# 1AC – Prisons:

## 1AC - Generic

### Offense

#### Prison reform ideas currently ignores the hidden violence of guard brutality --- new micro-level change is needed. MANN 10/20:

[Brian Mann, 10-20-2016, "Reports Of Prison Guard Brutality In New York Draw A Harsh Spotlight," NPR.org, <http://www.npr.org/2016/10/20/498688702/reports-of-prison-guard-brutality-in-new-york-draw-a-harsh-spotlight>. LHP SG]

The scene: **A half-dozen white corrections officers** at Clinton Correctional Facility in Dannemora, N.Y., are **confront**ing **an African-American inmate** named Leonard Strickland. **It's video of a closed world, invisible to** most of **us. "**Stay on the wall, do you understand me?" officers shout. "Don't move." **Strickland**, who had been **diagnosed with schizophrenia, appears dazed** and unresponsive, and **then** he **collapses.** Even **after he is contained**, handcuffed and surrounded by officers, [they make no effort to assess his medical situation](http://www.northcountrypublicradio.org/news/story/30461/20151222/in-clinton-dannemora-prison-violence-an-inmate-death-and-new-scrutiny). **Officers drag Strickland** along the floor with his handcuffed arms hyperextended behind his back. At last, guards and medical personnel appear to realize that Strickland is **in serious medical distress**. "I need the emergency bag up here now!" one responder calls out. The video was filmed by a guard at the prison in upstate New York in 2010 and [first made public by The New York Times](http://www.nytimes.com/2015/12/14/nyregion/clinton-correctional-facility-inmate-brutality.html?_r=0%20). **Strickland died after being struck on the head**. State investigators issued a scathing report about the incident, but **no officers were disciplined** or charged. **During the past couple of years, Americans have grown used to seeing video of deadly confrontations between black[s]** men **and police,** and a national conversation has begun over how and when police use deadly force. Now, videos like this one from Clinton prison are stoking a similar debate in New York state, over the way corrections officers work behind bars. **Critics say prison guards too often resort to excessive violence with little accountability. "Excessive use of force in prisons we believe has reached crisis proportions in New York state," says U.S. Attorney Preet Bharara.** Last month, Bharara [charged five former corrections officers](http://www.northcountrypublicradio.org/news/story/32620/20160922/five-ny-state-prison-guards-charged-with-federal-crimes) who worked at a different state prison in Fishkill, N.Y., with federal civil rights violations. At a press conference, Bharara and FBI officials who conducted part of the investigation said guards at Downstate Correctional Facility beat an African-American inmate named Kevin Moore so savagely that he suffered five broken ribs, skull fractures and a collapsed lung. The FBI's Bill Sweeney said guards tore out hunks of Moore's dreadlocked hair. "One of the officers allegedly boasted of the group's illicit conduct by referring to the dreadlocks ripped from Moore's scalp as 'souvenirs,' " Sweeney said. Investigators allege officers then arranged an elaborate cover-up. This kind of prison guard violence also has drawn new scrutiny from New York's State Assembly. Democrat Daniel O'Donnell opened a legislative hearing last winter by describing another case in which corrections officers are accused of brutalizing a prisoner "An inmate died, and after the inmate died, the official explanation was fabricated. And what we now know is that the inmate was in fact murdered — murdered by employees of the state of New York," O'Donnell said. He's talking about [Samuel Harrell, an African-American inmate who died last year](http://www.nytimes.com/2015/08/19/nyregion/fishkill-prison-inmate-died-after-fight-with-officers-records-show.html)after an altercation with officers at Fishkill Correctional Facility. No charges have been filed in that case, but the U.S. attorney's office confirms that it is investigating. Corrections officers and their political allies have pushed back against the way this debate is being framed. "The vast majority of these men and women do their jobs incredibly well under very difficult circumstances," says State Assemblywoman Janet Duprey, a Republican whose district includes a half-dozen state prisons, including Clinton in Dannemora. "And I hope that as we go forward we don't ever lose sight of that." Mike Powers, who heads the powerful corrections officer union in New York, says **the real issue that lawmakers should focus on is an increasingly violent inmate population**. He says too many prisons are understaffed and overcrowded. "Your life's on the line and you're doing everything you can to defend yourself. Before you know it, we're the ones being scrutinized by the advocates for being horrific corrections officers," Power says. But reform advocates and some legal experts say this kind of **scrutiny is long overdue** and that **violence by guards is a problem in prisons across the country**, not just in New York. Michael Mushlin, who testified at the Assembly hearing last winter, teaches at Pace Law School and co-chairs a panel of the American Bar Association that pushes for more prison transparency and accountability. **"These prisons can be dark places. When you have a lack of oversight, as we do basically throughout this country, inevitably horrible things are going to happen," he said. Mushlin says the problem is complicated by race. Many prison guards in the U.S. are white and come from rural communities, while inmate populations tend to be disproportionately African-American and urban.** In the face of these latest accusations and federal indictments, New York already has strengthened the internal affairs unit that investigates state prisons. **Critics want the state Legislature to go further, creating an independent oversight agency to review cases where inmates are injured or killed by officers.**

#### Plan text --- Resolved: The United States Supreme Court will reverse the Carrigan ruling in order to limit the current power of qualified immunity held by police officers in prisons. BELL ’99:

[Cheryl Bell, Martha Coven, John P. Cronan, Christian A. Garza, Janet Guggemos, and Laura Storto. “Rape and Sexual Misconduct in the Prison System: Analyzing America 's Most ‘Open’ Secret.” 1999. Yale Law and Policy Review. <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1385&context=ylpr> LHP SG]

**The debilitating impact of Carrigan on inmates' claims of rape and sexual misconduct is clear. Before Carrigan, individual inmates could make viable Eighth Amendment and section 1983 claims based largely on meeting the first "objectively inhumane conditions"** prong set forth in Farmer v. Brennan, because the Court had already outlined some circumstances under which the subjective "state of mind" prong would necessarily fail. Also, simple legislative reforms9 ' could have worked to buttress an inmate's claims against a qualified immunity defense. **However, the Court has all but upset the equity it had been trying to establish in its previous prisoners' rights cases, by creating a qualified immunity defense that functions like absolute immunity**. Even if an inmate can decisively prove the first prong of the Farmer test, without law that limits a prison official's qualified immunity defense, an inmate can never successfully meet the second prong of the Farmer test. **In the interest of justice,** the Court would do well to reassess its current Carrigan standard and bring it more in line with the precedent it set in its earlier cases-thus bringing individual inmates' rights back in balance with those of government officials.

#### Contention 1 is cruel and unusual punishment.

#### Prison officers are able to get away with torture against prisoners due to current qualified immunity loopholes. SHENG ’12:

[Sheng, Phillip. “An ‘Objectively Reasonable’ Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought Under 42 U.S.C. § 1983.” 2012. LHP MK]

Apart from the concerns that (I) the Court is affording law enforcement officers too much protection from liability and (2) the Court is splitting hairs to distinguish Graham's fact-based protection from Harlow's law-based protection, 5 4 this paper's main criticism of Saucier is that **the Court offered no clear guidance concerning the "appropriate level of specificity" needed for a law to be clearly established.** Subsequent cases have only made it less clear. For instance, in Hope v. Pelzer, **a prisoner brought a civil rights lawsuit against three prison guards for cruel and unusual punishment** under the Eighth Amendment. 55 After getting into a fight with one of the guards, **the prisoner was chained to a hitching post at both arms. 5 r' The guards removed the prisoner's shirt and let him bake under the sun for seven hours. 57 He was given no bathroom breaks, only two drinks of water, and was taunted by the guards throughout the ordeal. 5 x The Eleventh Circuit held that although the prisoner's Eighth Amendment rights were clearly violated, the guards were entitled to qualified immunity because the law concerning the use of the hitching post was not clearly established**. 59 Although it could be "inferred" from "analogous" case law that the guards' conduct was illegal,60 **the Eleventh Circuit held that the case law needed to have "materially similar"** facts in order to be considered clearly established law. 61 In other words, **to overcome qualified immunity, the prisoner would have had to cite case law that prohibited a prison guard from chaining a prisoner to a hitching post for seven hours, without a shirt, without bathroom breaks, without water, and while taunting him**. 62 This was how many circuit courts interpreted Saucier,rll but the Supreme Court rejected such a narrow approach.M The Court adopted a "fair warning" standard in Hope, and held that prior case law did not need to have materially similar f~1cts to serve as the basis for clearly established law.1 ' 5 In fact, no factual similarity was needed at all-"officials can still be on notice that their conduct violates [clearly] established law even in novel factual circumstances."66 As long as the current "state of the law" gave the officer "fair warning" that the conduct was unlawful, the officer was not entitled to qualified immunity.67 This holding greatly relaxed the standard that was purportedly announced in Saucier, making it "much easier for civil rights plaintiffs" to overcome qualified immunity. 68 Up until the time Hope was decided, cases were routinely being dismissed due to the lack of materially similar cascs.m Though Hope was an Eighth Amendment case and not a Fourth Amendment case, one would expect Hope to apply fully to excessive force cases; after all, cruel and unusual punishment is not too far removed from the use of excessive force.

#### And, inmates are coerced to the point of suicide --- qualified immunity puts the onus on the prisoners instead of the guards responsible for their torture. GILNA ’15:

[Gilna, Derek. “Supreme Court Rules Qualified Immunity Shields Prison Officials from Suicide Claim.” Prison Legal News – Human Rights. July 31, 2015. LHP MK]

In what can only be considered **a step backward for holding corrections officials accountable for** the **preventable suicide of prisoners** in their custody, **the U.S.** Supreme Court **has held that** the doctrine of **qualified immunity shields officials from** **liability in a case involving a prisoner who killed himself**. As a result, a federal lawsuit filed by the family of Christopher Barkes, who allegedly committed suicide due to an inadequate intake screening, was dismissed. According to the Supreme Court, there was no question that Barkes was “a troubled man with a long history of mental health and substance abuse problems.” Following his arrest for probation violations in 2004, he was confined at the Howard R. Young Correctional Institution in Delaware, where an intake evaluation was performed that included a brief mental health screening. The nurse performing the screening, who was employed by a private contractor, used a form approved by the National Commission on Correctional Health Care (NCCHC). The form covered 17 suicide risk factors and required immediate suicide countermeasures if 8 or more factors were reported. The nurse found only two indicators of suicidal tendencies, and thus failed to alert prison staff to the possibility of Barkes harming himself. Shortly after his arrival at the facility, Barkes called his wife and told her he was going to commit suicide; she did not notify anyone at the prison. The next day he hanged himself in his cell. The lawsuit filed by Barkes’ family raised claims under 42 U.S.C. § 1983 and alleged that the correctional institution and its employees had violated Barkes’ civil rights; the suit further alleged that **prison officials were not following updated NCCHC suicide prevention standards**, as the intake screening form they used had been developed in 1997. The defendants’ motions to dismiss were denied and a divided panel of the Third Circuit Court of Appeals affirmed, holding that in light of the many facts in dispute, summary judgment was inappropriate and qualified immunity did not protect the defendants from liability, as there was a clearly established right to “the proper implementation of adequate suicide prevention protocols.” The Supreme Court granted cert and reversed on June 1, 2015, **finding that qualified immunity applied in this case and the clearly established right** relied upon by the Third Circuit **did not exist**: “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” The Court continued, “When properly applied [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law.” The Court was not persuaded that Third Circuit precedent had put the defendants on notice of a requirement for proper suicide screening protocols. “In short, even **if the Institution’s suicide screening and prevention measures contained the shortcomings that respondents allege, no precedent on the books** in November 2004 [when Barkes died] **would have made clear to petitioners that they were overseeing a system that violated the Constitution**. Because, at the very least, petitioners were not contravening clearly established law, they are entitled to qualified immunity.” Accordingly, the judgment of the Third Circuit was reversed. See: Taylor v. Barkes, 135 S.Ct. 2042 (2015).

#### Only reform through the courts like the aff can solve --- repealing the Carrigan decision takes away the ‘clearly established’ clause, allowing for more leverage. BELL 2:

[Cheryl Bell. Martha Coven. John P. Cronan. Christian A. Garza. Janet Guggemos. “Rape and Sexual Misconduct in the Prison System: Analyzing America 's Most "Open" Secret.” Yale Law and Policy Review. 1999. LHP MK]

**An**other seemingly **impervious barrier that inmates face when bringing claims of cruel and unusual punishment is** the one presented by the modern interpretation of the **qualified immunity** defense. Historically **in prisoners' rights cases,** the qualified immunity standard effectively balanced government's administrative interests in keeping the "fear of being sued ... from unduly hampering official decisionmaking"' 8 against an individual's interests in protecting her/his constitutional rights. However, the recent decision by the Carrigan court has severely compromised this balance by placing an arguably unrealistic burden upon inmates to prove that there is established law invalidating a prison official's qualified immunity protections. 189 Before Carrigan, the Court in Scheuer v. Rhodes'9° declared that if an official has no "reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief," her/his claim to a qualified-immunity defense would fail.' 91 Further, in Wood v. Strickland,'92 the Court tweaked its reasoning to establish that qualified immunity depended on whether an official knew or reasonably should have known that s/he violated a constitutional right. 93 After Wood, a series of cases seemed to reiterate the Court's commitment to balancing the scale equitably by giving as much weight to individual inmates' rights as to government officials' rights. Procunier v. Navarette 94 extended Wood's high standards, helping define a legitimate qualified immunity defense for prison S • 195officials being sued under section 1983 by inmates. Knell v. Bensinger imposed personal liability upon those prison officials who disregarded the constitutional rights of inmates and the clearly established legal developments in inmates' rights. During this period (the late 1960s through the early 1980s), individual inmates won a fair number of judicial victories. They made several successful section 1983 claims against prison officials,'96 and the courts began setting limits on how far claims of ignorance by prison officials could go unchallenged.'9 The debilitating impact of Carrigan on inmates' claims of rape and sexual misconduct is clear. **Before Carrigan, individual inmates could make viable Eighth Amendment and section 1983 claims based largely on meeting the first "objectively inhumane conditions" prong** set forth in Farmer v. Brennan, because the Court had already outlined some circumstances under which the subjective "state of mind" prong would necessarily fail. Also, simple **legislative reforms**9 ' could have **worke**d **to buttress an inmate's claims against a qualified immunity defense**. However, **the Court has** all but **upset the equity** it had been **trying to establish** in its previous **prisoners' rights cases, by creating a qualified immunity defense that functions like absolute immunity. Even if an inmate can decisively prove the first prong of the Farmer test, without law that limits a prison official's qualified immunity defense, an inmate can never successfully meet the second prong of the Farmer test.** In the interest of justice, the Court would do well to reassess its current Carrigan standard and bring it more in line with the precedent it set in its earlier cases-thus bringing individual inmates' rights back in balance with those of government officials.

#### Plan solves --- supreme court ruling will allow for lower courts to be less confused and more cases to go to trial, showing a better support for citizens’ constitutional rights and an end to structural violence. STEFAN ‘16:

[Lindsey De Stefan. “‘No Man Is Above the Law and No Man Is Below It:’ How Qualified Immunity Reform Could Create Accountability and Curb Widespread Police Misconduct.” The article claims it’s from 2017 but let’s just go 2016 to be safe. Seton Hall University. <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1861&context=student_scholarship>. LHP SG]

**Altering the qualified immunity doctrine is an excellent way to** begin the path to **restor**ing **trust by establishing a** much-needed **sense of accountability. Civil remedies are a good jumping off point because, as repeated failures to indict officers—even in the face of video footage—have demonstrated, accountability via the criminal law is a far-off possibility, if it is possible at all. Prosecutors are** generally **disinclined to bring charges against** law enforcement **officers,** 140 **and grand juries are equally as hesitant to indict them.**141 **Independent investigations**, as suggested by the Task Force, are an excellent idea, but establishing a feasible system nationwide **would take time.** On the other hand, **Supreme Court amendment of the** stringent **immunity** afforded to police officers **could take effect relatively quickly**. Of course, this is easier said than done. The Court has increasingly enlarged the immunity afforded to police officers in its recent decisions, and any 180-degree turnaround would likely require a change in Court composition. But **the current Court can nevertheless begin** to firm up qualified immunity doctrine **by simply providing more guidance and clarification, thereby enhancing accountability and reaffirming trust** between law enforcement and their respective communities. **The** concept of a **clearly established right is**, in many ways, **a problem that requires solving. A substantial number of cases are disposed of on the premise that a right was not “clearly established”—yet lower courts have struggled for years with what those words actually mean.** Arguably, then, at least some officers are escaping liability simply because of the Court’s repeated failures to establish consistency in its qualified immunity jurisprudence. But if the Court used qualified immunity opinions to demonstrate what qualifies as a clearly established right by meticulously outlining its reasoning in answering whether a set of facts implicates such a right, **the Court could alleviate some confusion**. In other words, rather than taking cases simply to overturn the lower courts’ denial of immunity, it could take cases to affirm those denials or, alternatively, to reverse lower courts’ grant of immunity. By so doing, the Court can give examples of what constitutes a right that is “sufficiently clear that every reasonable official would have understood that what he is doing violates that right,”142 and can give lower courts somewhat of a guide to follow. By elucidating the contours of the clearly established right, the Court would alleviate someof the confusion **of lower courts and ensure that they are in fact applying that part of the test properly**. Proper application of this prong directly promotes **accountability**, as the public can rest assured that, at least in that regard, **cases are not being disposed of based merely on perplexity and uncertainty.** Moreover, **increased confidence about the clearly established prong could foster a willingness to take on the second part of the test and, in so doing, advance the development of constitutional law and clarify further constitutional rights**. The Court could also accept that its attempts at a general standard for all classes of officials that are not otherwise entitled to absolute immunity has been problematic and hugely unsuccessful. Though the Court apparently fears “complicating” qualified immunity, the doctrine is quite complicated as is, and adopting more particularized classes of officials with different standards of immunity would not only assist lower courts in properly analyzing immunity, but would promote justice in constitutional tort litigation. For example, the Court could classify officials based on the approximate number of people with whom they come in contact, so to speak, and that might therefore bring civil suits against them. A governor, for example, could theoretically face a lawsuit from any resident of the state, and would thus be afforded more stringent protection—much like the standard afforded to all officials now. But law enforcement officers, who come in contact with only the residents of one town, city, or perhaps county, risk possible suits from a much smaller pool of people. The threat of litigation would therefore be much less crippling on governmental function, and immunity protection need not be so rigorous. In the case of allegations of Fourth Amendment violations, in light of the already-existing reasonableness standard, immunity may be inappropriate altogether. In addition, the Court could do its proverbial homework and take notice of the widespread indemnification of officers that often results in a complete absence of financial or employmentrelated consequences for law enforcement. **If the Court stopped relying on its own intuition, and instead came to grip with the facts, it would likely realize that it has been overzealous in protecting low-level officers, and be inclined to alter course somewhat.** By beginning to mend the qualified immunity doctrine in these ways, the Court will allow more civil suits for the vindication of constitutional rights to succeed. This will help to reduce the public mentality—strengthened by recent events—that cops get away with everything, in every regard. Civil suits avoid subjecting law enforcement to any criminal liability that, because of recent events, many laypersons believe is warranted. While this may be true in select circumstances, reality demonstrates that criminal charges are highly unlikely to stick against a police officer. But **allowing more civil suits to go forward will serve as an important reminder to both civilians and law enforcement that the police are not above the law, and that they are held accountable for their wrongdoings. In turn, this accountability will begin to heal the relationship between law enforcement and communities** by serving as the first step on what will surely be a long path to rebuilding the trust that is so crucial. VII. Conclusion 29 By adopting different immunity standards for high-level and low-level officials, clarifying the vagueness surrounding the definition of a “clearly established” right, and acknowledging the real-world effects of indemnification, the Court can begin to repair some of the substantial flaws in its qualified immunity jurisprudence. As it does, it will permit more constitutional tort suits to succeed, thereby fostering law enforcement accountability. Because criminal liability is nearly impossible as a practical matter, and because strategies like improving police training and recruiting tactics will likely take years to effectively implement, civil suits are the (relatively) fastest way to demonstrate to the country that our officers are our guardians and that they are accountable to us. It is thus the most immediate way to rebuild trust and begin healing the citizenpolice relationship.

#### Contention 2 is sexual abuse.

#### The right from sexual abuse isn’t deemed ‘clearly established,’ allowing for it to perpetuate in prisons --- the plan solves by repealing the ‘clearly unlawful’ framework. BUCHANAN ’07:

[Buchanan, Kim Shayo. “Impunity: Sexual Abuse in Women’s Prisons.” Harvard University. 2007. LHP MK]

**Prison guards** and institutions also **enjoy qualified immunity for conduct** that is **not clearly unlawful:** 253 prison guards and officials cannot be held liable for torts committed in the course of their employment **unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known"** under the law of that 24 time. 1 Unfortunately, **the law does not clearly prohibit all forms of custodial sexual abuse.** Although the illegality of forcible rape is sufficiently clear to overcome qualified immunity2,55 it is not firmly established that other forms of sexual abuse, such as sexual harassment and sexual threats, are clearly unlawful. 256 Courts have held that many forms of sexual **abuse** short of rape, such as sexual harassment without touching2"7 **and sexual activity to which the guard alleges the prisoner consented,**258 **are not clearly unlawful**. In states that have not criminalized all sexual contact between guards and prisoners, even sexual touching and quid pro quo sexual ex- ploitation short of rape may not be clearly unlawful. Qualified immunity may particularly impede allegations of institutional failure to investigate sexual abuse, as it is not clear how cursory an investigation must be before25 9 it will be found clearly unlawful. **The usual justifications for the application of qualified immunity to government actors do not fit the context of civil claims for custodial sexual abuse.** First, **an important justification for the qualified immunity rule is to avoid** "unwarranted timidity,"26° or the fear that "**government officials who are exposed to money damages for the full costs of their constitutional violations will become overly cautious or quiescent,** reducing their activ- ity to suboptimal levels and shying away from socially beneficial risks. '26' **This** concern **is irrelevant within the context of sexual contact between prisoners and guards, as there is no optimal level of custodial sex which the threat of liability might overdeter.**

#### The impact of sexual assault cannot be isolated by single causal claims, rather they transcend throughout an individual’s life. STARS:

[Sexual Assault and Assault Response Services (STARS). “Effects of Sexual Assault.” No Date. LHP MK]

**Sexual assault is** a **personal and destructive** crime. Its effects on you and your loved ones can be psychological, emotional, and/or physical. They can be brief in duration or last a very long time. It is important to remember that there is not one "normal" reaction to sexual assault. Therefore your individual response will be different depending on your personal circumstances. In this section, we explain some of the more common effects that sexual assault [survivors] victims may experience. Depression: **There are many emotional and psychological reactions** that victims **[survivors] of** rape and **sexual assault** can **experience. One of the most common of these is depression**. The term "depression" can be confusing since many of the symptoms are experienced by people as normal reactions to events. At some point or another, everyone feels sad or "blue." This also means that recognizing depression can be difficult since the symptoms can easily be attributed to other causes. These feelings are perfectly normal, especially during difficult times. Depression becomes something more than just normal feelings of sadness when the symptoms last for more than two weeks. Therefore, if you experience five or more of the symptoms of depression over the course of two weeks you should consider talking to your doctor about what you are experiencing. **The symptoms** of depression may **include**: Prolonged sadness or unexplained crying spells Significant change in weight or appetite Loss of energy or persistent fatigue Significant change in sleep patterns (insomnia, sleeping too much, fitful sleep, etc.) Loss of interest and pleasure in activities previously enjoyed; **social withdrawal Feelings of worthlessness, hopelessness or** guilt **Pessimism** or indifference Unexplained aches and pains (headaches, stomachaches) Inability to concentrate, indecisiveness Irritability, worry, anger, agitation, or anxiety Thoughts of death or suicide If you are having suicidal thoughts, don't wait to get help. Call us or the National Suicide Prevention Lifeline at 800-273-TALK (8255) at any time. Depression can affect people of any age, gender, race, ethnicity, or religion. Depression is not a sign of weakness, and it is not something that someone can make him/herself "snap out of." Rate your risk for [depression](http://www.webmd.com/depression/depression-symptom-quiz) Flashbacks: when **memories of past traumas** feel as if they are taking place in the current moment. These memories can take many forms: dreams, sounds, smells, images, body sensations, or overwhelming emotions. This **re-experience of** the **trauma** often seems to **come[s] from nowhere, and** therefore **blurs the lines between past and present, leav[es]ing the individual feeling anxious, scared, and/or powerless. It can also trigger** any other emotions that were felt at the time of the **trauma**.

#### Limiting qualified immunity will lead to a flood of litigation that catalyzes reform --- the plan disrupts the legal flows the prison industrial complex relies on. BUCHANAN 2:

[Buchanan, Kim Shayo. “Impunity: Sexual Abuse in Women’s Prisons.” Harvard University. 2007. LHP MK]

**A** second, related **rationale for qualified immunity is that** govern- mental **institutions must be spared the burden of litigation**. 26 2 The Supreme Court has held that "public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." It has cautioned **that** "broad-ranging discovery and the deposing of **numerous persons**, including an official's profes- sional colleagues ... **can be peculiarly disruptive of government.** ' '261 **This justification**, like the discredited doctrine of marital privacy, seems to **rest on the notion that the integrity of an institution requires that it be shielded from civil accountability for abuses committed under its authority**. Common law courts justified noninterference in domestic vio- lence cases by suggesting that "it is easier for an altruistic wife to forgive her husband's impulsive violence than it is for a husband to suffer the loss of authority entailed in having his exercise of prerogative reviewed by pub- lic authorities. '265 Similarly, **by applying qualified immunity to prisoners' claims, courts apparently calculate that the inconvenience to prison authorities involved in defending inmate lawsuits outweighs the harm caused to prisoners by their toleration of systematic sexual abuse.** Judicial concern that prisoner litigation (or the fear of it) will result in governmental paralysis is overblown. 66 **There is no compelling reason to believe that our legal system must abide by a strict no-vicarious-liability rule. For instance, Canadian statutory and judge-made law allow for gov- ernmental vicarious liability**.2 67 Finally, **if sexual abuse by guards in prison has become so common that it would give rise to a deluge of cases whose defense would require great institutional time and expense, it would seem that the flood of litigation is urgently needed to bring about reform.**

### Framing

#### The standard is minimizing structural oppression, defined as promoting the material conditions necessary for inclusion. Debate is a space for real world change, but we have to consider tangible policy action above all else. CURRY ’14:

Dr. Tommy J. Curry 14, “The Cost of a Thing: A Kingian Reformulation of a Living Wage Argument in the 21st Century”, Victory Briefs, 2014

Despite the pronouncement of **debate** as an activity and intellectual exercise **pointing to the** real world **consequences of dialogue**, **thinking, and (personal) politics** when addressing issues of racism, sexism, economic disparity, global conflicts, and death, many of the discussions concerning these ongoing challenges to humanity **are fixed to a paradigm** which sees the adjudication of material disparities and sociological realities as the conquest **of one ideal theory over the other**. In “Ideal Theory as Ideology,” Charles Mills outlines **the problem** contemporary theoretical-performance styles in policy debate and value-weighing **in Li**ncoln**-Do**uglass are confronted with in their attempts to get at the concrete problems in our societies. At the outset, Mills concedes that “ideal theory applies to moral theory as a whole (at least to normative ethics as against metaethics); [s]ince ethics deals by definition with normative/prescriptive/evaluative issues, [it is set] against factual/descriptive issues.” At the most general level, the conceptual chasm between what emerges as actual problems in the world (e.g.: racism, sexism, poverty, disease, etc.) and how we frame such problems theoretically—the assumptions and shared ideologies we depend upon for our problems to be heard and accepted as a worthy “problem” by an audience—**is** the most obvious call for an anti-ethical paradigm, since such a paradigm insists on the actual as the basis of what can be considered normatively. Mills, however, describes this chasm as a problem of **an ideal-**as**-**descriptive **model which argues** **that** for any actual-empirical-observable social phenomenon (P), an ideal of (P) is necessarily a representation of that phenomenon. In the idealization of a social phenomenon (P), **one “necessarily has to abstract away** from certain features” of (P) that is observed before abstraction occurs. **This gap between what is actual** (in the world), **and what is represented by theories** and politics of **debaters proposed in rounds threatens any real discussions about the concrete nature of oppression** and the racist economic structures **which necessitate tangible policies and reorienting changes** in our value orientations. As Mills states: “What distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual,” so what we are seeking to resolve on the basis of “thought” is in fact incomplete, incorrect, or ultimately irrelevant to the actual problems which our “theories” seek to address. **Our attempts to situate social disparity cannot simply** appeal to the ontologization of social phenomenon—meaning we canno**t suggest that the various complexities of social problems** (which are constantly emerging and undisclosed beyond the effects we observe) **are totalizable** by any one set of theories **within an ideological frame** be it our most cherished notions of Afro-pessimism, feminism, Marxism, or the like. **At best, theoretical endorsements make us aware of** sets of actions to address ever developing **problems in our empirical world**, **but** even this awareness **does not command us** to only do X, but rather do X and the other ideas which compliment the material conditions addressed by the action X. As a whole, debate (policy and LD) neglects the need to do X in order **to remedy** our cast-away-ness among **our ideological tendencies** and politics.

#### And, ethics assumes recognition of moral agency --- structural violence precludes that possibility classifying oppressed groups as morally inferior. WINTER AND LEIGHTON ’99:

Winter and Leighton ‘99 Deborah DuNann Winter and Dana C. Leighton. Winter "Peace, conflict, and violence: Peace psychology in the 21st century." 1999

Finally, **to recognize** the operation of **structural violence forces us to ask** questions about how and **why we tolerate it,** questions which often have painful answers for the privileged elite who unconsciously support it. A final question of this section is how and why we allow ourselves to be so oblivious to structural violence. Susan Opotow offers an intriguing set of answers, in her article Social Injustice. She argues that **our normal perceptual/cognitive processes divide people into in-groups and out-groups.** Those outside our group lie outside our scope of justice. Injustice that would be instantaneously confronted if it occurred to someone we love or know is barely noticed if it occurs to strangers or those who are invisible or irrelevant. **We do not seem to be able to open our minds and our** **hearts to everyone,** **so we draw conceptual lines between those who are in and out of our moral circle. Those** who fall **outside are morally excluded**, and become either invisible, or demeaned in some way so that we do not have to acknowledge the injustice they suffer. **Moral exclusion is** a human failing, but Opotow argues convincingly that it is **an outcome of everyday social cognition. To reduce its** nefarious effects, **we must be** vigilant in **noticing and listening to oppressed**,invisible, **outsiders**. Inclusionary thinking can be fostered by relationships, communication, and appreciation of diversity. Like Opotow, all the authors in this section point out that **structural violence is not inevitable if we become aware of its operation**, and build systematic ways to mitigate its effects. Learning about structural violence may be discouraging, overwhelming, or maddening, but these papers encourage us to step beyond guilt and anger, and begin to think about how to reduce structural violence. All the authors in this section note that **the** same **structures** (such as global communication and normal social cognition) **which feed structural violence, can** also **be used to empower citizens to reduce it**. In the long run, reducing structural violence **by reclaiming neighborhoods, demanding social justice and living wages,** providing prenatal care, alleviating sexism, and celebrating local cultures, will be our most surefooted path to building lasting peace.

#### Next, you as the judge have a pre-fiat obligation to help establish methods of prison reform through the state. Through reform like the aff, we can separate ourselves from the prison industrial complex and establish a platform for change. RODRIGUEZ ’10:

Dylan Rodriguez. “The Disorientation of the Teaching Act: Abolition as Pedagogical Position.” Radical Teacher, Number 88, Summer 2010, pp. 7-19 (Article). University of Illinois Press.

A compulsory deferral of abolitionist pedagogical possibilities composes the largely unaddressed precedent of teaching in the current historical period. It is this deferral—generally unacknowledged and largely presumed—that both undermines the emergence of an abolitionist pedagogical praxis and illuminates abolitionism’s necessity as a dynamic practice of social transformation, over and against liberal and progressive appropriations of “critical/ radical pedagogy.” Contrary to the thinly disguised ideological Alinskyism that contemporary liberal, progressive, critical, and “radical” teaching generally and tacitly assumes in relation to the prison regime, what is usually required, and what usually works as a strategy for teaching against the carceral common sense, is a pedagogical approach that asks the unaskable, posits the necessity of the impossible, and embraces the creative danger inherent in liberationist futures. About a decade of teaching a variety of courses at the undergraduate and graduate levels at one of the most demographically diverse research universities in the United States has allowed me the opportunity to experiment with the curricular content, assignment form, pedagogical mode, and conceptual organization of coursework that directly or tangentially addresses the formation of the U.S. prison regime and prison industrial complex. Students are consistently (and often unanimously) eager to locate their studies within an abolitionist genealogy—often understanding their work as potentially connected to a living history of radical social movements and epistemological-political revolt—and tend to embrace the high academic demands and rigor of these courses with far less resistance and ambivalence than in many of my other Ethnic Studies courses. There are some immediate analytical and scholarly tools that form a basic pedagogical apparatus for productively exploding the generalized common sense that creates and surrounds the U.S. prison regime. In fact, it is crucial for teachers and students to collectively understand that it is precisely the circulation and concrete enactment of this common sense that makes it central to the prison regime, not simply an ideological “supplement” of it. Put differently, many students and teachers have a tendency to presume that the cultural symbols and popular discourses that signify and give common sense meaning to prisons and policing are external to the prison regime, as if these symbols and discourses (produced through mass media, state spokespersons and elected officials, right-wing think tanks, video games, television crime dramas, etc.) simply amount to “bad” or “deceptive” propaganda that conspiratorially hide some essential “truth” about prisons that can be uncovered. This is a seductive and self-explanatory, but far too simplistic, way of understanding how the prison regime thrives. What we require, instead, is a sustained analytical discussion that considers how multiple layers of knowledge—including common sense and its different cultural forms—are constantly producing a “lived truth” of policing and prisons that has nothing at all to do with an essential, objective truth. Rather, this fabricated, lived truth forms the template of everyday life through which we come to believe that we more or less understand and “know” the prison and policing apparatus, and which dynamically produces our consent and/or surrender to its epochal oppressive violence. As a pedagogical tool, this framework compels students and teachers to examine how deeply engaged they are in the violent common sense of the prison and the racist state. Who is left for dead in the common discourse of crime, “innocence,” and “guilt”? How has the mundane institutionalized violence of the racist state become so normalized as to be generally beyond comment? What has made the prison and policing apparatus in its current form appear to be so permanent, necessary, and immovable within the common sense of social change and historical transformation? In this sense, teachers and students can attempt to concretely understand how they are a dynamic part of the prison regime’s production and reproduction— and thus how they might also be part of its abolition through the work of building and teaching a radical and liberatory common sense (this is political work that anyone can do, ideally as part of a community of social movement).

#### A combination of framing and policy is necessary to challenge the prison system as a whole --- we can’t solely act off radical left critique without reform like the aff. BERGER:

[2013, Dan Berger is an Assistant Professor at the University of Washington Bothell, “Social Movements and Mass Incarceration: What is To Be Done?”, Souls: A Critical Journal of Black Politics, Culture, and Society, Volume 15, Issue 1-2, 2013, pages 3-18]

**The strategy of decarceration** combines radical critique, direct action, and tangible goals for reducing the reach of the carceral state. **It is a** coalitional strategy that works to shrink the prison system through a combination of pragmatic demands **and** far-reaching, open-ended critique. **It is** reform in pursuit of abolition. Indeed, **decarceration allows a** strategic launch pad for the politics of abolition, **providing what has been an** exciting but abstract framework with a course of action. 32 **Rather than juxtapose pragmatism and radicalism**, as has so often happened in the realm of radical activism, **the strategy of decarceration** seeks to hold them in creative tension**. It is a strategy in** the best tradition of the black freedom struggle. **It is a strategy that seeks to** take advantage of political conditions without sacrificing its political vision.

#### Thus, the aff methodology for confronting structural violence is a reformation of the prison industrial complex. Any avoidance of engagement in the AC or overarching claims about prisons is synonymous with status quo pedagogy that excludes specific accounts of prison violence. LOYD ‘11:

Faculty Fellow in the Humanities @ Syracuse University [Dr. Jenna M. Loyd, (PhD in Geography from UC Berkeley. Has held postdoctoral positions with the Island Detention project in the Department of Geography @ Syracuse University, the Center for Place, Culture and Politics @ CUNY Graduate Center, and in the Humanities Center @ Syracuse University) “American Exceptionalism, Abolition and the Possibilities for Nonkilling Futures,” Nonkilling Geography, Edited by: James Tyner and Joshua Inwood (2011)

The relative invisibility **of domestic state violence** vis-à-vis war constrains the imagination and imperative **for building just, free, and peaceful futures, internationally and domestically**. Domestic practices of state violence (namely policing and **imprisonment**) are frequently treated as inherently more legitimate than war-making because these practices are founded in popular sovereignty. Yet, these **institutions reproduce racial, gender, class, and sexual relations of hierarchy and domination that contribute to family separation, community fragmentation, labor exploitation and premature death**. Building a **nonkilling future**, thus, means challenging the state’s organization for violence that are practiced domestically in the form of defense (military-industrial complex) and in the form of prisons and policing as the “answer” to social and economic problems ranging from poverty, to boisterous youth, to human migration, and drug use (Braz, 2008; Gilmore and Gilmore, 2008). It takes sustained ideological work to contain “war” as the only form of state violence and to contain the good sense that war’s harms cannot be confined to weapons, neatly demarcated battlefields, and declarations of wars’ conclusions. Building critiques of and movements against state violence means confronting hegemonic frames that understand state violence as exceptional, rather than as normal practices structuring both international relations and domestic governance. It means asking why denunciations of the “war at home” sound hyperbolic to some Americans. It means asking in what ways domestic practices of state violence are practiced elsewhere and international practices are imported. Such cross-boundary traffic in practices (and personnel) of policing, imprisonment and war-making are important for showing that the lines between foreign and domestic, war and peace, civilian and military are constantly blurred. This in turn highlights the tremendous ideological work that goes into maintaining these boundaries, and the material consequences such geographical imaginations have on people’s lives and the places in which they live. This is not to say that the war at home and war abroad are the same or necessarily have the same intensity. Rather it is to trace the frame of exceptionalism that structures the relations between these places in ways that facilitate violence in both places. As we have seen, **the invisibility and naturalization of** state violence in the form of **the prison is** one of **the most overlooked sites of** American exceptionalism, critiques **of US state violence**, and of antiwar efforts. **For precisely this reason, attentions should be placed** **on challenging the prison regime** as one aspect of building nonkilling futures. For this historical moment, Dylan Rodríguez argues that **undoing the naturalization** of such commonplace violence, **centers squarely on an** abolitionist pedagogy **that works “against the assumptive necessity, integrity, and taken-for-grantedness of prisons**, policing, **and the normalized state violence they reproduce**” (2010: 9). **Dismantling prisons is about dismantling relations of white supremacy, heteropatriarchy and economic exploitation that undermine the possibilities for freedom and human flourishing.** Prison abolition has an expansive antiviolence imperative that necessarily demands an end to connected practices of war, colonial dispossession, and imperial rule. Abolitionist imaginations challenge violent suppression of human freedom and offer important visions for forging links among different sectors of anti-violence organizing. We might look for example to the nineteenth century international slavery abolition movement or more recently to the nonaligned movement of (formerly) colonized nations, which regarded ending the Cold War as a condition for political autonomy and fulfilling human needs (Prashad 2007). Likewise, for civil rights organizers in the US South, the abolition of Cold War annihilation was predicated on domestic peace, which could only be won through freedom, that is overthrowing the legal and extralegal relations of white supremacy (Loyd, 2011). Creating the possibilities for nonviolent resolution of social conflict is a recognized aim of antiwar or peace organizing.

# Frontlines – Prisons:

## Case:

### Particularism

#### Broad philosophical critique fails to guide to action, rather we should minimize material injustice. PAPPAS ’16:

[Gregory Fernando Pappas “The Pragmatists’ Approach to Injustice”, The Pluralist Volume 11, Number 1, Spring 2016.]

**The pragmatists’ approach should be distinguished from nonideal theories whose starting point seems to be the injustices of society at large that have a history and persist through time**, where the task of political philosophy is to detect and diagnose the presence of these historical injustices in particular situations of injustice. For example, critical theory today has inherited an approach to social philosophy characteristic of the European tradition that goes back to Rousseau, Marx, Weber, Freud, Marcuse, and others. Accord- ing to Roberto Frega, this tradition takes society to be “intrinsically sick” with a malaise that requires adopting a critical historical stance in order to understand how the systematic sickness affects present social situations. In other words, **this approach assumes that¶ a philosophical critique of specific social situations can be accomplished only under the assumption of a broader and full blown critique of society in its entirety: as a critique of capitalism, of modernity, of western civilization, of rationality itself**. The idea of social pathology becomes intelligible only against the background of a philosophy of history or of an anthropology of decline, according to which the distortions of actual social life are but the inevitable consequence of longstanding historical processes. (“Between Pragmatism and Critical Theory” 63)¶ However, this particular approach to injustice is not limited to critical theory. It is present in those Latin American and African American political philosophies that have used and transformed the critical intellectual tools of ¶ critical theory to deal with the problems of injustice in the Americas. For instance, Charles W. Mills claims that the starting point and alternative to the abstractions of ideal theory that masked injustices is to diagnose and rectify a history of an illness—the legacy of white supremacy in our actual society.11 The critical task of revealing this illness is achieved by adopting a historical perspective where the injustices of today are part of a larger historical narrative about the development of modern societies that goes back to how Europeans have progressively dehumanized or subordinated others. Similary, radical feminists as well as Third World scholars, as reaction to the hege- monic Eurocentric paradigms that disguise injustices under the assumption of a universal or objective point of view, have stressed how our knowledge is always situated. This may seem congenial with pragmatism except the locus of the knower and of injustices is often described as power structures located in “global hierarchies” and a “world-system” and not situations.12¶ **Pragmatism** only questions that we live in History or a “World-System” (as a totality or abstract context) but not that we are in history (lowercase): in a present situation continuous with others where the past weighs heavily in our memories, bodies, habits, structures, and communities. It also **does not deny the importance of power structures and seeing the connections be- tween injustices through time**, but there is a difference between (a) inquiring into present situations of injustice in order to detect, diagnose, and cure an injustice (a social pathology) across history, and (b) inquiring into the his- tory of a systematic injustice in order to facilitate inquiry into the present unique, context-bound injustice. **To capture the legacy of the past on present injustices, we must study history but also** seek present evidence of the weight of the past **on the present injustice.¶** If injustice is an illness, then the **pragmatists’ approach takes as its main focus diagnosing and treating the particular present illness, that is, the particular situation-bound injustice and not a global “social pathology” or some single transhistorical source of injustice**. The diagnosis of a particular injustice is not always dependent on adopting a broader critical standpoint of society in its entirety, but even when it is, we must be careful to not forget that such standpoints are useful only for understanding the present evil. The **concepts and categories “white supremacy” and “colonialism**” can be great tools that can be of planetary significance. One could even argue that they pick out much larger areas of people’s lives and injustices than the categories of class and gender, but in spite of their reach and explanatory theoretical value, they **are nothing more than tools to make reference to and ameliorate particular injustices experienced (suffered) in the midst of a particular and unique re- lationship in a situation.** No doubt many, but not all, problems of injustice are a consequence of being a member of a group in history, but even in these cases, we cannot a priori assume that injustices are homogeneously equal for all members of that group. Why is this important? The possible pluralism and therefore **complexity of a problem of injustice does not always stop at the level of being a member of a historical group or even a member of many groups, as insisted on by intersectional analysis. There may be unique cir- cumstances to particular countries, towns, neighborhoods, institutions, and ultimately situations that we must be open to in a context-sensitive inquiry**. If an empirical inquiry is committed to capturing and ameliorating all of the harms in situations of injustice in their raw pretheoretical complexity, then this requires that we try to begin with and return to the concrete, particular, and unique experiences of injustice.¶ Pragmatism agrees with Sally Haslanger’s concern about Charles Mills’s view. She writes: “The goal is not just a theory that is historical (v. ahistori- cal), but is sensitive to historical particularity, i.e., that resists grand causal narratives purporting to give an account of how domination has come about and is perpetuated everywhere and at all times” (1). For “**the forces that cause and sustain domination vary tremendously context by context, and there isn’t necessarily a single causal explanation**; a theoretical framework that is useful as a basis for political intervention must be highly sensitive to the details of the particular social context” (1).13¶ Although each situation is unique, there are commonalities among the cases that permit inquiry about common causes. We can “formulate tentative general principles from investigation of similar individual cases, and then . . . check the generalizations by applying them to still further cases” (Dewey, Lectures in China 53). But Dewey insists that the focus should be on the indi- vidual case, and was critical of how so many sociopolitical **theories** are prone to starting and remaining at the level of “sweeping generalizations.” He states that they “**fail to focus on the concrete problems which arise in experience, allowing such problems to be buried under their sweeping generalizations**” (Lectures in China 53).¶ The lesson pragmatism provides for nonideal theory today is that it must be careful to not reify any injustice as some single historical force for which particular injustice problems are its manifestation or evidence for its exis- tence. Pragmatism welcomes the wisdom and resources of nonideal theories that are historically grounded on actual injustices, but it issues a warning about how they should be understood and implemented. It is, for example, sympathetic to the critical resources found in critical race theory, but with an important qualification. It understands Derrick Bell’s valuable criticism as context-specific to patterns in the practice of American law. Through his inquiry into particular cases and civil rights policies at a particular time and place, Bell learned and proposed certain general principles such as the one of “interest convergence,” that is, “whites will promote racial advantages for blacks only when they also promote white self-interest.”14 But, for pragma- tism, these **principles are nothing more than historically grounded tools to use in present problematic situations that call for our analysis**, such as deliberation in establishing public policies or making sense of some concrete injustice. The **principles are falsifiable and open to revision** as we face situation-specific injustices. In testing their adequacy, we need to consider their function in making us see aspects of injustices we would not otherwise appreciate.15

## Kritik:

**Wildrson card**

**Permutation is best - the alt has to accompany political struggle. Wilderson 10**

Frank b. Wilderson III, Prof at UC Irvine, speaking on a panel on literary activism at the National Black Writers Conference, March 26, 2010, "Panel on Literary Activism", transcribed from the video available at http://www.c-spanvideo.org/program/id/222448, begins at roughly 49:10

Typically what I mean when I ask myself whether or not people will like or accept my reading, what I'm really trying to say to myself whether or not people will like or accept me and this is a difficult thing to overcome especially for a black writer because **we are not just black writers, we are black people and** as black people **we live every day of our lives in an anti-black world. A world that defines itself in a very fundamental ways in constant distinction from us, we live everyday of our lives in a context of daily** rejection so its understandable that we as black writers might strive for acceptance and appreciation through our writing, as I said this gets us tangled up in the result. The lessons we have to learn as writers resonate with what I want to say about literature and political struggle. I am a political writer which is to say **my writing is self consciously about radical change but when I have worked as an activist in political movements, my labor has been intentional and goal oriented**. For example**,** I organized, with a purpose to say free Mumia Abu Jamal, to free all political prisoners, or to abolish the prison industrial complex here in the United States or in South Africa, I have worked to abolish apartheid and unsuccessfully set up a socialist state whereas I want my poetry and my fiction, my creative non fiction and my theoretical **writing to resonate with** and to impact and impacted by **those tangible identifiable results**, I think that something really debilitating will happen to the writing, that it the writing will be hobbled if and when I become clear in the ways that which I want my writing to have an impact on political struggle what I am trying to say when I say that I want to be unclear is I don't want to clarify, I do not want to clarify the impact that my work will have or should have on political struggle, is that the relationship of literature to struggle is not one of causality but one of accompaniment, when I write I want to hold my political beliefs and my political agenda loosely. I want to look at my political life the way I might look at a solar eclipse which is to say look indirectly, look arie, in this way **I might be able to liberate my imagination and go to places in the writing that** I and other black people go to all the time the places **that are too dangerous to go to and too dangerous to speak about when one is trying to organize people to take risk or when a political organization is presetting a list of demands**, I said at the beginning this is an anti-black world. Its anti black in places I hate like apartheid South Africa and apartheid America and it’s anti-black in the places I don't hate such as Cuba, **I've been involved with some really radical political movements but none of them have called for an end of the world but if I can get away from the result of my writing, if I can think of my writing as something that accompanies political struggle as opposed to something that will cause political struggle** then maybe just maybe I will be able to explore forbidden territory, the unspoken demands that the world come to an end, the thing that I can’t say when I am trying to organize maybe I can harness the energy of the political movement to make breakthroughs in the imagination that the movement can't always accommodate, if its to maintain its organizational capacity.

### Generic

#### Weigh the consequences of the plan against the K --- I’m the only one

### Policy Making (go for AFC too)

**Extend Curry, policy making is the only thing that gets stuff done. Your kritik may sound like a good idea but its too theoretical and wont accomplish anything.**

**Policy making and real world tangible conditions is key to oppression and is most educational:**

1. **We role play as policy makers, which lets us see oppression through tangible conditions. Key to critical ed because we learn how oppression manifests itself in society. Best way to solve oppression is to see how we can interact with oppressive conditions in the real world, so my ROTB comes first. Also key to real world ed because we directly discuss tangible impacts.**
2. **This type of ed outweighs- affects us later in life because this type of debate prepares us to be actual policy makers and people who have the ability to change the world. We wont care about discourse in the future, or what our speech act was like in this round, we will only care about real world impacts.**
3. **Outweighs- authoritarian figures are inevitable, even in the state of nature individuals will always look to form some type of alliance. We might as well embrace it and use them for greater good. Reps focus takes away from the importance of using the state.**
4. **My role of the ballot also key to ground- I ensure proper ground with competing advocacies such as cps and das. There are many actions and impacts we can debate and weigh. Ground is key to ed and fairness since we need argumentation to learn or have access to the ballot.**

### Reps Bad

**Cross apply Curry, we need focus on tangible conditions.**

**Reps focus is bad:**

1. **We will infinitely critique each others reps to the point where we wont get anything done. Harmful to coalition building. Policy making allows us to get things done and compare real world harms. Also means that only focusing on discourse distracts us away from policies. This precludes your arg that discourse frames policies because we cant even have policies when we look to discourse.**
2. **Discourse means we ignore material constraints that cause oppression in the first place. The oppressed want to know what is causing their oppression and how to actually fix it, not what mindset people have.**

### Prison Abolition K

#### 1] perm, the aff is an instance of the alt- cross apply the Berger ev.- social change is the first step towards abolition. We provide a framework for your radical approach.

**2] perm- do the aff first then the alt. Solves better, the aff makes sure people recognize the problems within prisons first before we go onto the extreme position of the alt. The aff informs people and takes an extra step to rectify the injustice. Just doing the alt would be viewed as too radical.**

**3] turn-abolishing prisons means more structural violence; some people can bring harm to society. Crime is a form of structural violence. We need prison reform like the aff not complete abolition.**

## Theory/T:

### FW vs. Theory/T

#### Framing: The aff advocates for a method of pedagogy that focuses on disrupting the prison industrial complex. Prisoners are excluded from normative frames of debate, vote aff despite questions of T and theory --- their shallow understandings of in-round fairness and education cedes the need for us to develop political change. That’s Loyd

### T – Police Officers

### ---C/I

#### Counter-interpretation: the aff may limit qualified immunity for corrections officers or prison guards. Police officers are law enforcement. The Law Dictionary:

[The Law Dictionary. “Police Officer.” <http://thelawdictionary.org/police-officer/> //LHP SG]

a person who is an officer of the law [enforcement](http://thelawdictionary.org/enforcement/) team employed by the county, town, [municipality](http://thelawdictionary.org/municipality/) or state.

#### And, prison guards meet. GANGI ’15:

[Gangi, Anthony. (Law enforcement officer for more than 13 years. Wrote a few books. Psychology major.) “Yes, Corrections officers are Law Enforcement Officers.” September 1, 2015. LHP MK]

Yes, **corrections officers are law enforcement officers. Corrections officers are part of the united blue family; don't isolate them.**

#### Net benefits:

#### Prison guards face the same conditions as police officers and are an important element in enforcing law. GANGI 2:

[Gangi, Anthony. (Law enforcement officer for more than 13 years. Wrote a few books. Psychology major.) “Yes, Corrections officers are Law Enforcement Officers.” September 1, 2015. LHP MK]

**Correctional officers need to remain firm, fair and consistent in** their **dealings with the inmate population.** They need to show no fear in a world that is dominated by predators and aggressors. **They are the law within these walls** and anything less than direct obedience from the inmate population is seen as a threat to their existence. **Their interactions with the offender consist of multiple elements that define the role of a law enforcement professional**, minus the recognition. These professionals **stop assaults, prevent suicides and homicides, suppress gang activity, seize contraband, conduct investigations, make arrests, and, most importantly, prevent escapes**. All of these elements can be furthered used to assist other law enforcement agencies in maintaining a safe and secure society. It's by this definition they have secured their place in the law enforcement family. But there may still be some who deny corrections is law enforcement. They maintain a perspective in which corrections and law enforcement remain unequal and any chance to create a sense of equality gets push aside. As law enforcement across the country is under attack, this kind of mockery is misplaced. Don't isolate corrections In the eyes of those who oppose, correctional officers become a reflection of the criminal element they supervise. This reflection presents a major conflict because it separates them from their brothers/sisters in blue and brings them closer to the offenders in their charge. The more they stand in isolation, the more they begin to question their importance. It is within that last statement that some may mistakenly see being a police officer as a step up from working in the 'tombs.' **As law enforcement professionals, correctional officers run parallel with police officers and their contribution to society is embedded in the personal sacrifices that they make on a daily basis to maintain their sense of control over the "kept" and ensure that those who are locked away, are given the chance to become productive members of society**. Even though correctional officers may stand unrecognized by those who remain outside, they are still motivated to do their job by their **sworn duty to protect and serve.** Being a professional means you do the job because the job has to get done. Correctional officers make sacrifices the public may never know and may never care about. They risk their lives every day in service to the public. In their fight, they have lost many, but continue to remain strong. Failure to recognize their importance is a failure to recognize a brother or sister who would die for the same things those on the outside represent. Embrace the complete circle of law enforcement and acknowledge those who lurk in the shadows and perform their services in the dark. Embrace them as law enforcement professionals and see them as they see you: one united blue family.

#### Impacts: (a) link turns ground --- they’re put in the same conditions that they’d need to exercise qualified immunity also means the aff is T. (b) legal ed --- prison guards are a key dimension to enforcement of the law so we get comparatively better clash in the context of the res. (c) real world --- my interp is more concerned with what constitutes a police officer based on empirical circumstances, not blanket words of art, proves my interp is more pragmatic and fair since it provides a real world basis for the args we make.

### ---Violation

#### 1] I meet --- the plan text explicitly refers to police officers working in correctional facilities.

**2] U.S. Code section 3050 states prison guards can make arrests. CORNELL LAW:**

Cornell University Law School. "18 U.S. Code § 3050," Legal Information Institute, https://www.law.cornell.edu/uscode/text/18/3050

**An officer** or employee of the Bureau **of Prisons may**— (1) **make arrests on or off** of Bureau of **Prison**s **property** without warrant for violations of the following provisions regardless of where the violation may occur: sections 111 (assaulting officers), 751 (escape), and 752 (assisting escape) of title 18, United States Code, and section 1826(c) (escape) of title 28, United States Code; (2) **make arrests on** Bureau of Prisons **premises** or reservation land **of a penal, detention, or correctional facility without warrant for violations** occurring thereon of the following provisions: sections 661 (theft), 1361 (depredation of property), 1363 (destruction of property), 1791 (contraband), 1792 (mutiny and riot), and 1793 (trespass) of title 18, United States Code; **and**(3) **arrest** without warrant **for any other offense** described in title 18 or 21 of the United States Code, **if committed on** the premises or reservation of a penal or **correctional facility** of the Bureau of Prisons if necessary **to safeguard security, good order, or government property**; if such officer or employee has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of such person’s escaping before an arrest warrant can be obtained. If the arrested person is a fugitive from custody, such prisoner shall be returned to custody. Officers and employees of the said Bureau of Prisons may carry firearms under such rules and regulations as the Attorney General may prescribe.

### T – Extra T

### ---Violation

### ---C/I

### Theory – 3x Spec

### ---C/I

#### Counter-interpretation: The aff may specify [a specific agent], [a type of limitation], and [where it’s limited] if there’s a solvency advocate for all three levels of specification that’s disclosed.

#### Solves the abuse --- MILLER advocates the entirety of the plan text, if there’s an author it means there’s lit that you could have cut on, and you can def find ev since I gave you the advocate.

#### Framing: Don’t vote on theory about the aff being hard to substantively engage, that punishes people for cutting good affs which kills fairness since it nullifies all the prep I did for it, and education since it incentivizes debaters to just read generics to skirt out of theory.

### Theory – Colt Peace

### ---C/I

#### CI: aff doesn’t need to specify any of the conditions in the interp if the neg didn’t ask the aff to add the specification before the round and the aff was willing to clarify in CX.

#### Net benefit:

#### Spec is infinitely regressive – if you don’t hold him to some standard on spec then he will just be able to make up more things for me to specify. Also, critical education is a net benefit – cross apply the framing args from the aff – asking before the round means we can avoid the theory debate and have the debate that the aff deems is good.

#### Group the engagement arguments: Your understanding of engagement is premised on the idea that we have equal footing to engage in each others arguments but that’s an incoherent way to think of dialogue – the prison industrial complex skews your evaluation of the flow since there are perspectives that are purposefully excluded by shallow methods of engagement like this --- that’s LLOY.

## Disad:

### Impact Framing

### ---S/V Outweighs

#### Case outweighs extinction:

#### 1] Structural harms happen over a theoretically infinite time period causing more suffering --- empirics. URSO:

(Stephanie Urso, Ph.D. candidate in social/personality psychology at the Graduate School of the City University of New York, Smoke and Mirrors: The Hidden Context of Violence in Schools and Society, p. 201

**This sad fact is not limited to the United States. Globally, 18 million deaths a year are caused by structural violence, compared to 100,000 deaths per year from armed conflict. That is, approximately every five years, as many people die because of relative poverty as would be killed in a nuclear war that caused 232 million deaths, and every single year, two to three times as many people die from poverty throughout the world as were killed by the Nazi genocide of the Jews over a six-year period. This is, in effect, the equivalent of an ongoing, unending, in fact accelerating, thermonuclear war or genocide, perpetuated on the weak and the poor every year of every decade, throughout the world.**

#### 2] High magnitude scenarios never happen and abstract from the real cause of suffering --- reject their hyperbole. JACKSON ’12:

Jackson 12—Director of the National Centre for Peace and Conflict Studies, the University of Otago. Former. Professor of International Politics at Aberystwyth University (8/5/12, Richard, The Great Con of National Security, http://richardjacksonterrorismblog.wordpress.com/2012/08/05/the-great-con-of-national-security/)

It may have once been the case that being attacked by another country was a major threat to the lives of ordinary people. It may also be true that there are still some pretty serious dangers out there associated with the spread of nuclear weapons. For the most part, however, most of **what you’ve been told about national security and all the big threats which can supposedly kill you is one big con designed to distract you from the things that can really hurt you, such as the poverty, inequality and structural violence of capitalism, global warming, and the manufacture and proliferation of weapons – among others. The facts are simple and irrefutable: you’re far more likely to die from lack of health care provision than you are from terrorism; from stress and overwork than Iranian or North Korean nuclear missiles**; from lack of road safety than from illegal immigrants; from mental illness and suicide than from **computer hackers**; from domestic violence than from asylum seekers; from the misuse of legal medicines and alcohol abuse than from international drug lords. And yet, politicians and **the servile media spend most of their time talking about the threats** posed by terrorism, immigration, asylum seekers, the international drug trade, the nuclear programmes of Iran and North Korea, computer hackers, animal rights activism, the threat of China, and a host of other issues which are all about as equally **unlikely to affect the health and well-being of you and your family. Along with this obsessive and perennial discussion of so-called ‘national security issues’, the state spends truly vast sums on security measures which have virtually no impact on the actual risk of dying from these threats**, and then engages in massive displays of ‘security theatre’ designed to show just how seriously the state takes these threats – such as the x-ray machines and security measures in every public building, surveillance cameras everywhere, missile launchers in urban areas, drones in Afghanistan, armed police in airports, and a thousand other things. This display is meant **to convince you that these threats are really, really serious. And while all this is going on, the rulers of society are hoping that you won’t notice that increasing social and economic inequality** in society leads to increased ill health for a growing underclass; that suicide and crime always rise when unemployment rises; that workplaces remain highly dangerous and kill and maim hundreds of people per year; that there are preventable diseases which plague the poorer sections of society; that **domestic violence kills and injures thousands of women and children annually; and that globally, poverty and preventable disease kills tens of millions** of people needlessly every year. In other words, they are hoping that you won’t notice how much structural violence there is in the world. More than this, they are hoping that you won’t notice that while literally trillions of dollars are spent on military weapons, foreign wars and security theatre (which also arguably do nothing to make any us any safer, and may even make us marginally less safe), that domestic violence programmes struggle to provide even minimal support for women and children at risk of serious harm from their partners; that underfunded mental health programmes mean long waiting lists to receive basic care for at-risk individuals; that drug and alcohol rehabilitation programmes lack the funding to match the demand for help; that welfare measures aimed at reducing inequality have been inadequate for decades; that health and safety measures at many workplaces remain insufficiently resourced; and that measures to tackle global warming and developing alternative energy remain hopelessly inadequate. Of course, none of this is surprising. Politicians are a part of the system; they don’t want to change it. For them, all the insecurity, death and ill-health caused by capitalist inequality are a price worth paying to keep the basic social structures as they are. A more egalitarian society based on equality, solidarity, and other non-materialist values would not suit their interests, or the special interests of the lobby groups they are indebted to. It is also true that dealing with economic and social inequality, improving public health, changing international structures of inequality, restructuring the military-industrial complex, and making the necessary economic and political changes to deal with global warming will be extremely difficult and will require long-term commitment and determination. For politicians looking towards the next election, it is clearly much easier to paint immigrants as a threat to social order or pontificate about the ongoing danger of **terrorists. It is also more exciting for the media than stories about how poor people and people of colour are discriminated against** and suffer worse health as a consequence. Viewed from this vantage point, national security is one massive confidence trick – misdirection on an epic scale. Its primary function is to distract you from the structures and inequalities in society which are the real threat to the health and wellbeing of you and your family, and to convince you to be permanently afraid so that you will acquiesce to all the security measures which keep you under state control and keep the military-industrial complex ticking along. Keep this in mind next time you hear a politician talking about the threat of uncontrolled immigration, the risk posed by asylum seekers or the threat of Iran, or the need to expand counter-terrorism powers. The question is: when politicians are talking about national security, what is that they don’t want you to think and talk about? What exactly is the misdirection they are engaged in? The truth is, if you think that terrorists or immigrants or asylum seekers or Iran are a greater threat to your safety than the capitalist system, you have been well and truly conned, my friend. Don’t believe the hype: you’re much more likely to die from any one of several forms of structural violence in society than you are from immigrants or terrorism. Somehow, we need to challenge the politicians on this fact.

### ---Benetar

### PTX

### ---Generic

#### 1] No link --- the plan text fiats a Supreme Court doctrine, not legislation in the house.

#### 2] Not intrinsic --- a logical policy maker would know to do both to prevent a foreseeable terminal impact.

#### 3] Fiat solves the link --- I don’t test whether people should vote on the plan, but whether they should do it.

#### **A Trump presidency would crush the GOP**

Chait 2/5 (Jonathan Chait is a commentator and writer for New York magazine. He was previously a senior editor at The New Republic and a former assistant editor of The American Prospect. “Why Liberals Should Support a Trump Republican Nomination,” New York Magazine, 2016, <http://nymag.com/daily/intelligencer/2016/02/why-liberals-should-support-a-trump-nomination.html>) Os

Second, a Trump nomination might upend his party. The GOP is a machine that harnesses ethno-nationalistic fear — of communists, criminals, matrimonial gays, terrorists, snooty cultural elites — to win elections and then, once in office, caters to its wealthy donor base. (This is why even a social firebrand like Ted Cruz would privately assure the billionaire investor Paul Singer that he wasn’t particularly concerned about gay-marriage laws.) As its voting base has lost college-­educated voters and gained blue-collar whites, the fissure between the means by which Republicans attain power and the ends they pursue once they have it has widened. What has most horrified conservative activists about Trump’s rise is how little he or his supporters seem to care about their anti-government ideology. When presented with the candidate’s previous support for higher taxes on the rich or single-payer insurance, heresies of the highest order, Trump fans merely shrug. During this campaign, Trump has mostly conformed to party doctrine, but without much conviction. Trump does not mouth the rote conservative formulation that government is failing because it can’t work and that the solution is to cut it down to size. Instead, he says it is failing because it is run by idiots and that the solution is for it to instead be run by Trump. About half of Republicans favor higher taxes on the rich, a position that has zero representation among their party’s leaders. And those Republicans are the most likely to support Trump. Trump’s candidacy represents, among other things, a revolt by the Republican proletariat against its master class. That is why National Review devoted a cover editorial and 22 columns to denouncing Trump as a heretic to the conservative movement. A Trump nomination might not actually cleave the GOP in two, but it could wreak havoc. If, like me, you think the Republican Party in its current incarnation needs to be burned to the ground and rebuilt anew, Trump is the only one holding a match.

#### This forces us to confront our issues

Orujyan 3/29 (Armen, founder and CEO of Athgo International, “Why an Embarrassing President Trump Might Be Good for America,” Fortune, 2016, <http://fortune.com/2016/03/29/trump-presidency-selective-memory/>) OS

Would a Trump presidency fix our national problems? Probably not. But, his presidency should not be viewed through that lens. Rather, think of it like this: President Trump is perfectly suited to be the commander-in-chief of political incorrectness and international blunders. He will rip the bandage that covers the corrosion of our country. A Trump presidency would likely produce alarming missteps, yet in the process it would expose the real problems our nation faces—problems that, if not corrected today, will cause far graver damage tomorrow. The worse he does, the better it may be for the country. Let me use an analogy: When we maintain a dreadful diet, we steadily worsen our health. We somehow think that heart conditions happen to other people, to our neighbors and strangers on TV. But never to us. The relative ease of doing nothing trumps (no pun intended) the fear of negative outcomes. Today, as a nation we have clogged the walls of our arteries. That is where President Trump comes in. The electorate that supports Trump is part of our national fabric, and it is playing the role of an organism that stimulates the stroke our society needs. They anticipate that President Trump will rip off that bandage and bring about a shock of awareness as to how things are, regardless of how politically incorrect or suicidal that may appear. They are fighting against our selective memory.

#### **Also solves warming**

Cowen 1/25 (Tyler Cowen is an American economist, academic, and writer. He occupies the Holbert C. Harris Chair of economics, as a professor at George Mason University. “Tyrone on why Democrats should vote for Donald Trump,” Marginal Revolution, 2016, <http://marginalrevolution.com/marginalrevolution/2016/01/tyrone-democrats-vote-donald-trump.html>) OS edited for problematic language

OK people, let’s say Trump sticks to the mainstream Republican position. What will happen then? Won’t greedy capitalists [destroy] the earth, not to mention building that energy-consuming wall? Well, in the short run, maybe. (Don’t forget Lennon on the omelette and those broken eggs!) But we all know how disastrous Trump’s economic ideas would be in practice. They would lower the growth rate of gdp and impoverish the masses. Even if you read Trump as a policy moderate, just imagine what his volatile temperament would do to the equity risk premium. (Then they would have to give Robert Barro a Nobel prize!) And so, four or maybe eight years later, — or is it two? — what we could expect to find? A fully Democratic Congress and White House. (And dear reader, is there any other way to get there?) And thus would arrive comprehensive climate change legislation, just as we got Obamacare post-2008. Voila! That’s way more important than maintaining America’s status as a nice, well-respected, and tolerant country, isn’t it? So Democrats, if you really care about Bangladesh and Vietnam, and don’t just have this silly mood affiliation fancy that Tyler has fabricated, you should promote the candidacy of Donald Trump. The more Democratic you are, the better. The more worried about climate change you are, the better. Your man has arrived on the national scene. Finally.

#### Warming causes extinction

Tickell 08 – (Oliver, The Guardian, “On a planet 4C hotter, all we can prepare for is extinction”, 8/11, http://www.guardian.co.uk/commentisfree/2008/aug/11/climatechange)

We need to get prepared for four degrees of global warming, Bob Watson told the Guardian last week. At first sight this looks like wise counsel from the climate science adviser to Defra. But **the idea that we could adapt to a 4C rise is absurd and dangerous. Global warming on this scale would be a catastrophe that would mean**, in the immortal words that Chief Seattle probably never spoke, "the end of living and the beginning of survival" for humankind. Or perhaps the beginning of our extinction**. The collapse of the polar ice caps would become inevitable, bringing long-term sea level rises of 70-80 metres. All the world's coastal plains would be lost, complete with ports, cities, transport and industrial infrastructure, and much of the world's most productive farmland.** The world's geography would be transformed much as it was at the end of the last ice age, when sea levels rose by about 120 metres to create the Channel, the North Sea and Cardigan Bay out of dry land. Weather would become extreme and unpredictable, with more frequent and severe droughts, floods and hurricanes. **The Earth's carrying capacity would be hugely reduced. Billions would undoubtedly die.** Watson's call was supported by the government's former chief scientific adviser, Sir David King, who warned that "if we get to a four-degree rise it is quite possible that we would begin to see a runaway increase". This is a remarkable understatement. **The climate system is already experiencing significant feedbacks, notably the summer melting of the Arctic sea ice. The more the ice melts, the more sunshine is absorbed by the sea, and the more the Arctic warms. And as the Arctic warms, the release of billions of tonnes of methane** – a greenhouse gas 70 times stronger than carbon dioxide over 20 years – **captured under melting permafrost is already under way**. **To see how far this process could go, look 55.5m years to the Palaeocene-Eocene Thermal Maximum, when a global temperature increase of 6C coincided with the release of about 5,000 gigatonnes of carbon into the atmosphere,** both as CO2 and as methane from bogs and seabed sediments. Lush subtropical forests grew in polar regions, and sea levels rose to 100m higher than today. It appears that **an initial warming pulse triggered other warming processes. Many scientists warn that this historical event may be analogous to the present: the warming caused by human emissions could propel us towards a similar hothouse Earth**.

#### Hillary increases US/China tensions

Dingding Chen ’15 [assistant professor of Government and Public Administration], The Diplomat 15, 4-20-2015, "3 Ways a Hillary Clinton Presidency Would Affect US-China Relations," Diplomat, http://thediplomat.com/2015/04/3-ways-a-hillary-clinton-presidency-would-affect-us-china-relations/

First, it is about Clinton’s past attitudes toward China. While still the first lady, Hillary Clinton had some tough words for China when she attended the fourth world conference on women in Beijing in 1995. That unhappy memory still lingers on the minds of many Chinese. Then again, recently Hillary strongly criticized China for arresting five women for promoting women’s rights. And then, of course, Chinese officials and scholars did not appreciate her interference in China’s disputes with other Asian countries in the South China Sea. Many in China also acknowledge the United States’ pivot to Asia – or rebalance – strategy as Hillary’s brainchild, for better or worse. So most Chinese experts have concluded, perhaps correctly, that Hillary Clinton is a strong leader who would do everything possible to maintain American hegemony in the world, a goal increasingly at odds with China’s growing geopolitical desires. Second, if elected, Clinton’s party, the Democratic Party, is traditionally strong on issues like human rights and trade protectionism. Chairman Mao once said jokingly that he would any day prefer to deal with the Republican Party, and that might still be the case of Chinese leaders today. Again, this might be a misperception because the Republican Party is also known for its tendency to flex America’s military muscle, something China wouldn’t prefer. So it remains to be seen whether another Democratic president would act tough on China. Third, and perhaps most importantly, there is increasing tension between China and the United States from a structural point of view as China continues to grow stronger economically and militarily. China will demand more power and respect from the United States, and the United States will refuse to give in as long as it can sustain the current global system. Such structural tensions will not disappear if both sides cannot find an effective way to narrow their differences, manage their conflicts carefully, and eventually share power in Asia. It is in this sense that the person to assume the next U.S. presidency probably matters very little. Whether or not the next U.S. president will adopt a tougher approach toward China very much depends on the capabilities and intentions of the United States as a whole. A single individual, even someone as powerful as the U.S. president, might not have a large enough influence on the democratic and fragmented U.S. system to cause real change. Many in China tend to neglect the influence of the U.S. Congress on American foreign policy, but, in reality, Congress can have a huge impact on U.S. foreign policy. It seems that the Republican Party will continue to dominate the Congress in near future, thus putting more constraints on a Democratic president. In the end, the attitude Hillary Clinton, if elected, would adopt toward China is a result of all three factors mentioned above. The bad news, however, is that all three factors seem to converge and point to a more turbulent relationship between China and the United States.

#### US-China relations solve extinction—trans-national conflict, economic collapse, and warming

Cohen ’9 (William S. Cohen is chairman and CEO of The Cohen Group, a strategic business consulting firm based in Washington, D.C. Secretary Cohen served as U.S. secretary of defense, Maurice R. Greenberg is chairman and CEO of C.V. Starr & Co., Inc. Mr. Greenberg retired four years ago as chairman and CEO of American International Group (AIG) after more than 40 years of leadership, creating the largest insurance company in history, “Smart Power in U.S.-China Relations,” http://csis.org/files/media/csis/pubs/090309\_mcgiffert\_uschinasmartpower\_web.pdf)

#### The evolution of Sino-U.S. relations over the next months, years, and decades has the potential to have a greater impact on global security and prosperity than any other bilateral or multilateral arrangement. In this sense, many analysts consider the US.-China diplomatic relationship to be the most influential in the world. Without question, strong and stable U.S. alliances provide the foundation for the protection and promotion of U.S. and global interests. Yet within that broad framework, the trajectory of U.S.-China relations will determine the success, or failure, of efforts to address the toughest global challenges: global financial stability, energy security and climate change, nonproliferation, and terrorism, among other pressing issues. Shepherding that trajectory in the most constructive direction possible must therefore be a priority for Washington and Beijing. Virtually no major global challenge can be met without U.S.-China cooperation. The uncertainty of that future trajectory and the "strategic mistrust" between leaders in Washington and Beijing necessarily concerns many experts and policymakers in both countries. Although some U.S. analysts see China as a strategic competitor—deliberately vying with the United States for energy resources, military superiority, and international political influence alike— analysis by the Center for Strategic and International Studies (CSIS) has generally found that China uses its soft power to pursue its own, largely economic, international agenda primarily to achieve its domestic objectives of economic growth and social stability.1 Although Beijing certainly has an eye on Washington, not all of its actions are undertaken as a counterpoint to the United States. In addition, CSIS research suggests that growing Chinese soft power in developing countries may have influenced recent U.S. decisions to engage more actively and reinvest in soft-power tools that have atrophied during the past decade. To the extent that there exists a competition between the United States and China, therefore, it may be mobilizing both countries to strengthen their ability to solve global problems. To be sure, U.S. and Chinese policy decisions toward the respective other power will be determined in large part by the choices that leaders make about their own nations interests at home and overseas, which in turn are shaped by their respective domestic contexts. Both parties must recognize—and accept—that the other will pursue a foreign policy approach that is in its own national interest. Yet, in a globalized world, challenges are increasingly transnational, and so too must be their solutions. As demonstrated by the rapid spread of SARS from China in 2003, pandemic flu can be spread rapidly through air and via international travel. Dust particulates from Asia settle in Lake Tahoe. An economic downturn in one country can and does trigger an economic slowdown in another. These challenges can no longer be addressed by either containment or isolation. What constitutes the national interest today necessarily encompasses a broader and more complex set of considerations than it did in the past As a general principle, the United States seeks to promote its national interest while it simultaneously pursues what the CSIS Commission on Smart Power called in its November 2007 report the "global good."3 This approach is not always practical or achievable, of course. But neither is it pure benevolence. Instead, a strategic pursuit of the global good accrues concrete benefits for the United States (and others) in the form of building confidence, legitimacy, and political influence in key countries and regions around the world in ways that enable the United States to better confront global and transnational challenges. In short, the global good comprises those things that all people and governments want but have traditionally not been able to attain in the absence of U.S. leadership. Despite historical, cultural, and political differences between the United States and China, Beijing's newfound ability, owing to its recent economic successes, to contribute to the global good is a matter for common ground between the two countries. Today there is increasing recognition that no major global challenge can be addressed effectively, much less resolved, without the active engagement of—and cooperation between—the United States and China. The United States and China—the worlds first- and third-largest economies—are inextricably linked, a fact made ever more evident in the midst of the current global financial crisis. Weak demand in both the United States and China, previously the twin engines of global growth, has contributed to the global economic downturn and threatens to ignite simmering trade tensions between the two countries. Nowhere is the interconnectedness of the United States and China more clear than in international finance. China has $2 trillion worth of largely U.S. dollar-denominated foreign exchange reserves and is the world's largest holder—by far—of U.S. government debt. Former treasury secretary Henry M. Paulson and others have suggested that the structural imbalances created by this dynamic fueled the current economic crisis. Yet. China will almost certainly be called on to purchase the lion's share of new U.S. debt instruments issued in connection with the U.S. stimulus and recovery package. Secretary of State Hillary Rodham Clinton's February 23.2009, reassurance to Beijing that U.S. markets remain safe and her call for continued Chinese investment in the U.S. bond market as a means to help both countries, and the world, emerge from global recession underscored the shared interest—and central role—that both countries have in turning around the global economy quickly. Although China's considerable holdings of U.S. debt have been seen as a troubling problem, they are now being perceived as a necessary part of a global solution. Similarly, as the worlds two largest emitters of greenhouse gases, China and the United States share not only the collateral damage of energy-inefficient economic growth, but a primary responsibility to shape any ultimate global solutions to climate change. To date, cooperation has been elusive, owing as much to Washington's reluctance as to Beijing's intransigence. Painting China as the environmental bogeyman as an excuse for foot-dragging in policymaking is no longer an option; for its part, China, as the world's top polluter, must cease playing the developing-economy card. Yet energy security and climate change remain an area of genuine opportunity for joint achievement. Indeed, U.S.-China cooperation in this field is a sine qua non of any response to the energy and climate challenges. The sheer size of the Chinese economy means that collaboration with the United States could set the de facto global standards for efficiency and emissions in key economic sectors such as industry and transportation. Climate change also provides an area for cooperation in previously uncharted policy waters, as in emerging Arctic navigational and energy exploration opportunities. Washington and Beijing also share a deep and urgent interest in international peace and stability. The resumption of U.S.-China military contacts is a positive development. As two nuclear powers with worldwide economic and strategic interests, both countries want to minimize instability and enhance maritime security, as seen by parallel antipiracy missions in the waters otT Somalia. Joint efforts in support of United Nations peacekeeping, nonproliferation, and counterterrorism offer critical areas for bilateral and multilateral cooperation. Certainly, regional and global security institutions such as the Six-Party Talks concerning North Korea or the UN Security Council require the active engagement of both Washington and Beijing. Even more broadly, crisis management in geographic regions of mutual strategic interest like the Korean peninsula, Iran, or Burma require much more Sino-U.S. communication if the two countries are to avoid miscalculation and maximize opportunities to minimize human sutfering. Increasing the number of mid-level military-to-military exchanges would help in this regard. The United States and China could do more to cooperate on law enforcement to combat drug trafficking and organized crime in Western China. Afghanistan is competing with Burma as the main provider of narcotics to China; Washington could use its influence with the International Security Assistance Force in Kabul to develop a joint antinarcotics program. This could potentially build networks and joint capabilities that might be useful for U.S.-China cooperation on the issue of Pakistan. In addition, Washington should also encourage NATO-China cooperation along the Afghan border. Collaborating under the auspices of the Shanghai Cooperation Organization (SCO) might provide an additional framework for Beijing and Washington to address Central Asian security issues in a cooperative manner. 1he SCO, which includes Pakistan as an observer and will convene a multinational conference on Afghanistan in March 2009, has long made curbing narcoterrorism in Afghanistan a priority. In addition, the VS. Drug Enforcement Agency and the Chinese Anti-Narcotics Bureau should expand cooperation on interdiction and prosecution of heroin and meth traffickers. To be sure, there are a number of areas of serious divergence between Washington and Beijing. This should surprise no one. The United States has disagreements with even its allies. Two large powers with vastly dilferent histories, cultures, and political systems are bound to have challenges. History has shown, however, that the most effective way of addressing issues is for the U.S. and Chinese governments to engage in quiet diplomacy rather than public recrimination. In the U.S.-China context, there is often little to be gained—and much to be lost in terms of trust and respect—by a polarizing debate. Any differences, moreover, must not necessarily impede Sino-U.S. cooperation when both sides share strong mutual interests. I;. Scott Fitzgerald wrote that "the test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function."3 Effective policy toward China by the United States, and vice versa, will require this kind of dual-minded intelligence. Moreover, working together on areas of mutual and global interest will help promote strategic trust between China and the United States, facilitating possible cooperation in other areas. Even limited cooperation on specific areas will help construct additional mechanisms for bilateral communication on issues of irreconcilable disagreement. In fact, many of the toughest challenges in U.S.-China relations in recent years have been the result of unforeseen events, such as the accidental bombing of the Chinese embassy in Belgrade in May 1999 and the EP-3 reconnaissance plane collision in April 2001. Building trust and finding workable solutions to tough problems is the premise behind the Obama administrations foreign policy of smart power, as articulated by Secretary of State Clinton. Smart power is based on, as Secretary Clinton outlined in her confirmation hearing, the fundamental belief that 'We must use... the full range of tools at our disposal—diplomatic, economic, military, political and cultural—picking the right tool, or combination of tools, for each situation."' As the CS1S Commission on Smart Power noted in November 2007, "Smart Power is neither hard nor soft—it is the skillful combination of bothIt is an approach that underscores the necessity of a strong military, but also invests heavily in alliances, partnerships and institutions at all levels... .°5 As such, smart power necessarily mandates a major investment in a U.S.-China partnership on key issues. 'The concept enjoys broad support among the Chinese and American people and, by promoting the global good, it reaps concrete results around the world. There should be no expectation that Washington and Beijing will or should agree on all, or even most, questions. But the American and Chinese people should expect their leaders to come together on those vital issues that require their cooperation. U.S.-China partnership, though not inevitable, is indispensable.

#### Clinton collapses US-Russia relations

Miller ’15(S.A. Miller, reports from Capitol Hill on politics, policy and political campaigns for The Washington Times, The Washington Times - Tuesday, June 9, 2015. “Hillary Clinton’s hawkish position on Russia troubles both sides of aisle” <http://www.washingtontimes.com/news/2015/jun/9/hillary-clintons-hawkish-position-on-russia-troubl/?page=all>)

Democratic presidential front-runner Hillary Rodham Clinton has pivoted left on domestic issues but stands out on foreign policy as more hawkish than some of her GOP rivals, even stoking fears that she’s ready to put the U.S. on a warpath with Russia. Mrs. Clinton is poised to make her foreign policy experience as senator and secretary of state a central argument for her White House run. It’s a record that includes supporting military intervention in Iraq and Libya, positions that put her at odds with her party’s liberal base. And since leaving the State Department in 2013, her harsh rhetoric about Russia raised eyebrows among hawks and doves alike. At a California fundraiser last year, she reportedly compared Russian President Vladimir Putin to Adolf Hitler. At a meeting earlier this year with London Mayor Boris Johnson, he said she faulted European leaders for being “too wimpy” about challenging Mr. Putin. Conservative commentator Paul Craig Roberts, an economist who served as assistant secretary of treasury under President Reagan, warned that Mrs. Clinton will have a difficulty backing down from a confrontation with Mr. Putin after calling him Hitler. “When you go that far out on a limb, you really kind of have to go the rest of the way,” he said in an interview at Infowars.com. “I don’t’ think there is any candidate that we can end up with as president that would be more likely to go to war with Russia than Hillary.” Mrs. Clinton isn’t the only candidate to take a tough stand on Russia’s annexation of Crimea and ongoing involvement in the warfare in eastern Ukraine. But she brings more heat to the discourse than any other Democrat or most Republicans. Former Florida Gov. Jeb Bush, who is expected to announce his presidential run next week, gave a speech Wednesday in Berlin in which he said the West should “push back” against Russian aggression. Mr. Bush described Mr. Putin as a bully who “will push until someone pushes back.” But he warned against being reactionary and pushing away the Russian people, as occurred during the Cold War. “I don’t think we should be reacting to bad behavior. By being clear of what the consequences of that bad behavior is in advance, I think we will deter the kind of aggression we fear from Russia,” he said. “But always reacting and giving the sense we’re reacting in a tepid fashion only enables the bad behavior of Putin.” Still, Mr. Roberts said that Mrs. Clinton doesn’t just talk tough but “is in tight with the military-security complex.” Former Green Party presidential candidate Ralph Nader recently called her “a deep corporatist and a deep militarist.” He said that when Mrs. Clinton served on the Senate Armed Services Committee, she “never met a weapons system she didn’t like.” Mr. Nader also blamed Mrs. Clinton for “almost single-handedly” pushing President Obama into lending U.S. military support to depose Libyan dictator Moammar Gadhafi, which unleashed chaos in the country that spread throughout the region and helped the terrorist army that calls itself the Islamic State gain a foothold. “She persuaded the White House that it was an easy topple without knowing that, in a tribal society with nothing to replace it, you would have a civil war, sectarian killings spilling into Africa [and] weapons everywhere [in] Mali [and] central Africa. The big thing is the huge amount of geography that has been destabilized because of the Libyan overthrow.” Mr. Nader’s criticism echoed comments form some of Mrs. Clinton’s Republican rivals, including Sen. Rand Paul of Kentucky, who has said that she will have to answer not only for the deadly attack on the U.S. compound in Benghazi but for the other far-reaching consequences of her Libya policy. For liberal activists, Mrs. Clinton’s foreign policy record compounds their concerns that she doesn’t truly support their agenda. “We definitely view Hillary as pretty far right when it comes to foreign policy,” said Alli McCracken, national coordinator for the feminist anti-war group Code Pink. She said that Mrs. Clinton acts “more like a war general than a diplomat,” including supporting the Iraq invasion, the troop surge in Afghanistan, the Libya overthrow and a potential strike on Iran. “I hope that the left puts pressure on her to break away from the status quo,” said Ms. McCracken. “I hope that there is pressure put on her to not just have left-leaning domestic polices and support of women’s rights here in the U.S. but women’s rights everywhere, and that means taking military options off the table.”

#### Collapse of Russian relations causes nuclear war

Cohen ’11 (Stephen Cohen, Ph.D., professor of Russian studies at New York University and Professor of Politics Emeritus at Princeton University. “Obama's Russia 'Reset': Another Lost Opportunity?” <http://www.thenation.com/article/161063/obamas-russia-reset-another-lost-opportunity?page=full>)

An enduring existential reality has been lost in Washington’s post–cold war illusions and the fog of subsequent US wars: the road to American national security still runs through Moscow. Despite the Soviet breakup twenty years ago, only Russia still possesses devices of mass destruction capable of destroying the United States and tempting international terrorists for years to come. Russia also remains the world’s largest territorial country, a crucial Eurasian frontline in the conflict between Western and Islamic civilizations, with a vastly disproportionate share of the planet’s essential resources including oil, natural gas, iron ore, nickel, gold, timber, fertile land and fresh water. In addition, Moscow’s military and diplomatic reach can still thwart, or abet, vital US interests around the globe, from Afghanistan, Iran, China and North Korea to Europe and Latin America. In short, without an expansive cooperative relationship with Russia, there can be no real US national security. And yet, when President Obama took office in January 2009, relations between Washington and Moscow were so bad that some close observers, myself included, characterized them as a new cold war. Almost all cooperation, even decades-long agreements regulating nuclear weapons, had been displaced by increasingly acrimonious conflicts. Indeed, the relationship had led to a military confrontation potentially as dangerous as the 1962 Cuban missile crisis. The Georgian-Russian War of August 2008 was also a proxy American-Russian war, the Georgian forces having been supplied and trained by Washington. What happened to the “strategic partnership and friendship” between post-Soviet Moscow and Washington promised by leaders on both sides after 1991? For more than a decade, the American political and media establishments have maintained that such a relationship was achieved by President Bill Clinton and Russian President Boris Yeltsin in the 1990s but destroyed by the “antidemocratic and neo-imperialist agenda” of Vladimir Putin, who succeeded Yeltsin in 2000. In reality, the historic opportunity for a post–cold war partnership was lost in Washington, not Moscow, when the Clinton administration, in the early 1990s, adopted an approach based on the false premise that Russia, having “lost” the cold war, could be treated as a defeated nation. (The cold war actually ended through negotiations sometime between 1988 and 1990, well before the end of Soviet Russia in December 1991, as all the leading participants—Soviet President Mikhail Gorbachev, President Ronald Reagan and President George H.W. Bush—agreed.) The result was the Clinton administration’s triumphalist, winner-take-all approach, including an intrusive crusade to dictate Russia’s internal political and economic development; broken strategic promises, most importantly Bush’s assurance to Gorbachev in 1990 that NATO would not expand eastward beyond a reunited Germany; and double-standard policies impinging on Russia (along with sermons) that presumed Moscow no longer had any legitimate security concerns abroad apart from those of the United States, even in its own neighborhood. The backlash came with Putin, but it would have come with any Kremlin leader more self-confident, more sober and less reliant on Washington than was Yeltsin. Nor did Washington’s triumphalism end with Clinton or Yeltsin. Following the events of September 11, 2001, to take the most ramifying example, Putin’s Kremlin gave the George W. Bush administration more assistance in its anti-Taliban war in Afghanistan, including in intelligence and combat, than did any NATO ally. In return, Putin expected the long-denied US-Russian partnership. Instead, the Bush White House soon expanded NATO all the way to Russia’s borders and withdrew unilaterally from the Anti-Ballistic Missile Treaty, which Moscow regarded as the bedrock of its nuclear security. Those “deceptions” have not been forgotten in Moscow. Now Russia’s political class, alarmed by the deterioration of the country’s essential infrastructures since 1991, is locked in a struggle over the nation’s future—one with profound consequences for its foreign policies. One side, associated with Putin’s handpicked successor as president, Dmitri Medvedev, is calling for a “democratic” transformation that would rely on “modernizing alliances with the West.” The other side, which includes ultra-nationalists and neo-Stalinists, insists that only Russia’s traditional state-imposed methods, or “modernization without Westernization,” are possible. As evidence, they point to NATO’s encirclement of Russia and other US “perfidies.” The choice of “modernizing alternatives” will be made in Moscow, not, as US policy-makers once thought, in Washington, but American policy will be a crucial factor. In the centuries-long struggle between reform and reaction in Russia, anti-authoritarian forces have had a political chance only when relations with the West were improving. In this regard, Washington still plays the leading Western role, for better or worse.

## Counterplan:

## NC:

# Old Stuff

## \*Plan – Good Faith\*

### Plan – Good Faith [mediocre]:

#### Despite attempted shifts from private prisons, the prison industrial complex as a whole still exists. AP 8/18:

[Associated Press. “Obama administration to end use of private prisons.” August 18, 2016. LHP MK]

WASHINGTON – **The Obama administration** announced Thursday it **will phase out** its use of **some private prisons,** affecting thousands of federal inmates and immediately sending shares of the two publicly traded prison operators plunging. In a memo to the Bureau of Prisons, Deputy Attorney General Sally Yates told it to start reducing "and ultimately ending" the Justice Department's use of private prisons. The announcement follows a recent Justice Department audit that found that the private facilities have more safety and security problems than government-run ones. The Obama administration says the declining federal prison population justifies the decision to eventually close privately run prisons. The federal prison population — now at 193,299 — has been dropping due to changes in federal sentencing policies over the past three years. Private prisons hold about 22,100 of these inmates, or 12 percent of the total population, the Justice Department said. **The policy change does not cover private prisons used by Immigration and Customs Enforcement, which hold** up to **34,000 immigrants awaiting deportation.** "Private prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities," Yates wrote in a memo to the acting director of the Federal Bureau of Prisons. As private prison contracts come to an end, the bureau is not to renew the contract or it should at least "substantially" reduce its scope, Yates wrote. She did not specify a timeline for when all federal inmates would be in government-owned facilities. Democratic presidential candidate Hillary Clinton says the country should move away from using private facilities to house inmates. The Clinton campaign has said it no longer accepts contributions from private prison interests, and if it receives such a contribution, it will donate that money to charity. The private prison industry is a major contributor to Republican political campaigns, particularly in recent years. GOP presidential candidate Donald Trump has said he supports the use of private prisons. The private prisons on the chopping block are operated by three private companies — Corrections Corporation of America, GEO Group Inc., and Management and Training Corporation. After the announcement Thursday, Corrections Corp. stock dropped $13.22, or 48.6 percent, to $14 and Geo Group tumbled $13.80, or 42.7 percent, to $18.49. Both companies get about half their revenue from the federal government. The Management and Training Corporation and Corrections Corporation of American issued statements saying they were disappointed with the decision. They also said they disagreed with the conclusions of an inspector general's audit that preceded the Justice Department's decision. **The federal government started to rely on private prisons** in the late 1990s **due to overcrowding**. **Many of the federal prison inmates** held in private facilities are foreign nationals who **are being held on immigration offenses,** the audit said. **Immigration and human rights advocates have long-complained about the conditions in privately-run prisons**. Amnesty International, on Thursday, urged states to follow suit. Some states, such as Kentucky, already have. Before Thursday, the Bureau of Prisons had been working toward the goal of phasing out private prison contracts when, three weeks ago, it did not renew a contract for 1,200 beds, Yates said. Thursday's **policy change also included direction to change a current solicitation for a private prison contract, cutting the maximum number of beds required by 66 percent**.

#### And, qualified immunity is exercised by public and private prison officers to get out of liabilities --- most recent Supreme Court ruling. VOLOKH ‘13:

Volokh, Alexander. “Supreme Court Clarifies Standards for Qualified Immunity in Civil Rights Cases.” Reason Foundation. April 5, 2013.

**Qualified immunity is** a **well-established** part of civil rights law, though it remains controversial among scholars. On the one hand, a general rule that holds officials liable would better compensate victims, and may also lead to greater accountability. On the other hand, the fear of liability might make officials overly timid and might make it hard to recruit competent people for government work; moreover, courts might shy away from recognizing constitutional violations if they were concerned that doing so would excessively burden government functions. **Qualified immunity is usually given to public employees. But [it] § 1983 is broader** than that: **private parties, for instance corrections officers at private prisons**, can also **act under** color of **state law, and thus** **can** **also be liable. Are these private parties entitled to** claim **qualified immunity? Yes** they can, **in many cases, said the Supreme Court on** April 17, **2012 in Filarsky v. Delia.** But reconciling Filarsky with previous decisions isn’t necessarily easy, and **the availability of qualified immunity in the privatization context will probably continue** to be confusing.

#### Plan text --- Resolved: The Supreme Court of the United States and all constituent circuit courts will limit qualified immunity for police officers operating in public and private prisons to a ‘Good Faith Defense’ framework. MILLER ’09:

[Miller, Stephen. “Rethinking Prisoner Litigation: Shifting from Qualified Immunity to a Good Faith Defense in § 1983 Prisoner Lawsuits.” Notre Dame Law Review. 2009. FD]

**The current state of prisoner § 1983 litigation is marked by inconsisten[t]cy.** A prisoner whose constitutional or statutory rights have been violated by prison officials faces significant challenges to even have her grievances heard in court as new laws require that a prisoner exhaust all administrative procedures before filing her suit.6 Assuming the prisoner meets the requirements, her suit will progress differently depending upon whom she sues. **If the defendant is a state prison official, [t]he[y] may be allowed to assert qualified immunity, thus diminishing the prisoner's chance of successfully achieving redress**. 7 If the defendant is a privately employed guard, however, he is not allowed to assert qualified immunity, but may be able to assert some form of good faith defense.8 Under this current regime, both prisoners and prison guards are treated unjustly. Adding to the mix is the argument that the federal courts have been inundated with mostly frivolous prisoner lawsuits. While some allege the use of excessive force by guards, others allege the denial of their constitutional right to a certain kind of peanut butter. 9 Given the characterization of the frivolous nature of the latter and the perception that the majority of prisoner suits fit that mold, 10 prisoner suits have become a convenient target for those seeking to limit access to the federal courts under § 1983. When the Prison Litigation Reform Act (PLRA) of 199511 was passed in 1996,12 the prevailing thought was that prisoner litigation would be curtailed significantly.1 3 Congress passed the Act in response to the increasing number of prisoner lawsuits being filed and their perceived collective frivolity. 14 An initial examination of the Act's effects seemed to indicate that it had been successful in decreasing the number of prisoner suits. 15 However, it is unclear whether this represents only a decrease in the amount of frivolous prisoner suits, or whether the decrease has also managed to keep legitimate claims out of federal court. 16 Although § 1983 prisoner litigation currently suffers from several deficiencies that threaten to undermine the just result § 1983 seeks, **this Note** does not advocate for a complete overhaul of the system. Rather, it hopes to resolve one of the most glaring flaws in the current system-the varying defenses afforded to private and public prison guards. This Note **proposes that courts abandon the doctrine of qualified immunity and replace it with a good faith defense in the prisoner litigation context.** **Such a shift would make it easier for prisoners with meritorious claims to have their cases heard. Further, it would introduce a measure of consistency and fairness with respect to prison guard defendants in § 1983 lawsuits**. **This may be palatable to those afraid of federal court inundation as the flooded courtroom concern-a concern that helped justify the use of qualified immunityhas been somewhat alleviated by the PLRA. Moreover, such a shift would further the important principles underlying § 1983 by removing the obstacles facing prisoners who allege violations of their constitutional or federal statutory rights**

#### MILLER ’09:

[Miller, Stephen. “Rethinking Prisoner Litigation: Shifting from Qualified Immunity to a Good Faith Defense in § 1983 Prisoner Lawsuits.” Notre Dame Law Review. 2009.]

**Qualified immunity, like absolute immunity, provides protection for those acting under color of state law from civil liability**, though it does not function as a total bar to suit. The Court has generally afforded this kind of immunity to government officers whose duties include the exercise of significant discretion.46 Among those who have been granted qualified immunity are police officers, 4 7 state prison guards, 48 school board members, 49 and FBI agents, 50 to name a few. **Early decisions involving qualified immunity**, such as Scheuer v. Rhodes,51 **relied on both the subjective good faith of the actor and an objective standard of reasonableness**.5 2 The Scheuer Court set forth the following reasons justifying the grant of qualified immunity to the governor and state officials in Ohio who were sued as a result of their roles in the 1971 Kent State shooting: (1) the injustice, particularly in the absence of bad faith, of subject- ing to liability an officer who is required, by the legal obligations of his position, to exercise discretion; [and] (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and thejudgment required by the public good.53 These are fairjustifications, and under the Scheuer formulation, a balance was struck between the policies underlying § 1983 and public policy-specifically, that those who are deprived of their rights by someone acting under color of law would have a method for redress, and the interests of those acting for the public in being free from civil liability where (1) the officer had a good faith belief that his actions were constitutional, and (2) there were reasonable grounds for the belief.

### Generic Coercion

#### Advantage X is Coercion.

#### Prison officers treat inmates cruelly --- qualified immunity is a legal buffer. SHENG ’12:

[Sheng, Phillip. “An ‘Objectively Reasonable’ Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought Under 42 U.S.C. § 1983.” 2012. LHP MK]

Apart from the concerns that (I) the Court is affording law enforcement officers too much protection from liability and (2) the Court is splitting hairs to distinguish Graham's fact-based protection from Harlow's law-based protection, 5 4 this paper's main criticism of Saucier is that **the Court offered no clear guidance concerning the "appropriate level of specificity" needed for a law to be clearly established.** Subsequent cases have only made it less clear. For instance, in Hope v. Pelzer, **a prisoner brought a civil rights lawsuit against three prison guards for cruel and unusual punishment** under the Eighth Amendment. 55 After getting into a fight with one of the guards, **the prisoner was chained to a hitching post at both arms. 5 r' The guards removed the prisoner's shirt and let him bake under the sun for seven hours. 57 He was given no bathroom breaks, only two drinks of water, and was taunted by the guards throughout the ordeal. 5 x The Eleventh Circuit held that although the prisoner's Eighth Amendment rights were clearly violated, the guards were entitled to qualified immunity because the law concerning the use of the hitching post was not clearly established**. 59 Although it could be "inferred" from "analogous" case law that the guards' conduct was illegal,60 **the Eleventh Circuit held that the case law needed to have "materially similar"** facts in order to be considered clearly established law. 61 In other words, **to overcome qualified immunity, the prisoner would have had to cite case law that prohibited a prison guard from chaining a prisoner to a hitching post for seven hours, without a shirt, without bathroom breaks, without water, and while taunting him**. 62 This was how many circuit courts interpreted Saucier,rll but the Supreme Court rejected such a narrow approach.M The Court adopted a "fair warning" standard in Hope, and held that prior case law did not need to have materially similar f~1cts to serve as the basis for clearly established law.1 ' 5 In fact, no factual similarity was needed at all-"officials can still be on notice that their conduct violates [clearly] established law even in novel factual circumstances."66 As long as the current "state of the law" gave the officer "fair warning" that the conduct was unlawful, the officer was not entitled to qualified immunity.67 This holding greatly relaxed the standard that was purportedly announced in Saucier, making it "much easier for civil rights plaintiffs" to overcome qualified immunity. 68 Up until the time Hope was decided, cases were routinely being dismissed due to the lack of materially similar cascs.m Though Hope was an Eighth Amendment case and not a Fourth Amendment case, one would expect Hope to apply fully to excessive force cases; after all, cruel and unusual punishment is not too far removed from the use of excessive force.

#### And, inmates are coerced to the point of suicide --- qualified immunity puts the onus on the prisoners instead of the guards responsible for their torture. GILNA ’15:

[Gilna, Derek. “Supreme Court Rules Qualified Immunity Shields Prison Officials from Suicide Claim.” Prison Legal News – Human Rights. July 31, 2015. LHP MK]

In what can only be considered **a step backward for holding corrections officials accountable for** the **preventable suicide of prisoners** in their custody, **the U.S.** Supreme Court **has held that** the doctrine of **qualified immunity shields officials from** **liability in a case involving a prisoner who killed himself**. As a result, a federal lawsuit filed by the family of Christopher Barkes, who allegedly committed suicide due to an inadequate intake screening, was dismissed. According to the Supreme Court, there was no question that Barkes was “a troubled man with a long history of mental health and substance abuse problems.” Following his arrest for probation violations in 2004, he was confined at the Howard R. Young Correctional Institution in Delaware, where an intake evaluation was performed that included a brief mental health screening. The nurse performing the screening, who was employed by a private contractor, used a form approved by the National Commission on Correctional Health Care (NCCHC). The form covered 17 suicide risk factors and required immediate suicide countermeasures if 8 or more factors were reported. The nurse found only two indicators of suicidal tendencies, and thus failed to alert prison staff to the possibility of Barkes harming himself. Shortly after his arrival at the facility, Barkes called his wife and told her he was going to commit suicide; she did not notify anyone at the prison. The next day he hanged himself in his cell. The lawsuit filed by Barkes’ family raised claims under 42 U.S.C. § 1983 and alleged that the correctional institution and its employees had violated Barkes’ civil rights; the suit further alleged that **prison officials were not following updated NCCHC suicide prevention standards**, as the intake screening form they used had been developed in 1997. The defendants’ motions to dismiss were denied and a divided panel of the Third Circuit Court of Appeals affirmed, holding that in light of the many facts in dispute, summary judgment was inappropriate and qualified immunity did not protect the defendants from liability, as there was a clearly established right to “the proper implementation of adequate suicide prevention protocols.” The Supreme Court granted cert and reversed on June 1, 2015, **finding that qualified immunity applied in this case and the clearly established right** relied upon by the Third Circuit **did not exist**: “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” The Court continued, “When properly applied [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law.” The Court was not persuaded that Third Circuit precedent had put the defendants on notice of a requirement for proper suicide screening protocols. “In short, even **if the Institution’s suicide screening and prevention measures contained the shortcomings that respondents allege, no precedent on the books** in November 2004 [when Barkes died] **would have made clear to petitioners that they were overseeing a system that violated the Constitution**. Because, at the very least, petitioners were not contravening clearly established law, they are entitled to qualified immunity.” Accordingly, the judgment of the Third Circuit was reversed. See: Taylor v. Barkes, 135 S.Ct. 2042 (2015).

#### Only reform through the courts like the aff can solve --- it gives prisoners leverage against officers and establishes a framework for equality. BELL ’99:

[Cheryl Bell. Martha Coven. John P. Cronan. Christian A. Garza. Janet Guggemos. “Rape and Sexual Misconduct in the Prison System: Analyzing America 's Most "Open" Secret.” Yale Law and Policy Review. 1999. LHP MK]

**An**other seemingly **impervious barrier that inmates face when bringing claims of cruel and unusual punishment is** the one presented by the modern interpretation of the **qualified immunity** defense. Historically **in prisoners' rights cases,** the qualified immunity standard effectively balanced government's administrative interests in keeping the "fear of being sued ... from unduly hampering official decisionmaking"' 8 against an individual's interests in protecting her/his constitutional rights. However, the recent decision by the Carrigan court has severely compromised this balance by placing an arguably unrealistic burden upon inmates to prove that there is established law invalidating a prison official's qualified immunity protections. 189 Before Carrigan, the Court in Scheuer v. Rhodes'9° declared that if an official has no "reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief," her/his claim to a qualified-immunity defense would fail.' 91 Further, in Wood v. Strickland,'92 the Court tweaked its reasoning to establish that qualified immunity depended on whether an official knew or reasonably should have known that s/he violated a constitutional right. 93 After Wood, a series of cases seemed to reiterate the Court's commitment to balancing the scale equitably by giving as much weight to individual inmates' rights as to government officials' rights. Procunier v. Navarette 94 extended Wood's high standards, helping define a legitimate qualified immunity defense for prison S • 195officials being sued under section 1983 by inmates. Knell v. Bensinger imposed personal liability upon those prison officials who disregarded the constitutional rights of inmates and the clearly established legal developments in inmates' rights. During this period (the late 1960s through the early 1980s), individual inmates won a fair number of judicial victories. They made several successful section 1983 claims against prison officials,'96 and the courts began setting limits on how far claims of ignorance by prison officials could go unchallenged.'9 The debilitating impact of Carrigan on inmates' claims of rape and sexual misconduct is clear. Before Carrigan, individual inmates could make viable Eighth Amendment and section 1983 claims based largely on meeting the first "objectively inhumane conditions" prong set forth in Farmer v. Brennan, because the Court had already outlined some circumstances under which the subjective "state of mind" prong would necessarily fail. Also, simple **legislative reforms**9 ' could have **worke**d **to buttress an inmate's claims against a qualified immunity defense**. However, **the Court has** all but **upset the equity** it had been **trying to establish** in its previous **prisoners' rights cases, by creating a qualified immunity defense that functions like absolute immunity. Even if an inmate can decisively prove the first prong of the Farmer test, without law that limits a prison official's qualified immunity defense, an inmate can never successfully meet the second prong of the Farmer test.** In the interest of justice, the Court would do well to reassess its current Carrigan standard and bring it more in line with the precedent it set in its earlier cases-thus bringing individual inmates' rights back in balance with those of government officials.

### Women’s Prisons

#### Qualified immunity

[Buchanan, Kim Shayo. “Impunity: Sexual Abuse in Women’s Prisons.” Harvard University. 2007. LHP MK]

**Prison guards** and institutions also **enjoy qualified immunity for conduct** that is **not clearly unlawful:** 253 prison guards and officials cannot be held liable for torts committed in the course of their employment **unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known"** under the law of that 24 time. 1 Unfortunately, **the law does not clearly prohibit all forms of custodial sexual abuse.** Although the illegality of forcible rape is sufficiently clear to overcome qualified immunity2,55 it is not firmly established that other forms of sexual abuse, such as sexual harassment and sexual threats, are clearly unlawful. 256 Courts have held that many forms of sexual **abuse** short of rape, such as sexual harassment without touching2"7 **and sexual activity to which the guard alleges the prisoner consented,**258 **are not clearly unlawful**. In states that have not criminalized all sexual contact between guards and prisoners, even sexual touching and quid pro quo sexual ex- ploitation short of rape may not be clearly unlawful. Qualified immunity may particularly impede allegations of institutional failure to investigate sexual abuse, as it is not clear how cursory an investigation must be before25 9 it will be found clearly unlawful. **The usual justifications for the application of qualified immunity to government actors do not fit the context of civil claims for custodial sexual abuse.** First, **an important justification for the qualified immunity rule is to avoid** "unwarranted timidity,"26° or the fear that "**government officials who are exposed to money damages for the full costs of their constitutional violations will become overly cautious or quiescent,** reducing their activ- ity to suboptimal levels and shying away from socially beneficial risks. '26' **This** concern **is irrelevant within the context of sexual contact between prisoners and guards, as there is no optimal level of custodial sex which the threat of liability might overdeter.**

### Immigration

#### (Private prisons internal link)

#### And, qualified immunity lets them get away with AELE:

[AELE Law Library of Case Summaries: Civil Liability of Law Enforcement Agencies and Personnel. “Immigrants & Immigration Issues.” No Date. LHP MK]

**In a lawsuit claiming** that **there was** a practice of abusive and **unlawful raids of Latino homes by** **agents of the** U.S. **Immigration** and Customs **Enforcement** (ICE), high level supervisory **personnel** **were entitled to qualified immunity since the plaintiffs failed to assert any** plausible **basis to impose liability on them** for the purported abuses. Many allegations in the complaint were merely conclusory, and did not adequately set forth a theory of possible liability on the part of the supervisors, such as their knowledge of or acquiescence in unconstitutional conduct. Argueta v. US Immigration and Customs Enforcement, #10-1479, 643 F.3d 60 (3rd Cir. 2011). Upholding an injunction against the enforcement of portions of an Arizona state statute creating immigration-related state offenses, a federal appeals court found that issuance of the injunction was not an abuse of discretion, and that the trial court properly found that the provisions at issue were preempted by federal immigration law. **Provisions enjoined included a requirement that police officers check the immigration status of anyone reasonably suspected of being in the U.S. illegally.** U.S. v. Arizona, #10-16645, 2011 U.S. App. Lexis 7413 (9th Cir.). Ruling in a lawsuit filed by the federal government against the state of Arizona and its governor, a federal judge enjoined the enforcement of a number of controversial provisions of a new state immigration law, S.B.1070, including a requirement that police officers check the immigration status of anyone reasonably suspected of being in the U.S. illegally. The federal government focused on the argument that the enforcement of immigration law is its job and that the Arizona law is therefore preempted by federal law. Other critics of the Arizona law have argued that it will lead to "racial profiling." Other lawsuits are also pending challenging the statute. U.S.A. v. State of Arizona, #CV-10-1413, U.S. Dist. Ct. (D. Ariz. July 28, 2010). **A woman from China and her husband sued the federal government and a number of officials under the Federal Tort Claims Act, asserting that an asylum officer demanded sexual favors from her in return for assisting with her asylum application**. He had the authority to grant her asylum request, eliminating the need for a formal hearing on it. **When she refused** to allow him to allegedly unzip and remove her pants, **he denied her application A federal appeals court upheld the dismissal of the lawsuit in part, as the plaintiff failed to establish** that **there was a specific duty violated** under the Fifth Amendment or any evidence that could establish the existence of an unconstitutional policy. It did, however, reinstate an emotional distress claim, and stated that emotional distress suffered from such a request for sexual favors could potentially be proven and constitute an injury separate and apart from battery. The U.S. government is immune under the Federal Tort Claims Act from claims for battery committed by its employees.. Lu v. Powell, #08-56421, 2010 U.S. App. Lexis 18368 (9th Cir.). **In a lawsuit claiming that the government's negligence resulted in the wrongful deportation** of the plaintiff's son, brought under the Federal Tort Claims Act, **the** U.S. **government was protected** from the lawsuit by the discretionary function exception of the Act, 28 U.S.C. Sec, 2680(a). Castro v. U.S., #07-40416, 2010 U.S. App. Lexis 11241 (5th Cir.). Occupants of a van, containing between twelve and fourteen passengers, questioned by an officer following a traffic stop, claimed that he violated their civil rights by asking about their immigration status. The appeals court found that it was not clear that the brief questioning on the issue by the officer or the few minutes it took him to receive a response from immigration had resulted in the unreasonable extension of the time of the stop, or that he was required to have independent reasonable suspicion to make a brief inquiry into immigration status. **The officer was entitled to qualified immunity** **on civil rights claims arising from asking the plaintiffs' status** **and contacting immigration, as well as requiring that the van go to the local immigration office**, particularly as it appeared that many passengers in the van essentially admitted to being in the country illegally. The officer was also entitled to qualified immunity on claims under the Rhode Island Racial Profiling Prevention Act. Estrada v. Rhode Island, #09-1149, 2010 U.S. App. Lexis 2390 (1st Cir.). An intermediate California appeals court has upheld summary judgment for the defendants in a lawsuit challenging a Los Angeles Police Department policy barring officers from initiating action with the sole objective of discovering the immigration status of an individual, or arresting anyone for illegal entry into the U.S. The plaintiff was unable to show any instances where an officer was disciplined for violating the policy, barring an "as applied" challenge to the policy. There was no indication that police were prevented from voluntarily contacting federal immigration authorities in order to determine a person's immigration status. The court also rejected a facial challenge to the policy, finding no inevitable conflict between it and a federal law, 8 U.S.C. Sec. 1373, which invalidates any state or local restrictions on voluntary exchange of information with federal immigration personnel, since only a hypothetical" conflict was presented. The court ruled that the policy was not preempted by federal law, but that a California state statute governing law enforcement cooperation with the federal Office of Immigration and Customs Enforcement.(ICE), Pen. Code Sec 834b, was itself so preempted. That statute says that California law enforcement agencies "shall fully cooperate" with ICE regarding any arrestee suspected of being in the U.S. illegally. This statute is preempted as an impermissible state regulation of immigration, the court stated, Sturgeon v. Bratton, #B209913, 2009 Cal. App. Lexis 967 (2nd Dist.).