily about expanding opportunities for large multinational companies, has undermined the power of nation¬states and exacerbated the negative effects of globalization on such services as healthcare, education, water and transport (Martinez and Garcia, 2000). However, the current hegemonic role of business in schooling is para¬mount in convincing workers and future workers that socialism is off the agenda. Marxist educators and other Left radicals should expose this myth. Students have a right to discuss different economic and political systems such as twenty-first-century democratic socialism. This is particularly press¬ing given the current economic recession. It is easier in general for discussion in schools to embrace issues of gender, “race,” disability, sexual orientation, and social class when social class relates just to attainment than to address social class in the context of overthrowing capitalism, and replacing it with world democratic socialism, where participatory democracy is central. The latter may thus be seen as the last taboo, and, of course, understandably so. It is time to move forward and bring such discussions into schools, colleges, and universities, Marxist and other Left educators can make the case that such considerations are a perfectly reasonable democratic demand. Global capitalism is out of control, and the very survival of our planet is dependent on dialogical education that considers the socialist alternative, an alternative distanced from the distortions of Marx by Stalinism. No longer can socialism be divorced from environmental and ecologi¬cal issues. McLaren and Houston (2005, p, 167) have argued that “escalat¬ing environmental problems at all geographical scales from local to global have become a pressing reality that critical educators can no longer afford to ignore.” They go on to cite “the complicity between global profiteering, resource colonization, and the wholesale ecological devastation that has become a matter of everyday life for most species on the planet.” Following Kahn (2003), they state the need for “a critical dialogue between social and eco-justice” (McLaren and Houston 2005, p. 168). They call for a dialec¬tics of ecological and environmental justice to reveal the malign interaction between capitalism, imperialism, and ecology that has created widespread environmental degradation that has dramatically accelerated with the onset of neo-liberalism. World capitalism’s environmentally racist (Bullard et al., 2007) effects in both the “developing” and “developed” world should be discussed openly and freely in the educational institutions. As far as the “developing world” is concerned, there are, for example, such issues as the environmentally dev-astating method of extraction of natural resources utilized by multinational corporations in numerous “developing” countries that have devastated eco-systems and destroyed cultures and livelihoods (World Council of Churches, 1994, cited in Robinson, 2000), with toxic waste polluting groundwater, soil and the atmosphere (e.g., Robinson, 2000). In addition, there is trans¬boundary dumping of hazardous waste by developed countries to develop¬ing nations, usually in sub-Sahara Africa (e.g., Ibitayo et al., 2008; see also Blanco, 2010 on Latin America). As far as the “developed” world is concerned, in the U.S., for example, people of color are concentrated around hazardous waste facilities-more than half of the nine million people living within two miles of such facilities are minorities (Bullard et al., 2007). Finally, there is the ubiquitous issue of climate change, itself linked to the totally destructive impact of capitalism. Joel Kovel (2010) has described cli-mate change as “a menace without parallel in the whole history of humanity.” However, on a positive note, he argues that “[it]s spectacular and dramatic character can generate narratives capable of arousing general concern and thus provide a stimulus to build movements of resistance.” Climate change is linked to loss to the planet of living things—also a rallying point for young people. For Marxist educators, this provides a good inroad for linking envi¬ronment, global capitalism, and arguments for the socialist alternative. As Kovel (2010) puts it, only within the framework of a revolutionary ecoso- cialist society can we deal with the twinned crises of climate change and spe¬cies loss—and others as well—within a coherent program centered around the flourishing of life.” Capitalism and the destruction of the environment are inextricably linked, to the extent that it is becoming increasingly apparent that saving the environment is dependent on the destruction of capitalism. Debate should therefore include a consideration of the connections between global capital¬ism and environmental destruction, as well as a discussion of the socialist alternative. The need for environmental issues to be allied to socialism is paramount. As Nick Beams (2009) notes, all the “green” opponents of Marxism view “the overthrow of the capitalist system by means of the socialist revolution as the key to resolving the problems of global warming” as either “unrealis¬tic,” “not immediate enough,” or believe that socialism is hostile to nature. Beams (ibid.) argues that, in reality, “the system of market relations is based on the separation of the producers from the means of production, and it is this separation—-the metabolic rift between [human beings] and nature— that is the source of the crisis.” In other words, instead of the real producers of wealth (the working class) having control over what they produce and rationally assigning this to human need, goods are irrationally produced for profit. Beams (ibid.) quotes Marx (1894 [1966] p. 959) as follows: Freedom. ..can consist only in this, that socialised man, the associated pro¬ducers, govern the human metabolism with nature in a rational way, bringing it under their collective control instead of being dominated by it as a blind power; accomplishing it with the least expenditure of energy and in conditions most worthy and appropriate for their human nature. As Beams (2009) concludes, “[f]ar from Marx being outdated, the world has, so to speak, caught up with Marx.”

Vote negative as an absolute rejection of the structures that support capitalism

We must hollow out capitalist structures by refusing to invest our energy in reforms and rescue operations

Herod 2004

(James, Getting Free, http://site.www.umb.edu/faculty/salzman\_g/Strate/GetFre/06.htm)

  It is time to try to describe, at first abstractly and later concretely, a strategy for destroying capitalism. This strategy, at its most basic, calls for pulling time, energy, and resources out of capitalist civilization and putting them into building a new civilization. The image then is one of emptying out capitalist structures, hollowing them out, by draining wealth, power, and meaning out of them until there is nothing left but shells.

      This is definitely an aggressive strategy. It requires great militancy, and constitutes an attack on the existing order. The strategy clearly recognizes that capitalism is the enemy and must be destroyed, but it is not a frontal attack aimed at overthrowing the system, but an inside attack aimed at gutting it, while simultaneously replacing it with something better, something we want.

      Thus capitalist structures (corporations, governments, banks, schools, etc.) are not seized so much as simply abandoned. Capitalist relations are not fought so much as they are simply rejected. We stop participating in activities that support (finance, condone) the capitalist world and *start participating* in activities that build a new world while simultaneously undermining the old. We create a new pattern of social relations alongside capitalist relations and then we continually build and strengthen our new pattern while doing every thing we can to weaken capitalist relations. In this way our new democratic, non-hierarchical, non-commodified relations can eventually overwhelm the capitalist relations and force them out of existence.

      This is how it has to be done. This is a plausible, realistic strategy. To think that we could create a whole new world of decent social arrangements overnight, in the midst of a crisis, during a so-called revolution, or during the collapse of capitalism, is foolhardy. Our new social world must grow within the old, and in opposition to it, until it is strong enough to dismantle and abolish capitalist relations. Such a revolution will never happen automatically, blindly, determinably, because of the inexorable, materialist laws of history. It will happen, and only happen, because we want it to, and because we know what we’re doing and know how we want to live, and know what obstacles have to be overcome before we can live that way, and know how to distinguish between our social patterns and theirs.

      But we must not think that the capitalist world can simply be ignored, in a live and let live attitude, while we try to build new lives elsewhere. (There *is* no elsewhere.) There is at least one thing, wage-slavery, that we can’t simply stop participating in (but even here there are ways we can chip away at it). Capitalism must be explicitly refused and replaced by something else. This constitutes War, but it is not a war in the traditional sense of armies and tanks, but a war fought on a daily basis, on the level of everyday life, by millions of people. It is a war nevertheless because the accumulators of capital will use coercion, brutality, and murder, as they have always done in the past, to try to block any rejection of the system. They have always had to force compliance; they will not hesitate to continue doing so. Nevertheless, there are many concrete ways that individuals, groups, and neighborhoods can gut capitalism, which I will enumerate shortly.

      We must always keep in mind how we became slaves; then we can see more clearly how we can cease being slaves. We were forced into wage-slavery because the ruling class slowly, systematically, and brutally destroyed our ability to live autonomously. By driving us off the land, changing the property laws, destroying community rights, destroying our tools, imposing taxes, destroying our local markets, and so forth, we were forced onto the labor market in order to survive, our only remaining option being to sell, for a wage, our ability to work.

      It’s quite clear then how we can overthrow slavery. We must reverse this process. We must begin to reacquire the ability to live without working for a wage or buying the products made by wage-slaves (that is, we must get free from the labor market and the way of living based on it), and embed ourselves instead in cooperative labor and cooperatively produced goods.

      Another clarification is needed. This strategy does not call for reforming capitalism, for changing capitalism into something else. It calls for replacing capitalism, totally, with a new civilization. This is an important distinction, because capitalism has proved impervious to reforms, as a system. We can sometimes in some places win certain concessions from it (usually only temporary ones) and win some (usually short-lived) improvements in our lives as its victims, but we cannot reform it piecemeal, as a system.

      Thus our strategy of gutting and eventually destroying capitalism requires at a minimum a totalizing image, an awareness that we are attacking an entire way of life and replacing it with another, and not merely reforming one way of life into something else.

Many people may not be accustomed to thinking about entire systems and social orders, but everyone knows what a lifestyle is, or a way of life, and that is the way we should approach it.

      The thing is this: in order for capitalism to be destroyed millions and millions of people must be dissatisfied with their way of life. They must *want something else* and see certain existing things as obstacles to getting what they want. It is not useful to think of this as a new ideology. It is not merely a belief-system that is needed, like a religion, or like Marxism, or Anarchism. Rather it is a new prevailing vision, a dominant desire, an overriding need. What must exist is a pressing desire to live a certain way, and not to live another way. If this pressing desire were a desire to live free, to be autonomous, to live in democratically controlled communities, to participate in the self-regulating activities of a mature people, then capitalism could be destroyed. Otherwise we are doomed to perpetual slavery and possibly even to extinction.

### T – Detention

#### A. The plan does not restrict power of detention

Korematsu was not a decision about indefinite detention – Korematsu was convicted for violating an order saying he could not remain where he lived. The Court explicitly refused to rule on the detention

Whalin 6 Sarah A. Whalin Georgia State University Law Review Spring, 2006 22 Ga. St. U.L. Rev. 711 NOTE & COMMENT: NATIONAL SECURITY VERSUS DUE PROCESS: KOREMATSUn1 RAISES ITS UGLY HEAD SIXTY YEARS LATER IN HAMDI n2 AND PADILLA n3

a. Korematsu v. United States

When given the opportunity to review the constitutional validity of the exclusion orders, the Supreme Court supported the government's actions.n32 In Korematsu, the Court began its decision by stating that restrictions affecting civil rights of a particular minority group are subject to "rigid scrutiny," however, the Court arguably failed to apply this level of review. n33

The government charged Fred Korematsu, a U.S. citizen of Japanese descent, with violating the Act of March 21, 1942, which made it a misdemeanor to disobey the government's exclusion orders.n34 Without rigidly scrutinizing the reasoning behind the exclusion orders or the effect they had on the constitutional rights of excluded citizens, the Court found the interests of national security outweighed the importance of a citizen's individual freedoms. n35 Despite conceding Korematsu's loyalty and the great hardships the exclusion orders imposed on Japanese-American citizens, the Court defended the exclusion orders since "under conditions of modern warfare [when] our shores are threatened by hostile forces, the power  [\*716]  to protect must be commensurate with the threatened danger."n36 The Court applied its rationale from Hirabayashi v. United States, n37 upholding the exclusion orders as a constitutionally delegated war power since "exclusion from a threatened area . . . has a definite and close relationship to the prevention of espionage and sabotage." n38

Furthering its stance that national security outweighed individual freedoms, the Court refused to rule on the constitutionality of the internments themselves, stating it would do so only after the government had issued an assembly or relocation order.n39

B. This is a voter

Limits are necessary for negative preparation and clash. The affirmative makes the topic too big by

Permitting cases outside four areas. At most they AFFECT detention, but effects T is no limit at all.

Everything affects detention – for example, the economy and taxes affect the ability to detain.

### Amendment CP

#### CP Text: The United States Congress and the appropriate number of states should amend the Constitution of the United States of America overturning the Supreme Court’s decision in Korematsu v the United States.

#### Amendments can overturn the Supreme Court Decisions

Schaffner 2005 (Joan, Associate Professor of Law, George Washington University Law School, “THE FEDERAL MARRIAGE AMENDMENT: TO PROTECT THE SANCTITY OF MARRIAGE OR DESTROY CONSTITUTIONAL DEMOCRACY?”, 54 Am. U.L. Rev. 1487, lexis, BB)

Because the judicial branch has the ultimate authority over constitutional interpretation and construction, the only "check" on judicial power of constitutional interpretation is the constitutional amendment process. The amendment process should be used to overturn the Court only when it acts beyond its powers or inconsistently with constitutional principles. Otherwise, the careful balance of powers among the branches is compromised. The history of amending the Constitution to overrule Supreme Court decisions is consistent with this view and is particularly relevant here. While the U.S. Supreme Court is not being overturned by the FMA, the Massachusetts Supreme Judicial Court's Goodridge decision is in jeopardy. Goodridge was the catalyst for the fervor behind the proposed marriage amendment. Moreover, the FMA will forever prevent the U.S. Supreme Court from addressing the issue. Only four constitutional amendments have been adopted to overrule the Supreme Court. n186 They are: (1) the Eleventh Amendment, which overruled Chisolm v. Georgia; n187 (2) the Thirteenth Amendment and, most specifically, the first sentence of the [\*1519] Fourteenth Amendment, n188 which overruled Dred Scott v. Sanford; n189 (3) the Sixteenth Amendment, which overruled Pollack v. Farmer's Loan & Trust Co.; n190 and (4) the Twenty-Sixth Amendment, which overruled Oregon v. Mitchell. n191 As we will see, each amendment was in harmony with the basic principles that underlie the Constitution - individual rights, separation of powers, and federalism. Moreover, in the cases where fundamental liberty interests were at stake, the amendment reestablished individual rights in light of the Court's limited interpretation of those rights. Without analyzing the propriety of the individual Supreme Court decisions, the following will demonstrate that, unlike the FMA, the use of the amendment power to overrule these cases was proper and consistent with basic democratic principles.

### Case

### 1NC Solvency

#### Reversing Korematsu doesn’t overturn the other racist policies upheld by the Supreme Court and those currently being pursued by the other branches of the federal government –

#### 1. The court will still make racist decisions without realizing it – Korematsu itself proves.

Green 11 [Your 1AC Article]

Simple vote counting shows that the Korematsu Court itself did not view the case as involving straightforward racial discrimination. Several Justices who were sensitive to racial issues in other cases—including Douglas, Rutledge, Black, and Stone—were majority votes for the government in Korematsu.49 And two Justices with far less progressive records on race— Roberts and Jackson—were among Korematsu’s dissenters.50 This indicates that these Justices did not find the cases’ racial elements to be decisive; other doctrinal factors were driving their determinations.

#### 2. Other Laws – The aff cannot resolve racist government policies like racial profiling, crack-cocaine sentencing, three strikes laws, drone strikes, GITMO, etc. That’s CX.

#### 3. The Public – Plan obviously is not sufficient to resolve all nativist rhetoric and perceptions of physical and cultural difference.

#### 4. The Non-Detention Act prevents executive abuse of indefinite detention

Gonzalez 4 ARTURO J. GONZÁLEZ, counsel et al April 2004 Supreme Court of the United States On Writ Of Certiorari

RUMSFELD, v. PADILLA BRIEF AMICUS CURIAEOF FRED KOREMATSU, THE BAR ASSOCIATION OF SAN FRANCISCO, THE ASIAN LAW CAUCUS, THE ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA,

ASIAN PACIFIC ISLANDER LEGAL OUTREACH, AND THE JAPANESE AMERICAN CITIZENS

LEAGUE IN SUPPORT OF RESPONDENTS April 2004 <http://jenner.com/system/assets/assets/5417/original/18.pdf?1321652398>

In answering this question, it is important to look back at the lessons this country learned from the summary incarceration of Japanese Americans, including this Court’s decision in Ex Parte Endo 323 U.S. 283 (1944), and the history of the Emergency Detention Act, which was modeled after Executive Order 9066, the most notorious of the Japanese-American exclusion orders.

Although the Emergency Detention Act afforded detainees far greater procedural protections than the rights that have been granted to Respondent, Jose Padilla, many members of Congress viewed that statute as incompatible with basic due process protections. Ultimately, Congress rejected the notion that repairing the statute by amendment would be sufficient. Instead, Congress repealed it and passed the Non-Detention Act, a key basis for the Second Circuit’s decision in this case.

The Non-Detention Act specifically provides that no citizen may be detained without Congress’ authorization. Here, there is no such authorization. Because Congress has not authorized the indefinite detention of Mr. Padilla, without charges or access to counsel, the Second Circuit was correct to order the issuance of a writ of habeas corpus.

Our system of divided constitutional government gives us ample protection against an Executive acting based on no authority but its own edicts. From time to time in our history, however, the judiciary has been called upon to reign in the Executive during moments of national crisis. Mr. Padilla’s case arises during such a time. It is imperative that this Court uphold the delicate balance of power the Constitution envisions by requiring that the Executive seek congressional authority here.

#### 5. The Korematsu decision has been renounced by Congress and the Court

Whalin 6 Sarah A. Whalin Georgia State University Law Review Spring, 2006 22 Ga. St. U.L. Rev. 711 NOTE & COMMENT: NATIONAL SECURITY VERSUS DUE PROCESS: KOREMATSUn1 RAISES ITS UGLY HEAD SIXTY YEARS LATER IN HAMDI n2 AND PADILLA n3

Both Congress and the Supreme Court have expressed disapproval of the injustice resulting from the internment of Japanese-Americans during World War II.n59 In 1988, Congress passed the Civil Liberties Act, specifically apologizing for and making restitution to those Japanese-American individuals whom the government evacuated and interned. n60 In addition to focusing on the past in "acknowledg[ing] the fundamental injustice of the evacuation, relocation, and internment . . .; apologiz[ing] on behalf of the . . . United States . . .;" and "mak[ing] restitution to those . . . who were interned," this Act also sought to "discourage the occurrence of similar injustices and violations of civil liberties in the future." n61

The Supreme Court has also denounced the Court's decision in Korematsu; eight of the nine Justices on the Hamdi and Padilla Court stated the Court wrongly decided Korematsu.n62 Further, the District  [\*720]  Court for the Northern District of California overturned Korematsu's conviction and stated that the Supreme Court's decision in Korematsu v. United States

stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizen from the petty fears and prejudices that are so easily aroused.n63

#### Dwelling on the past only perpetuates racial division

[Kebennett](http://kebennett1.hubpages.com/)  9 United States Political and Social Issues http://itswritten.hubpages.com/question/20459/do-you-think-african-american-deserve-repuration-due-to-the-building-of-their-ancestors-without-usin

No I do not. Just like I do not think that that anyone should pay for the fact that there were also slaves of other races in the past. The past is over. Now and the future is what matters. If we continue to dwell on the past and its ugliness and hold people who took no part in it responsible for it then it only continues to divide us, 'the human race'. My daughter is black and I am white. We are not divided against each other. A murderer in prison, his or her family is not responsible for their actions. Slavery was never right, but I had nothing to do with It. I abhor racism. I will gladly stand beside my human brothers and sisters of any color and fight against racism, but reparation for the past, no. It only causes further dissension between people who need to concentrate on the here and now, and on the future.

#### The aff is an insincere apology that fails to effect broader change in society – using the law to seek redemption fails

Weisband, 2009

(Edward, Professor of Political Science @ Virginia Polytechnic University and State University, *Alternatives*, No. 34, “On the Aporetic Borderlines of Forgiveness: Bereavement as a Political Form,” Pg. 359-381)

Rituals of forgiveness provide emotional outlets for those compelled to find a way to continue, to live together or apart under the shadows of cataclysmic violence. But many conceptual as well as cultural contradictions assail notions of political forgiveness and efforts at reconciliation can become an impediment to consolation. Even when collective memories of past violence and political evil tend to be configured around forgiveness, the question arises as to what sets of consequences: mutual recognition or mutual recrimination, reconciliation with or without remorse. As Jean Hatzfeld’s study of the “killers” of the Rwandan genocide indicates, profound ignorance persists on the part of many of the perpetrators as to the price that had to be exacted from the survivors in return for the nebulous rewards presented by the possibilities of forgiveness. “The killer has no idea of the ordeal that begins for the victims once they have agreed to forgive, for in so doing they not only reopen old wounds but also lose the possibility of gaining relief through revenge,” Hatzfeld observes.40 He continues, “the killer does not understand that in seeking forgiveness, he is demanding that the victim make an extraordinary effort, and he remains oblivious to the survivor’s dilemma, anguish, and courageous altruism. . . . The killer does not realize that when he asks for forgiveness as though it were a simple formality, his attitude increases the victim’s pain by ignoring it.”41 Thus the walls, borders, and boundaries separating the emotional and psychic dimensions of personhood and personality from their expression in bereavement must find appropriate containers in the intimate places of redemptive self-healing and atonement as well as in the public spaces of commemoration that pay homage to victims. But even more than this, they must allow, in aspiration at the very least, perpetrators to express remorse and to atone in ways that transcend the entanglements of guilt, punishment, and forgiveness. What must be forgiven is unforgivable and what must be remembered must also be forgotten. Political evil demands that recrimination be transcended while simultaneously permitting no exit. Survivor and successor generations, culture to culture, inherit the legacies of grievous loss resulting from political evil, but their lives must move on. The children and successor generations of victims must find ways to live with the children and successor generations of those who perpetrated the violence. How to do this if not through mutual recognition of suffering and sorrow through forms of bereavement that transcend forgiveness in the name of universal reconciliation? In collective forms of forgiveness, successor generations pay homage to those who suffered and to the trauma of survivor generations. But for whom do the bells toll? Successor generations divide. They imitate as they learn and learn as they imitate. And what they learn to imitate are the very cultural mores and artifacts of identification that persist in the lures of invented difference, notwithstanding their sometimes common desires to mourn and to pay homage. Cultural values and meanings produce “subjects” as subjects invent themselves through mimetic processes of self and otherness, identity and difference, and through the psychic and emotional relations between “the self” who resides “in the other” and “the self in the other” who belittles the self. Even after the onslaughts of political evil have passed, human character remains centered by tyrannies of small, dare one say, miniscule differences, that foment sectarian violence within and among communities that share land, life, and history in proximity but also in hate. Thus cultures instruct through imitation in ways that resist transcendence, in ways that incapacitate mourning and the rituals of remembrance and consolation. Bereavement is what discourses of forgiveness impede or prevent. For forgiveness adheres to the vernaculars of fault, liability, and tort. It readily devolves into a discourse of judgment that exacts a price for its expression. If “you” accept that “I” forgive “you” for being “wrong,” you admit to guilt or failing. Forgiveness implies a kind of exhortatory form of promise; it presumes a commissive speech act performance that renounces what one is due on scales of account. As Nicholas Wolterstorff argues, forgiveness does not consist of “attitudes” but rather a willingness to give up what is owed. Forgiveness, he indicates, consists of the “enacted resolution to forego enjoying or claiming the goods to which one has a retributive right, whatever those goods may be.”42 But the one life good that cannot be disavowed by forgiveness is solace through bereavement. This is the one element that remains most elusive even when a consensus over wrongdoing exists or when juridical findings impose retributions on perpetrators. Forgiveness presents a paradoxical task for survivor as well as successor generations, a task that sets up the implausible aim: to forgive but simultaneously to seek reconciliation. Forgiveness is precisely the emotion that makes the politics of reconciliation elusive to achieve and consolation forever an illusion to entertain. In this lies its aporetic quality. In forgiveness one rarely mourns as a kind of bereavement that represents a more profound form of remembrance. Forgiveness presumes an “authentic truth” to history and in memory. It demands that others, especially the generations successor to evildoers, themselves reciprocate offers of forgiveness. In law this may appear operative but it runs up against human sentiment, ideology, and/or political and social identity constructions.

The affirmative imprisons us in the past – encouraging division

Wilson 7 Reamus Wilson, born and raised in Victoria BC., Gitxsan **by heritage** and a member of the Lax Seel Wilp from the Kispiox Village in the Tsimshian Territory. 2007? "Native American"

<http://www.reamuswilson.com/media/quotes_nativeamerican.html>

Not to forgive is to be imprisoned by the past, by old grievances that do not permit life to proceed with new business. Not to forgive is to yield oneself to another's control... to be locked into a sequence of act and response, of outrage and revenge, tit for tat, escalating always. The present is endlessly overwhelmed and devoured by the past. Forgiveness frees the forgiver. It extracts the forgiver from someone else's nightmare.

DEBATER NOTE the … is in the orginal

#### Dwelling on past racial wrongs undermines current efforts to deal with the problem

Wade 9 EY WADE 2009 Beads on a String-America’s Racially Intertwined Biographical History

<http://www.scribd.com/doc/79274816/Our-Deepest-Fear-is-Not-That-We-Are-Inadequate>

From what we see, love among the races is flowing freely. Don't forget what happened to our fore-parents. Let us not repeat it. Let go of what happened in the past. I am not saying that there is not prejudice in the world. What I am saying is this, when we are fighting8 for a 'cause' we must remember we are fighting the system and not a person. We have to be diligent in collecting facts, have an unbreakable, unbeatable plan, and remember all of our foes may not be of one color. Pay attention to the present. What we consider 'small things' is happening daily in the schools; on the jobs; in the government. Pay attention so we don't step back in time. Stop trying to benefit from the past. Everyone that was involved in the mayhem and destruction of the families and the souls of the slaves are dead. We cannot charge nor punish them with anything and if we attack because of racial prejudice we may hurt our own. We take a chance of destroying an uncle, aunt, cousin, brother because roots run deep. We cannot change the past hurts, but we can change the present laws. The heart of man has to be dealt with by God. We should not dwell on the past. It stirs up hatred in young hearts that should only know peace. We know what happened to our fore-parents. Let us not repeat it. It is time for America to let go of the past and heal itself. The grieving period should have been over and the healing started. But every year, old wounds are torn open by the words Black History Month. Why don't we teach the children about America's History with everyone included? To me it seems asif only a few Black people are pulled out of the closet, dusted off the shelves and paraded in front of America as if to say, 'this one wasn't worthless', thisone wasn't stupid'. Why is the ‘black’ in capital letters? Is it to point out aperson of color has a brain or is it to pronounce to the world we have pride? If there is so much pride in America for Native, African, Chinese, Japanese, Indian, Iranian-Americans and other 'hyphened Americans, drop the hyphen and pull together and teach our children that every bead has a purpose and should be celebrated.

Dwelling on the past means endless animosity

Monroe 12 Mark Monroe 2012 "Racial differences motivates a response"

<http://cloudexplorer.hubpages.com/hub/Inspired-Hub-response-to-a-hub-written-by-Mark-Monroe>

Now there's the epic battles amongst many social classes of differing groups where hate has seem to be rendered, over the years. The one thing that isn't really talked about much is what are the things we all have in common with one another as people, as human beings. There's much to talk about, and many good experiences we've all shared, and have in common amongst many walks of life, and **as long as we continue to dwell on the past**, there will be no end to the vicious animosity towards those who appear to be different from one another.

### Framing

#### Must evaluate consequences

Issac 2 [Jeffrey, professor of political science at Indiana University, Dissent, Spring, ebsco]

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

**Maximizing all lives is the only way to affirm equality**

**Cummiskey 90** – Professor of Philosophy, Bates (David, Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, jstor)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. Persons may have "dignity, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), but, as rational beings, persons also have a fundamental equalitywhich dictates that some must sometimes give way for the sake of others. The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

#### ----Extinction first

Nick Bostrom, Department of Philosophy, Yale University, 2002, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards,” [http://www.transhumanist.com/volume9/risks.html //](http://www.transhumanist.com/volume9/risks.html%20//) vkoneru

Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. We cannot necessarily rely on the institutions, moral norms, social attitudes or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[5] Our collective fear-response is likely ill calibrated to the magnitude of threat. Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk. If we take into account the welfare of future generations, the harm done by existential risks is multiplied by another factor, the size of which depends on whether and how much we discount future benefits [15,16].

# 2NC

## Cap K

#### Allowing even the slightest part of capitalism to remain lets it regenerate – by focusing class struggle on the proximate causes of the oppression of capital, they let the broader system go unchallenged.

Kovel 7 [Joel Kovel, has been Adjunct Professor of Anthropology at the Graduate Faculty in the New School for Social Research; Visiting Professor of Political Science and Communications at the University of California (1986-7); Visiting Professor at San Diego State University (1990); Visiting Professor of Communication at the University of California (1993); and Alger Hiss Professor of Social Studies, Bard College between 1988 and 2003, and Distinguished Professor of Social Studies at the institution from 2003 to 2008, “The Enemy of Nature,” 2007, p. 153]

The value-term that subsumes everything into the spell of capital sets going a kind of wheel of accumulation, from production to consumption and back, spinning every more rapidly as the inertial mass of capital grows, and generating its force field as a spinning magnet generates an electrical field. This phenomenon has important implications for the reformability of the system. Because capital is so spectral, and succeeds so well in ideologically mystifying its real nature, attention is constantly deflected from the actual source of eco-destabilization to the instruments by which that source acts. The real problem, however, is the whole mass of globally accumulated capital, along with the speed of its circulation and the class structures sustaining this. That is what generates the force field, in proportion to its own scale; and it is this force field, acting across the numberless points of insertion that constitute the ecosphere, that creates ever-larger agglomerations of capital, sets the ecological crisis going, and keeps it from being resolved. For one fact may be taken as certain – that to resolve the ecological crisis as a whole, as against tidying up one corner or another, is radically incompatible with the existence of gigantic pools of capital, the force field these induce, the criminal underworld with which they connect, and, by extension, the elites who comprise the transnational bourgeoisie. And by not resolving the crisis as a whole, we open ourselves to the specter of another mythical creature, the many-headed hydra that regenerates itself the more its individual tentacle-heads are chopped away.

#### Reforming society without attacking capitalism only legitimizes it – enables a false belief in a capitalist society without oppression

Tumino, Professor of English at the University of Pittsburgh, 2005

(Stephen, “What is Orthodox Marxism and Why it Matters Now More than Ever,” February 14, http://www.redcritique.org/spring2001/whatisorthodoxmarxism.htm)

Any effective political theory will have to do at least two things: it will have to offer an integrated understanding of social practices and, based on such an interrelated knowledge, offer a guideline for praxis. My main argument here is that among all contesting social theories now, only Orthodox Marxism has been able to produce an integrated knowledge of the existing social totality and provide lines of praxis that will lead to building a society free from necessity. But first I must clarify what I mean by Orthodox Marxism. Like all other modes and forms of political theory, the very theoretical identity of Orthodox Marxism is itself contested—not just from non-and anti-Marxists who question the very "real" (by which they mean the "practical" as under free-market criteria) existence of any kind of Marxism now but, perhaps more tellingly, from within the Marxist tradition itself. I will, therefore, first say what I regard to be the distinguishing marks of Orthodox Marxism and then outline a short polemical map of contestation over Orthodox Marxism within the Marxist theories now. I will end by arguing for its effectivity in bringing about a new society based not on human rights but on freedom from necessity. I will argue that to know contemporary society—and to be able to act on such knowledge—one has to first of all know what makes the existing social totality. I will argue that the dominant social totality is based on inequality—not just inequality of power but inequality of economic access (which then determines access to health care, education, housing, diet, transportation, . . . ). This systematic inequality cannot be explained by gender, race, sexuality, disability, ethnicity, or nationality. These are all secondary contradictions and are all determined by the fundamental contradiction of capitalism which is inscribed in the relation of capital and labor. All modes of Marxism now explain social inequalities primarily on the basis of these secondary contradictions and in doing so—and this is my main argument—legitimate capitalism. Why? Because such arguments authorize capitalism without gender, race, discrimination and thus accept economic inequality as an integral part of human societies. They accept a sunny capitalism—a capitalism beyond capitalism. Such **a society**, **based on cultural equality but economic inequality, has always been the not-so-hidden agenda of the bourgeois left**—whether it has been called "new left," "postmarxism," or "radical democracy." This is, by the way, the main reason for its popularity in the culture industry—from the academy (Jameson, Harvey, Haraway, Butler,. . . ) to daily politics (Michael Harrington, Ralph Nader, Jesse Jackson,. . . ) to. . . . For all, capitalism is here to stay and the best that can be done is to make its cruelties more tolerable, more humane. This **humanization (not eradication) of capitalism is the sole goal of ALL contemporary lefts** (marxism, feminism, anti-racism, queeries, . . . ). Such an understanding of social inequality is based on the fundamental understanding that the source of wealth is human knowledge and not human labor. That is, wealth is produced by the human mind and is thus free from the actual objective conditions that shape the historical relations of labor and capital. Only Orthodox Marxism recognizes the historicity of labor and its primacy as the source of all human wealth. In this paper I argue that any emancipatory theory has to be founded on recognition of the priority of Marx's labor theory of value and not repeat the technological determinism of corporate theory ("knowledge work") that masquerades as social theory. Finally, it is only Orthodox Marxism that recognizes the inevitability and also the necessity of communism—the necessity, that is, of a society in which "from each according to their ability to each according to their needs" (Marx) is the rule.

#### Memmi’s theorization of racism is more accurately explained as a consequence of class oppression and racialization – only resolving material inequality first can break down processes of assigning values.

San Juan 3 [E. San Juan, Jr., Filipino American literary academic, mentor, cultural reviewer, civic intellectual, activist, writer, essayist, video/film maker, editor, and poet whose works related to the Filipino Diaspora in English and Filipino languages have been translated into German, Russian, French, Italian, and Chinese.[2] As an author of books on race and cultural studies,[3] he was a “major influence on the academic world”.[2] He was the director of the Philippines Cultural Studies Center in Storrs, Connecticut in the United States.[1] In 1999, San Juan, Jr. received the Centennial Award for Achievement in Literature from the Cultural Center of the Philippines because of his contributions to Filipino and Filipino American Studies.[2] Marxism and the Race/Class Problematic: A Re-Articulation Cultural Logic Volume 6, 2003 http://clogic.eserver.org/2003/sanjuan.html]

34. A recent translation of Albert Memmi's magisterial book entitled Racism reminds us that any understanding of the complex network of ideas and practices classified by that term will always lead us to the foundational bedrock of class relations. Memmi defines racism as "the generalized and final assigning of values to real or imaginary differences, to the accuser's benefit and at his victim's expense, in order to justify the former's own privileges or aggression" (2000, 169). The underlying frame of intelligibility for this process of assigning values cannot be anything else but the existence of class-divided societies and nation-states with unequal allocations of power and resources. Both motivation and consequences can be adequately explained by the logic of class oppression and its entailments. In our epoch of globalization, inequality between propertied nation-states (where transnational corporate powers are based) and the rest of the world has become universalized and threatens the welfare of humanity and the planet.

#### Racial Redemption –

#### This has happened before – the Supreme Court struck down pro segregation initiatives yet allowed for the active resistance of desegregation in the form of the Southern manifesto – an attempt at redemption while allowing oppression to continue unchecked

Cho 09 Professor of Law, DePaul University College of Law

(Sumi, "Post-Racialism." *Iowa Law Review.* vol. 94, 2009)

Here, redemption is used mainly in a property sense, while secondarily in a quasi-religious sense—a process through which whiteness is decoupled from its problematic association with white supremacy in the civil-rights era and beyond. Thus, in order to repair the damages to the reputational and property value of whiteness caused by complicity with racism, society and its institutions needed to redeem themselves from Jim Crow segregation, indigenous dispossession, racialized labor exploitation, and a centuries-long covenant with white supremacy. The Warren Court brilliantly effectuated the repudiatory aspect of racial redemption, in per curiam after per curiam order striking down segregation in various contexts without written opinion, much like Lady MacBeth in her futile attempts to wash the blood of complicity from her hands.80 In its desire to cater to white preferences for desegregation,81 courts merely invited the active resistance of the South—and later the North—to comply with Brown. Meanwhile, anti-desegregation courts and communities deployed massive resistance in the form of the Southern Manifesto, the Parker doctrine, pupil-placement programs, so-called freedom-of-choice plans, and other ingenious “neutral” tactics to preserve white supremacy’s old forms and habits.82

#### 2. THE STATE – modern government is founded upon and utterly beholden to capital – working within the state only enables the continual rearticulation of capital

MESZAROS (Prof. Emeritus @ Univ. Sussex) 1995 [Istavan, Beyond Capital: Towards a Theory of Transition, // wyo]

P. 65

The modern state as the comprehensive political command structure of capital — is both the necessary prerequisite for the transformation of capital’s at first fragmented units into a viable system, and the overall framework for the full articulation and maintenance of the latter as a global system. In this fundamental sense the state on account of its constitutive and permanently sustaining role must be understood as an integral part of capital’s material ground itself. Or it contributes in a substantive way not only to the formation and consolidation of all of the major reproductive structures of society but also to their continued functioning. However, the close interrelationship holds also when viewed from the other side. For the modern state itself is quite inconceivable without capital as its social metabolic foundation. This makes the material reproductive structures of the capital system the necessary condition not only for the original constitution but also for the continued survival (and appropriate historical transformations) of the modern state in all its dimensions. These reproductive structures extend their Impact over everything, from the strictly material/repressive instruments cid juridical institutions of the state all the way to the most mediated ideological and political theorizations of its raison d’être and claimed legitimacy. It is on account of this reciprocal determination that we must speak of a close match between the social metabolic ground of the capital system on the one hand, and the modern state as the totalizing political command structure of the established productive and reproductive order on the other. For socialists this is a most uncomfortable and challenging reciprocity. It puts into relief the sobering fact that any intervention in the political domain — even when it envisages the radical overthrow of the capitalist state — can have only a very limited impact in the realization of the socialist project. And the other way round, the corollary of the same sobering fact is that, precisely because socialists have to confront the power of capital’s self-sustaining reciprocity under its fundamental dimensions, it should be never forgotten or ignored - although the tragedy of seventy years (if Soviet experience is that it had been willfully ignored — that there can be no chance of overcoming the power of capital without remaining faithful to the Marxian concern with the ‘withering away’ of the state.

#### Incremental reform fails – makes extinction inevitable

Kovel, Alger Hiss Professor of Social Studies at Bard College, awarded Fellowship at the John Guggenheim Foundation, **200**2 (Joel, *The Enemy of Nature,* pages 5-7)

As the world, or to be more exact, the Western, industrial world, has leapt into a prosperity unimaginable to prior generations, it has prepared for itself a calamity far more unimaginable still. The present world system in effect has had three decades to limit its growth, and it has failed so abjectly that even the idea of limiting growth has been banished from official discourse. Further, it has been proved decisively that the internal logic of the present system translates 'growth' into increasing wealth for the few and increasing misery for the many. We must begin our inquiry, therefore, with the chilling fact that 'growth' so conceived means the destruction of the natural foundation of civilization. If the world were a living organism, then any sensible observer would conclude that this 'growth' is a cancer that, if not somehow treated, means the destruction of human society, and even raises the question of the extinction of our species. A simple extrapolation tells us as much, once we learn that the growth is uncontrollable. The details are important and interesting, but less so than the chief conclusion — that irresistible growth, and the evident fact that this growth destabilizes and breaks down the natural ground necessary for human existence, means, in the plainest terms, that **we are doomed under the present social order**, **and** that **we had better change it as soon as possible if we are to survive**. One wants to scream out this brutal and plain truth, which should be on the masthead of every newspaper and the station-identification of every media outlet, the leading issue before Congress and all governmental organ­izations, the focus of every congregation and the centrepiece of every curriculum at all levels of education ... but is nothing of the kind. Yes, endless attention is paid to the crisis, a great deal of it useful, some of it trivial, and some plainly harmful. But where is the serious, systematic reflection of the brutal truth – that humanity is in the hands of a suicidal regime, which scarcely anyone thinks it either possible or desirable to funda­mentally change? Where is the rational dissection of this system's assault on nature, and the derivation of a plan to really change it – not to regulate this or that, or to resort to prayer or inward change, but actually to address the cancer and lay out the lineaments of a cure? I should hope, here. In any case, that is my goal, and if what I have to say is not true in every detail, or even sadly mistaken, at least it can serve to push the debate about fundamentals along. I have no quarrel with many of the virtuous and sensible environmental schemes put forward these days. My quarrel is only with the judgment that holds that piecemeal reforms are all that is needed. My grievance is against the attitude that refuses to look at the problem as a whole and to contemplate radical change. For if the argument laid out above has even the slightest claim on plausibility –and it deserves repetition that the mass of evidence is such as to place the burden of proof on those who would deny it – then its implications need to be spun out without regard for how unfashionable or unsettling these may be. If there is no effective discourse on the logic of the system's growth, and the world now sits blandly in smug denial, or even uneasily in morbid contemplation, taking the word of greenwashers and conmen of all kinds instead of facing the ecological crisis squarely, then a work is needed that strives just for such a discourse. I have written The Enemy of Nature, therefore, not because there is a lack of address to our environmental woes, but because scarcely any of the innumerable works devoted to the subject develop the following implications from what has been sketched out above: That the 'reigning system' in question is capitalism, the dynamism of which, capital, is a strange beast indeed, not at all accessible to common sense, and extending far beyond its usual economic implications. That the 'growth' in question is essentially capital expressing its inner­most being. That this is incorrigible; thus to seriously limit capital's expansion throws the system into deep crisis. For capital, it must always be 'Grow or Die!' It follows that **capital cannot be reformed: it either rules and destroys us, or is destroyed, so that we may have a lease on life**. That these implications demand of us that we rethink the question of revolution, now generally thought of as lying quietly in the dustbin of history. I would argue, instead, that capital's combined ecodestructivity and incorrigibility forces open the prospect of a total revolution, which I would call ecosocialist, related to but distinct from the socialisms of the past century. • That it is incumbent upon us to imagine the contours of such a revolu­tion and spell them out, notwithstanding the currently miserable state of radical forces. Now it may be that the times are changing. Perhaps the long downturn of resistance is coming to a close, because capital, having achieved globaliza­tion, can no longer rein in the contradictions stemming from its domination of nature and humanity, so that people everywhere break loose from the system. There are great signs to this effect, chiefly in the worldwide outbreak of demonstrations taken against the unholy trinity of global capital – the IMF, the World Bank and the WTO.4 Although The Enemy of Nature was begun well before the events in Seattle shook the world in 1999, it is, I believe, responsive to the same historical forces. It asks of those protesting globalization to consider where the logic of their actions points. How, in other words, do we go beyond the first stages of confronting the system? In what sense can the regime of capital be checked, if it can no more stop its unrelenting expansion than a man can voluntarily stop breathing? Are we ready to think through capital's overthrow and its replacement with a new kind of society based on a new kind of production? Are we ready, spurred by a dawning awareness that this crisis cannot be resolved within the existing system, to rethink this system in all its aspects, and really change it? These broad questions, and some of the innumerable issues arising from them, are addressed in the chapters to come.

#### A totalizing image of capitalism is necessary to motivate its destruction and to avert extinction.

Herod 4 [James, author of several books on capitalism and social activist since 1968, “Getting Free,” 2004 http://site.www.umb.edu/faculty/salzman\_g/Strate/GetFre/06.htm]

This is an important distinction, because capitalism has proved impervious to reforms, as a system. We can sometimes in some places win certain concessions from it (usually only temporary ones) and win some (usually short-lived) improvements in our lives as its victims, but we cannot reform it piecemeal, as a system. Thus our strategy of gutting and eventually destroying capitalism requires at a minimum a totalizing image, an awareness that we are attacking an entire way of life and replacing it with another, and not merely reforming one way of life into something else. Many people may not be accustomed to thinking about entire systems and social orders, but everyone knows what a lifestyle is, or a way of life, and that is the way we should approach it. The thing is this: in order for capitalism to be destroyed millions and millions of people must be dissatisfied with their way of life. They must want something else and see certain existing things as obstacles to getting what they want. It is not useful to think of this as a new ideology. It is not merely a belief-system that is needed, like a religion, or like Marxism, or Anarchism. Rather it is a new prevailing vision, a dominant desire, an overriding need. What must exist is a pressing desire to live a certain way, and not to live another way. If this pressing desire were a desire to live free, to be autonomous, to live in democratically controlled communities, to participate in the self-regulating activities of a mature people, then capitalism could be destroyed. Otherwise we are doomed to perpetual slavery and possibly even to extinction.

#### Worse than anything is never trying at all – their stories of failure are manufactured to deter opposition

Vrasti 12 [Wanda Vrasti is Humboldt post-doctoral fellow at Humboldt University in Berlin. Her current research, a book examining the intersection between governmentality and cognitive capitalism through an ethnography of volunteer tourism in the Global South, is currently under contract with Routledge. Her previous work has been published in Millennium: Journal of International Studies, Review of International Studies, and Theory & Event Mic Check/Reality Check Journal of Critical Globalisation Studies, Issue 5 (2012)]

This is precisely what critical theory teaches us when it insists that social reality is constructed, power is everywhere, and emancipation is complicated. But this critical lucidity can also serve as a sophisticated cover for the political nihilism, cynicism even, plaguing post-68 theory. All Revolutionary thought is haunted by the terror of repetition, the fear that revolutionary action will not be able to make a clear break with the past but Mic Check, Vrasti 123 will end up restoring the logic and structure of the ancient régime (Starr, 1995). ‘The most fearsome enemy of the politics of emancipation is not the repression by the established order. It is the interiority of nihilism’ (Badiou cited in Žižek, 2011). This is in fact the same nihilism occupying us all, the hopelessness that every act of resistance will be recuperated or will reproduce more of the same, that we are not doing enough to change things or we are doing the wrong things, that we are living in a mess of contradictions or have no meaning to live for at all (Haiven, 2011a). While this nihilism may be justified, we need to understand that in killing the radical imagination we are doing the work of capital, which has a lot of resources invested in having this ‘machine of hopelessness’ prevent us from imagining alternative worlds (Graeber, 2011a).

Mcquillan 08 (Martin Mcquillan, Professor of Literary Theory and Cultural Analysis and Dean of the Faculty of Arts and Social Sciences at Kingston University, London, Derrida and Policy: Is Deconstruction Really a Social Science? Derrida Today)

One might think that Derrida's invocation of International Law in his later writings would represent an example of a concrete relation between his writing and something that could take the manner of a policy formulation. In fact, while Derrida speaks eloquently of the need for International Law and demonstrates its philosophical genealogy, he actually does very little by way of elaborating what such a law might look like. Once again we return to the insurmountable difficulty of deconstruction's refusal to programme or pre-empt the arrival of an unknowable future. In fact, looked at in these terms, policy-making would seem to have a distinct relation to fortune telling, divination and other such modes of predicting the future. Future-ologists are of course a specialist sub-branch of policy-makers. In the context of university administration, I have never written a 'forward-looking strategic plan' that did not have to be rewritten six months later due to unforeseen circumstances. Derrida's discussion of International Law in the early 1990s was certainly prescient, given the way in which International Law has moved from the margins of legal specialism to become the locus of global politics through the development of the International Criminal Court, the test cases of 'universal jurisdiction', the demands of globalisation and the obfuscations of the war on terror. However, the question of International Law in Derrida remains to be determined according to a double braid of reading: firstly, the deconstruction of the inherited western model of law and ethics which prevails in the discourse on the international, humanitarian and cosmopolitical; secondly, a responsible philosophical response to singular events as they arrive in the present calling for an exercise of public, critical reason. In other words, the deconstruction of International Law will proceed on a provisional and strategic basis. International Law is, of course, only an example for Derrida of a wider mutation in the conditions of sovereignty in the world today. This account of sovereignty is in turn part of a more general undoing of the logocentric schema, in Derrida, which points out that sovereignty as such is always already decentred by its inability to master the unconditionality of the other which it seeks to suppress, thus rendering the sovereign no longer sovereign. For example, the unconditionality of literature makes it both powerless in the sovereign public realm of techno-media-politics and simultaneously the one thing that this sovereignty cannot master, thus demonstrating the impotence of sovereignty and the all-powerful powerlessness of unconditionality. This is a scenario that can be moved around the tropes of the Derridean corpus in so far as it describes the familiar strategies of and resistances to phallogocentrism in a more general sense. Policy without conditions or a policy of unconditionality would seem to be no policy at all, or at least nothing policy-makers would recognise as policy in its proper sense. After all a policy without limits or purpose would be policy without utility and would be of no use to anyone, except as a policy of resistance.

Here is the rub, the moment that one begins to attempt a thought experiment of this kind one runs into immediate and insurmountable difficulties, not because deconstruction has nothing to say to politics or that deconstruction is a weak ontology, parasitical on the strong discourse of political culture but because if one were to take seriously (if not literally) what Derrida has to say about the disarticulation of the inherited metaphysical models of the political, it quickly becomes apparent that a new politics does not require that 'deconstruction' (if such a thing exists) be translated into a number of thematic policy choices but that the entire political model which rests upon policy as an enactable idea be subject to complete and irreversible displacement. Policy-making as it stands is untenable from a deconstructive point of view because political culture as such is untenable. The unconditionality and infinite responsibility of deconstruction, does not mean simply that we should make better policy (or that we should make better policy, simply) but that in doing so the entire apparatus of western political culture be removed and rethought in an unpredictable and emerging future. The frustration that many feel with deconstruction's reading of the political lies in this refusal to provide 'concrete policies'. However, it is this refusal to decide on the undecideable in advance which is the whole point of deconstruction. It is the promise of deconstruction. This is not the same thing as opposition politicians saying they could not say what their expenditure plans would be until they were in government and saw the state of the accounts (that is just a lie for political expediency and such people always have well developed plans for what they would do). The promise of deconstruction would be that in encountering the other, justice ought to be done, even if the progressive structure of the promise relied on the necessary, in principle, ability for promises to be broken or to fail. The politics of deconstruction can then only ever follow the dual strategy we saw above: the critical reading of the western inheritance and the disarticulation of the event as it arrives in the present. In this sense, deconstruction cannot be a political science because it has no means of securing the predictive force necessary to a science. Rather, deconstruction is that which puts all and every such prediction in doubt. As Bismarck remarked, politics is not a science it is an art. Elsewhere, he is said to have noted that it was the art of the possible. As Derek Attridge has put it, for Derrida, it is the art of the impossible (Attridge 2007). It is, nevertheless, an art and as such is on the side of the unconditional rather than the sovereign.

#### Focus on ‘policy relevance’ is intellectual fascism – it’s self-justifying and crowds out true academic scholarship

Jones 9 [Lee, lecturer in International. Relations at Queen Mary University, London, International Relations Scholarship and the Tyranny of Policy Relevance JOURNAL OF CRITICAL GLOBALISATION STUDIES Journal of Critical Globalisation Studies, Issue 1 (2009) http://criticalglobalisation.com/Issue%201/125\_131\_JCGS1\_JONES\_TYRANNYPOLICYRELEVANCE.pdf]

Having conceded where Nye has a point, let’s now consider the ways in which he may simply be wrong. His assumption is that the academic should be, needs to be, policy-relevant. As indicated above, this can be a very pernicious assumption. As an invitation to academics to contribute to discussions about the direction of society and policy, no one could reasonably object: those who wished to contribute could do so, while others could be left to investigate topics of perhaps dubious immediate ‘relevance’ that nonetheless enrich human understanding and thus contribute to the accumulation of knowledge and general social progress (and, quite probably, to those scholars’ research communities and their students). As an imperative, however, it creates all sorts of **distortions** that are **injurious to academic freedom**. It encourages academics to study certain things, in certain ways, with certain outcomes and certain ways of disseminating one’s findings. This ‘encouragement’ is more or less **coercive**, backed as it is by the allure of large research grants which advance one’s institution and personal career, versus the threat of a fate as an entirely marginal scholar incapable of attracting research funding – a nowadays a standard criteria for academic employment and promotion. Furthermore, those funding ‘policy-relevant’ research already have **predefined notions** of what is ‘relevant’. This means both that academics risk being **drawn into policy-based evidence-making**, rather than its much-vaunted opposite, and that academics will tend to be selected by the policy world based on whether they will reflect, endorse and **legitimise the** overall **interests and ideologies that underpin the prevailing order.** Consider the examples Nye gives as leading examples of policy-relevant scholars: Henry Kissinger and Zbigniew Brzezinski, both of whom served as National Security Advisers (under Nixon and Carter respectively), while Kissinger also went on to become Secretary of State (under Nixon and Ford). Kissinger, as is now widely known, is a war criminal who does not travel very much outside the USA for fear of being arrested à la General Pinochet (Hitchens, 2001). Brzezinski has not yet been subject to the same scrutiny and even popped up to advise Obama recently, but can hardly be regarded as a particularly progressive individual. Under his watch, after Vietnam overthrew the genocidal Khmer Rouge in 1978, Washington sent tens of millions of dollars to help them regroup and rearm on Thai soil as a proxy force against Hanoi (Peou, 2000, p. 143). Clearly, a rejection of US imperialism was not part of whatever Kissinger and Brzezinski added to the policy mix. In addition to them, Nye says that of the top twenty-five most influential scholars as identified by a recent survey, only three have served in policy circles (Jordan et al, 2009). This apparently referred to himself (ranked sixth), Samuel Huntington (eighth), and John Ikenberry (twenty-fourth).2 Huntington, despite his reputation for iconoclasm, never strayed far from reflecting elite concerns and prejudices (Jones, 2009). Nye and Ikenberry, despite their more ‘liberal’ credentials, have built their careers around the project of institutionalising, preserving and extending American hegemony. This concern in Nye’s work spans from After Hegemony (1984), his book co-authored with Robert Keohane (rated first most influential), which explicitly sought to maintain US power through institutional means, through cheer-leading post-Cold War US hegemony in Bound to Lead (1990), to his exhortations for Washington to regain its battered post-Iraq standing in Soft Power: The Means to Succeed in International Politics (2004). Ikenberry, who was a State Department advisor in 2003-04, has a very similar trajectory. He only criticised the Bush administration’s ‘imperial ambition’ on the pragmatic grounds that empire was not attainable, not that it was undesirable, and he is currently engaged in a Nye-esque project proposing ways to bolster the US-led ‘liberal’ order. These scholars’ commitment to the continued ‘benign’ dominance of US values, capital and power overrides any superficial dissimilarities occasioned by their personal ‘conservative’ or ‘liberal’ predilections. It is this that qualifies them to act as **advisers to the modern-day ‘prince’; genuinely critical voices are unlikely to ever hear the call to serve.** The idea of, say, Noam Chomsky as Assistant Secretary of State is simply absurd. At stake here is the fundamental distinction between ‘problem-solving’ and ‘critical’ theory, which Robert Cox introduced in a famous article in 1981. Cox argued that theory, despite being presented as a neutral analytical tool, was ‘always for someone and for some purpose’. Problem-solving theories ultimately endorsed the prevailing system by generating suggestions as to how the system could be run more smoothly. Critical theories, by contrast, seek to explain why the system exists in the first place and what could be done to transform it. What unifies Nye, Ikenberry Huntington, Brzezinski and Kissinger (along with the majority of IR scholars) is their problem-solving approach. Naturally, policy-makers want academics to be problemsolvers, since policies seek precisely to – well, solve problems. But this does not necessarily mean that this should be the function of the academy. Indeed, the tyranny of ‘policy relevance’ achieves its most destructive form when it becomes so dominant that it **imperils the space** the academy is supposed to provide to allow scholars to think about the foundations of prevailing orders in a **critical**, even hostile, **fashion**. Taking clear inspiration from Marx, Cox produced pathbreaking work showing how different social orders, corresponding to different modes of production, generated different world orders, and looked for contradictions within the existing orders to see how the world might be changing.1 Marxist theories of world order are unlikely to be seen as very ‘policy relevant’ by capitalist elites (despite the fact that, where Marxist theory is good, it is not only ‘critical’ but also potentially ‘problem-solving’, a possibility that Cox overlooked). Does this mean that such inquiry should be replaced by government-funded policy wonkery? Absolutely not, especially when we consider the horrors that entails. At one recent conference, for instance, a Kings College London team which had won a gargantuan sum of money from the government to study civil contingency plans in the event of terrorist attacks presented their ‘research outputs’. They suggested a raft of measures to securitise everyday life, including developing clearly sign-posted escape routes from London to enable citizens to flee the capital. There are always plenty of academics who are willing to turn their hand to repressive, official agendas. There are some who produce fine problem-solving work who ought to disseminate their ideas much more widely, beyond the narrow confines of academia. There are far fewer who are genuinely critical. The political economy of research funding combines with the tyranny of ‘policy relevance’ to **entrench a hierarchy topped by tame academics.** ‘Policy relevance’, then, is a double-edged sword. No one would wish to describe their work as ‘irrelevant’, so the key question, as always, is ‘relevant to whom?’ Relevance to one’s research community, students, and so on, ought to be more than enough justification for academic freedom, provided that scholars shoulder their responsibilities to teach and to communicate their subjects to society at large, and thus repay something to the society that supports them. But beyond that, we also need to fully respect work that will never be ‘policy-relevant’, because it refuses to swallow fashionable concerns or toe the line on government agendas. Truly critical voices are worth more to the progress of human civilisation than ten thousand Deputy Undersecretaries of State for Security Assistance, Science, and Technology.

The primary ethical directive of politics is to fight against global capitalism. The large scale social exclusion and exploitation of entire groups of people is rendered incalculable and hidden within the framework of capital.

Zizek and Daly 04 (Slavoj, professor of philosophy at the Institute for Sociology, Ljubljana, and Glyn, Conversations with Zizek, pg 14-16) JXu

For Zizek it is imperative that we cut through this Gordian knot of postmodern protocol and recognize that our ethico-political responsibility is to confront the constitutive violence of today's global capitalism and its obscene naturalization/anonymization of the millions who are subjugated by it throughout the world. Against the standardized positions of postmodern culture - with all its pieties concerning 'multiculturalist' etiquette - Zizek is arguing for a politics that might be called 'radically incorrect' in the sense that it breaks with these types of positions and focuses instead on the very organizing principles of today's social reality: the principles of global liberal capitalism. This requires some care and subtlety. For too long, Marxism has been bedevilled by an almost fetishistic economism that has tended towards political morbidity. With the likes of Hilferding and Gramsci, and more recently Laclau and Mouffe, crucial theoretical advances have been made that enable the trascendence of all forms of economism. in this new context, however, Zizek argues that the problem that now presents itself is almost that of the opposite fetish. That is to say, the prohibitive anxieties surrounding the taboo of economism can function as a way of not engaging with the economic reality and as a way of implicitly accepting the latter as a basic horizon of existence. In an ironic Freudian-Lacanian twist, the fear of economism can end up reinforcing a de facto economic necessity in respect of contemporary capitalism (i.e. the initial prohibition conjures up the very thing it fears). This is not to endorse any retrograde return to economism. Zizek's point is rather that in rejecting economism we should not lose sight of the systemic power of capital in shaping the lives and destinies of humanity and our very sense of the possible. In particular, we should not overlook Marx's central insight that in order to create a universal global system the forces of capitalism seek to conceal the politico-discursive violence of its construction through a kind of gentrification of that system. What is persistently denied by neo-liberals such as Rorty (1989) and Fukuyama (1992) is that the gentrification of global liberal capitalism is one whose 'universalism' fundamentally reproduces and depends upon a disavowed violence that excludes vast sectors of the world's population. In this way, neo-liberal ideology attempts to naturalize capitalism by presenting its outcomes of winning and losing as if they were simply a matter of chance and sound judgement in a neutral marketplace. Capitalism does indeed create a space for a certain diversity, at least for the central capitalist regions, but it is neither neutral nor ideal and its price in terms of social exclusion is exorbitant. That is to say, the human cost in terms of inherent global poverty and degraded 'life-chances' cannot be calculated within the existing economic rationale and, in consequence, social exclusion remains mystified and nameless (viz. the patronizing reference to the developing world). And Zizek's point is that this mystification is magnified through capitalism's profound capacity to ingest its own excesses and negativity; to redirect (or misdirect) social antagonisms and to absorb them within a culture of differential affirmation. Instead of Bolshevism, the tendency of today is towards a kind of political boutiquism that is readily sustained by postmodern forms of consumerism and lifestyle. Against this Zizek argues for a new universalism whose primary ethical directive is to confront the fact that our forms of social existence are founded on exclusion on a global scale. While it is perfectly true that universalism can never become Universal (it will always require a hegemonic-particular embodiment in order to have any meaning), what is novel about Zizek's universalism is that it would not attempt to conceal this fact or to reduce the status of the abject Other to that of a 'glitch' in an otherwise sound matrix.

### Root Cause – War

#### We control the root cause of warfare – they might win arguments about specific discourses () or practices (), but capitalism makes war necessary and inevitable even post plan

Barrigos, 2007 (Rebecca, “War: Why capitalism is to blame,” July, http://www.sa.org.au/index.php?option=com\_content&task=view&id=1367&Itemid=1)

Wars, like the current war in Iraq with all its death and destruction, seem not only horrifying but also quite senseless to most of us. So it's easy to understand why people can fall into thinking that wars occur because of the individual policies of "evil" or "crazy" leaders like Bush and his cronies. An alternative argument is that nations go to war over resources. So for example, the US invasion of Iraq was all about gaining control of its oil. This argument was bolstered recently by Defence Minister Brendan Nelson's surprisingly forthright declaration (feebly refuted by John Howard) that Australia's support for the war was based on the West's need to guarantee energy resources. Yet this is only part of the explanation for why wars happen. Understanding why wars occur requires looking at the way society is organised. War is not an aberration, not a result of the system breaking down or going wrong. Rather, war is an inevitable product of the contradictions at the heart of capitalism, a system in which production takes place to generate profits and not to satisfy human needs. In the early stages of capitalism, small firms competed with one another for profits. Companies got bigger and bigger, undercutting less viable rivals, driving them out of business and swallowing them up. By the twentieth century, huge amounts of capital were concentrated in fewer and fewer hands and the small enterprises of early capitalism gave way to huge corporations with monopolies over whole industries in the economies of the nation state in which they were based. But as capitalism advanced and monopolisation increased, competition was not abolished. Far from it. Capitalist competition was raised to a higher level as corporations developed interests beyond the borders of their own nation, and demanded government protection for their business operations at home and abroad. Competition between firms developed into competition between nation states striving to secure the interests of their own local corporations. At times the governments of different countries have tried defend the interests of their own capitalists through economic means, like negotiating for favourable trade agreements. But at other times this competition has spilled over into outright war. Almost a hundred years ago, the Russian revolutionary Lenin identified that the great military rivalry between states, epitomised by World War I, was synonymous with capitalism at its peak of development. By the end of the nineteenth century, the colonialism of the dominant capitalist nations, Britain and France, had seen the world carved up between these powers. When burgeoning capitalist powers like the United States and Germany sought to expand their influence, they came into unavoidable conflict with the empires of the more established capitalist nations. The aspirations of US and German capitalism could only be achieved through war, and it was this dynamic which plunged the world into the turmoil and barbarism of World War I, and which led Lenin to conclude that the competition between powerful nations to dominate parts of the world, imperialism, defines modern capitalism and makes war inevitable. The dynamic of capitalist competition in the system is still alive and well today, and is precisely the factor driving the recent wars in the Middle East. The Marxist understanding that capitalism breeds war cannot just be reduced to the argument that every war is motivated by a grab for resources. After all, there were no valuable resources in Vietnam. The US intervened there as part of their Cold War rivalry with the Soviet Union for control of "spheres of influence". In this period, both powers were seeking dominance of the world economy. They sought to contain each other's influence by forging alliances with friendly regimes around the globe who would uphold their imperialist interests. And of course if this didn't work, both superpowers were prepared to forcibly bring contested areas into their fold. So the US invasion of Vietnam and the Soviet Union's invasion of Afghanistan were essentially proxy wars in which each superpower was trying to weaken the other and limit its expansion. Similarly today, US capitalism is not reliant on the oil reserves in the Middle East, but US control of this strategically important and resource-rich part of the globe is crucial to maintaining their status as the world's only superpower. Just as their real enemy in Vietnam was not the Viet Cong but the Soviet Union, so today their real, if undeclared, enemies are their present-day economic rivals, Europe and China. The latter in particular is seen as a medium to long term threat to US global domination. The US emerged the victors in the Cold War, but American domination of the world economy has been in decline since the mid-1970s. The US state has been forced to go to further lengths to secure the profit rates for its capitalist class and to ensure that their influence is not superseded by a rival power. So the "war on terror", which has seen up to a million people killed in Iraq and tens of thousands more in Afghanistan, is a reflection of the continuing and ruthless competition at capitalism's core. It had nothing to do with bringing "peace and democracy" to the Middle East, nor was it just about oil, and even less about the crazed ambitions of Bush. In fact to those at the top of society this war makes perfect sense, and fits in with the whole logic of a system that places the pursuit of profits ahead of the lives of people everywhere. Of course they don't tell us this. Because the capitalists rely on workers to carry out their wars for profit, they never honestly declare their intentions at the outset of any war. Historically, the ruling class has always sought to clothe their real rationale for wars in the rhetoric of "fighting for democracy". So the "war on terror", with all its corresponding anti-Muslim racism, has provided the US with the ideological cover for their imperialist interventions in Iraq and Afghanistan. Because wars show the brutality of capitalism and highlight all of its contradictions, they always breed working class resistance. It was workers' revolutions in Russia and Germany that were responsible for ending World War I. Imperialism is not just the result of this or that policy pursued by particular parties; war is the logical outcome of a worldwide capitalist system of imperialist competition. Because war is an inherent part of capitalism, getting rid of war is not just a matter of electing a different political party. All parties who seek to run capitalism are by necessity parties of war, because they are committed to the interests of their own capitalist state. In 1914, all the European social democratic parties that had pledged never to go to war, never to send the workers of their countries to kill and be killed by each other, ended up capitulating to nationalism and voting for war. In the end, they would not stand up against their capitalist classes, because to do so would have meant taking on the system itself - a system that they wanted to manage, not to destroy. Instead, they sent their working class supporters off to slaughter.

### Root Cause – Oppression

#### Class is the primary cause of all other forms of oppression – can’t challenge other forms of domination without challenging class first

Kovel, Alger Hiss Professor of Social Studies at Bard College, awarded Fellowship at the John Guggenheim Foundation, 2002

(Joel, *The Enemy of Nature,* pages 123-124)

If, however, we ask the question of efficacy, that is, which split sets the others into motion, then priority would have to be given to class, for the plain reason that class relations entail the state as an instrument of enforce­ment and control, and it is the state that shapes and organizes the splits that appear in human ecosystems. Thus class is both logically and historically distinct from other forms of exclusion (hence we should not talk of 'classism' to go along with 'sexism' and 'racism,' and `species-ism'). This is, first of all, because class is an essentially man-made category, without root in even a mystified biology. We cannot imagine a human world without gender dis­tinctions – although we can imagine a world without domination by gender. But a world without class is eminently imaginable – indeed, such was the human world for the great majority of our species' time on earth, during all of which considerable fuss was made over gender. Historically, the difference arises because 'class' signifies one side of a larger figure that includes a state apparatus whose conquests and regulations create races and shape gender relations. **Thus there will be no true resolution of racism so long as class society stands**, inasmuch as a racially oppressed society implies the activities of a class-defending state.'° **Nor can gender inequality be enacted away so long as class society**, with its state, demands the super-exploitation of woman's labour. Class society continually generates gender, racial, ethnic oppressions and the like, which take on a life of their own, as well as profoundly affecting the concrete relations of class itself. It follows that class politics must be fought out in terms of all the active forms of social splitting. It is the management of these divisions that keeps state society functional. Thus though each person in a class society is reduced from what s/he can become, the varied reductions can be combined into the great stratified regimes of history — this one becoming a fierce warrior, that one a routine-loving clerk, another a submissive seamstress, and so on, until we reach today's personi­fications of capital and captains of industry. Yet no matter how functional a class society, the profundity of its ecological violence ensures a basic antagonism which drives history onward. History is the history of class society — because no matter how modified, so powerful a schism is bound to work itself through to the surface, provoke resistance (`class struggle'), and lead to the succession of powers. The relation of class can be mystified without end — only consider the extent to which religion exists for just this purpose, or watch a show glorifying the police on television — yet so long as we have any respect for human nature, we must recognize that so funda­mental an antagonism as would steal the vital force of one person for the enrichment of another cannot be conjured away.

## Case

### 2NC 1 – Courts Still Wrong

#### Didn’t realize it was a racial issue – voted on other doctrinal considerations. Green

#### Executive circumvention caused the Courts to rule falsely in Korematsu

Roosevelt 08

Kermit Roosevelt, professor at the University of Pennsylvania Law School, Constitutional Scholar, Yale University Press, The Myth of Judicial Activism: Making Sense of Supreme Court Decisions, 2008 //jchen

These facts do not excuse the Court's performance, but they suggest the difficulty of its situation, and they demonstrate the justices' unwillingness to accede completely. If this were all we knew, we might conclude that the Court did the best it could, but its best was not good enough. And, as most people do, we would assign ultimate responsibility for the decision to the Court that issued it. But other facts, not apparent at the time, suggest that the outcome in Korematsu could have been avoided had the Executive simply displayed honesty and good faith in its dealings with the Court.

Researching a book on the internment cases, Peter Irons discovered considerable discord among the Justice Department lawyers assigned to the litigation. In internal memos, some lawyers had protested that the Department was engaged in the "suppression of evidence" and that General DeWitt's Final Report on the evacuation, presented to the Supreme Court, contained "lies" and "intentional falsehoods." Based on this evidence, Fred Korematsu returned to court in 1983, seeking to have his conviction vacated because of governmental misconduct amounting to a fraud on the Court. Korematsu's petition presented two main allegations.

First, the Justice Department had argued to the courts that there was insufficient time to distinguish between loyal and disloyal Japanese Americans and that a wholesale evacuation was therefore necessary. Irons and Aiko Herzig-Yoshinaga, a research associate for the federal commission created to review the internment program, discovered that DeWitt's initial version of the Final Report had made no mention of insufficient time but asserted that there was simply no way to tell the loyal from the disloyal, a more frankly racist claim to which courts might have been less willing to defer. War Department officials revised the report to make it consistent with the Justice Department's litigating position, burned the original version, and destroyed records of its existence.

Second, the War Department and the Justice Department withheld from the courts and Korematsu's attorneys reports from the FBI, the Federal Communications Commissions (FCC), and the Office of Naval Intelligence that contradicted the DeWitt Report's assertions about disloyalty and espionage activity among the Japanese-American population. Given these contradictory reports, Justice Department attorney John Burling concluded that the DeWitt Report's statements about illegal radio transmissions and shore-to-ship signaling were "intentional falsehoods." Burling drafted a footnote for the Justice Department's brief in Korematsu stating that the De Witt Report's factual assertions in support of the claims of military necessity were "in conflict with information in possession of the Department of Justice" and renouncing any reliance on those facts. At the insistence of the War Department, and over the objections of Burling and his superior Edward Ennis, Assistant Attorney General Herbert Wechsler revised the footnote to eliminate any mention of the contradictory reports. As submitted to the Supreme Court, the footnote simply asserted that the Justice Department relied on the DeWitt report only for facts asserted in the brief.

The government did not oppose Korematsu's request that his conviction be vacated, but it urged the Court not to delve into the issue of governmental misconduct. In its decision, however, the Court explicitly discussed the footnote and its revision, concluding that the government knowingly withheld information from the courts. It granted Korematsu's petition on April 19, 1984.

What this evidence suggests is that blame for the decision in Korematsu may lie primarily with the Executive. The real problem in Korematsu was not that the Supreme Court was "activist" (a characterization that is, frankly, absurd), nor even that it capitulated to wartime hysteria and racial prejudice. It was that Executive lawyers misled the Court about the basis for the military judgment to which they deferred.

What can we learn from these decisions? If we are seeking foolproof markers of illegitimacy, the answer is, not much. The four cases cover the bases of judicial review. Lochner strikes down a state law, and Plessy upholds one. Dred Scott strikes down a federal law, and Korematsu upholds one. In Dred Scott and Lochner the Court was too aggressive; in Plessy and Korematsu it was too passive. And Lochner and Korematsu, regrettable though they were, were not even obviously illegitimate. What this shows, in the end, is that objective indicators of illegitimacy do not exist. There is no substitute for careful examination of constitutional meaning and the doctrine created to implement it.

But Plessy and Korematsu have one more thing to teach us. If the Court erred by deferring too much to state officials in Plessy, if it was misled by federal officials in Korematsu, that suggests that we should be concerned about the performance of these other governmental actors. We cannot decide whether the Court is wielding too much power without considering what the alternatives would look like. That consideration is the goal of the next chapter.

### 2NC 3 – Racist People

#### They have it wrong – post 9/11 Islamophobia causes people to *think Korematsu is justified* – not the other way around

Zasloff 11

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Well, perhaps this is one of those cases where everyone “knows” what the “right” answer is, viz., that Korematsu was an embarrassing abomination, so the students were attempting to argue against the obvious answer. I wasn’t in the room, so it’s hard for me to tell. But it doesn’t seem like this group: they don’t hesitate to speak up, but they won’t argue for the sake of arguing.

Rather, I wonder if the post-9/11 world has subtly but powerfully transformed our worldview. I graduated from law school in 1993; I can’t imagine a room full of law students then defending Korematsu, and I certainly can’t imagine that occurring without a million hands popping up to attack it.

The drip, drip, drip of anti-Muslim propaganda from the “respectable” organs of the Right and the constant MSM images of Muslim radicalism has made us more willing to understand or accept why decisionmakers would decide that for national security’s sake, perhaps one group has to be focused on. We might accept profiling, which of course is a far cry from internment, but really, it was more serious then, and in fact they had attacked us, and while I certainly don’t like this and would try to do something else and of course the vast majority of Muslim-Americans are loyal citizens you can’t be too sure and….

### 2NC Memory

#### The decision serves as a reminder of the risks to freedom

Whalin 6 Sarah A. Whalin Georgia State University Law Review Spring, 2006 22 Ga. St. U.L. Rev. 711 NOTE & COMMENT: NATIONAL SECURITY VERSUS DUE PROCESS: KOREMATSUn1 RAISES ITS UGLY HEAD SIXTY YEARS LATER IN HAMDI n2 AND PADILLA n3

The Supreme Court has also denounced the Court's decision in Korematsu; eight of the nine Justices on the Hamdi and Padilla Court stated the Court wrongly decided Korematsu.n62 Further, the District  [\*720]  Court for the Northern District of California overturned Korematsu's conviction and stated that the Supreme Court's decision in Korematsu v. United States

stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizen from the petty fears and prejudices that are so easily aroused.n63

### 2NC Korematsu Renounced

#### Korematsu is seen as definitively wrong – won’t ever rule on it again

Saito 10 Natsu Taylor Saito. Professor of Law, Georgia State University College of Law. Duke Forum for Law & Social Change Spring, 2010 2 Duke Forum for L. & Soc. Change 71 ARTICLE: INTERNMENTS, THEN AND NOW: CONSTITUTIONAL ACCOUNTABILITY IN POST-9/11 AMERICA

After decades of concerted activism, research, public education, and political pressure raising awareness of the injustices of the Japanese American  [\*74]  internment, as well as renewed legal challenges, lower federal courts vacated the convictions of Korematsu and Hirabayashi in the 1980s. [n12](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.654331.0823097691&target=results_DocumentContent&returnToKey=20_T18475450548&parent=docview&rand=1382754958509&reloadEntirePage=true" \l "n12) Acting on the findings of the Commission on the Wartime Relocation and Internment of Civilians ("CWRIC"), Congress passed the Civil Liberties Act of 1988, which provided an official apology and minimal redress to surviving internees. [n13](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.654331.0823097691&target=results_DocumentContent&returnToKey=20_T18475450548&parent=docview&rand=1382754958509&reloadEntirePage=true" \l "n13) At that point there was widespread belief that the World War II internment of Japanese Americans had been legally as well as politically repudiated, despite the fact that Korematsu and related Supreme Court decisions upholding the internment had never been formally overruled, and no legislation passed clearly prohibiting such practices. [n14](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.654331.0823097691&target=results_DocumentContent&returnToKey=20_T18475450548&parent=docview&rand=1382754958509&reloadEntirePage=true" \l "n14) Vacating Korematsu's conviction in 1984, District Judge Patel concluded optimistically that legal scholars and Supreme Court justices had characterized the Korematsu decision as an "anachronism" and that the "government acknowledged its concurrence with the Commission's observation that 'today the decision in Korematsu lies overruled in the court of history.'" [n15](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.654331.0823097691&target=results_DocumentContent&returnToKey=20_T18475450548&parent=docview&rand=1382754958509&reloadEntirePage=true" \l "n15)