

Mandatory Minimums Aff Masterfile

Notes

What is a mandatory minimum?

A mandatory minimum is a sentence, created by Congress or a state legislature, which the court must give to a person convicted of a crime, no matter what the unique circumstances of the offender or the offense are. Typically, mandatory minimums apply to gun and drug crimes and are based on only the type and weight of the drug involved or the possession or presence of a gun.

Example: A person is convicted of selling 28 grams of crack cocaine. The mandatory sentence is 5 years in prison without parole. The court must give this sentence, even if it is too harsh for the offender, his role in the offense, or the nature of the crime.

From (useful 2 page summary for all you need to know) - <https://famm.org/wp-content/uploads/FS-MMs-in-a-Nutshell.pdf>

**Mandatory Minimums Aff – GDI M&M
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Status Quo

Contention One is the Status Quo

Despite efforts at congressional reform, mandatory minimums continue harsh punishment – taking discretion away from judges and growing federal prison populations

Barkow 19 (Rachel. E ,Vice Dean and Segal Family Professor of Regulatory Law and Policy and Faculty Director, Center on the Administration of Criminal Law, at NYU School of Law “Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing.” Harvard Law Review, 133 Harv. L. Rev. (2019-2020), Hein Online, Accessed 7/12/20, GDI – JMoore)

President Ronald Reagan and Congress passed a series of sweeping changes in the Comprehensive Crime Control Act of 1984, described as “the most significant series of changes in the federal criminal justice system ever enacted at one time.”⁸⁴ The CCCA created new federal crimes and mandatory minimum sentences, increased fines and sentences for federal offenses, expanded asset forfeiture, and treated juvenile crime more harshly.⁸⁵ In the Bail Reform Act of 1984, ⁸⁶ one part of the CCCA, Congress expanded the availability of pretrial detention.⁸⁷ Congress allowed courts to consider a defendant’s risk of danger to the community and did not limit its notion of “danger” to possible violent crimes; instead, Congress expressly contemplated detaining defendants so that they would not engage in drug trafficking, an activity that “constitutes a danger to the safety of any other person or the community.”⁸⁸ Indeed, the Act created a rebuttable presumption that a defendant is dangerous (and therefore should be detained) if he is charged with a drug violation that carries a maximum penalty of at least ten years.⁸⁹ Individuals charged with a drug felony that involved the use or possession of a firearm were also presumed to be dangerous.⁹⁰ The goal of the bail reform provisions was thus to increase dramatically the number of people detained pretrial.⁹¹

Another major part of the CCCA was the Sentencing Reform Act, which eliminated parole and indeterminate sentencing in favor of a determinate sentencing model.⁹² The Sentencing Reform Act also created a Sentencing Commission charged with passing mandatory sentencing guidelines that drastically limited the range of punishments judges could impose.⁹³

The ACCA fits within the larger aims of the CCCA to increase punishments for a group of offenders and to strip discretion from judges by establishing a new mandatory minimum punishment — in this case for individuals with certain prior felony convictions charged with possessing a firearm. Senator Arlen Specter initially introduced legislation known as the Career Criminal Life Sentence Act of 1981, ⁹⁴ which would have treated any robbery or burglary committed by someone in possession of a firearm as a federal crime subject to a mandatory life sentence if the offender had two prior robbery or burglary convictions.⁹⁵ Ultimately, after consultation with the Department of Justice, the proposed legislation was changed to impose a fifteen-year mandatory minimum and a maximum possible sentence of life.⁹⁶ Because of federalism concerns associated with turning the traditional state crimes of burglary and robbery into federal ones,⁹⁷ legislators also amended the proposed law so that individuals with three convictions for burglary or robbery would receive an increased sentence if they violated a federal firearms offense.⁹⁸ The House Report accompanying this version of the ACCA (which ultimately passed) cited recidivism research showing that a small number of habitual criminals commit a large number of offenses;⁹⁹ thus, the goal of the law was to target repeat offenders with harsher punishments to incapacitate them.¹⁰⁰

While the initial version of the ACCA applied to offenders in possession of a firearm who had three or more felony convictions for burglary or robbery,¹⁰¹ Congress later expanded the predicate felonies. The Career Criminals Amendment Act, part of the Anti-Drug Abuse Act of 1986, produced the version of the ACCA that exists today.¹⁰² In that amendment, Congress changed the relevant predicate offenses that trigger the mandatory minimum to include “a violent felony” or “serious drug offense.”¹⁰³ A “serious drug offense” is defined by reference to federal drug laws and state drug laws with statutory maximum sentences of ten years or more.¹⁰⁴ A “violent felony” was originally defined in the law as an offense punishable by more than one year that: has “as an element the use, attempted use, or threatened use of physical force against the person of another”; is one of the enumerated felonies in the ACCA, which are burglary, arson, and extortion; or falls within what is known as the residual clause of the Act, which encompasses any offense that “otherwise involves conduct that presents a serious potential risk of physical injury to another.”¹⁰⁵ The legislative history indicates that this change was designed to cover more repeat offenders because Congress believed that the law was successfully carrying out its objective and wanted to expand its reach.¹⁰⁶

The Anti-Drug Abuse Act of 1986 was far broader than just these ACCA amendments. It also imposed a new slate of harsh mandatory minimum sentences for drug offenses and introduced what came to be known as the 100-to-1 ratio between crack and powder cocaine, which required 100 times the quantity of powder cocaine to trigger the same mandatory minimum sentence threshold as crack cocaine.¹⁰⁷ Senator Patrick Leahy described the legislation as taking “a full swing at the drug problem from every angle — at the source, at the border, in enforcement,

education, treatment, and rehabilitation.”¹⁰⁸ But Congress made these changes without the benefit of the research of its newly created Sentencing Commission because Congress enacted the AntiDrug Abuse Act before the Sentencing Commission even had a chance to pass its initial guidelines.¹⁰⁹ Congress then passed additional, harsh amendments to the law in 1988 without seeking Sentencing Commission feedback.¹¹⁰ The 1988 amendments nearly doubled the federal anti-drug budget,¹¹¹ imposed even stiffer penalties for drug offenses, and provided that juvenile crimes were to be counted for enhancement purposes under the ACCA.¹¹² The amendments also imposed new collateral consequences for drug offenses and required revocation of parole, probation, and supervised release for any person who possessed an illicit drug.¹¹³

The model established in the 1980s continued in subsequent decades. Congress passed a slate of additional mandatory minimums in the 1990s, and it continued to impose tough sanctions on recidivists (including a mandatory life sentence as part of a three-strikes law).¹¹⁴ In addition, Congress instructed the Sentencing Commission to “specify a sentence to a term of imprisonment at or near the maximum term” for individuals convicted of “crimes of violence” or drug-trafficking offenses who also have two or more prior felony convictions in either of those categories.¹¹⁵ Congress also instituted harsh, one-size-fits-all collateral consequences on individuals with felony convictions, particularly drug convictions.¹¹⁶ For example, Congress passed federal legislation that allowed public housing authorities to refuse public housing to anyone engaged in “any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises.”¹¹⁷ The individual did not need to be convicted or even charged for the housing authority to evict the entire household.¹¹⁸ People can be and have been kicked out of their apartments on the basis of complaints by neighbors or anonymous tips that a tenant or guest is using drugs.¹¹⁹ Congress took a similarly hard line when it came to welfare benefits, passing a law in 1996 that required states to impose lifetime bans on individuals with multiple drug-related felony convictions from receiving federal welfare aid or food stamps.¹²⁰ People convicted of drug offenses were also barred from receiving student loans for specified periods of time, and in the case of people with three convictions for drug possession, for life.¹²¹

While Congress has passed modest reforms in recent years,¹²² the fundamental architecture put in place in the 1980s remains. Most of the laws from the 1980s and 1990s are still on the books, and mandatory minimums continue to play an outsized role in filling federal prisons.¹²³

¹²² See, e.g., First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (codified as amended in scattered sections of 18, 21, 34, and 42 U.S.C.) (instituting several reforms, including the reduction of some federal mandatory minimum sentences and the creation of opportunities for people in prison to earn time off their sentences by participating in programming); Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372, 2372 (codified as amended at 21 U.S.C. § 841(b)) (reducing the previous 100:1 ratio between powder and crack cocaine needed to trigger certain federal criminal penalties to 18:1).

¹²³ More than half of the individuals in federal prison as of late 2016 were convicted of an offense carrying a mandatory minimum sentence and more than forty-two percent of all people in federal prison remained subject to a mandatory minimum penalty at sentencing. U.S. SENTENCING COMM’N, OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 6 (2017) [hereinafter 2017 MANDATORY MINIMUM OVERVIEW], https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf [<https://perma.cc/4K8S-GHZ6>].

The First Step Act was a good First Step, but more actions is needed to address harsh sentencing and large prison populations

Grawert 20 (Ames, “What Is the First Step Act — And What’s Happening With It?” Brennan Center for Justice, 6/23/20, <https://www.brennancenter.org/our-work/research-reports/what-first-step-act-and-whats-happening-it>, Accessed 7/5/20, GDI-VM)

Taken together, these changes represent an important decrease in incarceration. One year after the First Step Act was signed, the federal prison population was around 5,000 people smaller, continuing several years of declines. It has continued to shrink amidst the coronavirus pandemic.

To be sure, there’s still a long way to go: the federal prison population remains sky-high. And the Department of Justice does not appear to be in complete lockstep with the White House’s celebration of the law. In some old crack cocaine cases, federal

prosecutors are opposing resentencing motions or seeking to reincarcerate people who have just been released. Prosecutors in these cases argue that any motions for resentencing must also consider the (often higher) amount of the drug the applicant possessed according to presentence reports. Other technical disputes are also cropping up, with the Department of Justice often arguing for a narrow interpretation of the First Step Act.

Mass Incarceration Adv

Contention Two is Mass Incarceration

Federal mandatory minimum penalties account for nearly half of the federal prison popular and ensures federal mass incarceration while disproportionately impacts black people

Bennett 18 (Mark W. U.S. District Judge in the Northern District of Iowa, "Addicted to Incarceration: A Federal Judge Reveals Shocking Truths About Federal Sentencing and Fleeting Hopes for Reform." 87 UMKC L. Rev. 3, Fall 2018, Nexis, Accessed 7/9/20, GDI – JSuek)

B. The Latest U.S. Sentencing Commission Data

As bone-crushingly severe as federal guidelines drug sentences are, I find that § 851 sentencing enhancements and mandatory minimum sentences are equally perverse culprits of unfair sentencing and federal mass incarceration. As of September 30, 2016, 49.1% of federal inmates were incarcerated for drug offenses. As of the same date, 72.3% of drug offenders in federal prisons "were convicted of an offense carrying a mandatory minimum penalty, and more than [*12] half (50.4%) remained subject to that penalty at sentencing." 45 Indeed, in fiscal year 2016, 52.8% of offenders convicted of federal drug offenses carrying mandatory minimums faced a mandatory minimum of ten years or more. 46 This jumped to nearly 60% for offenders convicted of methamphetamine offenses. 47

From 1995 to 2016, Black offenders in federal prisons were convicted of offenses carrying mandatory minimum penalties more frequently than any other race. 48 As of fiscal year 2016, 62.7% of Black offenders were convicted of an offense carrying mandatory minimum penalties. 49 There has been a slight but steady decline in this statistic since 2010 when it reached 69.4%. 50

C. Mandatory Minimum Sentencing in Federal Drug Crimes

The missing piece in the post-Booker analysis is the handcuffing role of mandatory minimum sentencing laws. 51

1. The Current Status of Mandatory Minimum Penalties

After the passage of the SRA in 1984 (creating the U.S. Sentencing Commission and mandating sentencing guidelines), but before the guidelines were promulgated by the newly formed Commission and went into effect in 1987, Congress stamped through its chambers and onto President Reagan's desk for signing the Anti-Drug Abuse Act of 1986 ("ADAA"). 52The ADAA created mandatory minimum sentences based solely on drug quantity and the type of drug. 53Professor Bowman has written that the ADAA—even more than the Guidelines—was responsible for the "mushrooming number of federal prisoners and the increased severity of their sentences." 54After nearly a quarter century of sentencing more than 1,000 low-level, non-violent drug addicts to lengthy mandatory minimum sentences, many for possession of very small amounts of methamphetamine or crack cocaine (five grams is the approximant equivalent of a [*13] sugar packet), I have come to believe that the ADAA is the worst, most arbitrary piece of legislation ever passed by Congress. It has inflicted more damage on the poor, people of color, our nation's inner cities, and has destroyed untold numbers of families and helped perpetuate the school-to-prison pipeline, than any other single event.

The ADAA is arbitrary because, before it passed, Congress did not have a single shred of scientific, pharmacological, or other evidence to support any of the drug quantities for any of the various drug mandatory minimums. While there is a plethora of examples, here is just one: under the ADAA, it takes only five grams of pure methamphetamine to trigger a five-year mandatory minimum, yet it takes 100 grams of heroin to trigger the same mandatory minimum. 55How dare Congress engage in such arbitrary legislative nonsense.

In fact, increased use of federal mandatory minimum sentencing balloons federal prison populations and disproportionately affect people of color

The Leadership Conference 18 (“FACT SHEET: Sentencing and Mandatory Minimums.” 3/28/18, <http://civilrightsdocs.info/pdf/criminal-justice/Sentencing-Fact-Sheet.pdf>, Accessed 7/9/20, GDI-FGilbard)

Mandatory minimums undermine our nation’s commitment to justice and fairness by preventing judges from taking into account the individual’s background and the circumstances of his/her offenses in the sentencing determination. These laws disproportionately impact people of color, have caused our prison populations to soar, and have led to overcrowding and exorbitant costs to taxpayers.

The increasing number and lengths of federal mandatory minimum sentences has caused the U.S. prison population to balloon in the last several decades.

- The number of federal mandatory sentences has doubled in the last 20 years. 1
- 14,138 people were convicted of an offense carrying a mandatory minimum penalty in the fiscal year of 2015. Of these people, 8,602 (13.5 percent) remained subject to a mandatory minimum penalty at sentencing. Drug trafficking offenses accounted for over two-thirds (66.2 percent) of the offenses carrying a mandatory minimum penalty.2
- In 2010, 39.4 percent of individuals in Federal Bureau of Prisons custody were subject to a mandatory minimum penalty.3
- Between 1980 and 2013, the federal imprisonment rate increased 518 percent. 4 At its peak, the Federal Bureau of Prisons (BOP) was operating at 36 percent over capacity.
- Over the last three years, the BOP population has dropped by almost 30,000,5 primarily due to administrative reforms like the Attorney General’s Smart on Crime Initiative. As a result, the BOP is currently operating at 16 percent over its intended capacity.6

The explosion of the prison population and the increasing use of mandatory minimums have had a disproportionate impact on communities of color.

- African Americans make up 13 percent of the U.S. population7–but almost 38 percent of the federal prison population.8 Hispanics account for 17 percent of the U.S. population9– but almost 34 percent of federal inmates.10
- During fiscal year 2015, Black people accounted for 28.9 percent and Hispanic people accounted for 41.5 percent of those convicted of a mandatory minimum penalty, compared to only 27.2 percent of White people. 11
- White people (33 percent) are more likely than Black people (29.4 percent) to receive relief from mandatory minimum penalties at sentencing. 12

These mandatory minimums impact both pre-trial negotiations with prosecutors and sentencing by judges once there is a guilty verdict or pleas. Mandatory minimums prevent judges from accounting for individual factors in cases that might warrant reducing sentences. Prosecutors leverage fear of long sentences for force pleas bargains from low level offenders fearful of long sentences while also allowing higher level drug offenders to reduce their own sentences by cooperating with prosecutors.

McNelis 17 (Abigail A. J.D Candidate Antonin Scalia Law School, George Mason University, "COMMENT: Habitually Offending the Constitution: THE CRUEL AND UNUSUAL CONSEQUENCES OF HABITUAL OFFENDER LAWS AND MANDATORY MINIMUMS." 28 Geo. Mason U. Civ. Rts. L.J. 97, Fall 2017, Nexis, Accessed – 07/06/20, GDI – JSuek)

2. The Problem with Mandatory Minimums

Mandatory minimums statutorily require judges to impose, at a minimum, a specific sentence for certain criminal offenses.⁶⁵At the most basic level, mandatory minimums ignore each offender's individuality.⁶⁶Bound by this, judges remain unable to consider the relevant and unique qualities of each criminal defendant.⁶⁷Considerations [*104] such as whether or not punishment is necessary to keep the public safe, whether someone was injured, whether there is a possibility of rehabilitation, the individual's role in the crime, and motive for engaging in criminal activity all fall to the wayside when mandatory minimums deny judicial discretion.⁶⁸

By denying judicial discretion, power is directly given to federal and state prosecutors.⁶⁹Using mandatory minimums, prosecutors are able to pressure criminal defendants into pleading guilty to lower crimes, rather than invoking their constitutional right to a trial, thus risking conviction and potentially receiving a harsh mandatory minimum penalty.⁷⁰Prosecutors possess the ability to ask for a lower sentence based on "substantial assistance" from cooperating defendants.⁷¹Typically, the higher the position a defendant holds in a drug operation, the more information the defendant possesses to substantially assist the prosecutor in making further convictions.⁷² Lower-level offenders often lack the information needed to substantially assist prosecutors, and instead face the decision to plead out or risk receiving daunting minimum sentences.⁷³As a result, the higher-ups in drugs schemes can work with prosecutors to finagle their sentences down to lengths comparable to those intended for low ranking drug offenders.⁷⁴

B. Life Sentences for Non-Violent Offenders as a Product of Mandatory Minimums

The mass incarceration resulting from mandatory minimum laws has resulted in more than 3,000 non-violent offenders across the United States receiving life sentences without the possibility of parole.⁷⁵Life without parole sentences affect even low-level criminals.⁷⁶

[*105]

1. Defining Non-Violent Offenders

The statutory definition of violence varies among jurisdictions.⁷⁷For example, in Virginia, violent crimes are defined as "acts of violence" and include a list of seven different offenses.⁷⁸These offenses include murder, mob-related felonies, kidnapping, assault, robbery, sexual assault, and arson.⁷⁹In South Carolina, the definition of violent crime is much more specific and extends to over fifty offenses.⁸⁰Such offenses include crimes like drug trafficking and a "vessel operator's failure to render assistance resulting in death."⁸¹

Despite the vast differences among state statutes, the overarching theme across jurisdictions remains: a violent crime is a crime against another.⁸²The obvious examples of violent crime include rape, murder, and assault.⁸³In November 2013, the American Civil Liberties Union (ACLU) published a report, which defined violent crimes, explaining violent crimes do not include drug offenses, property crimes, and crimes that do not involve threat or force against another.⁸⁴Even so, individuals convicted of low-level non-violent offenses receive life without parole sentences, oftentimes because of past convictions.⁸⁵

Notably, the ACLU's report does not include drug offenses in their definition of violent crime. ⁸⁶The adoption of three-strike and habitual offender laws spiked during the 1980s and 1990s because of media and political hysteria conflating drug offenses with increased violence. ⁸⁷Conversely, the mass incarceration of drug users has not ^[*106] impacted violence rates. ⁸⁸ The rate of violent crime actually remains stable, even as drug use rates surge upward. ⁸⁹

The ACLU collected data from the Bureau of Prisons and state Departments of Corrections. ⁹⁰The ACLU calculated that in 2012, there were 3,278 individuals serving life sentences in the federal system and nine states without the possibility of parole for non-violent drug and property crimes. ⁹¹Of the 3,278 individuals, seventy-nine percent were serving time for non-violent drug convictions. ⁹²Louisiana, Florida, Georgia, Alabama, Mississippi, South Carolina, and Oklahoma have the highest number of prisoners serving life sentences without the possibility of parole for non-violent crimes. ⁹³The high rates in these states result mainly from various three-strikes and habitual offender laws, which mandate life sentences in connection with certain non-violent crimes.

We isolate 2 Impacts to the use of federal mandatory minimums:

Scenario 1 - Racialized sentencing: Practices and use of federal mandatory minimums re-enforces the tropes of black criminality and racial bias that impact everyday life, leading to harsher and disparate sentences for non-white offenders

Exum 20 (Jelani Jefferson Exum, Philip J. McElroy Professor of Law at the University of Detroit Mercy School of Law, "Sentencing Disparities and the Dangerous Perpetuation of Racial Bias." 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 491 (2020), Hein Online, Accessed 7/12/20, GDI – JMoore)

It is well known that there are racial sentencing disparities in the United States criminal justice system. Studies reportedly show that there are persistent differences between the sentences imposed on White versus non-White offenders, with Black male offenders receiving the brunt of sentencing severity. ^{2 2} For instance, a comprehensive sentencing study conducted by the Bureau of Justice Statistics found that from 2005 to 2012, "the trends in [federal] sentences for black males were increasingly longer than the sentences for white males." ^{2 3} The same problem plagues the state criminal justice systems as well. In its 2014 written testimony to the Inter-American Commission on Human Rights, the American Civil Liberties Union (ACLU) explained that "Black and Latino offenders sentenced in state and federal courts face significantly greater odds of incarceration than similarly situated white offenders and receive longer sentences than their white counterparts in some jurisdictions." ^{2 4} As a result of these harsh sentencing practices levied at Black and Brown individuals, we suffer the disturbing plight of racially disproportionate incarceration as well. For instance, in 2011, African-American males were six times more likely to be incarcerated than White males. ^{2 5} In a 2016 sentencing study, the Sentencing Project reported that "African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of Whites." ^{2 6} This statistic is reflected in our prison population where, "[t]oday, people of color make up 37% percent of the U.S. population but 67% percent of the prison population." ^{2 7} More specifically, Blacks make up thirteen percent of the U.S. population, yet comprise thirtyeight percent of the U.S. prison population. ^{2 8} Distressingly, more than half of the prison population is African American in twelve states. ^{2 9} This is especially troubling considering that the United States is the world leader in incarceration. ^{3 0} As the oft-touted statistic tells us, "the U.S. has 5% of the world's population, but 25% of the world's prisoners." ^{3 1} Therefore, not only do we over-incarcerate generally, we focus that unnecessarily punitive ammunition on communities of color. While there are many collateral consequences to incarceration that have racial disparities as well, ^{3 2} the consequence of perpetuating biased views about black criminality are the most universally damaging because of the danger they cause in everyday life. The sentencing numbers provide a formal source for racial stereotypes-they give official numbers to back up a view that Black Americans are more likely to engage in criminal behavior than Whites. The way those numbers are understood and acted on by the greater society in their interactions with Blacks show that sentencing disparities also play a part in the informal sources of racial stereotypes and bias. A closer look at the role of bias and the popular views about who commits crimes shows that sentencing disparities contribute to bolstering the stereotypical story of Black criminality that has become a popular trope.

The mass incarceration emerges along the color line and exists as an extension slave labor through prison labor

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

Incarceration successfully masks slavery and it does so cunningly through the unrelenting vestiges of racial bigotry, finely tuned fear, and stereotypes. Viewed in this light, prison is not about disproportionate and racialized policing and the exploitation of labor, but rather community safety. Despite rates of criminality mapping similarly between Blacks, Whites, and Latinos, most white Americans presume that Blacks are [*958] more dangerous, prone to criminality, and likely to commit more crimes. Drug use statistics offer an important point of relevance given the overwhelming number of individuals incarcerated associated with drug use or distribution. 329

Data from 2015 shows that "about 17 million whites and 4 million African Americans reported having used an illicit drug within the last month." 330 However, imprisonment rates for Blacks and whites vary dramatically. According to the NAACP, "African Americans and whites use drugs at similar rates, but the imprisonment rate of African Americans for drug charges is almost 6 times that of whites. 331

Arguably, police brutality detracts attention from other points of vital inquiry in the criminal justice system, including prison slavery. The modern masks of slavery: mass incarceration, pay to play probation, modern chain gangs, and the exploitation of cheap labor emerge along the color line just as Antebellum slavery was anchored in the same. In 2014, "African Americans constituted 2.3 million, or 34%, of the total 6.8 million correctional population." 332 According to one of the nation's chief civil rights organizations, the NAACP, "African Americans are incarcerated at more than 5 times the rate of whites." 333 For African American women, their rate of incarceration is at least twice that of their white counterparts. 334 Three key points of examination further explicate the racial color line of modern incarceration:

* Nationwide, African American children represent 32% of children who are arrested, 42% of children who are detained, and 52% of children whose cases are judicially waived to criminal court. 335

* Though African Americans and Hispanics make up approximately 32% of the US population, they comprised 56% of all incarcerated people in 2015. 336

[*959] * If African Americans and Hispanics were incarcerated at the same rates as whites, prison and jail populations would decline by almost 40%. 337

Thus, the scale of mass incarceration is quite significant. Its scope exceeds that of all other developed and peer nations. In 2015, there were 2,173,800 incarcerated persons in the United States. 338 One compelling reference point can be found in data on the founding NATO member nations. Among the founding NATO members, the United States incarcerates at a rate nearly ten times that of Norway and Denmark; nearly eight times that of France, and well over four times that of the United Kingdom. 339 The chart below crystalizes the comparison. Incarceration Rates Among Founding Nato Members (per 100,000 population)

According to the Prison Policy Initiative, "these data reveal that even the U.S. states that incarcerate the smallest portion of their own citizens are out of step with the larger community of nations." 340 Advocacy organizations have long urged the U.S. "to reevaluate their own hefty reliance on incarceration, we recommend that they look to the broader global context for evidence that incarceration need not be the default response to larger social problems." 341 Sadly, however, even such reasonable advice misses the point as to why the system of mass incarceration remains ubiquitous and persistent, and the answer is [*960] located in color line articulated by Frederick Douglass and W.E.B. DuBois more than a century ago.

By comparison to its European counterparts, incarceration in the United States is not only racialized; it is dramatically more expansive than that of peer nations, such as the United Kingdom, Switzerland, France, Italy, German, and others. 342 In fact, "the

sheer size of the federal prison system alone - larger than the total prison population of every nation on the planet except for seven (China, Russian Federation, Brazil, India, Thailand, Mexico, and Iran)" 343 exposes the extent to which incarceration has become normalized and by extension, its dirty secret of prison labor exploitation and slavery.

And, prison slavery exploits the people who are incarcerated federally and subjects them to abuse and deadly conditions

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

[*963] Prison slavery also extracts more than labor from inmates, especially women. There are other devastating costs associated with incarceration: stigmatization, sexual abuse, and emotional harassment. For women, numerous reports document sexual violence behind bars, sometimes at the hands of guards, meals that contain rotten and rotting foods, and deadly labor conditions - such as putting out California's wildfires. 359 Even more devastating are the illegal instances in which prison systems rent out men and women as sexual slaves to guards and other prisoners. 360

Incarcerated individuals are expected to work. 361 Federal policy authorizes this: "convicted inmates confined in Federal prisons, jails, and other detention facilities shall work." 362 Similar policies exist in each state, governing state prison facilities.

Yet, as this Article emphasizes, there is a sharp and profound distinction between work and slavery. Work implies fair compensation for the labor delivered. Slavery relates to uncompensated labor, bondage, and servitude. Abysmally low prison wage does not fit within the norm of what traditional definitions of "work" convey and more fittingly locates within the slavery contexts.

Even if lawmakers are slow to acknowledge the pervasive thicket of prison labor exploitation and slavery, the incarcerated recognize it. For example, "Melvin Ray, an inmate at the W.E. Donaldson Correctional Facility in Bessemer, Alabama, and a member of an organizing group called the Free Alabama [*964] Movement stated: "Work is good for anyone... . The problem is that OUR work is producing services that we're being charged for, that we don't get any compensation from." 363 Mr. Ray captures the urgent concern associated with modern slave practices perpetuated in disproportionately racialized U.S. prisons. Moreover, his concerns are echoed by others. Paul Wright with Prison Legal News explains that "if [inmates] refuse to work, they can be punished by having their sentences lengthened and being placed in solitary confinement." 364

This observation is confirmed by the Incarcerated Workers Organizing Committee (IWOC). The organization reports that if inmates do not perform according to their overseers' expectations, punishment is the prison's recourse. 365 They explain, "They may have replaced the whip with pepper spray, but many of the other torments remain: isolation, restraint positions, stripping off our clothes and investigating our bodies as though we are animals." 366

The prison environment contributes to extreme psychological stress that results in physical and mental health degradation

Haney 12 (Craig, American social psychologist and a professor at the University of California, Santa Cruz, "Prison Effects of in the Age of Mass Incarceration." The Prison Journal, 7/25/12, <https://doi.org/10.1177/0032885512448604>, Accessed 7/12/20, GDI – JMoore)

Most prisons expose prisoners to severe levels of deprivation, degradation, and danger. The extreme stress that results is problematic both because it appears to have direct, adverse consequences on prisoners' physical and mental health, and also because many prisoners adjust to the immediate pains of

imprisonment in ways that can prove highly dysfunctional once they have been released. In general, exposure to extreme environmental stress is known to result in psychological damage (Hocking, 1970), which can be exacerbated under conditions of threat or when persons have little or no control over their environment or surroundings (cf. Evans, 1982). Especially when prison stress is extreme and endured for long periods of time, it may go beyond merely being painful and unpleasant to actually causing damage. These effects can persist long after prisoners have been released from prison.

The pains of imprisonment and their negative psychological effects are well documented. For example, Liebling and her colleagues found that the measured levels of distress in 11 of the 12 prisons they studied were “extraordinarily high” (Liebling, Durie, van den Beukel, Tait, & Harvey, 2005, p. 216), and above the threshold that ordinarily triggers an inquiry into whether a patient is suffering from a treatable emotional or psychological illness. Moreover, Cooper and Berwick (2001) reported that the severity of environmental stress that existed in certain prisons played a significant role in the levels of anxiety and depression that prisoners experienced while confined in them.

Very high levels of prison stress can take a special psychological toll. The clinical diagnosis of posttraumatic stress disorder (“PTSD”) is applied to patients who suffer a set of interrelated, trauma-based symptoms, including depression, emotional numbing, anxiety, isolation, and hypervigilance. Reviews of the literature on the prevalence of PTSD among prisoners suggest that this disorder may occur as much as 10 times more often than in the general population (Gibson et al., 1999; Goff et al., 2004; Heckman, Cropsey, & Olds-Davis, 2007; Zlotnick, 1997). In extreme cases, prisoners react to the psychic stress of imprisonment by taking their own lives, and thus suicide occurs at a much higher rate among prisoners than within the general population (e.g., Bland, Newman, Dyck, & Orn, 1990; Hayes, 1989). Elevated rates of prison suicide appear to be the product both of the number of risk factors to which prisoners were exposed before their incarceration and the harshness of the particular prison conditions that they experience during confinement (e.g., Cooper & Berwick, 2001; Liebling, 1995).

The immediate pains of imprisonment may produce lasting problems that persist long after prisoners are released (e.g., Haney, 2003b). In fact, psychiatric assessments of long-term prisoners have found that their most serious psychological problems are typically manifested only after they reenter free society. Indeed the “psychological consequences of imprisonment for these men and their families are complex and profound” (Grounds & Jamieson, 2003, p. 358). Prisoners also suffer increased physical health risks once they are released from prison (e.g., National Commission on Correctional Health Care, 2002; Wilper et al., 2009). One study reported that within two years of their release, former prison inmates suffered mortality rates that were three and a half times that of the general population (Binswanger et al., 2007). Moreover, within the first two weeks immediately following their release, their mortality rates were over twelve times the rate in the population at large.

Mandatory minimums cause prison overcrowding – abolishing them solves

Peeler 18 (Travis, J.D. from the University of Houston Law Center and Legal Match Legal Writer, “Problems with Mandatory Minimum Sentencing.” Legal Match, 12/11/18, <https://www.legalmatch.com/law-library/article/problems-with-mandatory-minimum-sentencing.html>, Accessed 7/4/20, GDI-FGilbard)

Many people feel this policy leads to prison overcrowding of non-violent offenders.. Many offenders who may have otherwise received short sentences, or not been given a sentence at all, are imprisoned for many years due to mandatory sentencing. As prison populations have grown exponentially, many judges and lawyers have argued that mandatory minimums should be done away with to combat this issue.

That magnifies the impact on inmate health

Haney 12 (Craig, American social psychologist and a professor at the University of California, Santa Cruz, "Prison Effects of in the Age of Mass Incarceration." The Prison Journal, 7/25/12, <https://doi.org/10.1177/0032885512448604>, Accessed 7/12/20, GDI – JMoore)

Overcrowding touches virtually every aspect of a prisoner's day-to-day existence and greatly amplifies the stress of prison life. Among other things, overcrowding confines prisoners in spaces occupied by too many others, increasing the sheer number of social interactions that involve "high levels of uncertainty, goal interference, and cognitive load . . ." (Cox, Paulus, & McCain, 1984, p. 1159). Crowded prison conditions introduce greater social complexity, turnover, and interpersonal instability into an already dangerous world, one in which interpersonal mistakes or errors in social judgments can be fatal. Overcrowding also raises collective frustration levels inside prisons by generally decreasing the amount of available resources. The sheer number of things that prisoners can do or accomplish on a day-to-day basis is compromised by the number of people who are literally and figuratively standing in between them and their goals and destinations. Prison staff members are often hard-pressed to manage the inevitable chaos and conflicts that result, and they may resort to increasingly repressive approaches to do so (e.g., Haney, 2006b).

Not surprisingly, a large literature on overcrowding has documented a range of adverse effects that occur when prisons have been filled to near capacity and beyond. As a group of prison researchers concluded in the 1980s, as the scope of the prison overcrowding problem in the United States was just becoming apparent, "crowding in prisons is a major source of administrative problems and adversely affects inmate health, behavior, and morale" (Cox et al., 1984, p. 1159; see, also, Gaes, 1985; and Paulus, Cox, & McCain, 1988). Two other early commentators concluded their review of the literature in much the same way, namely, that "[w]ith few exceptions, the empirical studies indicate that prison overcrowding has a number of serious negative consequences" (Thornberry & Call, 1983, p. 351; see, also, Ruback & Carr, 1984).

Scenario two: Private Prisons

Mass imprisonment from mandatory minimums drives the expansion of federal private prisons

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

Specifically, shortly after the War on Drugs was declared, federalized, and militarized in the 1970s, a private for-profit company in Tennessee sprang up called the Corrections Corporations of America ("CCA"). The advent of this private prison corporation ushered in an era where the traditional government function of crime, punishment, and imprisonment became intertwined and enmeshed with corporate principles and goals like profit maximization for shareholders; executive compensation based on profits and share price; forward-looking statements forecasting larger prison populations; management's discussion and analysis focusing on a more robust prison state; and increased profits built solely on human misery and debasement.¹ Today, the prison industrial complex in the United States, of which CCA is a major player, has proliferated to the point that perverse incentives drive corporate managers at private prison companies." Private prison company directors, managers, and their lobbyists currently work doggedly to increase profits by: (1) influencing carceral policy so that greater numbers of Americans face incarceration;² (2) exploiting those imprisoned through private prison labor contracts;³ (3) lobbying government officials tirelessly to privatize entire state and federal prison systems;⁴ (4) reducing the quality of food and degree of safety for prisoners to cut costs at privately run facilities;⁵ (5) drafting legislation and lobbying for passage of draconian sentencing policies including mandatory minimums, three-strikes, and illegal immigration legislation;⁶ (6) bribing judges and government officials to fill private prison facilities with children on dubious charges;⁷ (7) requiring governments that contract for their services to maintain capacity in the private

prisons at ninety percent or risk breach of contract and higher per diem fees;²⁹ and (8) building new prison facilities despite no government contract or ready prisoners to fill them.³⁰

What seems undeniable now is the perverse and immoral incentives underlying the private prison industry translate into a demand for more prisons and prisoners. Simply stated, mass incarceration, often under inhumane conditions, is good business. The fact that United States prison conditions are so dehumanizing and ghastly, and so many prisoners are low-level, non-violent minor drug offenders, begs the question as to why we as a nation stand for private corporate profit in the realm of human imprisonment. The perverse incentives that frantically drive corporate executives are laid bare when an ever-increasing number of imprisoned Americans energizes corporate interests. One private prison analyst recently claimed that the consistent yearly increase in the prison population "from a business model perspective [is] clearly good news."³¹

And, private prisons are more violent and subject inmates to inhumane conditions

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

CCA's cost-cutting and profit-maximizing practices often lead to inadequate staffing, which results in dangerous and, in some instances, uncontrollable prison environments. One scholar who studied CCA's management of a private prison in Youngstown, Ohio, explains that within fourteen months of its operation, "the prison 'experienced pivotal failures in its security and operational management'.... Consequently, CCA prison guards were unable to control their prisoners." "As a result, some prisoners were subjected to horrific treatment:

CCA managers employed brutal policies[.]. engaged in excessive use of force against prisoners, failed to maintain control over weapons, and failed to implement numerous security procedures.

As a result, there were two homicides, numerous stabbings, extreme levels of violence, and six escapes within the first 14 months."⁸

Likewise, a study in Mississippi concluded that "privately-run prisons in the state had assault rates three to five times higher than the public facilities." In Oklahoma, it was reported that "[a] riot at the North Fork Correctional Facility in 2011 resulted in forty-six injuries, while a four hour long 'disturbance' at the Cimarron Correctional Facility this year only ended after corrections officers used bean bag rounds and pepper balls to subdue the rioters."^o One article discussing a private prison in Mississippi explained that "[b]eatings, rape, robbery and riots are commonplace, and inmates are denied access to medication and psychiatric care."^{9 1}

Notably, "inexperience of private prison employees is one reason for why this violence takes place," which is caused in part by the high turnover rate at these prisons." One study attributed violence at private prisons to "high employee turnover, inadequate training for officers, under-staffing, and miserable conditions experienced by the inmate population." "The study compared the rate and severity of violence in private prisons with their government-run counterparts:

When comparing for-profit prisons with public, a nationwide study found that assaults on guards by inmates were [forty-nine] percent more frequent in private prisons than in government-run prisons. The same study revealed that assaults on fellow inmates were [sixty-five] percent more frequent in for-profit/private prisons. Another study concluded that, "Privately operated prisons appear to have systemic problems in maintaining secure facilities" concluding that for-profit/private prisons have significantly more escapes, homicides, assaults, and drug abuse compared to government-run prisons.⁹⁴

Thus, there can be little doubt that "there are structural problems with private prisons that increase the risk of bad and sometimes lethal outcomes."⁹

c. Private Prisons Subject Inmates to Inhumane Conditions

The living environments at many private prisons deprive many inmates of basic needs.⁶ For example, "[o]ne way for for-profit prisons to minimize costs is by skimping on provisions, including food."⁷ In fact, a psychiatrist who investigated a private prison in Mississippi "found that the inmates were severely underfed and looked 'almost emaciated.'"⁸ In fact, "[d]uring their incarceration, prisoners dropped anywhere from [ten] to [sixty] pounds."⁹

Sadly, numerous reports detail startling examples of deplorable prison conditions. At one Mississippi prison, "an otherwise healthy inmate had to have a testicle removed after prison officials repeatedly denied his request for medical help when it swelled to the size of a softball from cancer." Additionally, some prisoners live in "filthy quarters without working lights or toilets, forcing them to defecate on Styrofoam trays or into trash bags."¹⁰

Furthermore, in a comprehensive report, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System*, the American Civil Liberties Union described the shocking conditions of confinement at one private prison:

At Reeves County Detention Center in late 2008 and early 2009, after a prisoner died from inadequate medical care, prisoners organized uprisings that got so out of control they ended with prisoners setting fire to the facility. Then, in the summer of 2013, prisoners started a petition to protest crowded conditions, bad food, and lack of medical care. When prison staff learned of the petition, they reportedly sought out the protest organizers, tear-gassed their dormitories, shot at them with rubber bullets, and then locked in isolation cells both the organizers and bystanders who objected to being tear-gassed. 102

Similarly, a class-action lawsuit against Walnut Grove Youth Correctional Facility asserted, "children there are forced to live in barbaric and unconstitutional conditions and are subjected to excessive uses of force by prison staff." 103

These conditions are traceable to the demand upon private prisons to consistently operate at nearly maximum capacity.¹¹ As one commentator notes, "[s]tates sign agreements with private prisons to guarantee that they will fill a certain number of beds in jail at any given point,"¹² and "[t]he most common rate is [ninety percent], though some prisons are able to snag a [one hundred percent] promise from their local governments."¹³ Because of these contracts, "the state is obligated to keep prisons almost full at all times or pay for the beds anyway, so the incentive is to incarcerate more people and for longer in order to fill the quota."¹⁴

While the above evidence demonstrates that private prison corporations' mantra or promise of "more safe," "more efficient," and "more cost-effective" is bankrupt, if not fraudulent, the private prison regime continues to thrive in the United States. Private prisons thrive primarily on effective propaganda and relationships with lawmakers around the nation, including through lobbying efforts, campaign contributions, and the specious argument that private industry will always operate more efficiently than government facilities. As the above discussion demonstrates, in the case of the privatized prison corporation, this is simply not true. What is true is that perverse and immoral profit incentives motivate private prison leaders to act and establish policies that harm human beings and trample basic civil liberties.

Private prisons ensures the ongoing expansion of the carceral state for profit – relaxing mandatory sentencing practices undermines private prisons viability

Takei 17 (Carl, Staff Attorney at the National Prison Project of the American Civil Liberties Union, "FROM MASS INCARCERATION TO MASS CONTROL, AND BACK AGAIN: HOW BIPARTISAN CRIMINAL JUSTICE REFORM MAY LEAD TO A FOR-PROFIT NIGHTMARE." 20 U. Pa. J.L. & Soc. Change 125, 2017, Nexis, Accessed – 07/07/20, GDI – JSuek)

Despite this record, private prisons have grown into a multibillion-dollar industry. The two largest private prison companies - Corrections Corporation of America/CoreCivic and GEO Group - are both publicly traded, with annual revenues of, respectively, \$ 1.79 billion and \$ 1.84 billion in 2015. 139 They have developed into a potent lobbying force in both state and federal arenas, with their lobbying and campaign contributions targeted at particular states and particular congressional committees. 140 For example, the Palm Beach Post reported that in Florida alone, private prison companies spent more than \$ 4 million on state political parties, election committees and candidate campaigns between 2000 and 2013. 141 In Oklahoma, private prisons skeptic Justin Jones was forced to resign from his position as Director of the Oklahoma Department of Corrections in 2013, reportedly because private prison lobbyists objected to his resistance to expanding privatization. 142 His successor quickly expressed openness to more private prison contracts. 143

The industry also exerts influence through indirect means. Arizona's SB 1070 legislation, which increased the state's powers to jail immigrants, was based on model legislation [*150] drafted by a committee of the American Legislative Exchange Council ("ALEC"), a membership

organization of state legislators and corporate interests. CCA/CoreCivic's representative to ALEC participated in the ALEC meetings that generated this model legislation. 144

There is a revolving door between correctional agencies and the private prison industry. In 2011, for example, Harley Lappin became an executive at CCA/CoreCivic less than a month after retiring from his position as Director of the Federal Bureau of Prisons. 145 Similarly, Stacia Hylton left the Office of the Federal Detention Trustee - where she was responsible for managing federal detention acquisitions for BOP, ICE, and the U.S. Marshals Service - in 2010 to consult for GEO Group, and then returned to head the U.S. Marshals Service later that year. 146 A host of other high-level corrections officials have followed similar paths into the private prison industry. 147 Additionally, private prison companies foster cozy relationships with corrections officials through sponsorships and contributions to industry associations such as the American Correctional Association, the American Jail Association, the Association of State Correctional Administrators, the Corrections Technology Association, and the National Sheriffs' Association. 148

Private prisons suffer from oversight and transparency problems. A 2012 report by the National Council on Crime and Delinquency concluded that oversight and monitoring of private prisons has "proven to be difficult and tends to be lax and ineffective." 149 Meanwhile, the public remains in the dark because many public records statutes do not reach documents held by private prison companies. 150

The private prison industry depends on the expansion of the carceral state for its continued profitability. The annual reports that the two largest private prison companies file with [*151] the SEC describe this relationship in frank terms. For example, CCA/CoreCivic's 2014 annual report states:

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage correctional and detention facilities The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them. Immigration reform laws are currently a focus for legislators and politicians at the federal, state, and local level. Legislation has also been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities. 151

Plan

The United States federal government should enact substantial criminal justice reform by eliminating federal mandatory minimum sentences and apply those changes retroactively.

Solvency

Contention Three is Solvency

Eliminating mandatory minimums reduces harsh sentencing that disproportionately affects people of color – judge discretion key

Barkow, interviewed by Sangree, 20 (Rachel E. Barkow, New York University law professor, “Breaking the Cycle of Mass Incarceration.” Brennan Center for Justice, 1/3/20, <https://www.brennancenter.org/our-work/analysis-opinion/breaking-cycle-mass-incarceration>, Accessed 7/12/20, GDI – JMoore)

How do we go about rectifying “excessive uniformity” in sentencing laws?

The first key action to take is to eliminate mandatory minimum sentences, which lump together people of vastly different culpability levels and give them the sentence designed for the worst person legislators were thinking about when they passed the law. It results in disproportionate sentences that discriminate on the basis of race. Supporters of mandatory minimums initially thought they would reduce disparities, but they have ended up exacerbating them because prosecutors have discretion whether or not to charge offenses with mandatory minimums, and they have used that discretion in ways that discriminate against people of color.

The second key action is to make sure that judges have discretion to tailor sentences to the facts before them. Too often the temptation is to constrain judges to reduce disparities based on which judge you get. And while that is a laudable goal, it ignores the fact that a regime that does that simply shifts the power to prosecutors instead. It doesn't eliminate disparities; it recreates them in the prosecutors' office.

We should retroactively apply changes to minimum sentences

Barkow, interviewed by Sangree, 20 (Rachel E. Barkow, New York University law professor, “Breaking the Cycle of Mass Incarceration.” Brennan Center for Justice, 1/3/20, <https://www.brennancenter.org/our-work/analysis-opinion/breaking-cycle-mass-incarceration>, Accessed 7/12/20, GDI – JMoore)

I also think a best-case scenario would see the reduction in or elimination of mandatory minimum sentences and a robust return of second looks at sentencing, whether with parole, clemency, compassionate release, or prosecutorial efforts to change sentences. The hope is that any changes to laws would be retroactively available to those serving under prior laws. I also hope we see massive changes to conditions in jails and prisons, as these institutions are deplorable in so many places.

Replacing mandatory minimums provides flexibility for specific cases, reducing harsh sentences

FAMM 12 (Families Against Mandatory Minimums, “MANDATORY MINIMUMS IN A NUTSHELL.” 4/26/12, <https://famm.org/wp-content/uploads/FS-MMs-in-a-Nutshell.pdf>, Accessed 7/5/20, GDI-FGilbard)

What's the alternative to mandatory minimums?

Sentencing guideline systems created by expert commissions. Guidelines typically give courts

1. Sentencing ranges for each crime (i.e., 51-63 months in prison) that depend on the offender's criminal record and the seriousness of the crime, and
2. Flexibility to sentence inside, above, or below that range, if there are special facts and circumstances of the offender or the crime.

The federal system and many states have sentencing guidelines, in addition to their mandatory minimums. Guidelines can be either mandatory (courts must follow them) or advisory (courts can choose not to follow them, when the facts call for it). Well-written advisory guidelines provide judges with reasonable sentencing options and are fairer and more flexible than mandatory minimums.

Why are mandatory minimums a bad sentencing policy?

Anyone who has ever bought a "one size fits all" T-shirt knows that one size never fits all! In fact, "one size fits all" shirts are usually too big on most people! Mandatory minimum sentences are exactly the same – because courts can't tailor these sentences to fit the individual, many people get punishments that are too harsh for the crimes they committed. Mandatory minimums are based on only the type and weight of the drug, which prevents courts from considering other important facts, like whether the offender is nonviolent or a drug addict, not dangerous to the community, or played a minor role in the crime.

Racial Sentencing reform reduces disparities and challenges racial bias in the system

Exum 20 (Jelani Jefferson Exum, Philip J. McElroy Professor of Law at the University of Detroit Mercy School of Law, "Sentencing Disparities and the Dangerous Perpetuation of Racial Bias." 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 491 (2020), Hein Online, Accessed 7/12/20, GDI – JMoore)

For all of the reasons already explained in this Article, the criminal justice system is a "culture maker." Sentencing is a tool used in the criminal justice system and, consequently, racial disparities in sentencing outcomes become a part of the story we tell about black culture. The Perception Institute suggests that while we wait for that culture to change, we should "in the meantime" encourage people to address their own biases.^{1 33} What this Article promotes instead, is that "in the meantime" we actively work to change culture, and that one way to do that is to institute measures to drastically reduce sentencing disparities. Another obvious question is what entity will be used to institute such measures. This question has several possible answers as well. Legislators and sentencing commissions can play a role by instituting sentencing laws and guidelines that mandate taking racial disparity into account when sentencing offenders. Prosecutors and courts can employ internal policing and accountability measures that track racial disparities in decision making and mandates that reducing those disparities become a priority in making decisions. For instance, chief judges can collect and disseminate racial sentencing disparity numbers for their courts and can set a policy that judges consider the reduction of disparities in selecting punishments. Appellate courts may also have a place in reducing sentencing disparities by making room in their interpretation of applicable sentencing laws and constitutional provisions for such racial disparities to be legally considered.

Whatever approach is ultimately taken, the important point to take away from this discussion is that we should be talking about and confronting racial disparities in sentencing and racial bias differently than we are. We should characterize racial bias as a consequence and not simply a cause of sentencing disparities. When viewed in this light, if we actually care about Black lives, it becomes crucial to address the disparities in order to begin the task of changing a culture that perpetually suspects the innocence of those lives.

Mass Incarceration Extensions

MM - Mass Incarceration – Racist

*** In 1AC

Mandatory minimums cause mass incarceration and disproportionately affect black people

Bennett 18 (Mark W. U.S. District Judge in the Northern District of Iowa, “Addicted to Incarceration: A Federal Judge Reveals Shocking Truths About Federal Sentencing and Fleeting Hopes for Reform.” 87 UMKC L. Rev. 3, Fall 2018, Nexis, Accessed 7/9/20, GDI – JSuek)

B. The Latest U.S. Sentencing Commission Data

As bone-crushingly severe as federal guidelines drug sentences are, I find that § 851 sentencing enhancements and mandatory minimum sentences are equally perverse culprits of unfair sentencing and federal mass incarceration. As of September 30, 2016, 49.1% of federal inmates were incarcerated for drug offenses. As of the same date, 72.3% of drug offenders in federal prisons "were convicted of an offense carrying a mandatory minimum penalty, and more than [*12] half (50.4%) remained subject to that penalty at sentencing." 45 Indeed, in fiscal year 2016, 52.8% of offenders convicted of federal drug offenses carrying mandatory minimums faced a mandatory minimum of ten years or more. 46 This jumped to nearly 60% for offenders convicted of methamphetamine offenses. 47

From 1995 to 2016, Black offenders in federal prisons were convicted of offenses carrying mandatory minimum penalties more frequently than any other race. 48 As of fiscal year 2016, 62.7% of Black offenders were convicted of an offense carrying mandatory minimum penalties. 49 There has been a slight but steady decline in this statistic since 2010 when it reached 69.4%. 50

C. Mandatory Minimum Sentencing in Federal Drug Crimes

The missing piece in the post-Booker analysis is the handcuffing role of mandatory minimum sentencing laws. 51

1. The Current Status of Mandatory Minimum Penalties

After the passage of the SRA in 1984 (creating the U.S. Sentencing Commission and mandating sentencing guidelines), but before the guidelines were promulgated by the newly formed Commission and went into effect in 1987, Congress stamped through its chambers and onto President Reagan's desk for signing the Anti-Drug Abuse Act of 1986 ("ADAA"). 52The ADAA created mandatory minimum sentences based solely on drug quantity and the type of drug. 53Professor Bowman has written that the ADAA—even more than the Guidelines—was responsible for the "mushrooming number of federal prisoners and the increased severity of their sentences." 54After nearly a quarter century of sentencing more than 1,000 low-level, non-violent drug addicts to lengthy mandatory minimum sentences, many for possession of very small amounts of methamphetamine or crack cocaine (five grams is the approximant equivalent of a [*13] sugar packet), I have come to believe that the ADAA is the worst, most arbitrary piece of legislation ever passed by Congress. It has inflicted more damage on the poor, people of color, our nation's inner cities, and has destroyed untold numbers of families and helped perpetuate the school-to-prison pipeline, than any other single event.

The ADAA is arbitrary because, before it passed, Congress did not have a single shred of scientific, pharmacological, or other evidence to support any of the drug quantities for any of the various drug mandatory minimums. While there is a plethora of examples, here is just one: under the ADAA, it takes only five grams of pure methamphetamine to trigger a five-year mandatory minimum, yet it takes 100 grams of heroin to trigger the same mandatory minimum. 55How dare Congress engage in such arbitrary legislative nonsense.

Mandatory minimums support racialized mass incarceration

Takei 17 (Carl, Staff Attorney at the National Prison Project of the American Civil Liberties Union, “FROM MASS INCARCERATION TO MASS CONTROL, AND BACK AGAIN: HOW BIPARTISAN CRIMINAL JUSTICE REFORM MAY LEAD TO A FOR-PROFIT NIGHTMARE.” 20 U. Pa. J.L. & Soc. Change 125, 2017, Nexis, Accessed – 07/07/20, GDI – JSuek)

From 1925 (when the Bureau of Justice Statistics first began collecting nationwide data) to 1972, the U.S. per-capita incarceration rate remained relatively stable, with prison and jail populations rising in tandem with the overall population. 8 But starting in 1972, the United States [*129] embarked on an historically unprecedented prison boom that grew unabated for nearly three decades. By the time the U.S. incarceration rate stabilized in 2009, the United States was incarcerating people at more than four times its historical incarceration rate and seven times the rate of Western European democracies. 9 In absolute numbers, this meant that the United States maintained a total of 2.29 million people in custody in 2009 - seven times more people than the United States incarcerated in 1972. 10 As President Barack Obama stated in a July 2015 speech, "For what we spend to keep everyone locked up for one year, we could eliminate tuition at every single one of our public colleges and universities." 11

Since 2009, there has been some progress in reducing the incarcerated population. By 2015, the combined prison and jail population had fallen about 5% from its 2009 peak. 12 However, contrary to popular belief, this modest reduction in the national incarceration rate is not the result of a uniform, nationwide decarceration trend. Instead, it is attributable to specific policy changes that reduced prison populations in a handful of states - primarily California, New York, and New Jersey. 13 Meanwhile, the national jail population has changed relatively little since 2011. 14 Additionally, the immigration detention population - though a relatively small part of the overall incarcerated population - consistently exceeded 30,000 from 2007 to 2014. 15 In other words, claims that mass incarceration is clearly or inevitably on its way out have been greatly exaggerated. 16

This incarceration boom coincided with a similarly stunning increase in the number of people under criminal justice supervision, such as probation and parole. From 1976 to 2010, the probation population grew from 923,000 to 4.06 million. 17 Similarly, from 1975 (the earliest date for which data are available) to 2010, the parole population grew from 143,000 to 841,000. 18 [*130] Thus, by 2010, nearly 5 million people were on probation and parole. 19 Because violations of terms of supervision often return people to prison and jail, the growth in probation and parole supervision helped further feed the incarceration boom. As the National Academy of Sciences reported in its comprehensive 2014 study of mass incarceration, parole violations accounted for an increasing share of state prison admissions as mass incarceration became more entrenched - rising from 20% in 1980 to 30% in 1991 and then between 30 and 40% in 2010. 20

B. Why Did Mass Incarceration Happen?

As mass incarceration continued to metastasize from the 1970s to the 2000s, many people assumed that rising rates of incarceration were a result of increases in crime, and that if crime rates fell, so would prison populations. 21 However, that turned out not to be the case. While both crime and incarceration rates did rise significantly from the early 1960s to the 1980s, violent crime fell in the 1990s even as the incarceration rate continued to rise, and crime rates stabilized at a relatively low level in the 2000s as incarceration rates hit their peak. 22 For this reason, the National Academy of Sciences flatly stated in 2014 that "the very high rates of incarceration that emerged over the past decades cannot simply be ascribed to a higher level of crime today compared with the early 1970s, when the prison boom began." 23

So, what actually caused mass incarceration? The consensus explanation points to changes in law enforcement priorities and sentencing policy that resulted in state and federal authorities putting more people in prison for more reasons and for longer periods of time than at any prior time in U.S. history. 24 Throughout this period, rising incarceration rates were unrelated to trends in crime, and social science evidence had "strikingly little influence on deliberations about sentencing policy." 25 Instead, these changes in policy and practice were largely a response to racist fear mongering (exemplified by the Willie Horton ad 26 in the 1980s and overblown fears of juvenile "superpredators" in the 1990s stoked by John Dilulio 27) and the perceived urgency of [*131] the War on Drugs. At both state and federal levels, legislators responded by approving increasingly harsh sentencing laws, including mandatory minimum sentences, "Truth in Sentencing," Three Strikes laws, and stiff sentencing guidelines. The same dynamics led legislators to ramp up the size and aggressiveness of the police presence in cities - particularly in Black and Brown neighborhoods. 28 Both liberals and conservatives supported many of these changes - including the shift from indeterminate sentencing to the use of sentencing guidelines, which liberals incorrectly believed would reduce racial disparities and biases in sentencing. 29

MM - Mass Incarceration – Disproportionate

*** In 1AC

Mandatory minimums balloon federal prison populations and disproportionately affect people of color

The Leadership Conference 18 (“FACT SHEET: Sentencing and Mandatory Minimums.” 3/28/18, <http://civilrightsdocs.info/pdf/criminal-justice/Sentencing-Fact-Sheet.pdf>, Accessed 7/9/20, GDI-FGilbard)

Mandatory minimums undermine our nation’s commitment to justice and fairness by preventing judges from taking into account the individual’s background and the circumstances of his/her offenses in the sentencing determination. These laws disproportionately impact people of color, have caused our prison populations to soar, and have led to overcrowding and exorbitant costs to taxpayers.

The increasing number and lengths of federal mandatory minimum sentences has caused the U.S. prison population to balloon in the last several decades.

- The number of federal mandatory sentences has doubled in the last 20 years. 1
- 14,138 people were convicted of an offense carrying a mandatory minimum penalty in the fiscal year of 2015. Of these people, 8,602 (13.5 percent) remained subject to a mandatory minimum penalty at sentencing. Drug trafficking offenses accounted for over two-thirds (66.2 percent) of the offenses carrying a mandatory minimum penalty.2
- In 2010, 39.4 percent of individuals in Federal Bureau of Prisons custody were subject to a mandatory minimum penalty.3
- Between 1980 and 2013, the federal imprisonment rate increased 518 percent. 4 At its peak, the Federal Bureau of Prisons (BOP) was operating at 36 percent over capacity.
- Over the last three years, the BOP population has dropped by almost 30,000,5 primarily due to administrative reforms like the Attorney General’s Smart on Crime Initiative. As a result, the BOP is currently operating at 16 percent over its intended capacity.6

The explosion of the prison population and the increasing use of mandatory minimums have had a disproportionate impact on communities of color.

- African Americans make up 13 percent of the U.S. population7—but almost 38 percent of the federal prison population.8 Hispanics account for 17 percent of the U.S. population9— but almost 34 percent of federal inmates.10
- During fiscal year 2015, Black people accounted for 28.9 percent and Hispanic people accounted for 41.5 percent of those convicted of a mandatory minimum penalty, compared to only 27.2 percent of White people. 11
- White people (33 percent) are more likely than Black people (29.4 percent) to receive relief from mandatory minimum penalties at sentencing. 12

MM - Mass Incarceration – Experts

Mandatory minimums correlate with increased incarceration rates- experts agree **O'Connor**, contributor at The Badger Herald, 2017

(Matt, "Experts say mandatory minimum sentences lead to increased mass incarceration", The Badger Herald, 5/4/17, <https://badgerherald.com/news/2017/05/04/experts-say-mandatory-minimum-sentences-lead-to-increased-mass-incarceration/>, Accessed 7/9/20, GDI-FGilbard)

The Madison Institute and Wisconsin Union Directorate Committee on Society and Politics hosted a panel of experts Wednesday to speak about minimum sentencing's effects on mass incarceration and how society can move away from this practice.

The panel included Marquette University law professor Michael O'Hear, University of Wisconsin law professor Cecelia Klingele and former prisoner and current vice president of Madison Organizing in Strength, Equality, and Solidarity, Talib Akbar. All three speakers are legal professionals and criminal justice reform advocates.

O'Hear said **the introduction of mandatory minimums in sentencing policy and the reduction in the discretionary power of parole boards to grant release from prison lead to mass incarceration.**

"Suddenly, it didn't matter how well an inmate was behaving or how close they were to being released," O'Hear said. "Mandatory minimums would keep them in prison."

UW program shows how food can be used to end systemic incarceration of minorities

The Nelson Institute for Environmental Studies debuted its new short film, "Break the Cycle: The Power of Food to Interrupt Read..."

O'Hear said incarceration rates in Wisconsin have risen from 125 people incarcerated per 100,000 in 1978 to just less than 375 people incarcerated per 100,000 in 2011. This is more than a 200 percent increase.

In the 1970s, mandatory minimums were introduced and discretionary power was beginning to be taken away from judges, O'Hear said. He said the rise in incarceration rate is correlated with the mandatory minimums and less discretionary power.

But, O'Hear doesn't believe reinstating judicial discretion in sentencing would fix the problem of mass incarceration.

"Discretionary parole and judicial discretion is not the answer to ending mass incarceration," O'Hear said. "**Presumptive or mandatory release systems are more promising.**"

As a former prisoner, Akbar spoke about his personal experiences with both the prison and parole systems.

Akbar said his main problem with the parole system is the frequency with which parolees land back in prison for "unfair" or "unjust" reasons.

"A person should not be sent back to prison because of an unproved allegation that they broke a rule on parole," Akbar said.

As the movement to reform the criminal justice system gains momentum at the local level, three experts came together for Read...

The problem with mass incarceration is not necessarily the number of people imprisoned, Klingele said, but rather the scope and tenure of their sentences.

Klingele said because of mandatory minimums and coverage by the mainstream media, Americans have come to expect disproportionately and unnecessarily long prison terms for crimes of all types.

“We’re conditioned to believe that a serious sentence has to be measured through multiple decades, when in fact, the amount of change that can take place in just a few years is substantial,” Klingele said.

MM - Mass Incarceration – Prosecutors

*** In 1AC

Mandatory minimums shift power to the prosecutor and distribute harsher sentences people of color

Barkow 12 (Rachel E. Segal Family professor of regulatory law and policy and the faculty director at the Center on the Administration of Criminal Law at New York University, “The Problem With Mandatory Minimum Sentences.” New York Times, 8/19/12, <https://www.nytimes.com/roomfordebate/2012/08/19/do-prosecutors-have-too-much-power/the-problem-with-mandatory-minimum-sentences>, Accessed 7/7/20, GDI-FGilbard)

By almost any measure, **federal prosecutors wield too much power.** Because many federal laws govern similar behavior and are written broadly, prosecutors commonly have multiple charges from which to choose. This means they typically have many sentencing ranges to choose from as well. Thus, they can – and do – threaten defendants who want to exercise their trial rights with charges that will carry longer sentences (sometimes decades longer) than the charges they will file if defendants plead guilty. On average, federal defendants who refuse to waive their right to a jury trial receive a sentence three times longer than those who plead. And with the prevalence of **mandatory minimum laws, a prosecutor’s charging decision often dictates a sentence that a judge is powerless to avoid.** It is no wonder 97 percent of federal convictions are the result of guilty pleas.

To rein in this power, **Congress should no longer pass laws with mandatory minimum sentences.** Far from eliminating disparity by curbing judicial discretion (their stated purpose), studies show that mandatory minimums simply shift power to prosecutors (who file charges with those mandatory minimums disproportionately against defendants of color).

MM cause mass incarceration – prosecutor pressure

Cullen 18 (James, Research and Program Associate at the Brennan Center for Justice at NYU School of Law, “Sentencing Laws and How They Contribute to Mass Incarceration.” Brennan Center, 10/5/18, <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>, Accessed 7/4/20, GDI-FGilbard)

Simply put, anyone convicted of a crime under a “mandatory minimum” gets at least that sentence. The goal of these laws when they were developed was to promote uniformity; it doesn’t matter how strict or lenient your judge is, as the law and the law alone determines the sentence you receive.

Regrettably, the adoption of mandatory minimums has not led to a fairer system. In fact, it’s had the opposite effect. By tying judges’ hands, mandatory minimums effectively took power away from judges and gave it to prosecutors, who could threaten to charge defendants with crimes that would “trigger” a mandatory minimum. Facing a harsh sentence from which there’s no other escape, a defendant can often feel coerced into admitting their guilt — even sometimes falsely confessing.

Interestingly, federal judges have come to dislike mandatory minimums, especially in drug cases. Mandatory minimums often apply to nonviolent drug offenders, forcing judges to harshly punish those who pose the least physical danger to communities. While the goal of mandatory minimums may have been fairness, they’ve instead caused an imbalance in the courtroom that has helped drive mass incarceration.

MM - Mass Incarceration – Harsh Sentences

*** In 1AC

Mandatory minimums supports mass incarceration including life without parole sentences for low-level offenders

McNelis 17 (Abigail A. J.D Candidate Antonin Scalia Law School, George Mason University, “COMMENT: Habitually Offending the Constitution: THE CRUEL AND UNUSUAL CONSEQUENCES OF HABITUAL OFFENDER LAWS AND MANDATORY MINIMUMS.” 28 Geo. Mason U. Civ. Rts. L.J. 97, Fall 2017, Nexis, Accessed – 07/06/20, GDI – JSuek)

2. The Problem with Mandatory Minimums

Mandatory minimums statutorily require judges to impose, at a minimum, a specific sentence for certain criminal offenses. ⁶⁵At the most basic level, mandatory minimums ignore each offender's individuality. ⁶⁶Bound by this, judges remain unable to consider the relevant and unique qualities of each criminal defendant. ⁶⁷Considerations [*104] such as whether or not punishment is necessary to keep the public safe, whether someone was injured, whether there is a possibility of rehabilitation, the individual's role in the crime, and motive for engaging in criminal activity all fall to the wayside when mandatory minimums deny judicial discretion. ⁶⁸

By denying judicial discretion, power is directly given to federal and state prosecutors. ⁶⁹Using mandatory minimums, prosecutors are able to pressure criminal defendants into pleading guilty to lower crimes, rather than invoking their constitutional right to a trial, thus risking conviction and potentially receiving a harsh mandatory minimum penalty. ⁷⁰Prosecutors possess the ability to ask for a lower sentence based on "substantial assistance" from cooperating defendants. ⁷¹Typically, the higher the position a defendant holds in a drug operation, the more information the defendant possesses to substantially assist the prosecutor in making further convictions. ⁷²Lower-level offenders often lack the information needed to substantially assist prosecutors, and instead face the decision to plead out or risk receiving daunting minimum sentences. ⁷³As a result, the higher-ups in drugs schemes can work with prosecutors to finagle their sentences down to lengths comparable to those intended for low ranking drug offenders. ⁷⁴

B. Life Sentences for Non-Violent Offenders as a Product of Mandatory Minimums

The mass incarceration resulting from mandatory minimum laws has resulted in more than 3,000 non-violent offenders across the United States receiving life sentences without the possibility of parole. ⁷⁵Life without parole sentences affect even low-level criminals. ⁷⁶

[*105]

1. Defining Non-Violent Offenders

The statutory definition of violence varies among jurisdictions. ⁷⁷For example, in Virginia, violent crimes are defined as "acts of violence" and include a list of seven different offenses. ⁷⁸These offenses include murder, mob-related felonies, kidnapping, assault, robbery, sexual assault, and arson. ⁷⁹In South Carolina, the definition of violent crime is much more specific and extends to over fifty offenses. ⁸⁰Such offenses include crimes like drug trafficking and a "vessel operator's failure to render assistance resulting in death." ⁸¹

Despite the vast differences among state statutes, the overarching theme across jurisdictions remains: a violent crime is a crime against another. ⁸²The obvious examples of violent crime include rape, murder, and assault. ⁸³In November 2013, the American Civil Liberties Union (ACLU) published a report, which defined violent crimes, explaining violent crimes do not include drug offenses, property crimes, and crimes that do not involve threat or force against another. ⁸⁴Even so, individuals convicted of low-level non-violent offenses receive life without parole sentences, oftentimes because of past convictions. ⁸⁵

Notably, the ACLU's report does not include drug offenses in their definition of violent crime. ⁸⁶The adoption of three-strike and habitual offender laws spiked during the 1980s and 1990s because of media and political hysteria conflating drug offenses

with increased violence. 87Conversely, the mass incarceration of drug users has not [*106] impacted violence rates. 88 The rate of violent crime actually remains stable, even as drug use rates surge upward. 89

The ACLU collected data from the Bureau of Prisons and state Departments of Corrections. 90The ACLU calculated that in 2012, there were 3,278 individuals serving life sentences in the federal system and nine states without the possibility of parole for non-violent drug and property crimes. 91Of the 3,278 individuals, seventy-nine percent were serving time for non-violent drug convictions. 92Louisiana, Florida, Georgia, Alabama, Mississippi, South Carolina, and Oklahoma have the highest number of prisoners serving life sentences without the possibility of parole for non-violent crimes. 93The high rates in these states result mainly from various three-strikes and habitual offender laws, which mandate life sentences in connection with certain non-violent crimes. 94

---AT: Relief from Mandatory Minimums

Safety valve and cooperation are limited – don't apply to most offenses and black people are less likely to access them

Bennett 18 (Mark W. U.S. District Judge in the Northern District of Iowa, "Addicted to Incarceration: A Federal Judge Reveals Shocking Truths About Federal Sentencing and Fleeting Hopes for Reform." 87 UMKC L. Rev. 3, Fall 2018, Nexis, Accessed 7/9/20, GDI – JSuek)

2. Relief from Mandatory Minimum Penalties in Drug Sentencing

No discussion of mandatory minimums would be complete without mentioning the two ways an offender subject to a drug mandatory minimum penalty may avoid it: 1) the so-called "safety valve"; and/or 2) cooperating with the prosecution by providing "substantial assistance."

The safety valve was created by 18 U.S.C. § 3553(f). It provides that defendants who meet the following requirements may be sentenced without regard to the mandatory minimum: no more than one criminal history point; no violence or threat of violence in the offense; no possession of a firearm or dangerous weapon; the offense did not involve serious injury or death; the defendant was not an organizer, leader, manager, or supervisor in the offense; and prior to sentencing, the defendant truthfully provided the prosecution with all information related to the offense or offenses. 63 Practically speaking, Black offenders are less likely to qualify for the safety valve than White or Hispanic offenders because Black offenders are less likely to be in Criminal History I. ⁶⁴

The second way to obtain relief from a mandatory minimum sentence is for a defendant to cooperate with the prosecution in the investigation or prosecution of another and hope the prosecution moves the court for a "substantial assistance" reduction. However, a substantial assistance motion can only be made by the prosecution; neither the sentencing judge nor the defense lawyer are able to make the motion. ⁶⁵

In fiscal year 2016, 61.3% of offenders who were subject to mandatory minimum penalties at sentencing did not obtain relief from them. ⁶⁶ Of those that did, 18.8% obtained a substantial assistance departure, 14.3% received the safety [*15] valve, and 5.5% received both. 67 In fiscal year 2016, offenders sentenced pursuant to a mandatory minimum penalty received an average sentence of 138 months, more than twice the average of sixty-seven months for offenders who received relief from a mandatory minimum penalty. ⁶⁸

MM Bad – Plea Bargain

Mandatory minimums allow prosecutors coerce defendants into accepting plea deals – the sentencing laws enable classist bias

Stamm, Georgetown University Law Center J.D., 2018

(Michael, “Between a Rock and Discriminatory Place: How Sentencing Guidelines and Mandatory Minimums Should be Employed to Reduce Poverty Discrimination in the Criminal Justice System”, Georgetown Journal on Poverty Law and Policy, 24 Geo. J. Poverty Law & Pol’y 399, Accessed – 07/08/20, GDI – JSuek)

Mandatory minimums come into play in federal jurisdictions and in most states. 86 Mandatory minimums reduce fairness in the system by **curtailing the discretion of judges** to consider the circumstances of each case. 87 They also **create an environment with more weight behind the threat of conviction, leading more defendants to accept plea deals** when they otherwise may not have. 88

According to Norman L. Reimer and Lisa M. Wayne, Executive Director and President of the National Association of Criminal Defense Lawyers, respectively, the prime example of the excessive increase in prosecutorial discretion vis-à-vis mandatory minimums is the ability of prosecutors to negotiate the charges with minimums away. 89 This **allows prosecutors to coerce defendants into cooperation**, usually in order to bring charges against another alleged criminal, by threatening, for example, tens of years of incarceration if the defendant does not cooperate. 90

Mandatory minimum sentences represent a **bias against defendants in poverty** because they are most prevalent for crimes that most affect people in poverty. 91 The crimes subject to mandatory minimums include drug offenses, weapon offenses, and offenses of illegal reentry (e.g., offenses preventing aliens who have been deported from returning to the United States). 92 **Lawmakers make a choice to impose mandatory minimums for some crimes and not others.** 93 Mandatory minimum sentencing represents another **expression of bias**, whether explicit or implicit, against indigent defendants.

---AT: Plea Bargain Good

Implicit bias manifests in racial disparities within plea bargaining

Dunnigan, third-year student at the University of Richmond T.C. Williams School of Law,**18**

(John, "BARGAINING TOWARDS EQUALITY: THE EFFECTS OF IMPLICIT BIAS TRAINING ON PLEA BARGAINING," Richmond public interest law review, Vol 21, iss. 3, <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1432&context=pilr>, accessed 7/10/20, GDI-EW)

While it is apparent, racial disparities exist in the system of plea bargaining, it is not entirely clear why such disparities exist. One reason suggested for such racial disparities in plea agreements is the implicit racial bias of prosecutors.⁷ Implicit racial bias refers to the cognitive processes by which people unconsciously classify information in racially biased manners.⁸ Implicit racial biases are unintentional, unplanned, and effortless.⁹ Such biases result from the repeated exposure to cultural stereotypes and attitudes that pervade our society.¹⁰ For example, various stereotypes, such as the dangerous black male, are well documented.¹¹ It is critical to understand that implicit biases exist, even in the absence of purposeful bigotry, simply because of exposure to cultural and societal stereotypes.¹² Ultimately, many Americans, including prosecutors, carry some form of implicit racial bias.¹³ Implicit biases affect plea-bargaining through prosecutorial discretion, as prosecutors are granted ample discretion when deciding whether to offer plea deals and the substance of such offers.¹⁴ Prosecutors' decision-making is strongly influenced by their own implicit racial biases against African American defendants.¹⁵ As with all bias, implicit bias can distort one's view of the facts.¹⁶ In particular, implicit racial biases affect the evaluation of evidence, offering of plea deals, and the defendant's acceptance of punishments.¹⁷ Biased evaluation of evidence can lead one to unintentionally interpret evidence as more probative of guilt.¹⁸ For example, implicit racial biases can prevent prosecutors from offering plea deals due to expectations of the defendant's likelihood of recidivism.¹⁹ Ultimately, prosecutors with limited information, time, and resources may often subconsciously rely on race when making such plea-bargaining decisions.²⁰

MM Bad – Economically Hurts Families

Mandatory minimums economically devastating on families

Gertner and Bains 17 (Nancy, Professor at Harvard Law School/former federal district judge, and Chiraag, former senior counsel to the head of the at the Civil Rights Division of the Department of Justice “Mandatory minimum sentences are cruel and ineffective. Sessions wants them back.” Washington Post, 5/15/17, <https://www.washingtonpost.com/posteverything/wp/2017/05/15/mandatory-minimum-sentences-are-cruel-and-ineffective-sessions-wants-them-back/>, Accessed 7/6/20, GDI-FGilbard)

Mandatory federal drug sentencing is unforgiving. A person with one prior drug felony who is charged with possession of 10 grams of LSD, 50 grams of methamphetamine, or 280 grams of crack cocaine with intent to distribute faces 20 years to life. With two priors — no matter how long ago they occurred — the penalty is life without parole. As one federal judge has written, these are sentences that “no one — not even the prosecutors themselves — thinks are appropriate.”

They waste human potential. They harm the 5 million children who have or have had a parent in prison — including one in nine black children. And they wreak economic devastation on poor communities. Studies have found, for example, that formerly incarcerated employees make 10 to 40 percent less money than similar workers with no history of incarceration and that the probability of a family being in poverty increases by almost 40 percent when a father is imprisoned.

MM Bad - Prison Overcrowding

*** In 1AC

Mandatory minimums cause prison overcrowding – abolishing them solves

Peeler 18 (Travis, J.D. from the University of Houston Law Center and Legal Match Legal Writer, “Problems with Mandatory Minimum Sentencing.” Legal Match, 12/11/18, <https://www.legalmatch.com/law-library/article/problems-with-mandatory-minimum-sentencing.html>, Accessed 7/4/20, GDI-FGilbard)

Many people feel this policy leads to prison overcrowding of non-violent offenders.. Many offenders who may have otherwise received short sentences, or not been given a sentence at all, are imprisoned for many years due to mandatory sentencing. As prison populations have grown exponentially, many judges and lawyers have argued that mandatory minimums should be done away with to combat this issue.

Racist Sentencing Bad

Racialized sentencing practices re-enforce tropes of black criminality and racial bias that impact everyday life

Exum 20 (Jelani Jefferson Exum, Philip J. McElroy Professor of Law at the University of Detroit Mercy School of Law, "Sentencing Disparities and the Dangerous Perpetuation of Racial Bias." 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 491 (2020), Hein Online, Accessed 7/12/20, GDI – JMoore)

It is well known that there are racial sentencing disparities in the United States criminal justice system. Studies reportedly show that there are persistent differences between the sentences imposed on White versus non-White offenders, with Black male offenders receiving the brunt of sentencing severity. 2 2 For instance, a comprehensive sentencing study conducted by the Bureau of Justice Statistics found that from 2005 to 2012, "the trends in [federal] sentences for black males were increasingly longer than the sentences for white males." 2 3 The same problem plagues the state criminal justice systems as well. In its 2014 written testimony to the Inter-American Commission on Human Rights, the American Civil Liberties Union (ACLU) explained that "Black and Latino offenders sentenced in state and federal courts face significantly greater odds of incarceration than similarly situated white offenders and receive longer sentences than their white counterparts in some jurisdictions." 2 4 As a result of these harsh sentencing practices levied at Black and Brown individuals, we suffer the disturbing plight of racially disproportionate incarceration as well. For instance, in 2011, African-American males were six times more likely to be incarcerated than White males. 25 In a 2016 sentencing study, the Sentencing Project reported that "African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of Whites." 26 This statistic is reflected in our prison population where, "[t]oday, people of color make up 37% percent of the U.S. population but 67% percent of the prison population." 2 7 More specifically, Blacks make up thirteen percent of the U.S. population, yet comprise thirtyeight percent of the U.S. prison population. 28 Distressingly, more than half of the prison population is African American in twelve states. 29 This is especially troubling considering that the United States is the world leader in incarceration. 30 As the oft-touted statistic tells us, "the U.S. has 5% of the world's population, but 25% of the world's prisoners." 3 1 Therefore, not only do we over-incarcerate generally, we focus that unnecessarily punitive ammunition on communities of color. While there are many collateral consequences to incarceration that have racial disparities as well, 32 the consequence of perpetuating biased views about black criminality are the most universally damaging because of the danger they cause in everyday life. The sentencing numbers provide a formal source for racial stereotypes-they give official numbers to back up a view that Black Americans are more likely to engage in criminal behavior than Whites. The way those numbers are understood and acted on by the greater society in their interactions with Blacks show that sentencing disparities also play a part in the informal sources of racial stereotypes and bias. A closer look at the role of bias and the popular views about who commits crimes shows that sentencing disparities contribute to bolstering the stereotypical story of Black criminality that has become a popular trope.

---AT: No Solve Racism

Confronting Sentencing disparities solves instances of racial bias

Exum 20 (Jelani Jefferson Exum, Philip J. McElroy Professor of Law at the University of Detroit Mercy School of Law, "Sentencing Disparities and the Dangerous Perpetuation of Racial Bias." 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 491 (2020), Hein Online, Accessed 7/12/20, GDI – JMoore)

Racial bias in the criminal justice system has been well documented.¹ From police tactics to rates of arrests and prosecution, Black 2 people suffer the disproportionate weight of criminal law enforcement.³ This unfair treatment has been blamed on overt racism, implicit bias, and systemic institutional racism, among other social inequities. However, rather than solely exploring the causes of disparities in the criminal justice system, this Article addresses the role that these disparities specifically sentencing disparities play in perpetuating the racial bias that increases the daily danger of living as a Black American. While memes of BBQ Becky, Permit Patty, and other instances of White people calling the police to report Black people who are simply living as any other American have inspired internet hilarity, these instances highlight the manner in which our criminal justice system's racial inequities feed into biased beliefs about Black criminality.⁴ These biases hinder sentencing reform efforts, frustrate attempts to hold police accountable for excessive violence, and preserve beliefs that the racial disparities in the criminal justice system are warranted. As this Article argues, rather than simply tackling implicit bias as a means to fight sentencing and other criminal justice bias, we must actively correct and eliminate the disparities head-on. When this is done, perhaps a reduction in bias-and the dangerous consequences of that bias-will follow.

Racial Sentencing reform reduces disparities and challenges racial bias

Exum 20 (Jelani Jefferson Exum, Philip J. McElroy Professor of Law at the University of Detroit Mercy School of Law, "Sentencing Disparities and the Dangerous Perpetuation of Racial Bias." 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 491 (2020), Hein Online, Accessed 7/12/20, GDI – JMoore)

For all of the reasons already explained in this Article, the criminal justice system is a "culture maker." Sentencing is a tool used in the criminal justice system and, consequently, racial disparities in sentencing outcomes become a part of the story we tell about black culture. The Perception Institute suggests that while we wait for that culture to change, we should "in the meantime" encourage people to address their own biases.¹ ³³ What this Article promotes instead, is that "in the meantime" we actively work to change culture, and that one way to do that is to institute measures to drastically reduce sentencing disparities. Another obvious question is what entity will be used to institute such measures. This question has several possible answers as well. Legislators and sentencing commissions can play a role by instituting sentencing laws and guidelines that mandate taking racial disparity into account when sentencing offenders. Prosecutors and courts can employ internal policing and accountability measures that track racial disparities in decision making and mandates that reducing those disparities become a priority in making decisions. For instance, chief judges can collect and disseminate racial sentencing disparity numbers for their courts and can set a policy that judges consider the reduction of disparities in selecting punishments. Appellate courts may also have a place in reducing sentencing disparities by making room in their interpretation of applicable sentencing laws and constitutional provisions for such racial disparities to be legally considered.

Whatever approach is ultimately taken, the important point to take away from this discussion is that we should be talking about and confronting racial disparities in sentencing and racial bias differently than we are. We should characterize racial bias as a consequence and not simply a cause of sentencing disparities. When viewed in this light, if we actually care about Black lives, it becomes crucial to address the disparities in order to begin the task of changing a culture that perpetually suspects the innocence of those lives.

Mass Incarceration Bad – Slavery

*** In 1AC

Mass incarceration emerges along the color line and exists as an extension of prison labor/slavery

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

Incarceration successfully masks slavery and it does so cunningly through the unrelenting vestiges of racial bigotry, finely tuned fear, and stereotypes. Viewed in this light, prison is not about disproportionate and racialized policing and the exploitation of labor, but rather community safety. Despite rates of criminality mapping similarly between Blacks, Whites, and Latinos, most white Americans presume that Blacks are [*958] more dangerous, prone to criminality, and likely to commit more crimes. Drug use statistics offer an important point of relevance given the overwhelming number of individuals incarcerated associated with drug use or distribution. 329

Data from 2015 shows that "about 17 million whites and 4 million African Americans reported having used an illicit drug within the last month." 330 However, imprisonment rates for Blacks and whites vary dramatically. According to the NAACP, "African Americans and whites use drugs at similar rates, but the imprisonment rate of African Americans for drug charges is almost 6 times that of whites." 331

Arguably, police brutality detracts attention from other points of vital inquiry in the criminal justice system, including prison slavery. The modern masks of slavery: mass incarceration, pay to play probation, modern chain gangs, and the exploitation of cheap labor emerge along the color line just as Antebellum slavery was anchored in the same. In 2014, "African Americans constituted 2.3 million, or 34%, of the total 6.8 million correctional population." 332 According to one of the nation's chief civil rights organizations, the NAACP, "African Americans are incarcerated at more than 5 times the rate of whites." 333 For African American women, their rate of incarceration is at least twice that of their white counterparts. 334 Three key points of examination further explicate the racial color line of modern incarceration:

* Nationwide, African American children represent 32% of children who are arrested, 42% of children who are detained, and 52% of children whose cases are judicially waived to criminal court. 335

* Though African Americans and Hispanics make up approximately 32% of the US population, they comprised 56% of all incarcerated people in 2015. 336

[*959] * If African Americans and Hispanics were incarcerated at the same rates as whites, prison and jail populations would decline by almost 40%. 337

Thus, the scale of mass incarceration is quite significant. Its scope exceeds that of all other developed and peer nations. In 2015, there were 2,173,800 incarcerated persons in the United States. 338 One compelling reference point can be found in data on the founding NATO member nations. Among the founding NATO members, the United States incarcerates at a rate nearly ten times that of Norway and Denmark; nearly eight times that of France, and well over four times that of the United Kingdom. 339 The chart below crystalizes the comparison. Incarceration Rates Among Founding Nato Members (per 100,000 population)

According to the Prison Policy Initiative, "these data reveal that even the U.S. states that incarcerate the smallest portion of their own citizens are out of step with the larger community of nations." 340 Advocacy organizations have long urged the U.S. "to reevaluate their own hefty reliance on incarceration, we recommend that they look to the broader global context for evidence that incarceration need not be the default response to larger social problems." 341 Sadly, however, even such reasonable advice misses the point as to why the system of mass incarceration remains ubiquitous and persistent, and the answer is [*960] located in color line articulated by Frederick Douglass and W.E.B. DuBois more than a century ago.

By comparison to its European counterparts, incarceration in the United States is not only racialized; it is dramatically more expansive than that of peer nations, such as the United Kingdom, Switzerland, France, Italy, Germany, and others. 342 In fact, "the sheer size of the federal prison system alone - larger than the total prison population of every nation on the planet except for seven (China, Russian Federation, Brazil, India, Thailand, Mexico, and Iran)" 343 exposes the extent to which incarceration has become normalized and by extension, its dirty secret of prison labor exploitation and slavery.

Mass incarceration and private prisons represent the continuation of slavery in the name of profit

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

In other instances, inmates labor for private, multi-million and billion-dollar industries, earning very little or what might be described as "slave-like" wages. The most famous case of this was in the 1990s, when inmates sewed the merchandise sold by Victoria's Secret, J.C. Penney, and other retailers. 29 Sometimes inmates work for the state, and in other instances, private businesses essentially lease their labor. 30 The employers, [*906] whether private industry, the state, or private prisons, would be correct in pointing out that in the traditional sense, these women and men are not slaves; in fact, California refers to them as "volunteers." 31 After all, American slavery was a specific, racialized institution abolished with the ratification of the Thirteenth Amendment in 1865. 32

For some rehabilitation programs and prison systems, employment is a key part of allowing inmates to develop skills, prepare for the workforce, and shape a positive life within and one day beyond prison walls. As social "reentry" and "ban the box" programs emerge, even more industries are open to assisting the formerly incarcerated upon their release. 33 However, whether these programs represent progress by producing outcomes that benefit rather than exploit inmates or serve as a "chokehold," fitting within the narrow exception of the Thirteenth Amendment, which permits forced, uncompensated servitude or slavery of those convicted of crimes is a question that [*907] deserves debate and scrutiny. 34 Arguments that a low wage is better than no wage, and thus not slavery at all, fall short and fail to address the substantive quality of slavery embedded in the prison economy and how pernicious forms of servitude are ritualistically reimaged, reified, and re-instantiated in the American criminal justice system. 35 Nor do such arguments shed light on the economic motivations of contemporary slavery. From an unpaid laborer's perspective, the conditions and terms that instantiate her condition may seem unfair, inhumane, and downright abusive. However, situated from the view of the state as "holder" of the labor, slavery of this sort is quite simply profitable and legal.

This Article argues that cries for penal reform, while important, do not speak to the urgent issue of slavery behind bars and the externalities that pervade the broader consequences of prison labor markets. 36 Second, although recent attention to private prisons raises questions about whether states should contract with firms that seek to maximize profits in relation to incarceration, this work argues that slavery's fundamental importance to U.S. capitalism and the American economy extended beyond bankrolling private business interests in the 18th and 19th centuries.

For these reasons, now is an important time to consider these matters in order to develop a more robust jurisprudence in exile. 37 Even though political interest and efforts to address [*908] the lingering consequences of legalized slavery may not be at the forefront of congressional or state legislative debate (if present at all), it is nevertheless important to grapple with this important issue. To answer Stephen Sachs' question, "if law is a matter of social practice, as most seem to agree, can there be social practices that hardly anybody in society knows about?" 38 : yes, the prison slave economy.

This Article makes two conceptual contributions. First, it tells a story about the Thirteenth Amendment forbidding one form of slavery while legitimating and preserving others. Of course, the text does not operate absent important actors: legislatures and courts. Yet, as explained by Reva Siegel, despite "repeated condemnation of slavery," such united opposition to the practice "may instead function to exonerate practices contested in the present, none of which looks so unremittably 'evil' by contrast." 39 In this case, uncompensated prison labor, including that of the dangerous work of female firefighters, inures economic benefits to the state and the companies capable of extracting it. 40 This Article argues that this preservation of the practice of slavery through its transformation into prison labor means

that socially, legislatively, and judicially, we have come only to reject one form of discrimination-- antebellum slavery--while distinguishing it from the marginally remunerated and totally unremunerated prison labor that courts legitimate.

Second, this Article argues that the promises of the Thirteenth Amendment may actually fill in gaps of the Fourteenth Amendment. For example, the Fourteenth Amendment has been interpreted only to prohibit purposeful/intentional consequences [*909] or the purposeful/intentional production of disparate burdens. 41 Yet, the Thirteenth Amendment is different textually and historically.

This Article demonstrates that not only is the prison slave system vibrant, it produces profits and wealth for those who exploit prison labor. 42 Part I establishes the framework of this Article. Part II examines the preservation of slavery through the ratification of the Thirteenth Amendment and the Punishment Clause. Part III examines the scale of modern incarceration and forced labor. It argues that just like traditional forms of slavery, the modern system functions according to certain fundamental principles, such as the laws of supply and demand, creating perverse incentives in criminal justice. Part IV turns to the question of reform and offers recommendations to eradicate modern vestiges of slavery.

Mass incarceration enforces racialized slavery

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

The Thirteenth Amendment permits slavery of incarcerated persons and in turn, state and federal prisons force prisoners into the modern labor conditions of slavery. State and private prisons hone the practice of producing inmates through disparate racialized policing practices, thereby, intentionally or not, replicating slavery and strategically utilizing its core labor force: poor Blacks primarily, but also Latinos, immigrants, Native Americans, and poor whites. During Jim Crow, this phenomenon is depicted through folklore, chain gangs, prison labor songs like Long John, 299 legends such as the tale of John [*953] Henry, 300 and disturbing images. 301 However, prison slavery has been put to much more astonishing use and purpose in the twentieth and twenty-first centuries. As one commentator writes about chain gangs, the images, look "like 21st century slavery," where "the photos of men on the chain evoke [that] dark period. 302

A. Incarceration and Preservation

For whom does the bell of slavery continue to toll? The story of mass incarceration is prolifically and compellingly articulated in the case of men, particularly Black males. 303 In Chokehold, Professor Paul Butler offers a framework to understand the enduring legacy of Black oppression: the chokehold. Its focus is the criminal justice system and how Black males fit into it. Butler persuasively argues that law enforcement arbitrarily, but aggressively polices Black men, instilling fear, promoting anxiety, and contributing to the chilling number of Black men in prison. 304 Butler explains that the chokehold is [*954] intentional and omnipresent in the lives of Black men. His metaphorical use of chokehold suggests a broader system or trap from which Black men cannot escape. 305

Prison Slavery Bad - LL

***In 1AC

Impact to prison slavery – tons of stuff

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

[*963] Prison slavery also extracts more than labor from inmates, especially women. There are other devastating costs associated with incarceration: stigmatization, sexual abuse, and emotional harassment. For women, numerous reports document sexual violence behind bars, sometimes at the hands of guards, meals that contain rotten and rotting foods, and deadly labor conditions - such as putting out California's wildfires. 359 Even more devastating are the illegal instances in which prison systems rent out men and women as sexual slaves to guards and other prisoners. 360

Incarcerated individuals are expected to work. 361 Federal policy authorizes this: "convicted inmates confined in Federal prisons, jails, and other detention facilities shall work." 362 Similar policies exist in each state, governing state prison facilities.

Yet, as this Article emphasizes, there is a sharp and profound distinction between work and slavery. Work implies fair compensation for the labor delivered. Slavery relates to uncompensated labor, bondage, and servitude. Abysmally low prison wage does not fit within the norm of what traditional definitions of "work" convey and more fittingly locates within the slavery contexts.

Even if lawmakers are slow to acknowledge the pervasive thicket of prison labor exploitation and slavery, the incarcerated recognize it. For example, "Melvin Ray, an inmate at the W.E. Donaldson Correctional Facility in Bessemer, Alabama, and a member of an organizing group called the Free Alabama [*964] Movement stated: "Work is good for anyone... . The problem is that our work is producing services that we're being charged for, that we don't get any compensation from." 363 Mr. Ray captures the urgent concern associated with modern slave practices perpetuated in disproportionately racialized U.S. prisons. Moreover, his concerns are echoed by others. Paul Wright with Prison Legal News explains that "if [inmates] refuse to work, they can be punished by having their sentences lengthened and being placed in solitary confinement." 364

This observation is confirmed by the Incarcerated Workers Organizing Committee (IWOC). The organization reports that if inmates do not perform according to their overseers' expectations, punishment is the prison's recourse. 365 They explain, "They may have replaced the whip with pepper spray, but many of the other torments remain: isolation, restraint positions, stripping off our clothes and investigating our bodies as though we are animals." 366

Private prisons have terrible conditions and is the manifestation of slavery

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

Beyond cruelty to the inmates they serve, some prisons are notorious for their deplorable living conditions. Tent City Jail, erected in 1993, 439 has been described by its former warden, Joe Arpaio, as a "concentration camp." 440 The prison has men, women, and teens working on chain gangs, "sustained by twice-daily

meals that are the cheapest among the nation's lockups." 441 The inmates "risk beatings by gangbangers and guards," and receive medical care "so abysmal that it has been [*974] ruled unconstitutional by a federal court." 442 The prisoners sleep in tents in the Phoenix desert, where temperatures can reach over 110 degrees 443 and are released on work furlough, where they are discharged "into the community for 12 hours a day." 444

In 2017, Tent City Jail was scheduled to close. 445 Yet, a spokesperson for the prison stated that as of June 2017, "there are 380 work furlough inmates remaining in Tent City." 446 Their "work furlough means they go to their day jobs and return at the end of their workday to sleep in the Tents." 447 The spokesperson emphasized, that "almost all of these inmates are in Tent City only at night. We estimate that approximately fifty [of the 380] will be on site in the daytime - meaning that they work either a second or third shift at their job." 448

The two main private prison corporations are the CoreCivic (formerly known as Corrections Corporation of America) and the GEO Group, Inc. (formerly known as Wackenhut Securities). 449 The third-largest for-profit prison in the United States is Management & Training Corporation. 450 LaSalle Management Company LLC 451 and Emerald Correctional Management LLC 452 are two smaller private prison companies in the U.S. There are also some non-profit companies with work programs like PRIDE Enterprises that operate throughout the country. 453

The profits from these industries are staggering and raise important ethical questions about earning money from human labor exploitation that in any other context would be condemned as modern slavery, sweatshop labor, or human trafficking. For example, the Corrections Corporation of America [*975] (CCA) is the largest private prison company 454 and has been in operation for more than 30 years. 455 Founded in 1983, amid the early but nonetheless escalating drug war, CCA opened its first detention center in 1984 after the Immigration and Naturalization Service awarded them a federal contract to detain undocumented immigrants. 456 Recently, CCA rebranded as CoreCivic in order to change its perceived specialty from corrections and detention services to a broader range of "solutions" available to the government partners. 457

D. Conclusion

The modern manifestation of prison systems is closely linked to the various forms of slavery discussed in Part II. This modern tapestry of involuntary, state-governed labor provides evidence of slavery's enduring legacy and the formidability of legal innovations related to race. Slavery persists in the criminal justice system because involuntary prison labor is profitable. Because it is profitable, it is widespread. Private industries profit as do private prisons, states, and the federal government.

Prison Slavery Bad – Wage Exploitation

Federal inmates only get 5 percent of the what they produce

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

The Federal Bureau of Prisons (BOP) reports that there is a total of 187,756 federal inmates. ³⁹¹ Of that population, 81% (153,770) are in BOP Custody, 12% (20,693) are in privately managed facilities, and 7% (13,293) are in other types of facilities. ³⁹² In 2015, "federal inmates helped bring in nearly \$ 472 million in net sales - but only 5 percent of that revenue went to pay inmates." ³⁹³

The Federal Prison Industries, Inc. (FPI a.k.a. UNICOR), a governmental agency operates prison-labor in federal prisons. ³⁹⁴ UNICOR was founded in 1934 ³⁹⁵ and since that time has continued to expand, reporting 10,896 inmate workers in 2016. ³⁹⁶ UNICOR reports that its factories operate in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Minnesota, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia. ³⁹⁷ UNICOR inmates are [*968] employed in a variety of industries including: Agribusiness, Clothing and Textiles, Electronics, Office Furniture, Recycling, and Services. ³⁹⁸ In 2016, UNICOR generated \$ 498 million in total sales. ³⁹⁹

---AT: Prison Not Slavery

Yes there are distinctions between slavery and prisoners – but they do little to address legalized servitude in the constitution

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

These issues would deserve address, even if it were not for the overwhelming and deeply troubling racialized patterns of modern incarceration that resemble antebellum slavery's chilling past. Parallels, such as racialized policing and prosecutions, captivity, forced labor, unpaid wages, and the trading of bodies (moving prisoners across states to labor elsewhere is a common feature), can be drawn from slavery's past too. Yet, important distinctions exist, such as prisoners may petition for redress of violations to constitutional rights and civil liberties. Antebellum slaves were denied such opportunities and they had no rights. Today, such rights arguably could protect prisoners from cruel and unusual punishment but might do little to address the glaring problem of legalized servitude as a matter of constitutional law and policy norms.

Mass Incarceration Bad – Private Prisons

Mass incarceration contributes to the expansion of private prisons which destroy local communities

Takei 17 (Carl, Staff Attorney at the National Prison Project of the American Civil Liberties Union, "FROM MASS INCARCERATION TO MASS CONTROL, AND BACK AGAIN: HOW BIPARTISAN CRIMINAL JUSTICE REFORM MAY LEAD TO A FOR-PROFIT NIGHTMARE." 20 U. Pa. J.L. & Soc. Change 125, 2017, Nexis, Accessed – 07/07/20, GDI – JSuek)

Nationwide, about 7% of state prisoners and 18% of federal prisoners are held in private prisons run by for-profit companies.¹⁰² However, there are major variations from state to state. For example, according to the Bureau of Justice Statistics, the State of Alabama houses fewer than 500 prisoners in private prisons - but more than 14,000 Texas prisoners and more than 12,000 Florida prisoners are in the custody of private prisons.¹⁰³ Meanwhile, more than 60% of ICE's 34,000 immigration detention beds are in private prisons.¹⁰⁴ Additionally, the private prison [*143] industry is increasingly diversifying into for-profit community corrections facilities and for-profit post-release supervision, as well as supervised release for non-citizens awaiting outcomes in their immigration cases.¹⁰⁵

While it has historical antecedents in both the Eighteenth-century English "keeper" system and the post-Civil War practice of "convict leasing," the modern private prison industry did not begin until 1983, with the founding of Corrections Corporation of America¹⁰⁶ ("CCA/CoreCivic").¹⁰⁷ In the ensuing decades, private prisons grew rapidly - from a population of approximately 7,000 prisoners in 1990, to 87,000 in 2000, to more than 126,000 in 2015¹⁰⁸ - because mass incarceration enabled them to make alluring offers to both their host communities and state correctional officials. To struggling rural towns with few opportunities for economic growth, the private prisons offered the prospect of desperately-needed new jobs - and, with the seemingly limitless growth of the prison population, these jobs seemed like they would be secure for many years to come. In exchange, the host communities eagerly provided generous development subsidies, including tax-free construction bonds, property tax abatements, and subsidized road and sewer connections.¹⁰⁹ To state correctional officials, the private prisons offered new prison space that could rapidly be brought online, did not require the state to commit [*144] to funding construction or being responsible for the entire multi-decade lifecycle of the physical plant (that risk was, instead, borne by the host community), and would use the magic of the free market to increase efficiency and decrease costs to the state.¹¹⁰

Yet neither promise was fully realized. For host communities, recent research has concluded that building new private prisons is actually associated with negative local job growth and depressed wages.¹¹¹ And there are numerous cautionary tales of rural towns that went deeply into debt to finance new private prisons only to be left with unpaid bills and ruined bond ratings after their prisoner contracts ended. (Meanwhile, the private prison companies were able to simply pack up and leave town.)¹¹²

Mass imprisonment from mandatory minimums helps expand private prisons

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

Specifically, shortly after the War on Drugs was declared, federalized, and militarized in the 1970s, a private for-profit company in Tennessee sprang up called the Corrections Corporations of America ("CCA").⁰ The advent of this private prison corporation ushered in an era where the traditional government function of crime, punishment, and imprisonment became intertwined and enmeshed with corporate principles and goals like profit maximization for shareholders; executive compensation based on profits and share price; forward-looking statements forecasting larger prison populations; management's discussion and analysis focusing on a more robust prison state; and increased profits built solely on human misery and debasement.¹ Today, the prison industrial complex in the United States, of which CCA is a major player, has

proliferated to the point that perverse incentives drive corporate managers at private prison companies." Private prison company directors, managers, and their lobbyists currently work doggedly to increase profits by: (1) influencing carceral policy so that greater numbers of Americans face incarceration;²¹ (2) exploiting those imprisoned through private prison labor contracts;²⁴ (3) lobbying government officials tirelessly to privatize entire state and federal prison systems;²⁵ (4) reducing the quality of food and degree of safety for prisoners to cut costs at privately run facilities;²⁶ (5) drafting legislation and lobbying for passage of draconian sentencing policies including mandatory minimums, three-strikes, and illegal immigration legislation;²⁷ (6) bribing judges and government officials to fill private prison facilities with children on dubious charges;" (7) requiring governments that contract for their services to maintain capacity in the private prisons at ninety percent or risk breach of contract and higher per diem fees;²⁹ and (8) building new prison facilities despite no government contract or ready prisoners to fill them.³⁰

What seems undeniable now is the perverse and immoral incentives underlying the private prison industry translate into a demand for more prisons and prisoners. Simply stated, mass incarceration, often under inhumane conditions, is good business. The fact that United States prison conditions are so dehumanizing and ghastly, and so many prisoners are low-level, non-violent minor drug offenders, begs the question as to why we as a nation stand for private corporate profit in the realm of human imprisonment. The perverse incentives that frantically drive corporate executives are laid bare when an ever-increasing number of imprisoned Americans energizes corporate interests. One private prison analyst recently claimed that the consistent yearly increase in the prison population "from a business model perspective [is] clearly good news."³¹

Private prisons require new inmates from harsh sentencing policies like mandatory minimums

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

Perhaps the most perverse incentive in the private prison industry is that shareholder and executive profit are intimately tied to the number of prisoners that enter the private prison facility."¹⁰⁹ The evidence shows that when a profit motive depends on incarcerating prisoners on a mass scale, citizens are subject to abuses of the most intolerable and undemocratic kind.

For example, private prison companies-while forcefully disclaiming such activity¹⁰⁹-actively lobby for harsher prison sentences such as mandatory-minimums or three-strikes; ¹¹⁰ lobby for legislation that creates new crimes requiring incarceration, such as criminalization of illegal immigration or active detention of schoolchildren;" enter into contracts that mandate capacity minimums in their prison facilities or a contract breach will result;" ² provide manufacturing and service labor to private industry at low or no cost by using inmates as workers and reaping massive profits on the backs of those prisoners;"¹¹¹ and steadily decrease services and humane treatment of inmates to cut costs to increase shareholder profits and executive compensation."⁴ These activities are common behavior for many corporations, which seek assertively to increase profits for shareholders."¹¹² But in the private prison context, such activities lead to civil and human rights violations."⁶ In truth, the very existence of the private prison corporation flies in the face of the corporate social responsibility movement, as nearly every activity the private prison company advocates is arguably the antithesis of responsible corporate citizenship. "⁷

Ultimately, private prisons' existence, if not simply to enrich shareholders and executives, is dependent on whether the private prison regime actually delivers a more cost-effective, efficient, and safer system of warehousing criminals."⁸ This is the only avenue for which it makes sense to turn a traditional government function and taxpayer funds over to the private sector. Private prison lobbyists and executives base their pleas for government contracts on the fact that they can imprison more efficiently and more cost effectively."¹¹³ If they cannot, the idea of private prison company existence is nothing more than a naked transfer of taxpayer funds into the hands of corporate shareholders and executives. All indicators now point to the fact that the private prison regime

does not deliver more cost-effective, efficient, and safer warehousing of criminals. Thus, there is no rational reason for the private prison corporation to continue. The time has come to end the private prison experiment, as it has been a failure.

Private Prison Bad – Carceral State

Private prisons encourage the expansion of the carceral state for profit – relaxing sentencing practices hurts private prisons

Takei 17 (Carl, Staff Attorney at the National Prison Project of the American Civil Liberties Union, “FROM MASS INCARCERATION TO MASS CONTROL, AND BACK AGAIN: HOW BIPARTISAN CRIMINAL JUSTICE REFORM MAY LEAD TO A FOR-PROFIT NIGHTMARE.” 20 U. Pa. J.L. & Soc. Change 125, 2017, Nexis, Accessed – 07/07/20, GDI – JSuek)

Despite this record, private prisons have grown into a multibillion-dollar industry. The two largest private prison companies - Corrections Corporation of America/CoreCivic and GEO Group - are both publicly traded, with annual revenues of, respectively, \$ 1.79 billion and \$ 1.84 billion in 2015. 139 They have developed into a potent lobbying force in both state and federal arenas, with their lobbying and campaign contributions targeted at particular states and particular congressional committees. 140 For example, the Palm Beach Post reported that in Florida alone, private prison companies spent more than \$ 4 million on state political parties, election committees and candidate campaigns between 2000 and 2013. 141 In Oklahoma, private prisons skeptic Justin Jones was forced to resign from his position as Director of the Oklahoma Department of Corrections in 2013, reportedly because private prison lobbyists objected to his resistance to expanding privatization. 142 His successor quickly expressed openness to more private prison contracts. 143

The industry also exerts influence through indirect means. Arizona's SB 1070 legislation, which increased the state's powers to jail immigrants, was based on model legislation [*150] drafted by a committee of the American Legislative Exchange Council ("ALEC"), a membership organization of state legislators and corporate interests. CCA/CoreCivic's representative to ALEC participated in the ALEC meetings that generated this model legislation. 144

There is a revolving door between correctional agencies and the private prison industry. In 2011, for example, Harley Lappin became an executive at CCA/CoreCivic less than a month after retiring from his position as Director of the Federal Bureau of Prisons. 145 Similarly, Stacia Hylton left the Office of the Federal Detention Trustee - where she was responsible for managing federal detention acquisitions for BOP, ICE, and the U.S. Marshals Service - in 2010 to consult for GEO Group, and then returned to head the U.S. Marshals Service later that year. 146 A host of other high-level corrections officials have followed similar paths into the private prison industry. 147 Additionally, private prison companies foster cozy relationships with corrections officials through sponsorships and contributions to industry associations such as the American Correctional Association, the American Jail Association, the Association of State Correctional Administrators, the Corrections Technology Association, and the National Sheriffs' Association. 148

Private prisons suffer from oversight and transparency problems. A 2012 report by the National Council on Crime and Delinquency concluded that oversight and monitoring of private prisons has "proven to be difficult and tends to be lax and ineffective." 149 Meanwhile, the public remains in the dark because many public records statutes do not reach documents held by private prison companies. 150

The private prison industry depends on the expansion of the carceral state for its continued profitability. The annual reports that the two largest private prison companies file with [*151] the SEC describe this relationship in frank terms. For example, CCA/CoreCivic's 2014 annual report states:

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage correctional and detention facilities The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them. Immigration reform laws are currently a focus for legislators and politicians at the federal, state, and local level. Legislation has also been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities. 151

Private Prison Bad – Conditions

Private prison profit incentives results in increase violence and uniquely bad conditions

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

Studies have shown that private prisons achieve none of these goals, and the reason is simple: private prisons operate under a fundamentally different regulatory structure that alters the choices-and motives-of its participants."o Unlike their federal counterparts, private prisons operate in a market economy where maximizing profits is vital to sustainability and thus a driving factor in corporate decision-making.⁶ ' Under basic economic theory, when operational costs exceed current and future estimates, corporations must identify ways in which to reduce such costs and therefore increase profitability.^{6 2} This is precisely what happened in the private prison context. Corporations such as CCA often underestimate the cost of operating private prisons in a manner that would increase safety and treat inmates more humanely." As a result, operators of private prisons make the deliberate choice to cut costs. One scholar notes:

The cost-cutting focus of private corporations translates to reduced staffing levels, reduced investment in training of prison guards, increased ratios of inmates to correctional officers, and lower wages for private correctional officers. Low pay, poor training, and high turnover may contribute to higher levels of violence in the private sector prisons. This may in turn encourage private prison employees to violate prisoners' rights-rights that would be better safeguarded if government employees in government-run facilities guarded the prisoners. This is the predicament of the privately housed federal prisoner.^{6 4}

On one level, one cannot fault these corporations because there are only so many options for cost cutting in a prison, and they all involve areas directly or indirectly affecting inmate safety and treatment. This includes the quality and availability of health care, food, bathing, and recreational facilities; the experience (and quantity) of security personnel; and maintenance of the prison infrastructure.⁶ ' This very fact, however, demonstrates why private prisons inherently cannot achieve their stated objectives and why their very existence as a profit-making industry threatens to compromise inmates' basic civil liberties.

Private prisons are more violent and subject inmates to inhumane conditions

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

CCA's cost-cutting and profit-maximizing practices often lead to inadequate staffing, which results in dangerous and, in some instances, uncontrollable prison environments. One scholar who studied CCA's management of a private prison in Youngstown, Ohio, explains that within fourteen months of its operation, "the prison 'experienced pivotal failures in its security and operational management' Consequently, CCA prison guards were unable to control their prisoners."" As a result, some prisoners were subjected to horrific treatment:

CCA managers employed brutal policies[,]. engaged in excessive use of force against prisoners, failed to maintain control over weapons, and failed to implement numerous security procedures.

As a result, there were two homicides, numerous stabbings, extreme levels of violence, and six escapes within the first 14 months."⁸

Likewise, a study in Mississippi concluded that "privately-run prisons in the state had assault rates three to five times higher than the public facilities."¹¹ In Oklahoma, it was reported that " [a] riot at the North Fork Correctional Facility in 2011

resulted in forty-six injuries, while a four hour long 'disturbance' at the Cimarron Correctional Facility this year only ended after corrections officers used bean bag rounds and pepper balls to subdue the rioters." One article discussing a private prison in Mississippi explained that "[b]eatings, rape, robbery and riots are commonplace, and inmates are denied access to medication and psychiatric care."⁹¹

Notably, "inexperience of private prison employees is one reason for why this violence takes place," which is caused in part by the high turnover rate at these prisons." One study attributed violence at private prisons to "high employee turnover, inadequate training for officers, under-staffing, and miserable conditions experienced by the inmate population." The study compared the rate and severity of violence in private prisons with their government-run counterparts:

When comparing for-profit prisons with public, a nationwide study found that assaults on guards by inmates were [forty-nine] percent more frequent in private prisons than in government-run prisons. The same study revealed that assaults on fellow inmates were [sixty-five] percent more frequent in for-profit/private prisons. Another study concluded that, "Privately operated prisons appear to have systemic problems in maintaining secure facilities" concluding that for-profit/private prisons have significantly more escapes, homicides, assaults, and drug abuse compared to government-run prisons.⁹⁴

Thus, there can be little doubt that "there are structural problems with private prisons that increase the risk of bad and sometimes lethal outcomes."⁹

c. Private Prisons Subject Inmates to Inhumane Conditions

The living environments at many private prisons deprive many inmates of basic needs."⁶ For example, "[o]ne way for forprofit prisons to minimize costs is by skimping on provisions, including food." In fact, a psychiatrist who investigated a private prison in Mississippi "found that the inmates were severely underfed and looked 'almost emaciated.'" In fact, "[d]uring their incarceration, prisoners dropped anywhere from [ten] to [sixty] pounds."⁷

Sadly, numerous reports detail startling examples of deplorable prison conditions. At one Mississippi prison, "an otherwise healthy inmate had to have a testicle removed after prison officials repeatedly denied his request for medical help when it swelled to the size of a softball from cancer." Additionally, some prisoners live in "filthy quarters without working lights or toilets, forcing them to defecate on Styrofoam trays or into trash bags."⁸

Furthermore, in a comprehensive report, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System*, the American Civil Liberties Union described the shocking conditions of confinement at one private prison:

At Reeves County Detention Center in late 2008 and early 2009, after a prisoner died from inadequate medical care, prisoners organized uprisings that got so out of control they ended with prisoners setting fire to the facility. Then, in the summer of 2013, prisoners started a petition to protest crowded conditions, bad food, and lack of medical care. When prison staff learned of the petition, they reportedly sought out the protest organizers, tear-gassed their dormitories, shot at them with rubber bullets, and then locked in isolation cells both the organizers and bystanders who objected to being tear-gassed.¹⁰²

Similarly, a class-action lawsuit against Walnut Grove Youth Correctional Facility asserted, "children there are forced to live in barbaric and unconstitutional conditions and are subjected to excessive uses of force by prison staff."¹⁰³

These conditions are traceable to the demand upon private prisons to consistently operate at nearly maximum capacity.¹⁰ As one commentator notes, "[s]tates sign agreements with private prisons to guarantee that they will fill a certain number of beds in jail at any given point,"¹¹ and "[t]he most common rate is [ninety percent], though some prisons are able to snag a [one hundred percent] promise from their local governments."¹² Because of these contracts, "the state is obligated to keep prisons almost full at all times or pay for the beds anyway, so the incentive is to incarcerate more people and for longer in order to fill the quota."¹⁰⁷

While the above evidence demonstrates that private prison corporations' mantra or promise of "more safe," "more efficient," and "more cost-effective" is bankrupt, if not fraudulent, the private prison regime continues to thrive in the United States. Private prisons thrive primarily on effective propaganda and relationships with lawmakers around the nation, including through lobbying efforts, campaign contributions, and the specious argument that private industry will always operate more efficiently than government facilities. As the above discussion demonstrates, in the case of the privatized prison corporation, this is simply not true. What is true is that perverse and immoral profit incentives motivate private prison leaders to act and establish policies that harm human beings and trample basic civil liberties.

Trump Increasing Private Prisons

Trump increased the transfer to private prisons

Goodwin 19 (Michele, Chancellor's Professor of Law and Founding Director of the Center for Biotechnology and Global Health Policy at the University of California, Irvine. "ARTICLE: THE THIRTEENTH AMENDMENT: MODERN SLAVERY, CAPITALISM, AND MASS INCARCERATION." 104 Cornell L. Rev. 899, May, 2019, Nexis, Accessed – 07/07/20, GDI – JSuek)

The federal government turned to privatized prisons in the wake of what Democrats and Republicans both agree was a failed drug war. As the former Deputy Attorney General, Sally Yates explained in a memorandum dated August 18, 2016, "between 1980 and 2013, the federal prison population increased by almost 800 percent." 424 The federal government turned to private prisons to house its growing incarcerated populations - most of whom were poor and disproportionately men and women of color. 425 Many were young. And, although the U.S. comprises only 5% of the world's population, it houses [*972] 25% of the globe's incarcerated men and women. 426 Nearly two-thirds of the U.S. prison population were arrested for non-violent offenses. 427

In an effort to move away from privatized prisons, Yates wrote, "they simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security." 428 She is right. Neither do the privatized facilities provide the types of rehabilitative services that are crucial to achieving low recidivism and transitioning incarcerated persons to productive lives beyond prison gates. A 2016 report produced by the Office of the Inspector General found that there were 24 percent more grievances in private or "contract prisons" than those run by the Bureau of Prisons, across eight key areas: medical care, food, "conditions of confinement, institutional operations, safety and security, sexual abuse or assault, Special Housing Units (SHU), and complaints against staff." 429

President Trump articulated reversing this policy and did so shortly after assuming office in 2017. 430 In his memorandum reversing the Obama policy, Attorney General Jeff Sessions ostensibly anticipated even greater demand for privatized federal prisons, writing that the policy "impaired the Bureau's ability to meet the future needs of the federal correctional system." 431 In a leaked memorandum, dated January 24, 2018, Frank Lara, the Assistant Director of the Correctional Programs Division, specifically calls for the "re-designation" of prisoners for "transfer consideration to private contract facilities." 432

---AT: Private Prisons Economical

Private prisons aren't economical

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

Private prison profiteers seek to increase privatization of the industry by promising more efficiently run prisons at lower costs, safer prisons, and better facilities and outcomes for prisoners. Recent studies are now showing that these claims by private prison executives and lobbyists are simply not true." Private prisons are increasingly shown to be less safe, less efficient, and less economical.³⁴ The contractual exchange of taxpayer funds from governments and municipalities into the hands of the private prison system is simply a transfer of taxpayer monies into the personal accounts of private prison shareholders and executives who provide no real benefit in return, no manufactured product, and no efficient services. Rather, they provide taxpayer funded corporate welfare. The private prison system makes no sense morally, and it increasingly appears that the industry makes no sense economically.

Prison Bad – Black Health

Black Americans in prisons have higher rates of health issues

Shah & Seervai 2020 (Arnav, master's in public policy & research associate for the Commonwealth Fund's research and policy department, Shanoor, master in public policy & senior research associate to the president and as a communications associate, 6-17-2020, "How the Cash Bail System Endangers the Health of Black Americans" <https://www.commonwealthfund.org/blog/2020/how-cash-bail-system-endangers-health-black-americans>, DOA 7/9/2020, GDI-AW)

Keeping people in jail if they cannot afford cash bail is bad for their health. A well-documented body of research describes the negative health outcomes associated with and amplified by incarceration. This includes higher rates of HIV, hepatitis C, and tuberculosis. Incarcerated individuals also have a higher likelihood of chronic illness like hypertension, asthma, arthritis, and cervical cancer, as well as mental health issues such as anxiety, depression, and schizophrenia. Black Americans often have disproportionately high rates of chronic and infectious diseases because of other social factors; these conditions are compounded by the impact of the prison environment, poor quality health care in correctional facilities, and the fallout after release from incarceration, such as lack of access to housing and jobs and a high rate of poverty.

Jails and localities rely on secured bail money as revenue, creating a perverse incentive for police to make arrests. However, communities pay for the consequences of pretrial incarceration in many ways. Research has found that even short pretrial detention of two to three days may have negative effects on court appearance, conviction, sentencing, and future involvement with the criminal justice system. And, despite the incoming revenue, the system is expensive. Pretrial incarceration alone costs local governments and taxpayers an estimated \$13.6 billion annually. Providing health care in jails is difficult and expensive and often is paid for by other local agencies.

Prisons Bad - COVID

Mass incarceration subjects people in prison to coronavirus

Mulroy and Timmons 20 (Steven, former federal prosecutor and county commissioner who teaches criminal law at the University of Memphis, AND Brice, civil rights lawyer at the law firm of Black McLaren Jones Ryland & Griffiee Memphis, “How mass incarceration will lead to mass infection — and how to avoid it.” The Hill, 3/26/20, <https://thehill.com/opinion/criminal-justice/489446-how-mass-incarceration-will-lead-to-mass-infection-and-how-to-avoid>, Accessed 7/12/20, GDI – JMoore)

The coronavirus pandemic has people keeping their distance from each other. But what if you had no choice but to be in a crowded room, sharing a sink and a toilet, unable to do much as sanitize your hands or step away from a person when they sneezed? America’s culture of mass incarceration is unnecessarily forcing hundreds of thousands of people to crowd together, often with substandard sanitation and medical care. They’re prisoners held for low-level offenses like shoplifting, drug possession and even driving with a suspended license. For their sake, and ours, we need to let them out. Refusing to do so is not only unfair and dangerous, but possibly unconstitutional.

Many of our prisons and jails are overcrowded. Even the ones not considered overcrowded house strangers in close proximity, with a revolving door of inmates. Jails, which mostly house people who have not yet been convicted, move people in and out on a constant basis. As medical experts will tell you, this is a recipe for coronavirus disaster You cannot practice social distancing in prison.

It’s also a constitutional issue. Keeping prisoners in unhealthy conditions can constitute “cruel and unusual punishment” in violation of the Eighth and Fourteenth Amendments. The standard is fairly lenient. Prisoners must prove that prison officials acted with “deliberate indifference” to prisoners’ well-being. It’s a high bar, but the Supreme Court has stated that exposure of prisoners to a “serious communicable disease,” even if the prisoners currently show no symptoms, can meet this standard. Another federal court found that standard met by a prison’s lackluster response to a tuberculosis outbreak.

This injustice is even worse with respect to the roughly half a million people jailed in the U.S. who haven’t even been convicted. Under the Due Process Clause, they’re entitled to at least as much protection as those actually convicted. Such people are being held awaiting trial — some because a judge has determined they are likely to flee or be dangerous, but most simply because they can’t afford bail. To add insult to injury, many federal courts have suspended jury trials under the Speedy Trial Act’s emergency provisions, ensuring that those people remain in jail even longer awaiting a trial. Surely we can release many of these people pending trial without serious risk.

This isn’t just a question of justice; it’s sound health policy. Prisoners constantly cycling in and out of crowded prisons can spread coronavirus to the population at large. The virus is already spreading at New York’s Rikers Island facility. Our mass incarceration regime can mass-produce thousands of Typhoid Marys.

No reasonable person would urge the release of dangerous prisoners who have committed serious crimes. But a large percentage are held for nonviolent drug, property or “public order” offenses like prostitution, public drunkenness and even driving on a suspended license. They would pose less of a public safety threat healthy and released than as potential pandemic vectors.

Some jurisdictions have gotten this message. Los Angeles, Cleveland and Boston have already decided to release prisoners deemed low-risk. Others are not only releasing some inmates but slowing down the influx of more. Baltimore prosecutors are no longer prosecuting most drug, prostitution and other public order offenses.

But not all jurisdictions have gotten on board. The federal system has announced no policy regarding releasing low-risk prisoners or slowing the influx of new low-level, non-violent offenders. Thankfully Immigrations and Customs Enforcement has temporarily suspended most immigration arrests, reserving arrests for those who pose a public safety threat or whose confinement is mandatory.

Prisons Bad – Conditions

Prison conditions are terrible

Cummings and Lamparello 16 (andré douglas pond cummings, Associate Dean and Professor of Law at Indiana Tech Law School, AND Adam, Associate Dean for Experiential Learning and Assistant Professor of Law, Indiana Tech Law School. "Private Prisons and the New Marketplace for Crime." Wake Forest Journal of Law & Policy, Vol 6. 2016, Hein Online, Accessed 7/12/20, GDI – JMoore)

A felony prison sentence in the United States carries with it devastating outcomes.' A sentenced inmate loses his liberty and freedom during the period he is locked up and is often "sentenced" to brutalization, solitary confinement, dehumanization, sometimes rape, and an overwhelming scarcity of options once released from prison.' Imprisonment in the United States has devolved into a place where horrific conditions, inhumane treatment, and degradation have become the norm. When a felon gains release from prison, he or she faces obstacles and impediments that often lead a prisoner right back into the clutches of the prison system. Upon release, formerly incarcerated persons face discrimination and roadblocks that are nearly insurmountable for most ex-felons.'

Prisons Bad – Psychological

The prison environment contributes to extreme psychological stress that results in physical and mental health degradation

Haney 12 (Craig, American social psychologist and a professor at the University of California, Santa Cruz, “Prison Effects of in the Age of Mass Incarceration.” The Prison Journal, 7/25/12, <https://doi.org/10.1177/0032885512448604>, Accessed 7/12/20, GDI – JMoore)

Most prisons expose prisoners to severe levels of deprivation, degradation, and danger. The extreme stress that results is problematic both because it appears to have direct, adverse consequences on prisoners’ physical and mental health, and also because many prisoners adjust to the immediate pains of imprisonment in ways that can prove highly dysfunctional once they have been released. In general, exposure to extreme environmental stress is known to result in psychological damage (Hocking, 1970), which can be exacerbated under conditions of threat or when persons have little or no control over their environment or surroundings (cf. Evans, 1982). Especially when prison stress is extreme and endured for long periods of time, it may go beyond merely being painful and unpleasant to actually causing damage. These effects can persist long after prisoners have been released from prison.

The pains of imprisonment and their negative psychological effects are well documented. For example, Liebling and her colleagues found that the measured levels of distress in 11 of the 12 prisons they studied were “extraordinarily high” (Liebling, Durie, van den Beukel, Tait, & Harvey, 2005, p. 216), and above the threshold that ordinarily triggers an inquiry into whether a patient is suffering from a treatable emotional or psychological illness. Moreover, Cooper and Berwick (2001) reported that the severity of environmental stress that existed in certain prisons played a significant role in the levels of anxiety and depression that prisoners experienced while confined in them.

Very high levels of prison stress can take a special psychological toll. The clinical diagnosis of posttraumatic stress disorder (“PTSD”) is applied to patients who suffer a set of interrelated, trauma-based symptoms, including depression, emotional numbing, anxiety, isolation, and hypervigilance. Reviews of the literature on the prevalence of PTSD among prisoners suggest that this disorder may occur as much as 10 times more often than in the general population (Gibson et al., 1999; Goff et al., 2004; Heckman, Cropsey, & Olds-Davis, 2007; Zlotnick, 1997). In extreme cases, prisoners react to the psychic stress of imprisonment by taking their own lives, and thus suicide occurs at a much higher rate among prisoners than within the general population (e.g., Bland, Newman, Dyck, & Orn, 1990; Hayes, 1989). Elevated rates of prison suicide appear to be the product both of the number of risk factors to which prisoners were exposed before their incarceration and the harshness of the particular prison conditions that they experience during confinement (e.g., Cooper & Berwick, 2001; Liebling, 1995).

The immediate pains of imprisonment may produce lasting problems that persist long after prisoners are released (e.g., Haney, 2003b). In fact, psychiatric assessments of long-term prisoners have found that their most serious psychological problems are typically manifested only after they reenter free society. Indeed the “psychological consequences of imprisonment for these men and their families are complex and profound” (Grounds & Jamieson, 2003, p. 358). Prisoners also suffer increased physical health risks once they are released from prison (e.g., National Commission on Correctional Health Care, 2002; Wilper et al., 2009). One study reported that within two years of their release, former prison inmates suffered mortality rates that were three and a half times that of the general population (Binswanger et al., 2007). Moreover, within the first two weeks immediately following their release, their mortality rates were over twelve times the rate in the population at large.

Overcrowding magnifies the impact on inmate health

Haney 12 (Craig, American social psychologist and a professor at the University of California, Santa Cruz, "Prison Effects of in the Age of Mass Incarceration." The Prison Journal, 7/25/12, <https://doi.org/10.1177/0032885512448604>, Accessed 7/12/20, GDI – JMoore)

Overcrowding touches virtually every aspect of a prisoner's day-to-day existence and greatly amplifies the stress of prison life. Among other things, overcrowding confines prisoners in spaces occupied by too many others, increasing the sheer number of social interactions that involve "high levels of uncertainty, goal interference, and cognitive load . . ." (Cox, Paulus, & McCain, 1984, p. 1159). Crowded prison conditions introduce greater social complexity, turnover, and interpersonal instability into an already dangerous world, one in which interpersonal mistakes or errors in social judgments can be fatal. Overcrowding also raises collective frustration levels inside prisons by generally decreasing the amount of available resources. The sheer number of things that prisoners can do or accomplish on a day-to-day basis is compromised by the number of people who are literally and figuratively standing in between them and their goals and destinations. Prison staff members are often hard-pressed to manage the inevitable chaos and conflicts that result, and they may resort to increasingly repressive approaches to do so (e.g., Haney, 2006b).

Not surprisingly, a large literature on overcrowding has documented a range of adverse effects that occur when prisons have been filled to near capacity and beyond. As a group of prison researchers concluded in the 1980s, as the scope of the prison overcrowding problem in the United States was just becoming apparent, "crowding in prisons is a major source of administrative problems and adversely affects inmate health, behavior, and morale" (Cox et al., 1984, p. 1159; see, also, Gaes, 1985; and Paulus, Cox, & McCain, 1988). Two other early commentators concluded their review of the literature in much the same way, namely, that "[w]ith few exceptions, the empirical studies indicate that prison overcrowding has a number of serious negative consequences" (Thornberry & Call, 1983, p. 351; see, also, Ruback & Carr, 1984).

Solvency

Repeal

Replacing mm gives more flexibility for sentencing that reduces harsh sentences

FAMM 12 (Families Against Mandatory Minimums, “MANDATORY MINIMUMS IN A NUTSHELL.” 4/26/12, <https://famm.org/wp-content/uploads/FS-MMs-in-a-Nutshell.pdf>, Accessed 7/5/20, GDI-FGilbard)

What's the alternative to mandatory minimums?

Sentencing guideline systems created by expert commissions. Guidelines typically give courts

1. Sentencing ranges for each crime (i.e., 51-63 months in prison) that depend on the offender’s criminal record and the seriousness of the crime, and
2. Flexibility to sentence inside, above, or below that range, if there are special facts and circumstances of the offender or the crime.

The federal system and many states have sentencing guidelines, in addition to their mandatory minimums. Guidelines can be either mandatory (courts must follow them) or advisory (courts can choose not to follow them, when the facts call for it). Well-written advisory guidelines provide judges with reasonable sentencing options and are fairer and more flexible than mandatory minimums.

Why are mandatory minimums a bad sentencing policy?

Anyone who has ever bought a “one size fits all” T-shirt knows that one size never fits all! In fact, “one size fits all” shirts are usually too big on most people! Mandatory minimum sentences are exactly the same – because courts can’t tailor these sentences to fit the individual, many people get punishments that are too harsh for the crimes they committed. Mandatory minimums are based on only the type and weight of the drug, which prevents courts from considering other important facts, like whether the offender is nonviolent or a drug addict, not dangerous to the community, or played a minor role in the crime.

Drug MM Specific

Abolishing federal mandatory minimums reduces harsh sentencing policies that favor mass incarceration

Human Rights Watch 19 (“Coalition Urges Next Steps in Sentencing Reform.” HRW, 3/29/19, <https://www.hrw.org/news/2019/03/29/coalition-urges-next-steps-sentencing-reform>, Accessed 7/12/20, GDI – JMoore)

With enactment of the First Step Act in 2018, over 2,600 people serving crack cocaine sentences that predated passage of the Fair Sentencing Act of 2010 will have an opportunity for retroactive sentencing reductions. Previous retroactive amendments to the Sentencing Guidelines by the U.S. Sentencing Commission revealed that people who benefited from reduced prison terms for crack cocaine offenses did not have higher recidivism rates than their counterparts who had served longer sentences.^[1] Additional sentencing reforms incorporated in the First Step Act will help to limit other mandatory minimum sentences in the future. Unfortunately, these changes are not retroactive and thousands of people in federal prisons today serving sentences under now reformed statutes will not benefit, including many people who will die in prison without retroactivity. Congress must not delay applying retroactivity to the First Step Act’s other new sentencing reforms.

Mandatory Minimums

Mandatory minimum sentences are criminal penalties requiring the imposition of a specified minimum term of imprisonment upon conviction. In 2017, drug trafficking offenses accounted for almost two-thirds of the offenses carrying a mandatory minimum penalty in the federal system.^[2] The extraordinary federal incarceration levels are driven largely by these harsh sentencing policies, which favor incarceration over community-based alternatives or rehabilitative responses. In order to address some of the most problematic aspects of federal criminal law Congress should pass legislation eliminating mandatory minimum sentences for drug offenses and apply those changes retroactively.

States Follow On

States follow on – Sentencing Reform Act proves

Cullen 18 (James, Research and Program Associate at the Brennan Center for Justice at NYU School of Law, “Sentencing Laws and How They Contribute to Mass Incarceration.” Brennan Center, 10/5/18, <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>, Accessed 7/4/20, GDI-FGilbard)

While mandatory minimums have been in place in some states since the 1950s, their use grew after the 1984 Sentencing Reform Act, which added significant mandatory minimums for many federal crimes and abolished federal parole. States followed, and soon mandatory minimums became a standard response to drug epidemics and crime spikes. What started as a well-intentioned attempt to impose uniformity became too restrictive, creating new disparities and injustices in the process.

AT: CPs

AT: Courts CP - Done

Courts Fail – Booker

Courts fail to solve mandatory guidelines – Booker proves

Bennett 18 (Mark W. U.S. District Judge in the Northern District of Iowa, “Addicted to Incarceration: A Federal Judge Reveals Shocking Truths About Federal Sentencing and Fleeting Hopes for Reform.” 87 UMKC L. Rev. 3, Fall 2018, Nexis, Accessed 7/9/20, GDI – JSuek)

In 2005, the U.S. Supreme Court decided the landmark case of United States v. Booker. 32 Booker was revolutionary in declaring the mandatory Guidelines unconstitutional because they allowed federal judges to enhance sentences using facts not reviewed by juries, in violation of the Sixth Amendment right to trial by jury. 33 However, by excising the mandatory nature of the Guidelines and rendering them “effectively advisory,” the Sixth Amendment was not implicated. 34

The focus was now broadened to include statutory sentencing factors contained within 18 U.S.C. § 3553(a), which include inter alia: “the nature and circumstances of the offense and the history and characteristics of the defendant”; “the need for the sentence imposed,” including “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense”; “to afford adequate deterrence to criminal conduct”; “to protect the public from further crimes of the defendant”; and “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”

Thus, as I have previously written, “in the arc of just twenty years, federal sentencing has gone from virtually unlimited sentencing discretion, to virtually no sentencing discretion, back to sentencing discretion that emphasizes the 'reasonableness of the sentence imposed.'” 35 Yet, the post-Booker sentencing catastrophe remains in full force. Booker did nothing to alleviate the major cause of federal mass incarceration: mandatory minimums and their first cousin, § 851 drug sentencing enhancements.

AT: Drug PIC – Done

No Solvency – Incarceration

Mandatory Minimums for kingpins cause everyone to be sentenced the same

Peeler 18 (Travis, J.D. from the University of Houston Law Center and Legal Match Legal Writer, “Problems with Mandatory Minimum Sentencing.” Legal Match, 12/11/18, <https://www.legalmatch.com/law-library/article/problems-with-mandatory-minimum-sentencing.html>, Accessed 7/4/20, GDI-FGilbard)

The most glaring issue with mandatory minimum sentencing laws is how unfair they are. Because a judge does not have the authority to tailor the sentence to the facts specific to the individual case, someone who was an unimportant part of the drug conspiracy or someone who was simply an accessory, might receive the same minimum sentence as the ringleader of the whole operation. Another arguing point is that these minimums disproportionately affect minorities and are part of the War on Drugs, which is thought to be a failure.

No Solvency – Enforcement

Mandatory minimums don't aid drug enforcement

McNelis 17 (Abigail A. J.D Candidate Antonin Scalia Law School, George Mason University, “COMMENT: Habitually Offending the Constitution: THE CRUEL AND UNUSUAL CONSEQUENCES OF HABITUAL OFFENDER LAWS AND MANDATORY MINIMUMS.” 28 Geo. Mason U. Civ. Rts. L.J. 97, Fall 2017, Nexis, Accessed – 07/06/20, GDI – JSuek)

Despite Congress' intention to keep dangerous drug dealers in jail and prevent addiction, the current sentencing scheme is inefficient. ⁵⁴Congress' response to the war on drugs, attempting to win the war largely with increased drug sentences, is a failed tactic, which pays no mind to the effect these harsh penalties have on drug offenders at different levels. ⁵⁵Mandatory minimum statutes typically ignore an individual offender's level of involvement in narcotics distribution and fail to sufficiently differentiate between major and minor violators. ⁵⁶The vast majority of individuals who receive mandatory minimum sentences are not vital to any narcotics distribution organization. ⁵⁷Individuals such as street dealers typically rank the lowest, rendering them completely replaceable, and thus have no positive offensive force. ⁵⁸Senior Judge Whitman Knapp of the United States District Court for New York illustrated this point in an address to the [*103] Merchants Club in New York City. ⁵⁹In his address, Judge Knapp eloquently stated,

AT: Prosecutorial Discretion CP

No Solvency – Accountability

Prosecutorial discretion allows misconduct to go unchecked

Trautman, senior fellow of criminal justice and civil liberties policy at the R Street Institute, **2020**

(Lars, "Why prosecutorial discretion must be less discreet for criminal justice", The Hill, 2/21/20, <https://thehill.com/opinion/criminal-justice/484032-why-prosecutorial-discretion-must-be-less-discreet-for-criminal-justice>, Accessed 7/10/20, GDI-FGilbard)

But just because the legislature is attempting to solve a fictional problem does not mean very real ones do not exist. Prosecutorial discretion suffers from unaccountability and lack of transparency that could undermine its potential for good. It operates as a kind of black box that only prosecutors can see inside as facts go in, decisions come out, and explanations are rarely forthcoming. Policies are seldom public, and prosecutors do not usually disclose why they reached an outcome in any given case.

No Solvency – Compliance

Prosecutors don't comply with the CP – discretion leaves the decision to them – no incentive not to overcharge

Bruno, Chairman of the Human Rights Section Council at the Illinois State Bar Association, **2015**

(Evan, "Time to rethink absolute prosecutorial discretion?", Illinois State Bar Association, 6/2015, Volume 16, Number 3, <https://www.isba.org/committees/governmentlawyers/newsletter/2015/06/timerethinkabsoluteprosecutorialdis>, Accessed 7/10/20, GDI-FGilbard)

The only thing preventing our prosecution for the crimes we commit—yes, you and I both commit crimes—is the prosecutor's total discretion. And although prosecutorial discretion has always been a part of our criminal justice system, the criminalization renaissance we have seen over the past half century has elevated the prosecutor to a potentially dangerously high level of power. This gives rise to due process concerns that may not have been present in the days of yore.

Remember the eavesdropping law the Illinois Supreme Court struck down last year? That law made it a crime to record any part of a conversation unless all parties to the conversation consented. *People v. Clark*, 2014 IL 115776, ¶ 14. Thankfully, prosecutors in Illinois decided—in their discretion—not to prosecute the thousands of parents who certainly broke the law by recording their children's school plays. No one was charged and convicted with felony eavesdropping for using their iPhone to record a political debate in a public park. But could they have been? Under the current law governing prosecutorial discretion, the answer is an unequivocal "yes."

Perhaps the eavesdropping law might be a bad example. After all, it was found to be unconstitutionally overbroad. So take a look at another currently valid law. In Illinois, one commits "transmission of obscene messages" when he or she "sends messages or uses language or terms which are obscene, lewd or immoral with the intent to offend by means of or while using * * * equipment or wires of any person[.]" 720 ILCS 5/26.5-1(a). Welp, welcome to the Internet everyone. If every person who committed this crime was charged, the criminal docket of almost every county would be overflowing with juveniles and adults alike. So what should guide a prosecutor's decision to bring charges under this statute? This is the type of decision in which political motivations and personal grudges can turn a prosecutor into a tyrant.

But even if conviction does not result from a charge, the mere power to charge gives rise to its own liberty concerns. Professor Glenn Reynolds made the following observation about prosecutorial discretion:

Once charged with a crime, defendants are in a tough position. First, they must bear the costs of a defense, assuming they are not indigent. Second, even if they consider themselves entirely innocent, they will face strong pressure to accept a plea bargain—pressure made worse by the modern tendency of prosecutors to overcharge with extensive "kitchen-sink" indictments: Prosecutors count on the fact that when a defendant faces a hundred felony charges, the prospect that a jury might go along with even one of them will be enough to make a plea deal look attractive. Then, of course, there are the reputational damages involved, which may be of greatest importance precisely in cases where political motivations might be in play. Worse, **prosecutors have no countervailing incentives not to overcharge.** A defendant who makes the wrong choice will wind up in jail; a prosecutor who charges improperly will suffer little, if any, adverse consequence beyond a poor win/loss record. Prosecutors are even absolutely immune from lawsuits over misconduct in their prosecutorial capacity. Glenn Harlan Reynolds Ham Sandwich Nation: Due Process When Everything Is a Crime, 113 Columbia L. Rev. Sidebar (2013), <http://www.columbialawreview.org/ham-sandwich-nation_Reynolds>.

No solvency – Racial Bias

Discretion doesn't solve racial bias that encourages harsh sentencing

Godsil and Jiang, professor at Rutgers Law School and former fellow at the Perception Institute, **2018**

(Rachel D. and HaoYang (Carl), "Prosecuting Fairly: Addressing the Challenges of Implicit Bias, Racial Anxiety, and Stereotype Threat", Perception Institute, Vol. 40, No. 2, Winter 2018, <https://perception.org/wp-content/uploads/2018/07/Prosecuting-Fairly.pdf>, Accessed 7/10/20, GDI-FGilbard)

In a recent study of the Manhattan District Attorney's Office, the Vera Institute found that in the exercise of discretion at every level from case screening, bail recommendations, charging, and sentences in pleas, black defendants were subject to more severe outcomes compared to similarly situated whites. Prosecutors recommended denying bail to black defendants more often, a significant factor, and eventual plea deals included longer incarceration times."

The Vera study does not address the precise mechanisms explaining the disparate outcomes; however, research in social psychology suggests how bias may operate. For example, if black men are misjudged due to their physical size, leading to higher rates of perceived criminality and aggression, this has ramifications for witness or police officer actions, accounts, and trial testimony, but may also cause prosecutors to perceive such aggressiveness accordingly in charging and sentencing decisions."

Bias may further manifest in the detailed accounts of crimes provided to police and prosecutors. As noted earlier, a study asked participants to read a short description of a crime committed by "William" and an identical description of a crime committed by "Tyronne."TM They were then distracted for 15 minutes and asked to recall details of the incident. The participants who read William's actions recalled fewer aggressive details about the incident.

The participants who read Tyronne's actions not only correctly remembered more aggressive details about the incident, but also incorrectly attributed additional aggressive details to Tyronne.*!

One can imagine how such selective memory may play out in the courtroom, where prosecutors must routinely determine if defendants are exaggerating or being purposefully deceptive in their description of events. If passersby and witnesses provide a disingenuous version of the facts, one can expect that bias will color the subsequent results.

Research establishes that lawyers are not immune to implicit biases. In one study, 60 law firm partners were given an identical memorandum written by "Thomas Meyer," identified as a third-year associate who went to NYU Law School. The memo contained seven spelling or grammar errors. Half of the partners were led to believe that Meyer was white and the other half that Meyer was black. Though the memos were identical, partners found an average of 2.9 of the seven errors when Thomas Meyer was depicted as white, and an average of 5.8 of the seven errors when Thomas Meyer was depicted as black."

Racial bias affects pre-trial strategies – i.e. when prosecutors decide to pursue mandatory minimum penalties

Godsil and Jiang, professor at Rutgers Law School and former fellow at the Perception Institute, **2018**

(Rachel D. and HaoYang (Carl), "Prosecuting Fairly: Addressing the Challenges of Implicit Bias, Racial Anxiety, and Stereotype Threat", Perception Institute, Vol. 40, No. 2, Winter 2018, <https://perception.org/wp-content/uploads/2018/07/Prosecuting-Fairly.pdf>, Accessed 7/10/20, GDI-FGilbard)

In considering whether to oppose bail or consider a plea bargain, there are many points in which implicit bias can impact a prosecutor's pre-trial decision-making process. For example, research indicates that defendants of color receive worse pre-trial detention decisions than their white counterparts in certain jurisdictions.* In evaluating bail

procedures, implicit bias may also operate through “the implicit devaluation of the defendant.”” Evidence of this devaluation was demonstrated by a comparison of computerized facial images of a white male and a black male.” Researchers showed participants a series of images transitioning from “angry” to “neutral” to “happy,” and asked them to determine when a face appeared happy. The results of these findings pointed to a lack of empathy recognition among white participants with black faces. In essence, the black male appeared to be angrier, more hostile, and more serious than the white counterpart.” As a result, prosecutors may be unable to gauge their defendants’ honesty or intent based on body language alone.

Prosecutorial discretion leaves decisions vulnerable to racial bias

Sklansky, Professor at Stanford School of Law, **2018**

(David Alan, "The Problems With Prosecutors", Annual Review of Criminology, Vol. 1, 451-469, Jan. 2018, <https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-032317-092440>, Accessed 7/10/20, GDI-FGilbard)

The discretion exercised by prosecutors in the United States has long been seen as problematic for at least three different reasons. First, as previously noted, it bolsters prosecutorial power, which is widely thought excessive. Second, it undermines the uniformity and predictability of criminal sanctions and allows the very kind of arbitrary and capricious decision-making that administrative law generally strives to eliminate (Davis 1969). Third, it leaves prosecutorial decisions vulnerable to racial bias and other forms of unjust discrimination (Davis 2007). There is evidence that part of the racial disproportionality in the American criminal justice system stems precisely from exercises of prosecutorial discretion (Starr & Rehavi 2013).

For decades, scholars have suggested that the charging and bargaining discretion of individual prosecutors should be curbed by internal guidelines and supervisory oversight and that courts and legislatures should require prosecutors’ offices to move in this direction (Davis 1969, Vorenberg 1981). Courts and legislatures have not taken up the task (Barkow 2009). Whether prosecutors’ offices nonetheless have increased their use of guidelines and internal oversight is hard to say, because few prosecutors’ offices disclose information of this kind. What is clear is that many if not most line prosecutors continue to enjoy broad discretion over charging and plea bargaining, and that the use of guidelines or supervisory oversight to rein in that discretion varies widely from office to office.

---AT: Implicit Bias Training

Implicit bias training for prosecutors fails Baughman et al, 2016

(Shima Baughman, professor of criminal law at the University of Utah, "For Fairer Courts, Address Prosecutorial Bias", The New Republic, 10/14/16, <https://newrepublic.com/article/137806/fairer-courts-address-prosecutor-bias>, Accessed 7/10/20, GDI-FGilbard)

But is training enough to eliminate racial bias? We don't think so.

Indeed, people of color make up about 30 percent of the United States' population, but they account for 60 percent of those imprisoned. By some estimates, one in three black men is imprisoned in his lifetime, compared to one in 106 white men.

These disparities cannot be explained by differences in criminal activity alone. Evidence shows that black males receive harsher treatment from decision-makers at each stage of the criminal justice process. Decades of training and awareness of racial disparity, and other programmatic changes, have made little difference.

Our work on bias in the criminal justice system suggests that preventing racial information from reaching key decision-makers could be the best way to make justice truly blind.

Blinding in practice

The most important criminal decision-makers are prosecutors.

Prosecutors—individuals who decide whether and who to charge with a crime, and what crime—are the officials with the most unreviewable power.

In the U.S., over 2,300 prosecutors exercise this broad discretion. For example, a prosecutor may decide whether to charge someone with one drug trafficking offense or charge each phone call used to sell drugs as a separate offense. Multiple offenses can result in extended imprisonment and fines.

Or, prosecutors can choose to make no charge at all. In fact, 95 percent of criminal cases are now resolved through plea bargains, where prosecutors have the ultimate discretion. There is virtually no judicial involvement or oversight in those cases.

With this much discretion, bias is inevitable.

Even if most prosecutors are not intentional bad actors, like the rest of us, they suffer from unconscious bias.

In several studies, white subjects viewed black people as social threats automatically and without conscious intent. Indeed, this same phenomenon has been documented in virtually every area in which it has been studied.

In one workplace study, résumés with white-sounding names received 50 percent more callbacks for interviews than those with black-sounding names, even though the résumés were identical. Another recent study demonstrates that white men posing as doctoral students received 26 percent more responses from employers than women and minorities. And studies have found that even highly trained experts making specialized decisions, like doctors, suffer from racial bias.

Hillary Clinton and other policymakers may hope that racial bias can be eliminated through a highly selective process and training on professionalism for prosecutors or police. But this is unlikely to work. According to research, those who suffer from bias are usually unaware. In one study, the more white people were trained about and concerned with appearing racist, the more anxiety and aggression they expressed in interactions with blacks.

No Solvency - Rollback

Prosecutorial discretion isn't sustainable and gets rolled back – Sessions proves

Bennett 18 (Mark W. U.S. District Judge in the Northern District of Iowa, "Addicted to Incarceration: A Federal Judge Reveals Shocking Truths About Federal Sentencing and Fleeting Hopes for Reform." 87 UMKC L. Rev. 3, Fall 2018, Nexis, Accessed 7/9/20, GDI – JSuek)

Unfortunately, these modest changes in charging federal mandatory minimums did not last long. On May 10, 2017, President Trump's Attorney General, Jefferson Beauregard Sessions III, rolled back the reforms in the Holder Memorandum in his own Sessions Memorandum, noting the "core principle that prosecutors should charge and pursue the most serious, readily provable offense . . . [and] [b]y definition, the most serious offenses are those that carry the most substantial guideline sentences, including mandatory minimums."
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The Sessions Memorandum specifically stated that the Holder Memorandum's positions on charging mandatory minimums and § 851 sentencing [*14] enhancements were immediately rescinded.⁶¹ Former Attorney General Holder quickly responded that Attorney General Sessions's new policy was "unwise and ill-informed" and "this reversal is driven by voices who have not only been discredited but until now have been relegated to the fringes of this debate."⁶²

AT: Sexual Offenses PIC

MM Bad – Silencing

Mandatory minimums for sex offenses reinforce the stranger rape mythology and ignores acquaintance perpetrated assault – causes silencing

Racklin 16 (Meghan, contributor at Medium, “Why Mandatory Minimum Sentencing For Sexual Assault Isn’t The Answer.” Medium, 7/21/16, <https://medium.com/the-establishment/why-mandatory-minimum-sentencing-for-sexual-assault-isnt-the-answer-266839160e6c>, Accessed 7/9/20, GDI – EW)

While mandatory minimum sentences for rape have a long history, dating back to the 19th century, recent discussion of mandatory minimums for sex offenses have their roots in conservative efforts to reform rape law. These efforts emerged as reactions to infamous instances of child rape and murder in the '90s, and emphasized stranger rape mythology to justify harsh punishments.

Following cases such as that of Megan Kanka, a seven-year-old from New Jersey who was raped and murdered by her neighbor, the right-wing “tough on crime” movement began to shift its focus from the drug war to sex offenses. Many states enacted Sex Offender Community Notification and Registration statutes, and at least 18 states raised the terms of incarceration applicable to rape. Mandatory minimum sentencing also expanded; from 2001 to 2010, the share of federal sexual offenders subject to mandatory minimum sentencing increased from 5% to 51%. These narratives, and the conservative reforms they inspire, position rape as rare, and fail to account for the most common forms of gender-based violence – in which the perpetrator is an acquaintance, a family member, a partner, or a friend. Per the National Institute of Justice, for example, 85–90% of sexual assaults reported by women in college are committed by someone the survivor knows.

With stranger rape as their core narrative, however, mandatory minimum sentencing proposals neglect the lived realities of acquaintance-perpetrated sexual assault, and position the predatory stranger as the central problem in legal and cultural understandings of sexual violence. When survivors of gender-based violence know their assailants, as most do, increased penalties may deter reporting, since mandatory minimum sentencing laws often lead to sentencing much harsher than believed appropriate by those involved.

This, in turn, may contribute to reinforcing stranger rape mythology – if assaults by a stranger are disproportionately reported, it contributes to erasing the reality of acquaintance-perpetrated assault. If acquaintance rape is erased, then the narrative of rape as an exceptional event perpetrated by a stranger in the bushes persists, and “tough on crime” activists can continue to use it to justify harsh punishments. This is a dangerous cycle. Emily Doe, the survivor in the Turner case, did not know her assailant — so again, we see stranger rape used to push for harsher penalties for sex crimes.

We empathize with Emily Doe, and we want to see her get justice, but we must extend that empathy and desire for justice to every survivor. In seeking further reform, it’s important to create systems that support all survivors — rather than silencing them.

No Solvency - Racial Bias

CP doesn't solve prosecutors' racial bias— black men are more likely to be convicted for sexual offenses

Racklin 16 (Meghan, contributor at Medium, “Why Mandatory Minimum Sentencing For Sexual Assault Isn't The Answer.” Medium, 7/21/16, <https://medium.com/the-establishment/why-mandatory-minimum-sentencing-for-sexual-assault-isnt-the-answer-266839160e6c>, Accessed 7/9/20, GDI – EW)

Mandatory minimums, rather than eliminating discretion in the criminal legal process, work to shift the lion's share of that discretion from judges to prosecutors. Evidence indicates that when mandatory minimum sentencing laws are in place, prosecutors find a variety of ways to circumvent the effects of these laws. Prosecutors may decide to try a defendant for a lesser charge than the one with which they were initially charged, or encourage defendants to plead guilty to a lesser charge than the one covered under the mandatory minimum statute. This discretion leaves significant room for racial bias.

According to the ACLU, black defendants are often prosecuted for more serious offenses than white defendants, even when the characteristics of the crime are similar. In instances of sexual violence, this seems to be particularly true when the victim is white. In the ACLU's analysis of almost 900 cases of forcible sexual assault investigations, cases in which a black defendant is accused of raping a white woman are disproportionately likely to be brought to trial, and black men accused of raping white women received more serious charges.

Once a defendant is brought to trial, the decision by a judge or jury to convict provides another point in the process at which bias may manifest. In a study of white male and female mock jurors in a rape trial, for instance, the mock jurors were found to give black defendants significantly harsher penalties than white defendants. The race of the victim also had a significant effect here. Black men who assaulted white women received the longest sentences, while white men who assaulted black women received the shortest.

Under mandatory minimum sentencing statutes, juries would not have the ability to impose sentences, but this research indicates a pattern of significant racial bias in jury decision-making. Mandatory minimum sentencing statutes reduce the likelihood of a conviction for a charge covered by the statute overall, but it's all too likely that that reduction would disproportionately benefit white defendants and those convicted of crimes covered by the statute; those who would bear the brunt of the sentences are defendants of color.

With room for racial bias in prosecution and conviction, mandatory minimum sentencing statutes cannot adequately address systemic bias in the criminal legal system.

No Solvency – Incarceration

Sex offense minimums go against a broader challenge to the criminal justice system

Racklin 16 (Meghan, contributor at Medium, “Why Mandatory Minimum Sentencing For Sexual Assault Isn’t The Answer.” Medium, 7/21/16, <https://medium.com/the-establishment/why-mandatory-minimum-sentencing-for-sexual-assault-isnt-the-answer-266839160e6c>, Accessed 7/9/20, GDI – EW)

The impulse to impose mandatory minimums is understandable. It seems like a way to demand that the justice system take rape seriously, that it will ensure consistency in a system that too often allows bias and privilege to tilt results in favor of the powerful and privileged. In the wake of a story like this one, rage is natural; so too, often, is the desire for retribution. But the horrific nature of Turner’s crime, or even the horrific nature of gender-based violence in general, cannot be an excuse to overlook the consequences of instituting mandatory minimum sentencing statutes. Turner’s case clearly shows that something is wrong — with our responses to gendered violence and with the race- and class-based inequities in our legal system. But if we are truly committed to dismantling racism and bias in our legal system — and to adequately addressing gender-based violence — we must find ways other than mandatory minimum sentencing.

---AT: Retribution

Mandatory minimums are an ineffective response to gender-based violence – prisons reinforce toxic masculinity and rape culture

Racklin 16 (Meghan, contributor at Medium, “Why Mandatory Minimum Sentencing For Sexual Assault Isn’t The Answer.” Medium, 7/21/16, <https://medium.com/the-establishment/why-mandatory-minimum-sentencing-for-sexual-assault-isnt-the-answer-266839160e6c>, Accessed 7/9/20, GDI – EW)

Mandatory minimums for gender-based violence convictions reinforce the notion of prison time as the appropriate response to gender-based violence in America, and in the age of mass incarceration, prison as the solution to social problems is taken as a given. As activist Angela Davis writes in her book *Are Prisons Obsolete?*, “prison is considered an inevitable and permanent feature of our social lives.” Strengthening the carceral state as a corrective response to gender-based violence, however, raises serious concerns.

Prisons perpetuate a culture of toxic hyper-masculinity and gendered violence, and we cannot hope to prevent sexual assault or find meaningful justice for survivors while such a culture persists. Rashad Shabazz describes prison in the U.S. in his book *Spatializing Blackness: Architectures of Confinement and Black Masculinity* as places in which “the will to hurt others, the celebration of toughness, domination, hierarchy, and social control are part of the gender landscape.” Legal scholar Angela P. Harris extends this idea by naming the toxic masculinity in prison as gendered violence. Manhood as enacted in prison, she writes, “relies on two negative identities – not being a woman, and not being gay – and violence is the means by which these identities are disavowed.” There are also nauseatingly high rates of sexual violence in American prisons.

How can a place that allows for toxic masculinity and sexual violence be our best hope for ending the same?

In reinforcing the toxic masculinities that exist outside, prisons simply strengthen a culture that excuses and allows for sexual violence. Toxic masculinity is predicated on the idea that dominance — particularly sexualized dominance — over women and LGBTQ+ folks is good and necessary to masculine identity. Toxic masculinity is everywhere in our culture, and it is by no means a construction unique to or originating from prisons, but prison can serve to incubate and intensify this construction, reinforcing rape culture in the process. When sexual dominance is seen as the currency of power, those who are sexually dominated — most often women and LGBTQ+ folks — are not seen as fully human, and sexual violence is accepted and excused. We cannot expect institutions that sustain rape culture to provide adequate responses to gender-based violence, and in a culture that condones and excuses gender-based violence, simply locking up more people — and disproportionately men of color — cannot solve the problem.

Mandatory minimums and retribution results in disempowerment of and attacking survivors by the criminal system

Fisher, member of the Maryland Bar and an attorney for the Maryland Division of Parole and Probation, **15**

(Cortney, “What matters: An analysis of victim satisfaction with the criminal justice system in a procedural justice framework,” Proquest, University of Maryland, accessed 7/9/20, GDI-EW)

As legislation has progressed, the debate has shifted from the procedural rights of the victim, which are intended to make cooperation a rational decision, to the “right” of the victim to receive a conviction and harsh sentencing of the offender. This framework has been encapsulated by the “truth-in-sentencing”

movement, using the plight or “right” of the victim as justification for harsher sanctioning systems in the criminal justice process, mandatory minimum penalties, three strikes legislation, and the abolition or limitation on parole (Zimring, et al, 2001; Beck, 2010; Ohear, 2008). Rather than maintaining a focus on the process-oriented legislation which launched the victims’ rights movement, advocates of a harsh, retributive criminal justice system have used the political environment surrounding victims’ rights to their advantage, claiming in widespread literature that harsh and retributive sentencing is a right of the victim, and is essential to promoting victim satisfaction

Despite the retributive policy changes, victims continue to report dissatisfaction with the adversarial process, indicating that the process often feels like an extension of the crime (Herman, 2005). Research suggests that the goal of interpersonal crime is dominance over the victim. During the crime, the victim feels disempowered by the offender’s behavior; after the crime, the victim struggles to regain their sense of empowerment and psychological balance (Herman, 2005). Often, the adversarial design of our criminal justice system, which promotes aggressive argument, selective and formalized presentation of the facts, and attack on the credibility of the victim, serves to reinforce the dominance over the victim. Unlike during the crime, however, the dominance and aggression comes from and is condoned by the criminal justice system that the victim has turned to for help (Herman, 2005). Despite the legislative remedies— both process-oriented remedies and retributive remedies—crime victims have continued to report a lack of police sensitivity, the failure of the police to identify and recognize basic signs of trauma, the failure of police to provide any information about resources available or significant events related to the case, and the police unwillingness to take seriously victim reports of harassment or intimidation by the defendant (Campbell, 2006; Campbell, 2012; Martin and Powell, 1994). Victims also report insensitivity and disinterest by the prosecutor and other legal agents (Martin and Powell, 1994). In short, many victims remain disenfranchised and unsatisfied.

AT: DA's

AT: Crime DA – Done

No Link – MM Don't Deter Crime

MM don't deter crime – studies

Gertner and Bains 17 (Nancy, Professor at Harvard Law School/former federal district judge, and Chiraag, former senior counsel to the head of the at the Civil Rights Division of the Department of Justice “Mandatory minimum sentences are cruel and ineffective. Sessions wants them back.” Washington Post, 5/15/17, <https://www.washingtonpost.com/posteverything/wp/2017/05/15/mandatory-minimum-sentences-are-cruel-and-ineffective-sessions-wants-them-back/>, Accessed 7/6/20, GDI-FGilbard)

Sessions's assault on the past few years of progress might also make sense if mandatory minimums for minor drug offenses were necessary to combat crime — but they are not. A 2014 study by the U.S. Sentencing Commission found that defendants released early (based on sentencing changes not related to mandatory minimums) were not more likely to reoffend than prisoners who served their whole sentences. That is, for drug charges, shorter sentences don't compromise public safety. Indeed, research shows it is the certainty of punishment — not the severity — that deters crime.

Minimums don't deter crime – severity of punishment isn't a factor

Bucklen and Wetzel 17 (Bret, director of the Pennsylvania Department of Corrections' Office of Planning, Research & Statistics, AND John, secretary of the Pennsylvania Department of Corrections, “Mandatory minimums bad for public safety.” Centre Daily Times, 3/28/17, <https://www.centredaily.com/opinion/article141367453.html>, Accessed 7/6/20, GDI-FGilbard)

There is no good evidence that mandatory minimums do anything to make the public safer. Take one purpose of sentencing, to deter future criminal behavior. The science on deterrence is now clear that it is the swiftness and certainty of punishment that deters, not the severity. Mandatory minimums target the severity of punishment by unnecessarily ratcheting up sentence lengths. For criminals who tend to be impulsive, inconsistently delivered and arbitrarily long sentences do nothing to deter future crime. A study by the Pennsylvania Commission on Sentencing found that the imposition of a mandatory minimum sentence was not a predictor of criminal re-offending.

No Link – Incarceration

Incarceration doesn't impact crime – other factors and diminishing returns

Golash-Boza 17 (Tanya, sociology professor at the University of California, Merced, "Column: 5 charts show why mandatory minimum sentences don't work." PBS, 6/1/17, <https://www.pbs.org/newshour/politics/5-charts-show-mandatory-minimum-sentences-dont-work>, Accessed 7/6/20, GDI-FGilbard)

When mass incarceration first started ramping up in the 1970s, violent and property crime rates were high. However, even after crime rates began to decline, legislators continued passing punitive laws. In fact, some of the most draconian laws were passed in the mid-1990s, long after crime rates had gone down.

Incarceration has had a limited impact on crime rates. First of all, it is just one of many factors that influence crime rates. Changes in the economy, fluctuations in the drug market and community-level responses often have more pronounced effects.

Second, there are diminishing returns from incarceration. Incarcerating repeat violent offenders takes them off the streets and thus reduces crime. But incarcerating nonviolent offenders has a minimal effect on crime rates.

Link Turn – Resources

MM divert resources from law enforcement against serious crimes

Bucklen and Wetzel 17 (Bret, director of the Pennsylvania Department of Corrections' Office of Planning, Research & Statistics, AND John, secretary of the Pennsylvania Department of Corrections, "Mandatory minimums bad for public safety." Centre Daily Times, 3/28/17, <https://www.centredaily.com/opinion/article141367453.html>, Accessed 7/6/20, GDI-FGilbard)

Mandatory minimum sentencing wastes taxpayer dollars and diverts limited resources away from pursuing more serious offenders and supporting law enforcement. Estimates are that if Pennsylvania's legislature reinstates mandatory minimums, it could cost taxpayers as much as \$85.5 million per year.

AT: Crime Turns Incarceration

Mandatory minimums drive mass incarceration – not a rise in crime

Golash-Boza 17 (Tanya, sociology professor at the University of California, Merced, “Column: 5 charts show why mandatory minimum sentences don’t work.” PBS, 6/1/17, <https://www.pbs.org/newshour/politics/5-charts-show-mandatory-minimum-sentences-dont-work>, Accessed 7/6/20, GDI-FGilbard)

Today, the United States is a world leader in incarceration, but this has not always been the case.

For most of the 20th century, the U.S. incarcerated about 100 people per 100,000 residents – below the current world average. However, starting in 1972, our incarceration rate began to increase steadily. By 2008, we reached a peak rate of 760 incarcerated persons per 100,000 residents.

The increase in incarceration cannot be explained by a rise in crime, as crime rates fluctuate independently of incarceration rates. Incarceration rates soared because laws changed, making a wider variety of crimes punishable by incarceration and lengthening sentences.

This sharp increase was driven in part by the implementation of mandatory minimums for drug offenses, starting in the 1980s. These laws demand strict penalties for all offenders in federal courts, no matter the extenuating circumstances.

AT: Econ DA

Link Turn

MMs balloon federal prison budgets

Gertner and Bains 17 (Nancy, Professor at Harvard Law School/former federal district judge, and Chiraag, former senior counsel to the head of the at the Civil Rights Division of the Department of Justice “Mandatory minimum sentences are cruel and ineffective. Sessions wants them back.” Washington Post, 5/15/17, <https://www.washingtonpost.com/posteverything/wp/2017/05/15/mandatory-minimum-sentences-are-cruel-and-ineffective-sessions-wants-them-back/>, Accessed 7/6/20, GDI-FGilbard)

Sessions’s fixation on mandatory minimums might also be more palatable if they were cost-effective — but they are not. Federal prison costs have ballooned to \$7 billion, more than a quarter of DOJ’s budget, driven by a population that is nearly half drug offenders. And yet as detailed by the conservative American Legislative Exchange Council last year, most experts believe that expending public resources to incarcerate these offenders is profoundly inefficient.

Abolishing MMS Saves Billions - Smarter Sentencing Act Proves Gargano 15

(Amdrew, Gargano is the editorial assistant at Young Voices, a policy project of the international nonprofit Students For Liberty, “Federal sentencing reform can reduce prison crowding and save money”, The Hill, April 29, 2015, <https://thehill.com/blogs/congress-blog/judicial/240340-federal-sentencing-reform-can-reduce-prison-crowding-and-save>, Date Accessed: 7/9/2020 GDI – MG)

In recent weeks, officials from Massachusetts to Nebraska have called for mandatory minimum sentencing reform in order to reduce the hundreds of thousands of inmates deluging the criminal justice system. Yet while state-based reform is slowly enacted, 200,000 inmates remain behind bars in overcrowded federal prisons costing millions of dollars each day. Fortunately, one proposed law may change that: the Smarter Sentencing Act.

Today, the average federal prison is overcrowded by 36 percent. In 2013, the total federal prison system had a capacity rated to hold 132,221 inmates, yet there were 176,484 inmates behind federal bars that year. In some correctional institutions, the inmate population has been 50 percent over the rated capacity.

The reason for this overcrowding is in part due to drug laws, and more specifically, mandatory minimum sentencing laws. While initially intended to deter drug use with harsh sentences, mandatory minimums have instead led to a surge of non-violent drug offenders locked in federal penitentiaries without any possibility to negotiate their sentencing.

Drug offenders are now given prison time as part of their sentences at much higher rates than prior to 1986, when Congress established mandatory minimum drug sentences. Moreover, the length of time drug offenders spend in prison has largely increased — drug offenders in federal prison in 2013 were facing an average sentence of 11 years (at a cost of \$79 per day for each inmate).

In 2013, more people were admitted to federal prison under drug charges than for any other crime. In fact, nearly half of all current federal prisoners are serving sentences for drug crimes. A main reason for this is because mandatory minimums result in more guilty convictions by shifting discretion from judges to prosecutors. On top of this, drug laws are filled with disparities that result in inordinate convictions.

Take, for example, the sentencing established for drug offenders found guilty of cocaine possession. While the only difference between crack and powdered cocaine is a bit of baking soda and the method of ingestion, the Controlled Substances Act mandates a minimum five-year

sentence for the possession of 28 grams of crack cocaine, whereas 500 grams of powdered cocaine is needed for the same sentence to be imposed. Prior to the Fair Sentencing Act of 2010, this sentencing ratio was 100-to-one.

Not only is there a disparity in cocaine sentencing, there is also a discrepancy in arrests. A recent study by researchers at New York University found that crack cocaine users, who tend to be of lower socioeconomic status than powdered cocaine users, are at a much “higher risk” of arrest. What’s most troubling is that three-quarters fewer people use crack cocaine compared to powdered cocaine.

While reducing the discrepancy in arrests is clearly a law enforcement issue, resolving the sentencing disparity which has contributed to prison overcrowding can be easily achieved by amending drug laws with legislation that is currently under consideration.

The Smarter Sentencing Act of 2015 would cut in half most of the non-violent mandatory minimums for drugs, resulting in fewer people in prison for a fewer number of years. Moreover, it would make the Fair Sentencing Act retroactive so that 8,829 drug offenders would be eligible for resentencing. Overall, the bill would save 224,887 federal prison beds by 2023.

Further, in response to a Freedom of Information Act request made by Firedoglake, the Department of Justice last year estimated that the Smarter Sentencing Act, if passed, would save \$24 billion over 20 years.

However, if mandatory minimum sentencing reform is not passed, and the prison population continues to rise as expected, the federal government will need to build 16 more prisons at \$350 million each in order to maintain the 36 percent overcrowding rate through 2023.

It's clear that mandatory minimums contribute to overcrowding the justice system and they are inordinately expensive, but the Smarter Sentencing Act has the potential to bring considerable benefits almost immediately. Nearly two-thirds of Americans feel that a move away from mandatory minimums is a smart decision. It's clear that the time has come for legislation aimed at reforming these laws to be passed.

Ending Mandatory minimums saves state budget

Eisen 15

(Lauren-Brooke Eisen is director of the Brennan Center's Justice Program where she leads the organization's work to end mass incarceration, "Mandatory Minimum Sentences — Time to End Counterproductive Policy", Brennan Center for Justice, June 9, 2015, <https://www.brennancenter.org/our-work/analysis-opinion/mandatory-minimum-sentences-time-end-counterproductive-policy>, Date Accessed: 7/9/20, GDI – MG)

For the past four decades, the U.S. has incarcerated a higher percentage of its people, and for a longer period of time, than any other Democratic nation. There are currently five times as many people incarcerated now than there were in 1970, thanks in part to a spike in mandatory sentencing penalties, three-strikes laws, longer prison terms, and the "war on drugs." While the U.S. experimented with its incarceration binge, a remarkable phenomenon simultaneously occurred. The crime rate fell dramatically. In fact, violent crime has fallen by almost half since its peak in 1991, and crime rates in Massachusetts have generally followed that trend.

Yet, it would be wrong and dangerous to conclude that increasing incarceration was responsible for the decline in crime. In fact, a recent Brennan Center for Justice report concluded that the effect of increasing incarceration on the crime rate for the last 15 years has effectively been zero. Other factors, such as the aging population and the number of police on the street, are more responsible for the crime drop. Indeed, states such as Texas, California, Michigan, New York and New Jersey have reduced their prison populations while their crime rates continued to fall.

One of the drivers of mass incarceration is mandatory minimum sentences. These laws have replaced judicial discretion across a wide range of offenses. Their aim is to keep those who violate certain laws in prison for longer periods of time. In Massachusetts, this is expensive. The Bay State spends roughly \$45,000 per inmate a year on food, clothes and prison costs. Massachusetts spent more than \$1 billion in 2015 on prisons alone.

In an effort to alleviate the state's expensive mass incarceration problem, several bills that seek to repeal all mandatory minimum sentences for drug offenses will be reviewed by the Joint Committee on the Judiciary at a public hearing today. Some of these proposals have garnered the support of numerous law enforcement officials, academics, and recently, the chief justice of the Supreme Judicial Court, Ralph D. Gants. Just last month, Chief Justice Gants called for an end to mandatory minimums and argued that mandatory minimum sentences eliminate a judge's ability to impose a sentence that is individualized for each defendant. Ending mandatory minimums, Gants said, "makes fiscal sense, justice sense, policy sense and common sense."

According to the nonpartisan think tank Massachusetts Institute for a New Commonwealth, 70 percent of prisoners under the jurisdiction of the Department of Correction incarcerated for a drug offense were sentenced under mandatory minimum statutes. Across the nation, 77 percent of Americans support eliminating mandatory minimum sentences for nonviolent offenders. And in Massachusetts, a 2014 public opinion poll found that support for mandatory minimum sentences for any crime has fallen to 11 percent.

Mandatory minimums are not cost effective

Caulkins 98

(Jonathan P. Caulkins is the H. Guyford Stever University Professor of Operations Research and Public Policy at Carnegie Mellon University's Heinz College and a member of the National Academy of Engineering, "Are Mandatory Minimum Drug Sentences Cost-Effective?", RAND Corporation, 1998, https://www.rand.org/pubs/research_briefs/RB6003.html, Date Accessed: 7/9/20, GDI - MG)

Reducing Consumption: More Enforcement Against Higher-Level Dealers

The first two bars in Figure 1 represent enforcement approaches applied to a representative sample of drug dealers. Perhaps mandatory minimum sentences would be more cost-effective if they were applied only to higher-level dealers, who make more money and thus have more to lose from intensive enforcement. To approximate such a restriction, Caulkins and his colleagues limited the set of dealers analyzed to those prosecuted at the federal level who possess enough drugs to trigger a federal mandatory minimum sentence. Again, they analyzed how costs imposed on dealers influence cocaine market demand and supply. The results are shown in the dark bars in Figure 1.

Spending a million dollars on mandatory minimum sentences for higher-level dealers does indeed have a bigger effect on cocaine consumption than spending the same amount on either enforcement approach against typical dealers. Nonetheless, against any given type of dealer (or at any given level of government), mandatory minimums are less cost-effective than conventional enforcement. Moreover, although federal mandatory minimums do better relative to treating heavy users than do longer sentences for all dealers, treatment is still more cost-effective.

Why is conventional enforcement more cost-effective than mandatory minimums? Drug enforcement imposes costs on dealers through arrest and conviction, which includes seizure of drugs and other assets, and through incarceration, which involves loss of income. It turns out that, per dollar spent, the cost burden from seizures is greater. A million dollars spent extending sentences thus imposes less cost on dealers—and consequently reduces cocaine consumption less—than a million dollars spent on conventional enforcement, which includes asset seizures.[3]

Reforming Minimums solves states spending

Newburn 16

(Gregory, Gregory Newburn is a State Policy Director and works with families against mandatory minimums, "Mandatory Minimum Sentencing Reform Saves States Money and Reduces Crime Rates", American Legislative Exchange Council, March 2016, Date Accessed: 7/4/20, GDI – MG

THE SOLUTION: SENTENCING REFORM

After crime rates rose steadily throughout the 1970's, many states (and the federal government) responded by passing harsh mandatory minimum sentencing laws. These laws require automatic, fixed-length prison sentences – not only for violent crimes, but for nonviolent and drug crimes as well. These new sentencing laws sent more people to prison, imposed longer prison sentences, and are generally considered a main driver of exploding state prison populations.

If mandatory sentences for nonviolent and drug offenders were necessary for public safety, their cost would be justified. However, as corrections spending has climbed, most experts have come to believe incarcerating huge numbers of low-level, nonviolent and drug offenders post-conviction is an inefficient and ineffective method of controlling crime. While public safety benefits of incapacitating dangerous criminals justifies the costs, according to the Pew Center on the States, "most criminologists now consider the increased use of prison for nonviolent offenders a questionable public expenditure, producing little additional crime control benefit for each dollar spent."¹⁰

Even the most ardent and influential supporters of incarceration as a means to control crime have expressed skepticism toward mandatory minimum drug laws. Dr. John J. Dilulio Jr., a criminologist, Harvard Ph.D. and former Professor of Politics and Public Policy at Princeton, is among the leading advocates of incarceration in the United States. Dilulio rejects what he calls "the soft-in-the-head anti-incarceration left," and has written, "No one – at least no one in elite policy-wonk circles – is a bigger fan of incarcerating known, adjudicated adult and juvenile criminals than me."¹¹ Yet Dr. Dilulio opposes mandatory minimum sentences for drug offenders.¹² In a New York Times op-ed Dilulio wrote:

Prison definitely pays, but there's one class of criminal that is an arguable exception: low-level, first-time drug offenders . . . It makes no sense to lock away even one drug offender whose case could be adjudicated in special drug courts and handled less expensively through intensively supervised probation featuring no-nonsense drug treatment and community service.¹³

Dilulio continued that theme in a National Review article:

There is a conservative crime-control case to be made for repealing mandatory minimum drug laws now. That's a conservative crime-control case, as in a case for promoting public safety, respecting community mores, and reinstating the traditional sentencing prerogatives of criminal-court judges. It is a conservative case, and I . . . one of the few academic analysts with a kind word for imprisonment, have come to embrace it.¹⁴ Independent research organizations have come to similar conclusions. The RAND Corporation looked at the cost effectiveness of mandatory minimum drug laws and asserted: "[I]f reducing consumption or violence is the goal, more can be achieved by spending additional money arresting, prosecuting, and sentencing dealers to standard prison terms than by spending it on sentencing (fewer) dealers to longer, mandatory terms."¹⁵

Other influential proponents of the "lock 'em up and throw away the key" model of crime control also believe the strategy has gone too far and now recommend reducing the prison population to more efficiently fight crime.

For instance: University of Chicago economist and author Steven D. Levitt wrote several influential papers in which he concluded that pro-prison policies were a major factor in reducing crime during the 1990s. He later found, however, that as the crime rate continued to drop and the prison population continued to grow, the return on public safety diminished... “In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration.” And today? Dr. Levitt says, “I think we should be shrinking the prison population by at least one-third.”¹⁶

In recognition of the rising costs and shrinking benefits of harsh sentencing laws, many states have begun to reconsider their reliance on mandatory minimums for nonviolent and drug offenders. For example, the Pennsylvania Sentencing Commission found “neither length of sentence nor the imposition of a mandatory minimum sentence alone was related to recidivism.”¹⁷ A legislative analysis in Washington state found that while incarcerating violent offenders provides a net public benefit, imprisonment of property and drug offenders leads to negative returns.¹⁸

Many states have gone further than simply studying the problem and have adopted evidence-based, cost-effective sentencing reforms. For instance, prosecutors in Michigan suggested to legislators that the state was “warehousing too many low-level nonviolent offenders with a minimal role in the drug trade for too long in costly prison beds.”¹⁹ As a result, Michigan repealed most of its drug-related mandatory minimums. Prison admittances fell and Michigan saved billions in tax dollars. More importantly, the crime rate fell 27 percent in the decade after the repeal.

Other states have moved in a similar direction. Texas, a state not burdened with lengthy mandatory minimums laws, was able to save nearly \$2 billion by investing in diversion and community corrections programs rather than building new prisons. The incarceration rate in Texas fell from 710 per 100,000 residents in 2003 to 584 in 2014. Meanwhile, the crime rate fell faster than the national average.²⁰ The Texas experiment is not unique. In fact, the Pew Center on the States found all 17 states that cut their imprisonment rates over the past decade also experienced a decline in crime rates.²¹

Legislators have a wide range of policy options available to combat inefficient prison spending and to protect public safety. “Back-end” post-conviction reforms, including vocational training and reentry programs, are valuable tools to help reduce recidivism. Changes to occupational licensure laws to allow ex-offenders to find employment more easily are also beneficial. But just as one would first turn off a spigot to stop an overflowing bathtub, states must first stop filling their prisons with low-level offenders. They can best achieve this objective by reforming their mandatory minimum laws.

MMS have led to ballooning costs – ¼ of DOJ Spending

Pew Public Safety Project 2015

(Pewtrust, The Pew Charitable Trusts is an independent non-profit, non-governmental organization, founded in 1948, “Penalty increases enacted in 1980s and 1990s have not reduced drug use or recidivism”, Pewtrust, August 27, 2015, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>, Date Accessed: 7/7/20, GDI – MG)

Overview

More than 95,000 federal prisoners are serving time for drug-related offenses—up from fewer than 5,000 in 1980.¹ Changes in drug crime patterns and law enforcement practices played a role in this growth, but federal sentencing laws enacted during the 1980s and 1990s also have required more drug

offenders to go to prison— and stay there much longer—than three decades ago.² (See Figure 1.) **These policies have contributed to ballooning costs: The federal prison system now consumes more than \$6.7 billion a year, or roughly 1 in 4 dollars spent by the U.S. Justice Department.**³

Despite substantial expenditures on longer prison terms for drug offenders, taxpayers have not realized a strong public safety return. The self-reported use of illegal drugs has increased over the long term as drug prices have fallen and purity has risen.⁴ Federal sentencing laws that were designed with serious traffickers in mind have resulted in lengthy imprisonment of offenders who played relatively minor roles.⁵ These laws also have failed to reduce recidivism. Nearly a third of the drug offenders who leave federal prison and are placed on community supervision commit new crimes or violate the conditions of their release—a rate that has not changed substantially in decades.⁶

More imprisonment, higher costs

Congress increased criminal penalties for drug offenders during the 1980s—and, to a lesser extent, in the 1990s—in response to mounting public concern about drug-related crime.⁷ In a 1995 report that examined the history of federal drug laws, the U.S. Sentencing Commission found that “drug abuse in general, and crack cocaine in particular, had become in public opinion and in members’ minds a problem of overwhelming dimensions.”⁸ The nation’s violent crime rate surged 41 percent from 1983 to 1991, when it peaked at 758 violent offenses per 100,000 residents.⁹

Congress increased drug penalties in several ways. Lawmakers enacted dozens of mandatory minimum sentencing laws that required drug offenders to serve longer periods of confinement. They also established compulsory sentence enhancements for certain drug offenders, including a doubling of penalties for repeat offenders and mandatory life imprisonment without the possibility of parole for those convicted of a third serious offense. These laws have applied broadly: As of 2010, more than 8 in 10 drug offenders in federal prisons were convicted of crimes that carried mandatory minimum sentences.¹⁰

Also during the 1980s, Congress created the Sentencing Commission, an appointed panel that established strict sentencing guidelines and generally increased penalties for drug offenses. The same law that established the commission, the Sentencing Reform Act of 1984, also eliminated parole and required all inmates to serve at least 85 percent of their sentences behind bars before becoming eligible for release.

Federal data show the systemwide effects of these policies:

Probation has all but disappeared as a sanction for drug offenders. In 1980, federal courts sentenced 26 percent of convicted drug offenders to probation. By 2014, the proportion had fallen to 6 percent, with judges sending nearly all drug offenders to prison.¹¹ (See Figure 2.)

The length of drug sentences has increased sharply. As shown in Figure 1 above, from 1980 to 2011 (the latest year for which comparable statistics are available), the average prison sentence imposed on drug offenders increased 36 percent—from 54.6 to 74.2 months—even as it declined 3 percent for all other offenders.¹²

The proportion of federal prisoners who are drug offenders has nearly doubled. The share of federal inmates serving time for drug offenses increased from 25 percent in 1980 to a high of 61 percent in 1994.¹³ This proportion has declined steadily in recent years—in part because of rising prison admissions for other crimes—but drug offenders still represent 49 percent of all federal inmates.¹⁴

Time served by drug offenders has surged. The average time that released drug offenders spent behind bars increased 153 percent between 1988 and 2012, from 23.2 to 58.6 months.¹⁵ This increase dwarfs the 39 and 44 percent growth in time served by property and violent offenders, respectively, during the same period.¹⁶

The increased imprisonment of drug offenders has helped drive the explosive overall growth of the federal prison system, which held nearly 800 percent more inmates in 2013 than it did in 1980.¹⁷ One study found that the increase in time served by drug offenders was the “single greatest contributor to growth in the federal prison population between 1998 and 2010.”¹⁸

Growth in the prison population has driven a parallel surge in taxpayer spending. From 1980 to 2013, federal prison spending increased 595 percent, from \$970 million to more than \$6.7 billion in inflation-adjusted dollars.¹⁹ Taxpayers spent almost as much on federal prisons in 2013 as they paid to fund the entire U.S. Justice Department—including the Federal Bureau of Investigation, the Drug Enforcement Administration, and all U.S. attorneys—in 1980, after adjusting for inflation.²⁰

MMS Cost a the US \$75 billion and rising Figueroa No Date

(Mayra, Mayra Figueroa is a graduate student in the Department of Criminal Justice at UNLV, “The Monetary and Social Costs of Mandatory Sentencing Laws”, University of Nevada, Las Vegas, http://www.sheldensays.com/costsofmandatorysentencing.htm#_ftn1, GDI – MG)

Mandatory sentencing laws have been put in place in order to increase the severity of punishment for criminal behavior and they are meant to target chronic and habitual offenders. Policy makers have argued that if these small percentages of repeat offenders are incapacitated, crime levels will decrease dramatically (Stolzenberg & D’Alessio, 1997). The three-strikes law is only one of many different “get-tough” policies implemented in the United States in the 1990’s (Chen, 2008). Between 1993 and 1995, 24 states, as well as the federal government, implemented three-strikes laws that mandated life in prison for a third violent felony (although in California, the third strike does not need to be a violent offense) and this had a direct effect on the prison population (Rodriguez, 2003). Prisons are increasingly becoming overcrowded, and along with that, there are huge monetary and social costs of imprisoning millions as a result of mandatory sentencing laws.

In addition to racial disparities, mandatory sentencing laws across the United States, and especially California’s strict three-strike law, costs tax payers billions of dollars each year. In 2008, it was estimated

the cost of corrections for that year only was \$75 billion and that amount is still rising (Welsh & Farrington, 2011). This money could be used for health care, education, welfare, and diversion programs for troubled youth. A well-known study conducted on the cost-effectiveness of California's three-strikes law compared the law to four prevention and intervention programs. This study concluded that the three-strikes law was second to last in cost-effectiveness in reducing crime. On the top of the list were graduation incentives, parent training, and delinquent supervision (Welsh & Farrington, 2011). In addition to the laws lack of cost-effectiveness, the amount of money spent is astounding. Spending on corrections alone has almost quadrupled over the past two decades. The cost of prisons on average is 13.9% higher than what is represented in their combined corrections budgets. The biggest impact on prison budgets is from the changing sentencing policies. Incarcerating low-risk offenders does not increase public safety, and it costs tax payers more than the value of the crime they could potentially commit. (Henrichson & Delaney, 2012). In their study of the costs of prisons, Henrichson & Delaney (2012, p. 13) conclude that:

Policy makers must have complete information to make the best decisions possible. They must understand the full fiscal implications of their policy choices, particularly those related to the criminal justice system, whose costs make up a significant part of every state budget.

Legislators want to be seen as "tough on crime" so they pass mandatory sentencing laws in order to gain acceptance from the public, especially after a tragic event that instills fear into the public (Shelden et al. 2008, p. 216). Politicians have incentives to pass laws that yield immediate results, since they face re-election every few years. Supporting prevention programs that will not show results for a number of years is not beneficial to them and especially to their re-election campaign (Welsh & Farrington, 2011). Policy makers are more concerned with re-election than educating themselves and implementing policies and supporting programs that will be successful.

Studies conducted on the deterrence and incapacitation effects of mandatory sentencing laws show that there has been little to no effects on crime rates (Stolzenberg & D'Alessio, 1997). Some studies show that there was a preexisting downward trend on crime levels prior to the implementation of the three-strikes laws and many other mandatory sentencing laws (Stolzenberg & D'Alessio, 1997). Not only is there a lack of proof that these laws are working, mandatory sentencing laws have affected non-deserving people as well. There have been a few instances where mandatory sentencing laws have been used to impose harsh punishment on nonviolent offenders. For example, a mother of two was sentenced to life in prison for possessing \$40 worth of cocaine. Another man stole \$85 worth of videotapes and then \$69 worth a few days later. He was sentenced to two consecutive sentences of 25 years to life (Lockyer v. Andrade, 2003). Under California's strict three-strikes law, a man was sentenced to 25 years to life for stealing a slice of pizza. If this man would have raped a woman or molested a child, he would have received the same sentence. The three-strikes law does not distinguish between offenses. Is this really justice?

MMS is costing states and federal billions

Chacon 14

(Belen, Belen Chacon is a contributing journalist with the Consumer Information Blog. Ms. Chacon is a journalism graduate from California State University, Northridge, "Mandatory Minimums Are Costly to U.S. Taxpayers", Lachon Law Firm, March 25, 2014, <https://thelemonlawcalifornia.com/mandatory-minimums-are-costly-to-u-s-taxpayers/>, Date Accessed: 7/8/20, GDI – MG)

Mandatory Minimums Are Costly to U.S. Taxpayers

It's no secret that American jails and prisons are facing overcrowding problems. Over the last 30 years, the number of the incarcerated has shot up to over 2 million, over which half are convicted for drug crimes. Nearly 60 percent of federal drug offenders are sentenced under mandatory minimums – a 'one size-fits-all' law that imposes a particular sentence length for people who have committed certain crimes. Opponents of mandatory minimums have argued that these sentence laws have not only led to prison overcrowding and higher recidivism rates, but also a financial burden to taxpayers.

"Keeping people in prison longer than is necessary has created a budget crisis; one that threatens our public safety," said president of Families Against Mandatory Minimums (FAMM), Julie Stewart in a statement earlier in March. "Our sentencing policies have led to serious overcrowding in the federal Bureau of Prisons, which today consumes one of every four dollars available to the Department of Justice. It has become so dire that the Department of Justice has called the situation 'unsustainable.'"

The Federal Register reports the average cost to keep one person in federal prison for one year is nearly \$29,000. **The National Association of State Budget Officers found that taxpayers spend over \$50 billion annually for state prisons. For federal prisons, the U.S. spent nearly \$540 million in 1980 — a number that has grown over 12 times in the last 30 years (\$6.8 billion).**

"This explosion in costs is driven by the expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums," said founder of Americans for Tax Reform, Grover Norquist in his statement to the Judiciary House Committee in 2009. "...The benefits, if any, of mandatory minimum sentences do not justify this burden to taxpayers."

Due its one-size-fits-all approach, mandatory minimum laws do not allow judges to impose shorter sentences for individual cases, which forces judges to charge defendants with a minimum sentence for certain types of crimes, stated Paul Larkin and Evan Bernick in their report titled, Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms. The report goes on to say that opponents of mandatory minimums argue that the sentence laws don't do anything to address the current disparities in the criminal justice system, but instead simply shift sentencing discretion from judges to prosecutors – whom, in the mind of opponents, are not fit for such a responsibility.

Currently, there are two bills with bipartisan support that have been introduced to address the problems associated with mandatory minimum sentences, they are: the Justice Safety Valve Act of 2013, introduced by Senators Patrick Leahy (D-VT) and Rand Paul (R-KY), and the Smarter Sentencing Act of

2014, introduced by Senators Dick Durbin (D-IL) and Mike Lee (R-UT). The Safety Valve Act aims to apply to all federal mandatory minimums and add a provision that would allow judges to impose a shorter sentence for particular cases. The Smarter Sentencing Act would not apply to every mandatory minimum sentence, but would allow judges to impose a reduced sentence for nonviolent drug offenses.

Others, such as U.S. Attorney General Eric Holder, have also proposed sentence reduction laws that would apply to nonviolent drug crimes in order to help alleviate prison populations and financial costs. “By reserving the most severe penalties for dangerous and violent drug traffickers,” Holder stated, “we can better promote public safety, deterrence and rehabilitation while saving billions of dollars and strengthening communities.”

Prisons/Mass Incarceration hurt the Econ

Mass Incarceration hinders economic growth

Hernandez 2/24

(Eunice Hernandez is a writer for the North Texas Daily, "The negative effects on the economy caused by mass incarceration", North Texas Daily, February 24, 2020, <https://www.ntdaily.com/the-negative-effects-on-the-economy-caused-by-mass-incarceration/>, 2/24/20, Date Accessed: 7/9/20, GDI - MG)

For those unaware, the United States has the highest incarceration rate in the world.

Incarceration rates have risen across all 50 states throughout the years. The amount spent to keep an individual incarcerated varies from state to state. For example, New York spends an average of \$60,076 and Kentucky spends an average of \$14,603 per inmate, according to a study done by Skidmore College. **The amount of money that is being spent hinders the labor force participation which is key to sustaining economic growth.** Currently labor force participation is low due to most individuals who are being incarcerated are between the ages of 19 and 39, according to a report by Julia Bowling, a writer for the Brennan Center For Justice. Individuals in this age range are key in being able to contribute to the growth of the economy and incarcerating them lowers the quality of our workforce.

The more individuals that are being incarcerated the higher the unemployment rate is. Consequently, the U.S. economy loses in between \$57 billion and \$65 billion in output annually, according to a report by The Center for Economy and Policy. For ex-prisoners, it is very difficult to re-enter the workforce. This leads to higher state and federal government assistance payouts, loss of income tax revenue and drains the amount of monetary investment that can go into essential welfare programs.

When a parent is incarcerated one must think of the effects this has on the youth population as well. Having a parent in prison not only doubles the chance of a child experiencing social and academic problems but it also increases their chances of being incarcerated. The U.S. economy loses an estimated \$2 million every time a juvenile makes a career out of being a criminal. This leads to a decrease in economic mobility. If a juvenile decides to take this path it could increase recidivism rates. It is estimated that criminal recidivism reduces the annual GDP by \$65 billion.

When discussing incarceration, one must not only discuss the costs that come associated with the inmate but also the costs for victims, criminal justice system costs and the type of crime that was committed. When a crime is committed, one must take into account how the victim will be affected. In most cases victims will face an economic loss and expect some sort of restitution. Also, depending on the crime committed toward the victim, medical care costs and reparations must be accounted for. The state and federal governments are also required to fund the trial process which includes being able to hire prosecutors and fund the incarceration of the offender. The type of crime that is committed also plays an important role when discussing how much money is lost by the state. For example, when someone commits a murder, it costs the state approximately \$750,000 in reparations for the victim alone. By the

time all other costs are included like the trial of the defendant, incarceration and others, the state has spent roughly \$9 million, according to the report by Skidmore College.

If the United States wants to be able to increase their labor force participation and sustain their economy they should also consider treating the opioid crisis as a public health issue instead of treating it as a criminal activity issue. **The government loses approximately \$80 billion annually when prosecuting those with drug addictions, according to Alex Muresianu, a writer for the Foundation for Economic Education (FEE).** If the opioid crisis was treated from a public health issue perspective it would improve economic prospects for the government and would also improve individual prospects. State and federal governments should also consider decriminalizing marijuana. The legalization of marijuana would decrease state spending by \$6 billion and federal spending by \$4 billion, according to FEE.

To conclude, if we take into account the various types of expenses that go into incarcerating an individual it is apparent that incarcerating someone has many economic downsides. If we keep incarcerating individuals that do not really need to be there, not only will the government not have enough money to invest into welfare programs, but it will also increase the unemployment rate. The U.S. economy will eventually get to a point where it will slow down in growth due to not having the necessary labor participation needed to sustain it. As a society we can no longer afford to maintain the present system of mass incarceration.

AT: Federalism DA

Link Turn

Mandatory Minimums destroy the balance of Federalism

Luna 10

(Erik, Erik Luna is a law professor at Arizona State University. His interests include criminal law, criminal procedure, and constitutional law, "Mandatory Minimum Sentencing Provisions Under Federal Law", CATO Institution, 5/27/10, <https://www.cato.org/publications/congressional-testimony/mandatory-minimum-sentencing-provisions-under-federal-law> ,Date Accessed: 7/4/20, GDI- MG

Federal mandatory minimums also affect the Constitution's second structural device intended to prevent the problems associated with concentrated authority — the division of power between national and state governments. Grounded in the text and context of the Constitution,³⁵ federalism limits the powers of national government and prevents federal interference with the core internal affairs of the individual states.³⁶ Among the areas that the Framers sought to reserve to the states was "the ordinary administration of criminal and civil justice."³⁷ The Constitution mentioned only a handful of crimes in its text, all of which were consistent with the design and limits of federalism.³⁸ In fact, it was unthinkable to the Framers that the federal government would adopt a full-scale penal code, let alone displace or substantially interfere with the state criminal justice systems.³⁹ As Chief Justice John Marshall would later opine, Congress "has no general right to punish murder committed within any of the States," and "it is clear that Congress cannot punish felonies generally."⁴⁰ In more recent times, the Supreme Court has reiterated these limitations on federal involvement in local criminal justice matters, given that the "[s]tates possess primary authority for defining and enforcing the criminal law."⁴¹ Constitutional concerns are thus raised whenever Congress effects "a significant change in the sensitive relation between federal and state criminal jurisdiction."⁴²

Unfortunately, Congress has assumed such power over criminal matters, occasionally with a nod to an enumerated power, usually the regulation of interstate commerce. This does not mean, however, that politicians, courts, and commentators have been or should be oblivious to considerations of federalism.⁴³ **In the present context, mandatory minimums represent a federal encroachment on state prerogatives and the implementation of policies that may conflict with local choice.** For instance, most drug and weapons crimes amenable to federal mandatory minimums are actually prosecuted in state courts pursuant to state laws carrying far lower sentences.⁴⁴ Yet it is hardly disputed that the possibility of severe punishment influences the choice of whether to bring a case in federal or state court. This raises the specter of abusive forum shopping where a federal prosecution is pursued not because the case raises a special national interest, but because it jacks up the potential punishment.

Federal mandatory minimums also impinge on another core benefit of federalism, namely, pluralistic decision-making and local choice.⁴⁵ In a diverse society like ours, citizens in different jurisdictions are likely to have distinct views on the substance and process of criminal justice. State and local decision-makers tend to be more attuned to such preferences, given their closeness to constituents and the greater opportunity of citizens to be involved in state and local government. Unencumbered by national dictates, states may even become laboratories of experimentation in criminal justice. In the oft-repeated words of Justice Brandeis, "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."⁴⁶ Should individuals find unbearable the local or state approach to crime and punishment, federalism allows them to vote with their feet, so to speak, by moving to another county or state. Federal mandatory minimums can overwhelm such decision-making on issues of criminal justice, effectively and powerfully nullifying state and local judgments. For example, the

federal government may effectively override a state's decision that certain drug-related conduct should not be a crime in the first place or should be subject to far more lenient punishment.⁴⁷

AT: Politics

Bipart

Mandatory minimums reform bipartisan

Steinzor, Edward M. Robertson Professor at the University of Maryland Carey Law School., 2017

(Rena, "White Collar Crime and the Trump Administration", CPR Blog: Center for Progressive Reform, 04/27/17 NexisUni, Accessed – 07/04/20, GDI – JSuek)

During the last Congress, an unusual right/left alliance pushed so-called 'mass incarceration reform' quite far. A bill to modify mandatory minimum sentences was approved by the House of Representatives Judiciary Committee but the legislation stalled before it reached the House floor, in part because it increased the burden of proof for federal prosecutors in white-collar crime cases. In the Senate, a bipartisan group of seven senators (Cory Booker (D-N.J.), John Cornyn (R-Texas), Lindsey Graham (R-S.C.), Charles Grassley (R-IA), Patrick Leahy (D-Vt.), Mike Lee (R-Utah), Charles Schumer (D-N.Y.), and Sheldon Whitehouse (D-R.I.)) produced comparable legislation. It too never reached the floor because Senator Orrin Hatch (R-UT) demanded that the bill be amended to add tougher burdens on prosecutors. The strange bedfellows nature of these coalitions is its greatest strength. Fiscal and libertarian conservatives (Koch Industries, Freedom Works, and Right on Crime) participate out of concern about prison spending, which is about \$80 billion annually and unsustainable for many states. Liberals (the Leadership Conference Education Fund, the NAACP Legal Defense Fund, the ACLU, and the Center for American Progress) hope to rebuild communities by preventing lengthy prison terms that disproportionately punish people of color. Members of these groups may grow restless and push reform legislation without Trump administration support.

Bipartisan support against mandatory minimums

Bucklen and Wetzel 17 (Bret, director of the Pennsylvania Department of Corrections' Office of Planning, Research & Statistics, AND John, secretary of the Pennsylvania Department of Corrections, "Mandatory minimums bad for public safety." Centre Daily Times, 3/28/17, <https://www.centredaily.com/opinion/article141367453.html>, Accessed 7/6/20, GDI-FGilbard)

For all of these reasons, a bipartisan consensus has built around the country that mandatory minimums are ineffective and should be scaled back or eliminated. More than 30 states have now reconsidered mandatory minimum sentencing laws. Conservative groups like Koch Industries, the American Legislative Exchange Council, and the Commonwealth Foundation here in Pennsylvania, have all expressed opposition to mandatory minimums. Yet many in our legislature are ignoring these realities and moving forward to quietly reinstate mandatory minimums. This puts Pennsylvania out of touch with the facts.

Plan's bipartisan

McNelis 17 (Abigail A. J.D Candidate Antonin Scalia Law School, George Mason University, "OMMENT: Habitually Offending the Constitution: THE CRUEL AND UNUSUAL CONSEQUENCES OF HABITUAL OFFENDER LAWS AND MANDATORY MINIMUMS." 28 Geo. Mason U. Civ. Rts. L.J. 97, Fall 2017, Nexis, Accessed – 07/06/20, GDI – JSuek)

Changing attitudes regarding sentencing, especially for non-violent crimes, demand legislators repurpose harsh mandatory minimum [*99] laws. ²²Because of changing attitudes towards crime and punishment in recent decades, mandatory minimum reform is a bipartisan issue. ²³Prominent political figures from both ends of the spectrum support and call for a restructuring and repeal of many mandatory minimum laws, especially those that inflict lengthy sentences for non-violent drug offenses. ²⁴

Mixed Support – Public

There's mixed public support for mandatory minimums

Sundt 19 (Jody, Associate Dean of Graduate and Executive Education at the School of Public and Environmental Affairs at Indiana University, "Good governance, political experiences, and public support for mandatory sentencing: Evidence from a progressive US state." January 2019, Nexis, Accessed 7/12/20, GDI – MG)

Mandatory sentences have garnered mixed support in public opinion polls. In a review of the research, Roberts (2003) concludes that the public is "deeply divided" regarding mandatory sentencing policies (p. 483). A comparison of opinions in the mid-1990s to the early 2000s also demonstrates the fluidity of public opinion on mandatory sentencing. Between 1995 and 2002, the number of respondents who said mandatory sentences "are a good idea" dropped from 55% to 45% (Peter D Hart Research Associates, Inc., 2002). A 1999 poll linking policy preference to voting intention revealed that more than half of the sample "would be more likely to vote for a politician who advocated increasing judicial discretion—the antithesis to mandatory sentencing" (Roberts et al., 2007, p. 77). Finally, a 2014 poll found that 77% of Americans favored eliminating mandatory minimum prison sentences for nonviolent offenders (Ekins, 2014). Together these results suggest that public support for mandatory sentences is "mushy" and dynamic—perhaps sensitive to offender type, question wording, and social context.

Plan Unpopular – Public

American populous does not support lenient sentencing for criminals

VerBruggen, RealClear Policy author, **2013**

(Robert, "In Defense of Mandatory Minimums", RealClear Policy, 11/10/13, https://www.realclearpolicy.com/blog/2013/11/11/in_defense_of_mandatory_minimums_725.html, Accessed 7/9/20, GDI-FGilbard)

As I pointed out in my August post, 60 percent of Americans still believe courts go too easy on criminals, and fewer than one in five think courts are too harsh. And yet, in October, a majority of Americans supported the full legalization of marijuana for the first time. The lesson here is simple enough: The American people will support criminal-justice reforms up to a point -- but they don't like it one bit when judges are lenient with real criminals. We must evaluate reform proposals in this light, or risk another backlash.

AFF

AT: Judge Bias

Judges Would Lower Sentences

Minimums prevent judges from reducing sentences – hundreds would give lower sentences for non-violent cases

Martin and Bennett 17 (Rachel, host of NPR's Morning Edition, and Mark, federal judge from Iowa's Northern District, "A Federal Judge Says Mandatory Minimum Sentences Often Don't Fit The Crime." NPR, 6/1/17, <https://www.npr.org/2017/06/01/531004316/a-federal-judge-says-mandatory-minimum-sentences-often-dont-fit-the-crime>, Accessed 7/17/20, GDI – JMoore)

MARTIN: Although some judges think the incarceration rate is a big part of the problem. Mark Bennett is one of them. He's a federal judge from Iowa's Northern District. Bennett says mandatory minimum laws have forced him to put more than a thousand people in prison for lengthy stays, sometimes for the rest of their lives. And in a majority of those cases, Judge Bennett says the punishment didn't fit the crime.

MARK BENNETT: These mandatory minimums are so incredibly harsh, and they're triggered by such low levels of drugs that they snare at these non-violent, low-level addicts who are involved in drug distribution mostly to obtain drugs to feed their habit. They have a medical problem. It's called addiction, and they're going to be faced with five and 10 and 20-year and sometimes life mandatory minimum sentences. I think that's a travesty.

MARTIN: So people who support this policy change will argue, as has Attorney General Sessions, that there's no real thing as a low-level drug crime, that inherently violence is kind of baked into this experience. If you want to collect a drug debt, Sessions says, you can't file a lawsuit in court. You collect it with the barrel of a gun. So how do you respond to that?

BENNETT: There's actually a very easy, simple response to that. Any one of my 660 federal district court judge colleagues when there's actual violence involved in a case will impose a higher sentence than if there was no violence involved in the case. So that's really a red herring argument. And, you know, when I read the - Attorney General Session's memo, I noticed he was talking about consistency and fairness.

MARTIN: Yeah. They argued that mandatory minimums help ensure consistency, and as a result, the laws become more egalitarian.

BENNETT: Yeah. Well, I think just the opposite is true. Mandatory minimums support unwarranted uniformity by treating everyone alike even though their situations are dramatically different. So, for example, you have a low-level non-violent drug offender. One is selling methamphetamine for profit, and one is using methamphetamine and maybe trading it to other drug addicts to support their addiction.

Does it really make sense to treat a for-profit seller and a non-for-profit user the same? I don't think so because Congress has also said we're supposed to look at the nature and circumstances of the offense and the history and characteristics of the defendant. And, in fact, I think it's important to go back and look at the history of the mandatory minimums.

They came about because Len Bias, a basketball player, died of powder cocaine overdose but everybody assumed it was crack. And that's what triggered this massive political ratcheting up and passing the mandatory minimums. And it wasn't just Democrats, and it wasn't just Republicans, they were outbidding each other trying to increase and ratchet up the mandatory minimums.

And the interesting thing is that bill passed without a single congressional hearing, not a single federal judge was called to testify, not a single person from the Federal Bureau of Prisons. There were no criminologists, no penologists, just no pharmacologists. And they picked these mandatory minimums and the drug quantities literally out of thin air.

MARTIN: Let me ask you, there have been some of your colleagues, some judges have felt so strongly about the mandatory minimums that they have resigned. They have stepped down from the bench in protest. Is that something you would consider doing? If not, why stay? Why do you find it to be more valuable to stay in your position?

MM Prevent Lower Sentences

Mandatory minimums prevent judges from issuing lower sentencing

Umstead 14 (Zane, J.D. Candidate at The University of Iowa College of Law, “Deterring Racial Bias in Criminal Justice Through Sentencing.” 100 Iowa L. Rev. 431 (2014), <https://ilr.law.uiowa.edu/print/volume-100-issue-1/deterring-racial-bias-in-criminal-justice-through-sentencing/>, Accessed 7/17/20, GDI – JMoore)

A prosecutor’s charging discretion is not only implicated by the decision whether to charge or not to charge, but also by the choice of what offense to charge. Most federal drug offenses, for example, impose escalating mandatory minimum sentences based on the quantity of drugs involved in the conduct underlying the offense. These mandatory minimum sentencing schemes often lead to unduly harsh punishment because they eliminate a defendant’s ability to argue that mitigating circumstances warrant a lesser sentence than the statute prescribes. When a defendant is charged with—and found guilty of—a mandatory minimum offense, the judge has no power to issue a sentence below the statutory minimum. Thus, by electing to charge the highest degree of offense, prosecutors subject defendants to higher minimum sentences than they might otherwise receive.

AT: Sentencing Guidelines

Not Mandatory

US v Booker made guidelines not mandatory

Umstead 14 (Zane, J.D. Candidate at The University of Iowa College of Law, “Deterring Racial Bias in Criminal Justice Through Sentencing.” 100 Iowa L. Rev. 431 (2014), <https://ilr.law.uiowa.edu/print/volume-100-issue-1/deterring-racial-bias-in-criminal-justice-through-sentencing/>, Accessed 7/17/20, GDI – JMoore)

In 2005, in United States v. Booker, the Supreme Court struck down the provisions of the Guidelines that made their application mandatory. The Court held that, because juries generally determine a defendant’s guilt regarding only the statutory base-level offense (for example, robbery, using the hypothetical in Part II.A), calculating mandatory sentences using additional factors not submitted to a jury violated the Sixth Amendment.

Although Booker made the Guidelines advisory rather than mandatory, the Court deliberately excised only two provisions—one expressly requiring courts to impose sentences within the Guidelines range and another granting appellate courts de novo review of any Guideline departures—while leaving the rest unchanged.

AT: Pardon CP

Eliminate MM Key

Pardon Process is unfair – reforming sentencing laws key

Stewart 15 (Julie, president and founder of Families Against Mandatory Minimums, “The Pardon Process Is Inherently Unfair.” New York Times, 1/26/15, <https://www.nytimes.com/roomfordebate/2015/01/26/mark-wahlberg-and-the-purpose-of-pardons/the-pardon-process-is-inherently-unfair>, Accessed 7/17/20, GDI – JMoore)

Which is why asking who deserves a pardon and who doesn't might be the wrong question. For instance, we talk about clemency as an emergency measure; executive triage for the worst injustices produced by overly harsh, one-size-fits-all sentencing regimes. But granting clemency isn't a substitute for reforming laws that make clemency necessary. The same is true of pardons: They reduce burdens for individual offenders whose applications rise above the fray, but they don't address the ubiquity of such barriers, or the overwhelming number of people who seemingly can't surmount them without an official decree of forgiveness from the government. (Not to mention, mass disenfranchisement.)

And, like clemency, pardons are inherently unfair: Many, many offenders fit the various criteria put forth by state governors and the Office of the Pardon Attorney, but only a select few receive the relief they're seeking. Those qualified prisoners who don't receive pardons seldom know why they're passed over, and recipients seldom know what makes them so special.

Perm?

Even if pardons are good – eliminating mandatory minimums is necessary to challenge initial harsh sentencing and shift resources towards community engagement

Grawert 18 (Ames, Senior Counsel, John L. Neu Justice Counsel, “Trump's Afterthought on Pardons Shows Why Real Sentencing Reform is Needed.” Brennan Center, 6/12/18, <https://www.brennancenter.org/our-work/analysis-opinion/trumps-afterthought-pardons-shows-why-real-sentencing-reform-needed>, Accessed 7/17/20, GDI – JMoore)

In typical fashion, President Trump bumbled his way into a good point before taking off for his unnecessary showdown with the country's longest-standing allies on Friday. In the wake of the Kardashian-inspired pardon of Alice Marie Johnson, he mentioned potentially pardoning Muhammad Ali (nevermind the details: Ali's conviction for refusing military service in Vietnam was overturned by the Supreme Court in 1971) and asked NFL players concerned with the country's criminal justice system to recommend “friends or people they know about” for pardons.

But in a surprisingly truthful afterthought, the president acknowledged that those who could benefit from a presidential pardon “have sentences that aren't fair.” On that, he's right on. And if he really believes as much, he should support efforts to reduce mandatory minimums that are unnecessarily incarcerating thousands of Americans.

Indeed, over the past three decades, Congress has passed more than a hundred new laws imposing mandatory minimum sentences — which sap discretion from judges and juries and instead slap arbitrary penalties on federal crimes. That's led to a seven-fold increase in the federal prison population. Over the same period, federal prison spending has ballooned more than 600 percent.

Despite the growing bipartisan consensus to reduce or eliminate mandatory minimums (which may have spared Kim Kardashian the Oval Office visit), the president and his extremist Attorney General Jeff Sessions have unveiled a tepid prison reform bill, called the FIRST STEP Act, that sailed through the House earlier this spring.

The FIRST STEP Act implements some basic reforms (like training programs and banning the shackling of pregnant women) but does virtually nothing to materially lessen lengthy sentences that make our federal justice system so fundamentally unfair. That's part of the reason that Sen. Chuck Grassley, the powerful Republican chairman of the Senate Judiciary Committee, has publicly rebuked the piecemeal Trump bill and is now pushing for the Senate to attach substantive sentencing reform to any new legislation.

Somehow, one of the chamber's most conservative members has become the last best hope for criminal justice reformers.

Grassley in February got his committee to advance the Sentencing Reform and Corrections Act, a bill that would begin repairing the broken federal criminal justice system by reducing mandatory minimum sentences, at least for nonviolent offenders. The result: some 2,500 people each year would receive a sentence reduction between 22 and 50 percent, and more than 6,000 drug offenders would be immediately eligible for a sentence reduction of nearly 30 percent.

In short, the people harmed most by our unfair federal justice system would see drastic reductions in their sentences. And over the long term, the obliteration of mandatory minimums would keep low-level, nonviolent offenders out of costly prisons and allow us to redirect federal funds to do things like improve community policing and provide treatment for those with substance use disorders.

The reality is that at least four in every ten federal prisoners are unnecessarily incarcerated. And our data show that over the decades, our country's unconscionably high incarceration rate has had virtually zero impact on crime overall. Warehousing of humans isn't just a grave moral wrong – it's a costly mistake that has destroyed communities and economies across the country.

AT Private Prison CP

Performance Contracts Fail

Performance based contracts don't solve prison conditions

Armstrong 19 (Mia, intern at The Marshall Project, "Here's Why Abolishing Private Prisons Isn't a Silver Bullet." The Marshall Project, 9/12/19, <https://www.themarshallproject.org/2019/09/12/here-s-why-abolishing-private-prisons-isn-t-a-silver-bullet>, Accessed 7/15/20, GDI – JMoore)

Some researchers are turning their attention toward restructuring private prison contracts, rather than banning private involvement in the prison sector.

"The reality is that private prisons are a tool, and like all tools, you can use them well or use them poorly," Adrian Moore, vice president of policy at Reason Foundation, said

One alternative is performance-based contracts, which are in place in prison systems in Australia and New Zealand and link payment to measurable good outcomes.

But these models aren't silver bullets either, Eisen said. An ombudsman report raised concerns over confinement conditions at one of the performance-based facilities Eisen visited in New Zealand, even though that facility had met its goal of reducing recidivism.

Private Prison Support Inevitable

The Trump administration will still support private prisons regardless of their conditions – disincentivizes them to change

Ahmed 19 (Hauwa, research associate for Democracy and Government at the Center American Progress, “How Private Prisons Are Profiting Under the Trump Administration.” Center for American Progress, 8/30/19, <https://www.americanprogress.org/issues/democracy/reports/2019/08/30/473966/private-prisons-profiting-trump-administration/>, Accessed 7/17/20, GDI – JMoore)

In 2016, the U.S. Department of Justice’s (DOJ) inspector general initiated a review⁵ to examine conditions at a number of for-profit prisons that the federal government contracted with from fiscal year 2011 through fiscal year 2014. A report on the findings indicated that private prisons had a 28 percent⁶ higher rate of inmate-on-inmate assaults and more than twice as many inmate-on-staff assaults compared with federally run or operated prisons. Furthermore, the report found that for-profit prisons in the United States were more likely to endanger inmates’ security and rights. These problems were so significant that in August 2016, the Obama administration announced that it would begin to phase out private prisons.⁷

As the number of incarcerated individuals in for-profit prisons grew, so did the number of immigrants detained in such facilities. According to a report by the Sentencing Project⁸, about 4,841 immigrants were detained in for-profit facilities in 2000. By 2016, that number had soared to 26,249 immigrants—a 442 percent increase.⁹ In the wake of the DOJ’s decision to phase out the use of for-profit prisons, the Homeland Security Advisory Council reviewed¹⁰ the U.S. Department of Homeland Security’s (DHS) use of private immigration detention facilities. Immediately after this review was announced, the stock prices of private prison company giants CoreCivic—formerly the Corrections Corporation of America—and the GEO Group Inc. dropped by 9.4 percent and 6 percent, respectively.¹¹ A majority of the council agreed with the view that DHS should begin to move away from using private prison facilities but recommended that while they were still in use, they “should come with improved and expanded [U.S. Immigration and Customs Enforcement] oversight.”¹²

Following the inauguration of President Donald Trump in January 2017, however, the administration immediately shifted course to robustly support private prisons. In February of that year, then-Attorney General Jeff Sessions revoked the Obama administration’s initiative,¹³ and by April 2017, the DOJ began requesting bids for contracts to house federal inmates in private prison facilities¹⁴ once again. That same month, the GEO Group won a \$110 million¹⁵ contract to build the first detention center under the new administration.

The fact that private prisons have serious, documented flaws raises questions as to why the Trump administration is so eager to support them. It is noteworthy that a pro-Trump PAC¹⁶ and the president’s inaugural committee¹⁷ have benefited from the private prison industry’s financial contributions. The Trump family business has benefited from the industry’s patronage as well.¹⁸

Private prisons support political allies that will cover poor conditions

Ahmed 19 (Hauwa, research associate for Democracy and Government at the Center American Progress, “How Private Prisons Are Profiting Under the Trump Administration.” Center for American Progress, 8/30/19, <https://www.americanprogress.org/issues/democracy/reports/2019/08/30/473966/private-prisons-profiting-trump-administration/>, Accessed 7/17/20, GDI – JMoore)

Although private prisons have been ineffective at providing high-quality detention services, they have been effective at supporting political allies. In the 2016 presidential election, for example, the GEO Group and CoreCivic donated \$250,000⁶² each to President Trump’s inaugural committee. In 2017, the GEO Group moved its annual conference⁶³ to a Trump-owned resort in Boca Raton, Florida. Additionally, the GEO Group contributed heavily⁶⁴ to the campaigns of some members of the U.S. House Appropriations Subcommittee on Homeland Security, the congressional subcommittee charged with funding DHS.

These companies and their employees also contribute to congressional candidates, donating overwhelmingly to those running as Republicans. According to the Center for Responsive Politics, CoreCivic and its employees have spent about \$3 million⁶⁵ on campaign contributions to federal candidates and PACs since 1990. Eighty-five percent of CoreCivic's contributions to federal candidates since 1990 have gone to Republicans, while 13 percent of its contributions have gone to Democrats. Additionally, CoreCivic has spent \$26.1 million on lobbying since 1998. The GEO Group and its employees have donated about \$4.4 million⁶⁶ to federal candidates and PACs since 2004. Since that year, 54 percent of the GEO Group's campaign contributions went to Republican candidates, while 15 percent went to Democratic candidates.

Mandatory Minimums AFF - RKS 2020

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Advantage one is the Economy—

Mass incarceration locks in slow growth for the US economy

Hernandez 20—North Texas Daily, internally citing Skidmore College studies and Julia Bowling (Research associate in the justice program at the Brennan Center for Justice at New York University School of Law), and a report from The Center for Economy and Policy [Eunice, 2/24/2020, “The negative effects on the economy caused by mass incarceration”, North Texas Daily, <https://www.ntdaily.com/the-negative-effects-on-the-economy-caused-by-mass-incarceration/>] AMarb

For those unaware, **the United States has the highest incarceration rate in the world.**

Incarceration rates have risen across all 50 states throughout the years. The **amount spent to keep an individual incarcerated varies** from state to state. For example, **New York spends an average of \$60,076 and Kentucky spends an average of \$14,603 per inmate, according to a study done by Skidmore College.** The **amount of money that is being spent hinders the labor force participation which is key to sustaining economic growth.** **Currently labor force participation is low due to most individuals who are being incarcerated are between the ages of 19 and 39, according to a report by Julia Bowling, a writer for the Brennan Center For Justice.** **Individuals in this age range are key in being able to contribute to the growth of the economy and incarcerating them lowers the quality of our workforce.**

The **more individuals that are being incarcerated the higher the unemployment rate is.** Consequently, the **U.S. economy loses in between \$57 billion and \$65 billion in output annually, according to a report by The Center for Economy and Policy.** For ex-prisoners, it is very difficult to re-enter the workforce. **This leads to higher state and federal government assistance payouts, loss of income tax revenue and drains the amount of monetary investment that can go into essential welfare programs.**

When a parent is incarcerated one must think of the effects this has on the youth population as well. Having a parent in prison not only doubles the chance of a child experiencing social and academic problems but it also increases their chances of being incarcerated. The **U.S. economy loses an estimated \$2 million every time a juvenile makes a career out of being a criminal. This leads to a decrease in economic mobility.** If a juvenile decides to take this path it could increase recidivism rates. It is estimated that **criminal recidivism reduces the annual GDP by \$65 billion.**

When discussing incarceration, one must not only discuss the costs that come associated with the inmate but also the costs for victims, criminal justice system costs and the type of crime that was committed. When a crime is committed, one must take into account how the victim will be affected. In most cases victims will face an economic loss and expect some sort of restitution. Also, depending on the crime committed toward the victim, **medical care costs and reparations must be accounted for.** The state and federal governments are also required to fund the **trial process** which includes being able to hire prosecutors and fund the **incarceration of the offender.** The type of crime that is committed also plays an important role when discussing how much money is lost by the state. For example, when someone commits a murder, it costs the state approximately \$750,000 in reparations for the victim alone. **By the time all other costs are included like the trial of the defendant, incarceration and others, the state has spent roughly \$9 million,** according to the report by Skidmore College.

If the United States wants to be able to increase their labor force participation and sustain their economy they should also consider treating the opioid crisis as a public health issue instead of treating it as a criminal activity issue. The government loses approximately \$80 billion annually when prosecuting those with drug addictions, according to Alex Muresianu, a writer for the Foundation for Economic Education (FEE). If the opioid crisis was treated from a public health issue perspective it would improve economic prospects for the government and would also improve individual prospects. State and federal governments should also consider decriminalizing marijuana. The legalization of marijuana would decrease state spending by \$6 billion and federal spending by \$4 billion, according to FEE.

To conclude, if we take into account the various types of expenses that go into incarcerating an individual it is apparent that **incarcerating someone has many economic downsides.** If we keep incarcerating individuals that do not really need to

be there, not only will the government not have enough money to invest into **welfare programs**, but it will also **increase the unemployment rate**. The **U.S. economy will eventually get to a point where it will slow down in growth due to not having the necessary labor participation needed to sustain it**. As a society we can no longer afford to maintain the present system of mass incarceration.

COVID creates economic pressure but new measures to jumpstart growth determine whether it is a long-term depression BUT interim measures ensure slow growth

White 20—POLITICO Pro's chief economic correspondent [Ben White, Victoria Guida (financial services reporter covering banking regulations and monetary policy for POLITICO Pro), and Matthew Karnitschnig (POLITICO's chief Europe correspondent), 4/13/2020, "Blank checks, taboos and bazookas: Inside the global battle to prevent another depression", Politico, <https://www.politico.com/amp/news/2020/04/13/inside-global-race-prevent-depression-182619>] AMarb

"The **depth of the recession, just in terms of jobs lost and fallen output, will not compare to anything we've seen in the last 150 years**. The **only question is duration**," said Kenneth **Rogoff**, a **Harvard professor and former IMF chief economist who has studied every recent downturn**. "The economic tools we are using are important, but it's a natural catastrophe or war — **we are in the middle of it and just getting out of it is kind of the main thing right now**."

The **massive infusions of cash** from central banks and governments **around the world will help. But new approaches will ultimately be required**, Rogoff argued, including possible global debt moratoriums for emerging-market economies such as India likely to be slammed by the virus. He also said central banks such as **the Fed may be forced into unprecedented steps to revive growth** — such as lowering interest rates below zero, a move the central bank has long resisted in part because of mixed evidence of its effectiveness.

The **big institutional players** in this global economic drama **are battle-tested veterans at spraying foam on the runway** in the form of giant spending programs and an alphabet soup of lending facilities and central bank interventions. The **U.S. Fed and Treasury** just last week **announced efforts designed to dole out more than \$2 trillion in loans to businesses and municipalities, on top of trillions of dollars already promised** through other lending and stimulus efforts.

Scenario one is Jobs—

Mandatory minimums fuel a multi-generational cycle of poverty by disrupting the job market and fueling mass unemployment

Bowling 13—Research associate in the justice program at the Brennan Center for Justice at New York University School of Law [Julia, 9/13/2013, "Mass Incarceration Gets Attention as an Economic Issue (Finally)", Brennan Center, <https://www.brennancenter.org/our-work/analysis-opinion/mass-incarceration-gets-attention-economic-issue-finally>] AMarb

This week, in a move surprising to many, the AFL-CIO passed a resolution stating their intent to end mass incarceration. The **country's largest federation of unions** now officially **opposes long mandatory minimum sentences** for nonviolent crimes, and supports reforms to help former prisoners reintegrate into society.

This announcement will be well received among economists working on criminal justice reform. Long seen as a racial justice issue in the American political arena, mass incarceration has recently, although belatedly, come to be recognized as a fiscal concern. With the world's largest incarcerated population, the United States government spends an unsustainable \$79 billion a year on corrections.

But, until now, the understanding of incarceration's broader economic impact has largely been confined to academia. In the AFL-CIO press release, University of California at Berkeley Economist Steven Pitts put it best: "We cannot organize an economy that provides shared prosperity if we don't also end mass incarceration."

Mass incarceration greatly disrupts the American job market. Sixty-one percent of people in prison are between 18-39 years old -- in the prime of their working life. Removing able-bodied working-age people from the labor market lowers the quality of our work force and permanently damages their employment and educational opportunities. The formerly incarcerated face a daunting uphill battle with unemployment. In addition to gaps in employment and lack of work experience, the AFL-CIO resolution notes that many re-entering civil society return to neighborhoods, "long suffering from economic divestment, high unemployment, poor infrastructure and isolation."

Most importantly, the formerly incarcerated face stigma and discrimination. Efforts to "ban the box" on employment forms asking about criminal records may have worked in earlier eras, but today a former convict's past is only a quick Google search away. Given this reality, it is no surprise that 60 percent of formerly incarcerated people are unemployed, compared to 7.3 percent of the general population. High unemployment among ex-prisoners leads to higher state and federal government assistance payouts, loss of income tax revenue, and drains on spending for other essential programs.

The diminished employment prospects of formerly incarcerated individuals also have an enormous effect on their partners and children. Currently, 1 in 28 children has a parent in prison. Having an incarcerated parent doubles a child's chances of experiencing homelessness, and increases the likelihood that they'll exhibit social problems, academic problems, and be incarcerated themselves. Nobel Prize Winning Economist Joseph Stiglitz noted in the New York Times, "a young American's life prospects are more dependent on the income and education of his parents than in almost any other advanced country." The economic impact of incarceration pushes families through the revolving doors of the criminal justice system, and fuels a multi-generational cycle of poverty.

The AFL-CIO's resolution is an important sign that the biggest players in America's economy are beginning to wake up to the reality that mass incarceration is as much an economic issue as a criminal justice one. Let's hope more of those in the political and business arenas make ending mass incarceration a priority.

Slow growth triggers miscalculation and shatters global existential risk cooperation

Jonathan **Landay 17**, senior national security and intelligence correspondent for McClatchy Newspapers, "U.S. intelligence study warns of growing conflict risk", 1-9-2017, U.S., <https://www.reuters.com/article/us-usa-intelligence-future-idUSKBN14T1J4>

The risk of conflicts between and within nations will increase over the next five years to levels not seen since the Cold War as global growth slows, the post-World War Two order erodes and anti-globalization fuels nationalism, said a U.S. intelligence report released on Monday. "These trends will converge at an unprecedented pace to make governing and cooperation harder and to change the nature of power – fundamentally altering the global landscape." said "Global Trends: Paradox of Progress," the sixth in a series of quadrennial studies by the U.S. National Intelligence Council. The findings, published less than two weeks before U.S. President-elect Donald Trump takes office on Jan. 20, outlined factors shaping a "dark and difficult near future," including a more assertive Russia and China, regional conflicts, terrorism, rising income inequality,

climate change and sluggish economic growth. Global Trends reports deliberately avoid analyzing U.S. policies or choices, but the latest study underscored the complex difficulties Trump must address in order to fulfill his vows to improve relations with Russia, level the economic playing field with China, return jobs to the United States and defeat terrorism. The National Intelligence Council comprises the senior U.S. regional and subject-matter intelligence analysts. It oversees the drafting of National Intelligence Estimates, which often synthesize work by all 17 intelligence agencies and are the most comprehensive analytic products of U.S. intelligence. **The study, which included interviews with academic experts as well as financial and political leaders worldwide,** examined political, social, economic and technological trends that the authors project will shape the world from the present to 2035, and their potential impact. **'INWARD-LOOKING WEST'** It said the threat of terrorism would grow in coming decades as small groups and individuals harnessed "new technologies, ideas and relationships." **Uncertainty about the United States, coupled with an "inward-looking West" and the weakening of international human rights and conflict prevention standards, will encourage China and Russia to challenge American influence,** the study added. Those challenges "will stay below the threshold of hot war but **bring profound risks of miscalculation,**" the study warned. **"Overconfidence that material strength can manage escalation will increase the risks of interstate conflict to levels not seen since the Cold War."** While "hot war" may be avoided, **differences in values and interests among states and drives for regional dominance "are leading to a spheres of influence world,"** it said, The latest Global Trends, the subject of a Washington conference, added that the situation also offered opportunities to governments, societies, groups and individuals to make choices that could bring "more hopeful, secure futures." "As the paradox of progress implies, the same trends generating near-term risks also can create opportunities for better outcomes over the long term," the study said. THE HOME FRONT The report also said that while globalization and technological advances had "enriched the richest" and raised billions from poverty, they had also "hollowed out" Western middle classes and ignited backlashes against globalization. Those trends have been compounded by the largest migrant flows in seven decades, which are stoking "nativist, anti-elite impulses." **Slow growth** plus technology-induced disruptions in job markets **will** threaten poverty reduction and **drive tensions within countries** in the years to come, **fueling the very nationalism that contributes to tension between countries,** it said. The trends shaping the future include contractions in the working-age populations of wealthy countries and expansions in the same group in poorer nations, especially in Africa and South Asia, increasing economic, employment, urbanization and welfare pressures, the study said. The world will also continue to experience weak near-term growth as governments, institutions and businesses struggle to overcome fallout from the Great Recession, the study said. "Major economies will confront shrinking workforces and diminishing productivity gains while recovering from the 2008-09 financial crisis with high debt, weak demand, and doubts about globalization," said the study. "China will attempt to shift to a consumer-driven economy from its longstanding export and investment focus. Lower growth will threaten poverty reduction in developing countries." **Governance will become more difficult as issues, including global climate change, environmental degradation and health threats demand collective action,** the study added, while **such cooperation becomes harder.**

Specifically, it triggers great power conflict with Russia and China

Daniel Drezner 16, Professor of International Politics, Tufts; Nonresident Senior Fellow, Brookings. "Five Known Unknowns about the Next Generation Global Political Economy." Project on International Order and Strategy at Brookings. May, http://www.anamnesis.info/sites/default/files/D_Drezner_2016.pdf

The **erosion of the trade and demographic drivers puts even more pressure on technological innovation to be the engine of economic growth** in the developed world. As one McKinsey analysis concluded, **"For economic growth to match its historical rates, virtually all of it must come from increases in labor productivity."**⁷⁸ Growth in labor productivity is partially **a function of capital investment,** but mostly a function of technological innovation. **The key question is whether the pace of technological innovation will sustain itself.**⁷⁹ This remains a known unknown. **The pace of innovation relative to global population has slowed dramatically over the past fifty years.**⁷⁹ Consider that the developed world still relies on the same general purpose technologies of modern society that were originally invented 50-100 years ago: the automobile, airplane, telephone, refrigerator, and computer. To be sure, all of these technologies have improved in recent decades, in some cases dramatically. But nothing new has replaced them. And even these improvements have not necessarily had dramatic systemic effects. For example, the average speed on a passenger aircraft has actually fallen since the introduction of the Boeing 707 in 1958, because of the need to conserve fuel. For all of the talk of "disruptive innovations," the effect of these disruptions on both the business world and aggregate economic growth have been exaggerated.⁸⁰ At present, many of the fields that seem promising for innovation—nanotechnology, green energy, and so forth—require massive fixed investments. Only large institutions, like research universities, multinational corporations and government entities, can play in that kind of game. Joseph Schumpeter warned that once large organizations became the primary engine of innovation, the pace of change would naturally slow down. Because large organizations are inherently bureaucratic and conservative, they will be less able to imagine radical innovations.⁸¹ What if the "secular stagnation" debate is really just a harbinger of a

deeper debate about a return to pre-19th century growth levels?[¶] An obvious counter to this argument is that the pace of technological innovation in laptops, smart phones, tablets, and the Internet of things has accelerated. This is undeniably true—but the problem is that the gains in utility have not been, strictly speaking, economic. Most of the important innovations that we think about with respect to the Internet—Facebook, Twitter, Wikipedia, YouTube and so forth—are free technologies for consumers. As Tyler Cowen argues, “The big technological gains are coming in revenue-deficient sectors.”⁸² They generate lots of enjoyment but little employment. The largest and most dynamic information technology firms, like Google and Apple, hire only a fraction of the people who worked for General Motors in its heyday. At the same time, Internet-based content has eroded the financial viability of other parts of the economy. Content-providing sectors—such as music, entertainment, and journalism—have suffered directly. The growth of “sharing economy” firms like Uber and Airbnb that develop peer-to-peer markets are causing similar levels of creative disruption to the travel and tourism sectors.⁸³ The rapid acceleration of automation is also leading to debates about whether the “lump of labor” fallacy remains a fallacy—in other words, whether displaced workers will be able to find new employment.⁸⁴ **A slow-growth economic trajectory also creates policy problems that increase the likelihood of even slower growth. Higher growth is a political palliative that makes structural reforms easier.** For example, Germany prides itself on the “Hartz reforms” to its labor markets last decade, and has advocated similar policies for the rest of the Eurozone since the start of the 2008 financial crisis. But the Hartz reforms were accomplished during a global economic upswing, boosting German exports and cushioning the short-term cost of the reforms themselves. **In a low-growth world, other economies will be understandably reluctant to engage in such reforms.**[¶] It is possible that concerns about a radical growth slowdown are exaggerated. In 1987, Robert Solow famously said, “You can see the computer age everywhere but in the productivity statistics.”⁸⁵ A decade later, the late 1990s productivity surge was in full bloom. Economists are furiously debating whether the visible innovations in the information sector are leading to productivity advances that are simply going undetected in the current productivity statistics.⁸⁶ Google’s chief economist Hal Varian, echoing Solow from a generation ago, asserts that “there is a lack of appreciation for what’s happening in Silicon Valley, because we don’t have a good way to measure it.”⁸⁷ It is also possible that current innovations will only lead to gains in labor productivity a decade from now. The OECD argues that the productivity= problem resides in firms far from the leading edge failing to adopt new technologies and systems.⁸⁸ There are plenty of sectors, such as health or education, in which technological innovations can yield significant productivity gains. It would foolhardy to predict the end of radical innovations.[¶] **But the possibility of a technological slowdown is a significant “known unknown.” And if such a slowdown occurs, it would have catastrophic effects on the public finances of the OECD economies.** Most of the developed world will have to support disproportionately large numbers of pensioners by 2036; **slower-growing economies will worsen the debt-to-GDP ratios of most of these economies, causing further macroeconomic stresses—and, potentially, political unrest from increasingly stringent budget constraints.**⁸⁹[¶] 2. Are there hard constraints on the ability of the developing world to converge to developed-country living standards?[¶] One of the common predictions made for the next generation economy is that China will displace the United States as the world’s biggest economy. This is a synecdoche of the deeper forecast that per capita incomes in developing countries will slowly converge towards the living standards of the advanced industrialized democracies. The OECD’s Looking to 2060 report is based on “a tendency of GDP per capita to converge across countries” even if that convergence is slow-moving. The EIU’s long-term macroeconomic forecast predicts that China’s per capita income will approximate Japan’s by 2050.⁹⁰ The Carnegie Endowment’s World Order in 2050 report presumes that total factor productivity gains in the developing world will be significantly higher than countries on the technological frontier. Looking at the previous twenty years of economic growth, Kemal Dervis posited that by 2030, “The rather stark division of the world into ‘advanced’ and ‘poor’ economies that began with the industrial revolution will end, ceding to a much more differentiated and multipolar world economy.”⁹¹[¶] Intuitively, this seems rational. The theory is that developing countries have lower incomes primarily because they are capital-deficient and because their economies operate further away from technological frontier. The gains from physical and human capital investment in the developing world should be greater than in the developed world. From Alexander Gerschenkron forward, development economists have presumed that there are some growth advantages to “economic backwardness”⁹²[¶] This intuitive logic, however, is somewhat contradicted by the “middle income trap.” Barry Eichengreen, Donghyun Park, and Kwanho Shin have argued in a series of papers that as an economy’s GDP per capita hits close to \$10,000, and then again at \$16,000, growth slowdowns commence.⁹³ This makes it very difficult for these economies to converge towards the per capita income levels of the advanced industrialized states. History bears this out. There is a powerful correlation between a country’s GDP per capita in 1960 and that country’s per capita income in 2008. In fact, more countries that were middle income in 1960 had become relatively poorer than had joined the ranks of the rich economies. To be sure, there have been success stories, such as South Korea, Singapore, and Israel. But other success stories, such as Greece, look increasingly fragile. Lant Pritchett and Lawrence Summers conclude that “past performance is no guarantee of future performance. Regression to the mean is the single most robust and empirical relevant fact about cross-national growth rates.”⁹⁴[¶] Post-2008 growth performance of the established and emerging markets matches this assessment. While most of the developing world experienced rapid growth in the previous decade, the BRICS have run into roadblocks. Since the collapse of Lehman Brothers, these economies are looking less likely to converge with the developed world. During the Great Recession, the non-Chinese BRICS—India, Russia, Brazil, and South Africa—have not seen their relative share of the global economy increase at all.⁹⁵ China’s growth has also slowed down dramatically over the past few years. Recent and massive outflows of capital suggests that the Chinese economy is headed for a significant market correction. The collapse of commodity prices removed another source of economic growth in the developing world. By 2015, the gap between developing country growth and developed country growth had narrowed to its lowest level in the 21st century.⁹⁶[¶] What explains the middle income trap? Eichengreen, Park and Shin suggest that “slowdowns coincide with the point in the growth process where it is no longer possible to boost productivity by shifting additional workers from agriculture to industry and where the gains from importing foreign technology diminish.”⁹⁷ But that is insufficient to explain why the slowdowns in growth have been so dramatic and widespread.[¶] There are

multiple candidate explanations. One argument, consistent with Paul Krugman's deconstruction of the previous East Asia "miracle,"⁹⁸ is that much of this growth was based on unsustainable levels of ill-conceived capital investment. Economies that allocate large shares of GDP to investment can generate high growth rates, particularly in capital-deficient countries. The sustainability of those growth rates depends on whether the investments are productive or unproductive. For example, high levels of Soviet economic growth in the 1950s and 1960s masked the degree to which this capital was misallocated. As Krugman noted, a lesser though similar phenomenon took place in the Asian tigers in the 1990s. It is plausible that China has been experiencing the same illusory growth-from-bad-investment problem. Reports of overinvestment in infrastructure and "ghost cities" are rampant; according to two Chinese government researchers, the country wasted an estimated \$6.8 trillion in "ineffective investment" between 2009 and 2013 alone.⁹⁹ A political explanation would be rooted in the fact that many emerging markets lack the political and institutional capabilities to sustain continued growth. Daron Acemoglu and James Robinson argue that modern economies are based on either "extractive institutions" or "inclusive institutions."¹⁰⁰ Governments based on extractive institutions can generate higher rates of growth than governments without any effective structures. It is not surprising, for example, that post-Maoist Chinese economic growth has far outstripped Maoist-era rates of growth. Inclusive institutions are open to a wider array of citizens, and therefore more democratic. Acemoglu and Robinson argue that economies based on inclusive institutions will outperform those based on extractive institutions. Inclusive institutions are less likely to be prone to corruption, more able to credibly commit to the rule of law, and more likely to invest in the necessary public goods for broad-based economic growth. Similarly, Pritchett and Summers conclude that institutional quality has a powerful and long-lasting effect on economic growth—and that "salient characteristics of China—high levels of state control and corruption along with high measures of authoritarian rule—make a discontinuous decline in growth even more likely than general experience would suggest."¹⁰¹ A more forward-looking explanation is that the changing nature of manufacturing has badly disrupted the 20th century pathway for economic development. For decades, the principal blueprint for developing economies to become developed was to specialize in industrial sectors where low-cost labor offered a comparative advantage. The resulting growth from export promotion would then spill over into upstream and downstream sectors, creating new job-creating sectors. Globalization, however, has already generated tremendous productivity gains in manufacturing—to the point where industrial sectors do not create the same amount of employment opportunities that they used to.¹⁰² Like agriculture in the developed world, manufacturing has become so productive that it does not need that many workers. As a result, many developing economies suffer from what Dani Rodrik labels "premature deindustrialization." If Rodrik is correct, then going forward, manufacturing will fail to jump-start developing economies into higher growth trajectories—and the political effects that have traditionally come with industrialization will also be stunted.¹⁰³ Both the middle-income trap and the regression to the mean observation are empirical observations about the past. There is no guaranteeing that these empirical regularities will hold for the future. Indeed, China's astonishing growth rate over the past 30 years is a direct contradiction of the regression to the mean phenomenon. It is possible that over time the convergence hypothesis swamps the myriad explanations listed above for continued divergence. But in sketching out the next generation global economy, the implications of whether regression to the mean will dominate the convergence hypothesis are massive. Looking at China and India alone, the gap in projections between a continuation of past growth trends and regression to the mean is equivalent to \$42 trillion—more than half of global economic output in 2015.¹⁰⁴ This gap is significant enough to matter not just to China and India, but to the world economy. As with the developed world, a growth slowdown in the developing world can have a feedback effect that makes more growth-friendly reforms more difficult to accomplish. As Chinese economic growth has slowed, Chinese leader Xi Jinping's economic reform plans have stalled out in favor of more political repression. Follows the recent playbook of Russian President Vladimir Putin, who has added diversionary war as another distracting tactic from negative economic growth. Short-term steps towards political repression will make politically risky steps towards economic reform that less palatable in the future. Instead, the advanced developing economies seem set to double down on strategies that yield less economic growth over time.³ Will geopolitical rivalries or technological innovation alter the patterns of economic interdependence? Multiple scholars have observed a secular decline in interstate violence in recent decades.¹⁰⁵ The Kantian triad of more democracies, stronger multilateral institutions, and greater levels of cross-border trade is well known. In recent years, international relations theorists have stressed that commercial interdependence is a bigger driver of this phenomenon than previously thought.¹⁰⁶ The liberal logic is straightforward. The benefits of cross-border exchange and economic interdependence act as a powerful brake on the utility of violence in international politics. The global supply chain and "just in time" delivery systems have further imbricated national economies into the international system. This creates incentives for governments to preserve an open economy even during times of crisis. The more that a country's economy was enmeshed in the global supply chain, for example, the less likely it was to raise tariffs after the 2008 financial crisis.¹⁰⁷ Similarly, global financiers are strongly interested in minimizing political risk; historically, the financial sector has staunchly opposed initiating the use of force in world politics.¹⁰⁸ Even militarily powerful actors must be wary of alienating global capital. Globalization therefore creates powerful pressures on governments not to close off their economies through protectionism or military aggression. Interdependence can also tamp down conflicts that would otherwise be likely to break out during a great power transition. Of the 15 times a rising power has emerged to challenge a ruling power between 1500 and 2000, war broke out 11 times.¹⁰⁹ Despite these odds, China's recent rise to great power status has elevated tensions without leading to anything approaching war. It could be argued that the Sino-American economic relationship is so deep that it has tamped down the great power conflict that would otherwise have been in full bloom over the past two decades. Instead, both China and the United States have taken pains to talk about the need for a new kind of great power relationship. Interdependence can help to reduce the likelihood of an extreme event—such as a great power war—from taking place. Will this be true for the next generation economy as well? The two other legs of the Kantian triad—democratization and multilateralism—are facing their own problems in the wake of the 2008 financial crisis.¹¹⁰ Economic openness survived the negative shock of the 2008 financial crisis, which suggests that the logic of commercial liberalism will continue to hold with equal force going forward. But some international relations

scholars doubt the power of globalization's pacifying effects, arguing that **interdependence is not a powerful constraint**.¹¹¹ Other analysts go further, arguing that **globalization exacerbates financial volatility—which in turn can lead to political instability and violence**.¹¹² A different counterargument is that **the continued growth of interdependence will stall out**. Since 2008, for example, the growth in global trade flows has been muted, and global capital flows are still considerably smaller than they were in the pre-crisis era. In trade, this reflects a pre-crisis trend. Between 1950 and 2000, trade grew, on average, more than twice as fast as global economic output. In the 2000s, however, trade only grew about 30 percent more than output.¹¹³ In 2012 and 2013, trade grew less than economic output. The McKinsey Global Institute estimates that global flows as a percentage of output have fallen from 53 percent in 2007 to 39 percent in 2014.¹¹⁴ **While the stock of interdependence remains high, the flow has slowed to a trickle**. The Financial Times has suggested that **the global economy has hit "peak trade."**¹¹⁵ If economic growth continues to outstrip trade, then **the level of interdependence will slowly decline, thereby weakening the liberal constraint on great power conflicts**. And **there are several reasons** to posit **why interdependence might stall out**. One possibility is due to innovations reducing the need for traded goods. For example, in the last decade, higher energy prices in the United States triggered investments into conservation, alternative forms of energy, and unconventional sources of hydrocarbons. All of these steps reduced the U.S. demand for imported energy. A future in which compact fusion engines are developed would further reduce the need for imported energy even more.¹¹⁶ A more radical possibility is the development of technologies that reduce the need for physical trade across borders. Digital manufacturing will cause the relocation of production facilities closer to end-user markets, shortening the global supply chain.¹¹⁷ An even more radical discontinuity would come from the wholesale diffusion of 3-D printing. The ability of a single printer to produce multiple component parts of a larger manufactured good eliminates the need for a global supply chain. As Richard Baldwin notes, "Supply chain unbundling is driven by a fundamental trade-off between the gains from specialization and the costs of dispersal. This would be seriously undermined by radical advances in the direction of mass customization and 3D printing by sophisticated machines...To put it sharply, transmission of data would substitute for transportation of goods."¹¹⁸ As 3-D printing technology improves, the need for large economies to import anything other than raw materials concomitantly declines.¹¹⁹ **Geopolitical ambitions could reduce economic interdependence even further**.¹²⁰ **Russia and China have territorial and quasi-territorial ambitions beyond their recognized borders, and the United States has attempted to counter what it sees as revisionist behavior** by both countries. **In a low-growth world, it is possible that leaders of either country would choose to prioritize their nationalist ambitions over economic growth**. More generally, **it could be that the expectation of future gains from interdependence—rather than existing levels of interdependence—constrains great power bellicosity**.¹²¹ **If great powers expect that the future benefits of international trade and investment will wane, then commercial constraints on revisionist behavior will lessen**. All else equal, **this increases the likelihood of great power conflict going forward**.

Sentencing reforms solve by reducing mandatory minimums

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As U.S. incarceration rates have grown in recent decades, policy-makers, researchers, and advocates have become increasingly concerned about the equity and effectiveness of current incarceration policies. **A growing body of economic research supports the bipartisan case for sentencing reform, through both reducing mandatory minimum sentences and increasing judicial discretion in sentencing**. The current Department of Justice recently instructed federal prosecutors to "charge and pursue the most serious and readily provable offense" in all but exceptional cases. This policy reverses course from prior guidance that encourages the use of judiciary discretion in applying mandatory minimum sentences for low-level non-violent drug offenders. **More rigorous application of sentencing guidelines will subject a larger share of defendants to longer periods of incarceration, and increase the total incarcerated population in the U.S. This policy is unlikely to be cost-effective and will provide limited public safety benefits while increasing the costs borne by the least advantaged groups of our society**.

Scenario two is Prison Spending—

Mandatory minimums create immediate and continued escalation of prison population which contributes to prison overcrowding

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Research over the last four decades reveals the costly consequences of federal and state adoption of harsh mandatory minimum sentences and sentence enhancements for drug offenses and weapon offenses. Ample empirical evidence exists, assessing the ramifications of federal and state adoption and expansion of mandatory minimum sentences, drug and weapon sentence enhancements, and three strikes laws and truth-in-sentencing policies. Empirical evidence indicates that these ramifications are multi-pronged. The prongs include dramatic increases in length of imprisonment (USSC, 1991, 2011; Sutton, 2013; Meierhoefer, 1992; Tonry, 2013), immediate and continued escalation of the prison population (USSC, 1991, 2011; Tonry, 2011), the social and economic costs of this escalation, measured in terms of diminished opportunities for successful re entry into society after lengthy imprisonment, long-term disruption of family relations for low-level drug offenders, prison overcrowding (e.g. Caulkins et al., 1997; Parsons et al., 2015; Levy-Pounds, 2007), and race/ethnicity sentencing disparity tied to differential access to relief from application of mandatory minimums (USSC, 1991, 2011; Albonetti, 2002a, 2002b). The latter consequence is particularly troublesome in light of reform goals of uniformity, proportionality, and truth-in-sentencing. The very legitimacy of the criminal justice system is challenged when evidence indicates practices that shield some offenders from mandatory minimum penalties and sentence enhancements, while providing no such shield to similarly situated defendants. Research indicates that implementation of federal and state mandatory minimum penalties and truth-in-sentencing policies resulted in immediate increases in prison populations. Parsons et al. describe three decades during which the New York State prison population escalated by almost "sixfold and the number of people incarcerated for drug offenses grew by a factor of nearly 15 — skyrocketing from 1,488 people in 1973 to 22,266 in 1999" (2015:5). Furthermore, Parsons et al. (2015) found substantial racial disparities in the New York state prison population by 2001. They note "For every white male between the ages of 21 and 44 incarcerated for a drug offense, there were 40 African American males, also in the prime of life, behind bars for the same reason" (Parsons et al., 2015:15). In a special report to Congress, the U.S. Sentencing Commission (hereafter, Commission) indicated the following direct impact of sentencing guidelines and mandatory minimum penalties enacted in 1986. They reported the following: a) b) c) reduction from 42.42% to 18.9% if offenders receiving probation with no confinement conditions, the pre-guidelines average prison time served of 15.3 months will increase to 28.7 months with sentences for violent offenses accounting for most of almost doubling of imposed length of imprisonment, the substantial increase in average length of imprisonment will be accounted for by the Anti-Drug Abuse Act of 1986 and the career criminal provision of the Sentencing Reform Act of 1984. (USSC, 1991:113) The Commission projected, "... that the Anti-Drug Abuse Act of 1986 along with a relatively low rate of increases in prosecutions resulted in a doubling of the federal prison population over a ten-year period; from approximately 42,000 inmates in 1987 to approximately 85,000 inmates in 1997" (USSC, 1991:115). The Commission further noted that, "If one looks at the high growth scenario, the increase due to the drug laws is ever more dramatic; from a population of 42,000 to one of approximately 108,000" (USSC, 1991:115). Early Commission projections iden-

tified the Anti-Drug Abuse Act of 1986 and to a lesser degree, the career offender provision of the SRA of 1986, as the forces driving the dramatic increase in federal prison population during the late 1980s and the 1990s. The Commission's report to Congress in 1991 provided unquestionable evidence of the multi-dimensional cost of drug and weapon mandatory minimum penalties. Apparently, Congress was unmoved by the dramatic projected increases in prison population and the associated cost per inmate. The political climate, at both the federal and state level, was steeped in a "get tough with crime" agenda, with little or no interest in rolling back the number and punishment severity of mandatory minimum. In fact, during the decade of the 1990s, federal and state legislatures expanded mandatory minimum penalties. Twenty years later, the Commission produced a second report on the impact of mandatory minimum penalties on the federal prison population and on the operation of the federal criminal justice system (USSC, 2011). Using data provided by the Bureau of Justice Statistics (BJS), the Commission described the dramatic increase in the federal prison population at the end of each year from 1991 to 2009. Their report indicated that at the end of 1991 the federal prison population was 71,606 inmates and by the end of 2009, the prison population had grown to 208,188 inmates (USSC, 2011, see footnote 445:76). This increase in federal prison population reflects a tripling of the inmate population over the 20-year period, largely due to mandatory minimum provisions. The Commission (2011) empirically documented substantial changes in the length for offenders convicted of an offense carrying a mandatory minimum penalty for FY 1990 and FY 2010. The report notes that in FY 1990, sentences carrying relative higher mandatory minimum sentences, that is sentences greater than five years imprisonment, accounted for 43.5 percent of the mandatory minimum sentences imposed (USSC, 2011, see Figure 4—7:76). In FY 2010, the percentage of mandatory minimum sentences carrying greater than 5-year imprisonment represented 55 percent of the sentences carrying a mandatory minimum penalty (USSC, 2011, Figure 4—7:76). These findings reveal an 11.5 percent increase in offenses carrying extremely long terms of imprisonment — 10, 15, 20+ years (USSC, 2011). These findings provide further evidence-based understanding of the dramatic impact of federal mandatory minimum penalties over the ten-year period (USSC, 2011).

Overcrowded prisons overstretch state budget investments in education---freeing up funds ensures reinvestments that spur long-term economic growth

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Most states' prison populations are at historic highs after decades of extraordinary growth; in 36 states, the prison population has more than tripled as a share of the state population since 1978. This rapid growth, which continued even after crime rates fell substantially in the 1990s, has been costly. Corrections spending is now the third-largest category of spending in most states, behind education and health care. If states were still spending on corrections what they spent in the mid-1980s, adjusted for inflation, they would have about \$28 billion more each year that they could choose to spend on more productive investments or a mix of investments and tax reductions. Even as states spend more on corrections, they are underinvesting in educating children and young adults, especially those in high-poverty neighborhoods. At least 30 states are providing less general funding per student this year for K-12 schools than before the recession, after adjusting for inflation; in 14 states the reduction exceeds 10 percent. Higher education cuts have been even deeper: the average state has cut higher education funding per student by 23 percent since the recession hit, after adjusting for inflation. Eleven states spent more of their general funds on corrections than on higher education in 2013. And some of the states with the biggest education cuts in recent years also have among the nation's highest incarceration rates. This is not sound policy. State economies would be much stronger over time if states invested more in education and other areas that can boost long-term economic growth and less in maintaining extremely high prison populations. The economic health of many low-income neighborhoods, which face disproportionately high incarceration rates, could particularly improve if states reordered their spending in such a way. States could use the freed-up funds in a number of ways, such as expanding access to high-quality preschool, reducing class

sizes in high-poverty schools, and revising state funding formulas to invest more in high-poverty neighborhoods.

Education funding is key to solve extinction

Murphy 16

Innovation Education Developing a curricula and systemic design strategies for innovation education in Newfoundland and Labrador. Ryan J. A. Murphy This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International 2.5 Canada license. To see the license go to <http://creativecommons.org/licenses/by-nc-sa/4.0/legalcode> or write to Creative Commons, 171 Second Street, Suite 300, San Francisco, California 94105, USA. Submitted to OCAD University in partial fulfillment of the requirements for the degree of Master of Design in Strategic Foresight & Innovation. Retrieved at academia, accessed 8/10/17, jmg

The apparent loneliness of humanity is an important prompt for another reason: total existential terror. One solution to the Fermi Paradox is called the Great Filter. The Great Filter theory suggests that the absence of advanced interstellar life in the universe is due to the fact that every civilization that reaches a certain stage of achievement is “filtered” by some unknown force(s). While many questions exist about the Great Filter theory, the most important question is arguably the most pragmatic (Hason, 1998): Does the Great Filter lie in our past, or have we yet to meet it? Many have speculated about the what the filter may actually be. Some cosmic demon? Simple bolide collisions? In my mind, only one possible threat is clearly on the horizon of the present day: ourselves. Indeed, it takes little more than a skim of Christakis’ (2006) continuous critical problems to identify several handy levers by which to assure our own self-destruction. In fact, it was announced on the day of this passage’s first writing that atmospheric carbon dioxide has reached 400ppm—making anthropogenic climate change a particularly salient option. But again, what does all of this have to do with education? I take it as intuitively true that many of Christakis’ continuous critical problems have only grown more untamed since he authored his list in 2006. This means **the world’s problems have become even harder to solve**, and it is becoming ever more paramount that we solve them. To do so requires that humanity work at its best. **We need solutions to carbon sequestration, efficient sustainable energies, safe parameters on artificial intelligence, overpopulation, epidemic superbacteria, and hundreds of other challenges that could threaten the prosperity and survival of humanity.** The brightest minds must find their way into roles that will allow them to develop true, implementable solutions to remediate and resolve these challenges. But—at the same time—other challenges such as the gap between rich and poor, discrimination, and many more create insurmountable barriers, preventing many from becoming those brightest minds. I believe that **the only solution to both of these categories of problems—existential threats and disabling barriers—is found in an accessible, effective education system.** This system would simultaneously help people find their niche while enabling them to achieve their maximum potential in that niche. No, **not everyone will invent the technology that will allow us to efficiently capture and store carbon from the atmosphere, but we all have a role to play in enabling those that do to succeed.** In sum: the Great Filter lies ahead of us, and only through excellent education systems will we have the capacity to get through it.

Economic decline causes nuclear war

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Several **recent works** on China and Sino–US relations **have made substantial contributions to the current understanding of how and under what circumstances a combination of nuclear deterrence and economic interdependence may reduce the risk of war between major powers.** At least four conclusions can be drawn from the review above: first, those who say that **interdependence may both inhibit and drive conflict** are right. **Interdependence raises the cost of conflict for all sides but asymmetrical or unbalanced dependencies and negative trade expectations may generate tensions leading to trade wars among interdependent states that in turn increase the risk of military conflict** (Copeland, 2015: 1, 14, 437; Roach, 2014). The risk may increase if one of the interdependent countries is governed by an inward-looking socio-economic coalition (Solingen, 2015); second, the risk of war between China and the US should not just be analysed bilaterally but include their allies and partners. Third party countries could drag China or the US into confrontation; third, in this context it is of some comfort that the three main economic powers in Northeast Asia (China, Japan and South Korea) are all deeply integrated economically through production networks within a global system of trade and finance (Ravenhill, 2014; Yoshimatsu, 2014: 576); and fourth, **decisions for war and peace are taken by very few people, who act on the basis of their future expectations.** International relations theory must be supplemented by foreign policy analysis in order to assess the value attributed by national decision-makers to economic development and their assessments of risks and opportunities. **If leaders** on either side of the Atlantic **begin to seriously**

fear or anticipate their own nation's decline then **they may blame** this on **external dependence**, **appeal to anti-foreign sentiments**, **contemplate the use of force to gain** respect or **credibility**, **adopt protectionist policies**, and ultimately **refuse to be deterred by** either **nuclear arms** or prospects of socioeconomic calamities. Such a **dangerous shift could happen abruptly**, i.e. under the instigation of actions by a third party – or against a third party.¶ Yet as long as there is both nuclear deterrence and interdependence, the tensions **in East Asia** are unlikely to escalate to war. As Chan (2013) says, all states in the region are aware that they cannot count on support from either China or the US if they make provocative moves. **The greatest risk is not** that **a territorial dispute** leads to war under present circumstances **but that changes in the world economy** alter those circumstances in ways that **render inter-state peace** more **precarious**. If China and the US fail to rebalance their financial and trading relations (Roach, 2014) then **a trade war could result**, **interrupting transnational production networks**, **provoking social distress**, and **exacerbating nationalist emotions**. **This could have unforeseen consequences** in the field of security, **with nuclear deterrence remaining the only factor to protect the world from Armageddon, and unreliably so**. Deterrence could **lose its credibility**: one of the two **great powers might gamble** that the other **yield in a cyber-war or conventional limited war**, or third party countries might engage in conflict with each other, with a view to obliging Washington or Beijing to intervene.

1ac plan

Plan: The United States federal government should eradicate mandatory minimum penalties.

1ac disease adv

Advantage two is Disease—

Mass incarceration is the Achilles heel of combatting COVID-19---federal prisons are cluster sites and ideal incubators for spreading in rural communities

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FOR THE PAST several decades, rural America's economic lifeline has been the construction and operation of prisons and immigrant detention centers, both public and for-profit. The 1980s saw the collapse of American manufacturing and a farm crisis that ripped through the countryside. **Mass incarceration** was well-timed to fill the gap, producing jobs where they were needed. But those **lifelines have transformed into vectors for coronavirus, putting rural communities at risk of outbreaks.** For many Americans, the **plight of prisoners produces little sympathy.** But in a twist on JFK — "Freedom is indivisible, and when one man is enslaved, all are not free" — **those outside the prison walls are not immune from what goes on inside them.** Those jobs that made the campuses so attractive to local communities are staffed by people who go in and out each day — and what they bring with them could make all the difference in communities where hospitals were already shutting down, a trend exacerbated by Covid-19. **It's next to impossible to social distance in jails and prisons. "Correctional facilities are overcrowded, often badly,"** explained Aaron Littman, a UCLA School of Law professor who focuses on jail conditions. "It's important to remember that **when we say overcrowded, we mean dozens of people sleeping inches within each other's faces. They're using the same toilets. Most don't have access to liquid hand soap. In short, they are ideal sites for incubating respiratory viruses.**" Guards and other **jail staff have to share tight spaces and physically handle the prisoners — and then they go home** at night. In some rural areas, there are not many other career choices beyond **working in a jail or prison.** The average national salary for a prison correctional officer is \$47,013. In an essay titled "Building a Prison Economy in Rural America," public policy researcher Tracy Huling points out that **there are more prisoners than farmers in some swaths of the United States.** She notes that in the 1990s, a new prison or jail sprung up in a rural area at a rate equivalent to every 15 days. So it's not surprising that there have been outbreaks in areas that don't otherwise have risk factors, such as crowded public transportation in densely populated urban centers. Marion County, Ohio, has 2,332 confirmed cases, in a population of 66,501. The Marion County prison is currently the top cluster site in the country by far, according to a New York Times analysis. "When I read about institutions like in Ohio that are able to test a lot of people, **of the positive, most are asymptomatic**," Cheshire County jail superintendent Richard Van Wickler said. "My god, **how do you possibly protect other inmates and staff?**" Last week, PBS reported that **of federal prisoners who had been tested, 70 percent were found to have the coronavirus.** A breakdown of New York Times data tracking Covid-19 cluster sites on April 26 revealed that **out of 100 top cluster sites, 35 were tied to correctional facilities.** In comparison, 28 percent of infections were linked to nursing homes. Those numbers are astounding when you consider that nursing home residents are at much higher risk of serious infection because of their age, while incarcerated people and prison staff vary in age. **Seven of the top 10 cluster sites are linked to American prisons or jails.** As the Marshall Project reported, so-called **prison towns** like Palestine, Texas, where correctional facilities are a community's primary employer, **have already seen an explosion of cases.** An ACLU report released last week estimates that **100,000 more people will die** because of America's crowded jails. "The United States' unique obsession with **incarceration has become our Achilles heel** when it comes to **combating** the spread of **COVID-19,**" the ACLU concluded.

Models that predict the curve of the outbreak do not assume mass incarceration which is becoming the epicenter of the epicenter

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THERE IS A fundamental flaw in the models that Trump administration officials have used to project the curve of the coronavirus outbreak as it rips across the United States. Those models were based on other countries' experiences with the virus — from China to Italy — and do not account for a uniquely American risk factor: mass incarceration.

There are currently 2.3 million people incarcerated in U.S. jails and prisons. The U.S. accounts for 4 percent of the world's population and 21 percent of its prisoners. While incarcerated people have been released in trickles across the country as the U.S. has become the global epicenter of the pandemic, those releases are hardly making a dent in the density of prisons and jails, and they pale in comparison to the tens of thousands of people freed by other countries with far lower incarceration rates. So far, at least 295 men and women in the U.S. have died after contracting the virus behind bars — a figure that is climbing by the day and remains “dramatically underreported,” according to experts who have been tracking it. The official number of positive cases reveals little beyond how few incarcerated people are being tested: In the handful of facilities with higher test rates, most people were found to be positive. Eight of the 10 largest outbreaks in the country are in prisons and jails.

But mass incarceration is not only causing people to die of Covid-19 behind bars. **As corrections facilities become hot spots, the virus is also rapidly spreading into the surrounding communities.** A new model released in April by the American Civil Liberties Union suggests that when jails are accounted for, estimates of the death toll are off by at least 100,000. And that's for jails alone — not prisons or immigration detention facilities.

It's not hard to imagine why **prisons and jails have quickly become the epicenter of the epicenter.**

“There's **no such thing as social distancing in prison,**” a man incarcerated in a New York state maximum security facility wrote to me. “How can an incarcerated individual maintain social distancing in a population of over 2,000?” he added. “With 240 men to a block, minus the guards? With every man dwelling on all sides of one another, constantly?”

“This is a time bomb,” another incarcerated man wrote. “The mess halls and lines traveling to and from, among other places, are areas of mass density. They have cut down the amount of people per table, but we're still less than 2 feet part.”

Mandatory minimums create a prime environment for disease spread even if it is not COVID---federal action is necessary otherwise states will exceed population capacities making diseases inevitable

Daniel 4/25—Staff Reporter at the Center Square [Nyamekye Daniel, Eddie Burkhalter, Micah Danney and Martin Pratt, 4/25/2020, The Center Square, “Locked in Crisis: Packed by strict sentencing laws, prisons brace for COVID-19”, https://www.thecentersquare.com/alabama/locked-in-crisis-packed-by-strict-sentencing-laws-prisons-brace-for-covid-19/article_980eaf30-84ae-11ea-91e8-d797121dfc8d.html] AMarb

(The Center Square) – As the U.S. reels from an unprecedented global health emergency, many people have been sounding alarms about the magnified threat posed to people in prison.

With the highest incarceration rates in the world, America's overcrowded prisons are prime environments for a contagion such as the novel coronavirus to spread.

Mandatory minimum sentencing laws have played a major role in creating this scenario, according to criminal justice reform advocates. Designed to prevent lenient sentences for certain crimes, they removed judges' ability to exercise discretion. Long criticized as forcing arbitrary and outsized punishments on citizens convicted of a wide array of crimes, many of them nonviolent, such laws have been rolled back in many states.

Congress has bipartisan support for an overhaul of federal sentencing guidelines, but legislation has been stalled for several years.

Reforms have been passed by states in a piecemeal fashion as the laws were instituted. Alabama, Georgia and North Carolina are among the states critics said have been slow to embrace meaningful corrective action.

Alabama's and Georgia's prison systems consistently have ranked among the 10 most overcrowded in the nation. Other problems also have been blamed for extreme conditions in their facilities. In North Carolina, staffing shortages resulted in temporary closures of three state prisons last year.

North Carolina's prison population more than doubled between 1980 and 2016, the state's American Civil Liberties Union chapter said. The inmate population is projected to exceed capacity by 2025. The situation is similar in Alabama and Georgia.

All three states have been slow to implement the substantive criminal justice reforms that are needed to reverse mass incarceration and keep communities safer, advocates say. Critics point to the tremendous expense of warehousing so many people, as well as the threat to society represented by prison conditions. A nonviolent offender is more than 80 percent more likely to commit a violent crime after serving time.

The COVID-19 pandemic has thrust the situation to the forefront of the national conversation amid a chronically frenzied news cycle.

Eradicating mandatory minimums is essential to avoid the diminishing returns it creates

--fourth paragraph is at: crime da

Eisen 15—Director of the Brennan Center's Justice Program where she leads the organization's work to end mass incarceration [Lauren-Brooke Eisen, 6/9/2015, "Mandatory Minimum Sentences — Time to End Counterproductive Policy", Brennan Center for Justice, <https://www.brennancenter.org/our-work/analysis-opinion/mandatory-minimum-sentences-time-end-counterproductive-policy>] AMarb

One of the drivers of mass incarceration is mandatory minimum sentences. These laws have replaced judicial discretion across a wide range of offenses. Their aim is to keep those who violate certain laws in prison for longer periods of time. In Massachusetts, this is expensive. The Bay State spends roughly \$45,000 per inmate a year on food, clothes and prison costs. Massachusetts spent more than \$1 billion in 2015 on prisons alone.

In an effort to alleviate the state's expensive mass incarceration problem, several bills that seek to repeal all mandatory minimum sentences for drug offenses will be reviewed by the Joint Committee on the Judiciary at a public hearing today.

Some of these proposals have garnered the support of numerous law enforcement officials, academics, and recently, the chief justice of the Supreme Judicial Court, Ralph D. Gants. Just last month, Chief Justice Gants called for an end to mandatory minimums and argued that mandatory minimum sentences eliminate a judge's ability to impose a sentence that is individualized for each defendant. Ending mandatory minimums, Gants said, "makes fiscal sense, justice sense, policy sense and common sense."

According to the nonpartisan think tank Massachusetts Institute for a New Commonwealth, 70 percent of prisoners under the jurisdiction of the Department of Correction incarcerated for a drug offense were sentenced under mandatory minimum statutes. Across the nation, 77 percent of Americans support eliminating mandatory minimum sentences for nonviolent offenders. And in Massachusetts, a 2014 public opinion poll found that support for mandatory minimum sentences for any crime has fallen to 11 percent.

There is compelling evidence that mandatory minimums do not make us safer. In 2009, Rhode Island repealed all mandatory minimum sentencing laws for drug offenses. After mandatory minimum sentences for nonviolent drug offenses were repealed, Rhode Island's prison population decreased but, more importantly, its violent crime rate decreased as well. There is little to no evidence that longer prison terms for many nonviolent offenders make us safer. Indeed, it can have the precise opposite effect. There is vast research indicating that prison can cause inmates to commit more crimes upon release partly because low-level offenders find themselves surrounded by more serious and violent offenders in prison and partly because they have trouble finding employment and reintegrating into society upon release.

Using incarceration as a one-size fits all punishment for crime has passed the point of diminishing returns. Policy makers would be wise to focus on legislation to eradicate mandatory minimum penalties. Massachusetts has the opportunity to serve as a model for other states to learn that long prison sentences are not equated with an increase in public safety.

COVID causes extinction---it's worse than defense assumes

Dr. Sharad **Kulkarni 20**, posted by Jeevottama Health which offers advice straight from Dr. Sharad Kulkarni, 1/27/2020, A STUDY OF CORONA VIRUS AND CURE, <https://medium.com/@drsharadjh/a-study-of-corona-virus-and-cure-f89d717b76c4>

The world is unsettled by the outbreak of corona virus lately. Although supposed to be mild infection in most cases, the present outbreak does not appear to be so. What started in the Wuhan region of China continues to spread across the world.

The threat is rising day by day and experts are taking important measures. The virus is already showing its signs in Europe and USA. While China has set a target to build two new hospitals within 10 days to accommodate the increasing number of infected patients, US has started evacuating its employees from Consulates. The virus is posing a global threat to human survival. Under such scenario it is important to have a detailed understanding of the disease and the cure. This particular virus causes disease in mammals and birds causing diarrhoea among birds and animals while respiratory infections among humans. Typically the virus is non-lethal with symptoms and actions that of common flu. It is hard to distinguish between lethal and non-lethal virus. Among a group of viruses it is particularly some special anomaly which is making it potentially lethal. Corona virus, which manifests in human body as respiratory tract illness causes pretty generic symptoms. Usual signs of the contamination include runny nose, headache, cough, sore throat and fever. With pretty common and generic symptoms it is hard to distinguish the virus from that of common cold and flu. However, the problem arise with a few particular types among the group of viruses. Two human corona virus MERS-CoV and SARS-CoV is known to be the powerful among the group of viruses. It is these that are prone to be lethal and bring about fatal consequences with mortal danger. The virus behind the outbreak in China is recognised by WHO as a new type (2019-nCoV) that is causing all the mayhem. The strain has not been identified in human beings ever before making it potentially unfamiliar in nature. There are a few variances that distinguish this new lethal virus from the common ones. The usual upper respiratory tract infection is absent in this type of infection. Also in spite of lack of respiratory infection, the patients report severe difficulty in breathing which makes it artificial respiratory aids a-must-have. Being a completely new type of virus, there are no possible vaccines to have been invented by doctors. Meanwhile proper medical assistance is

suggested by health experts to prevent worsening scenario. Doctors are advising the usage of hot shower, complete physical rest and lot of fluids to alleviate the symptoms of the virus.

Pandemics cause extinction---multiple diseases at once creates a global spread

Piers **Millett 17**, Consultant for the World Health Organization, PhD in International Relations and Affairs, University of Bradford, Andrew Snyder-Beattie, "Existential Risk and Cost-Effective Biosecurity", Health Security, Vol 15(4), <http://online.liebertpub.com/doi/pdfplus/10.1089/hs.2017.0028>

Historically, disease events have been responsible for the greatest death tolls on humanity. The 1918 flu was responsible for more than 50 million deaths,¹ while smallpox killed perhaps 10 times that many in the 20th century alone.² The Black Death was responsible for killing over 25% of the European population,³ while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world's population at the time.⁴ It is an open question whether **a future pandemic could result in outright human extinction** or the irreversible collapse of civilization. A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread worldwide to **remote populations**, overcome rare genetic resistances, and evade detection, cures, and **countermeasures**. Even evolution itself may work in humanity's favor: Virulence and transmission is often a trade-off, **and so evolutionary pressures** could push against maximally lethal wild-type pathogens.^{5,6} While **these arguments** point to a very small risk of human extinction, **they do not rule the possibility out** entirely. Although rare, **there are recorded instances of species going extinct due to disease**—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.^{7,8} There **are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population** without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and the Western Abenaki (which suffered a staggering 98% loss of population). In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But **many diseases are proof of principle that each worst-case attribute can be realized independently**. For example, **some diseases exhibit** nearly a **100% case fatality** ratio in the absence of treatment, such as rabies or septicemic plague. **Other diseases have a track record of spreading to virtually every human community worldwide**, such as the 1918 flu,¹⁰ and **seroprevalence studies indicate that other pathogens**, such as chickenpox and HSV-1, **can successfully reach over 95% of a population**.^{11,12} **Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits**. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.¹³⁻¹⁷ Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.¹⁸ In addition to transmissibility and lethality, **studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified** as well.¹⁹⁻²

Independently, diseases cause nuclear war

Gregory **Koblentz 10**, Deputy Director of the Biodefense Program @ GMU, Assistant Professor in Public and International Affairs, March, "Biosecurity Reconsidered: Calibrating Biological Threats and Responses." International Security Vol. 34, No. 4, p. 96-132

Pandemics are disease outbreaks that occur over a wide geographic area, such as a region, continent, or the entire world, and infect an unusually high proportion of the population. Two pandemic diseases are widely cited as having the potential to **pose direct threats to the stability** and security of states: HIV/AIDS and influenza. HIV/AIDS. Since it was first identified in 1981, HIV is estimated to have killed more than 25 million people worldwide. According to the Joint UN Program

on HIV/AIDS (UNAIDS), the percentage of the global population with HIV has stabilized since 2000, but the overall number of people living with HIV (33 million in 2007) has steadily increased. Sub-Saharan Africa continues to bear a disproportionate share of the global burden of HIV with 35 percent of new HIV infections, 75 percent of AIDS deaths, and 67 percent of all people living with HIV. 116 Scholars have identified four ways that HIV/AIDS can affect security. 117 First, the disproportionately high prevalence of HIV/AIDS in the armed forces of some nations, particularly in Southern Africa, may compromise the ability of those states to defend themselves from internal or external threats. Militaries with high rates of HIV infection may suffer losses in combat readiness and effectiveness as infected troops are transferred out of combat roles, units lose cohesion because of high turnover rates, middle management is "hollowed out" by the early death or disability of officers, and defense budgets are strained because of rising medical costs and the need to recruit and train replacements for sick soldiers. The second threat is that HIV/AIDS will **undermine the international peace-keeping system**. Nations with militaries with high rates of HIV/AIDS will be **unable to provide troops for international peacekeeping missions; nations with healthy militaries may be unwilling to commit troops to peacekeeping operations** in nations with a high prevalence rate of HIV/AIDS; **and war-torn nations may be unwilling to accept peacekeepers for fear they will spread the disease in their country**. The third threat is that a "second wave" of **HIV/AIDS could strike large, strategically important countries such as China, India, and Russia**. These states, **which possess nuclear weapons and** are important players in critical regions, also **suffer from internal security challenges that could be aggravated by a severe AIDS epidemic** and its **attendant socioeconomic disruptions**. The fourth threat is that the high prevalence of HIV in less developed countries will cause **political instability** that **could degenerate into internal conflict** or spread into neighboring countries. Unlike most diseases, which affect primarily the poor, young, and old, HIV/AIDS strikes young adults and members of the middle and upper classes. By sickening and killing members of society when they should be their most productive, HIV/AIDS has inflicted the "single greatest reversal in human development" in modern history.

*****case*****

econ advantage

solvency—sentencing reform

Sentencing reform is key otherwise prison spending and overcrowding will increase through 2023

Gargano 15—Editorial assistant at Young Voices, a policy project of the international nonprofit Students For Liberty [Andrew Gargano, 4/29/2015, “Federal sentencing reform can reduce prison crowding and save money”, The Hill, <https://thehill.com/blogs/congress-blog/judicial/240340-federal-sentencing-reform-can-reduce-prison-crowding-and-save>] AMarb

However, if mandatory minimum sentencing reform is not passed, and the **prison population continues to rise** as expected, the federal government will need to build **16 more prisons at \$350 million each** in order to maintain the **36 percent overcrowding rate through 2023.**

internal/solvency—mandatory minimum + growth

Reforming mandatory minimums boosts economic growth---job growth, state budgets, and taxes

Wolf 19—serving his second term as Governor of Pennsylvania [Tom, 2/22/2019, “Fix the criminal justice system to open up our economy”, The Hill, <https://thehill.com/opinion/criminal-justice/431055-fix-the-criminal-justice-system-to-open-up-our-economy>] AMarb

A third of African American males are outright excluded from many job opportunities before even getting an interview. Tens of millions of Americans, from all places and heritages, experience the same built-in disadvantage in our workforce.

They all have a felony conviction. And even more Americans face the same discrimination from a misdemeanor or less.

According to a January 2018 report from Pew Charitable Trusts, the number of U.S. residents with a felony record increased significantly in every state between 1980 and 2010. The percentage of black males who have served time in prison was five times that of all Americans.

If we want a strong economy and stronger communities, this makes no sense.

The burden of mass incarceration has a negative effect on state budgets and an even bigger negative effect on society, where people with felony records struggle to get out of low-wage jobs.

Breaking laws must have consequences, but our criminal justice system needs to provide a pathway to individual justice through the opportunity to earn a second chance in our economy.

Anything less is a failure. And failing means more people reentering the criminal justice system and less stability for their families and our communities.

Given the stakes, criminal justice reform is a topic looked at through this pragmatic lens rather than a partisan one.

Pennsylvania is leading the nation with a steady advancement of bipartisan criminal justice reforms focused on removing barriers that prevent advancement in the workforce: the nation's first 'Clean Slate' law; creating a fair-chance hiring policy for state government; and eliminating driver's license suspensions for non-driving infractions; all while seeing consecutive annual decreases in our prison population and a drop in crime.

Our Clean Slate legislation is really a jobs bill. With this new law, a person's misdemeanor record will not shut them out the possibilities for a good job, career advancement, obtaining housing or getting into college.

According to Community Legal Services in Philadelphia, since the law went into effect in late December 2018, more than 7,500 Pennsylvanians have requested help from attorneys offering their services free of charge via the My Clean Slate PA initiative; and 25,000 have visited mycleanslatepa.com to see how they might benefit from wiping their record clean.

In the land of the free, a criminal record should not mean a lifetime disqualification from opportunity – opportunity to build a better life after a mistake, for oneself and one's family.

A criminal justice leader in our legislature, Rep. Jordan Harris, says, “We shouldn't judge any person by only their worst day.”

He's right.

Our government shouldn't. And neither should our economy.

Tens of millions of Americans face a lifetime of economic stagnation due to a past conviction. This isn't right. And it is not smart.

Government at all levels, and businesses and institutions across sectors must embrace common sense solutions to help the previously incarcerated through access to opportunity.

Smart criminal justice reforms will put more people to work and make our communities safer and more prosperous. It also will save taxpayers millions, if not billions, of dollars by reducing the cost of mass incarceration and the trail of social problems that follows it.

Criminal justice reform means making lives better by ensuring rehabilitation is available for those who have paid for their mistakes. It means providing job or skills training, so people can move back into their communities and succeed. It means access to services, including mental health and substance use treatment, so they can have a future that doesn't involve returning to prison.

We have a lot of work to do.

We need to reform excessive sentencing guidelines, mandatory minimums, and probation and parole terms that trap people in the criminal justice system for too long. We need true bail reform — an end to our modern-day debtors' prisons — and better access to legal counsel.

We need a nationwide clean slate program that speeds up record-sealing, and expansion of fair-chance hiring that removes the lifetime stigma of a past failure.

State and local governments need to step up. The federal government must enact more smart criminal justice reforms, including more funding for specialty courts and diversion programs. Businesses, nonprofits and institutions must commit to giving qualified people with a past conviction a fair shot at jobs.

Since I became governor, Pennsylvania has reformed our criminal justice system so that it leads to better individual outcomes, lower taxpayer costs, less crime and fewer victims. We've taken the first steps to correct the decades-long errors that have left behind people with skills, talent, intellect and endless potential.

These efforts are working. But our commonwealth and the nation have a lot more to do. We must continue towards building the criminal justice system that's fair and effective at rehabilitation.

internal—education funding trade off

Prison overspending trades off with education funding

Hanna 16—San Jose State University [Peter, “Human Cattle: Prison Overpopulation and the Political Economy of Mass Incarceration”, Themis: Research Journal of Justice Studies and Forensic Science: Vol. 4 , Article 3, <https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1037&context=themis>] AMarB

Over the past few decades, the costs associated with maintaining America’s prison system have grown at such a rapid pace that local, state, and federal governments now **struggle to keep up with related expenses**, even as results fail to reflect the large amount of spending. According to Kirchhoff (2010) in a report from the Congressional Research Service, in 2006, \$68.7 billion was spent on the corrections system—a staggering increase of 660% from 1982. In 2008, those costs continued to grow, totaling nearly \$75 billion for federal, state, and local governments combined. Evidence points towards public spending on the prison system yielding diminishing returns, with crime rates stabilizing, or even decreasing, since the early 1990s, while associated costs continue to grow (Kirchhoff, 2012). Maintaining such a prison system becomes even more costly when one considers that other state agencies and programs also suffer from the strain that the corrections system puts on the overall state budget. According to Kirchhoff’s report (2010), state governments, on average, spend about 7% of their general fund revenues on incarceration. During the past three decades correctional spending has risen nearly twice as fast as state spending on education, health care, and social service programs” (pp. 2-3). In California, for instance, “the prison system now consumes a larger share of general revenues (10%) than higher education (7%)” (Kirchhoff, 2010, p. 3). As MacDonald (2013) puts it, “California’s costly correctional system financially affects every other state government program,” (p. 15) depriving taxpayers of benefits and government services that they might have otherwise enjoyed. Henrichson and Delaney (2012) offer another way of viewing prison expenses by factoring in indirect costs, or expenses not included in state corrections budgets, that taxpayers shoulder by keeping inmates in prison. Taking into account “(1) costs that are centralized for administrative purposes, such as employee benefits and capital costs; (2) inmate services funded through other agencies, such as education and training programs; and (3) the cost of under-funded pension and retiree health care plans,” (Henrichson & Delaney, 2012, p. 3), it was found that, across 40 states, taxpayers actually paid \$39 billion in maintaining their state prison systems. Compared to the \$33.5 billion shown in state corrections budgets, this figure reveals that, in these 40 states, \$5.4 billion was spent from other state budgets and programs to maintain prisons. In other words, maintaining the prison system not only results in other government programs receiving a smaller share of the overall budget, but also directly diminishes the budgetary allocations for those programs by incurring additional costs.

internal—long sentences

Mandatory minimums cause longer sentences

Urban Institute 16—Urban Institute analysis of fiscal year (FY) 1994–2014 Bureau of Prisons and US Sentencing Commission data and refer to the standing prison population at the end of FY 2014 [Research by Samuel Taxy and Julie Samuels Writing by Cybele Kotonias, Samuel Taxy, Julie Samuels, and Serena Lei Development and Design by Hannah Recht and John Wehmann Editing by Daniel Matos, 2016, “Charting a Path Forward for Federal Corrections Reform”, <http://apps.urban.org/features/corrections-reform/>] AMarb

Mandatory minimums lead to longer sentences

Mandatory minimum sentences dictate penalties for certain drug crimes and other offenses, but many argue that they **are too inflexible and severe, sending people to prison for years for minor offenses or on technicalities**. Minimum penalties for drug offenses are based solely on the quantity of the drug and not whether the person charged used violence or played a big role in any drug trafficking organization.

Of the more than 90,000 people in federal prisons for drug offenses at the end of FY 2014, **59 percent were sentenced to a mandatory minimum penalty**. Another **19 percent** had been convicted of an offense subject to a mandatory minimum but were granted relief at sentencing.

Those convicted of drug offenses who had mandatory minimums applied at sentencing average **over 11 years in prison**, compared with about 6 years for drug offenses not subject to a mandatory minimum.

internal—us econ spillover

US slow-down goes global

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Because of its size and interconnectedness, developments in the US economy are bound to have important effects around the world. The US has the world’s single largest economy, accounting for almost a quarter of global GDP (at market exchange rates), one-fifth of global FDI, and more than a third of stock market capitalisation. It is the most important export destination for one-fifth of countries around the world. The US dollar is the most widely used currency in global trade and financial transactions, and changes in US monetary policy and investor sentiment play a major role in driving global financing conditions (World Bank 2016). At the same time, the global economy is important for the US as well. Affiliates of US multinationals operating abroad, and affiliates of foreign companies located in the US account for a large share of US output, employment, cross-border trade and financial flows, and stock market capitalisation. Recent studies have examined the importance of global growth for the US economy (Shambaugh 2016), the global impact of changes in US monetary policy (Rey 2013), or the global effect of changing US trade policies (Furman et al. 2017, Crowley et al. 2017). It is likely that there will be shifts in US growth, monetary and fiscal policies, as well as uncertainty in US financial markets. What will be the global spillovers? Our recent work (Kose et al. 2017) attempts to answer these questions: How synchronised are US and global business cycles? How large are global spillovers from US growth and policy shocks? How important is the global economy for the US? How synchronised are US and global business cycles? Business cycles in the US, other advanced economies (AEs), and emerging market and developing economies (EMDEs) have been highly synchronous (Figure 1.A). This partly reflects the strength of global trade and financial linkages of the US economy with the rest of the world, but also that global shocks drive common cyclical fluctuations. This was particularly the case at the time of the 2008-09 Global Crisis. It is not a new phenomenon, however. Although the four recessions the global economy experienced since 1960 (1975, 1982, 1991, and 2009) were driven by many problems in many places, they all overlapped with severe recessions in the US (Kose and Terrones 2015). Other countries tend to be in the same business cycle phase as the US roughly 80% of the time (Figure 1.B). The degree of synchronisation with US financial cycles is slightly lower, but still significant – credit, housing, and equity price cycles are in the same phase about 60% of the time. Although it is difficult to establish empirically whether the US economy leads business and financial cycle turning points in other economies, recent research indicates that the US appears to influence the timing and duration of recessions in many major economies (Francis et al. 2015). How large are global spillovers from US growth and policy shocks? A surge in US growth – whether due to expansionary fiscal policies or other reasons – could provide a significant boost to the global economy. Shocks to the US economy transmit to the rest of the world through three main channels. An acceleration in US activity can lift growth in trading partners directly through an increase in import demand, and indirectly by strengthening productivity spillovers embedded in trade.

impact—slow growth—terminal

Slow growth causes extinction

Richard N. Haass **13**, President of the Council on Foreign Relations, 4/30/13, “The World Without America,” <http://www.project-syndicate.org/commentary/repairing-the-roots-of-american-power-by-richard-n--haass>

Let me posit a radical idea: **The most critical threat** facing the United States now and **for the foreseeable future is not** a rising China, a reckless North Korea, a nuclear Iran, modern terrorism, or climate change. Although all of these constitute potential or actual threats, **the biggest challenges** facing the US **are its** burgeoning debt, crumbling infrastructure, second-rate primary and secondary schools, outdated immigration system, **and slow economic growth** – in short, **the domestic foundations of American power**. Readers in other countries may be tempted to react to this judgment with a dose of schadenfreude, finding more than a little satisfaction in America's difficulties. Such a response should not be surprising. The US and those representing it have been guilty of hubris (the US may often be the indispensable nation, but it would be better if others pointed this out), and examples of inconsistency between America's practices and its principles understandably provoke charges of hypocrisy. When America does not adhere to the principles that it preaches to others, it breeds resentment. But, like most temptations, the urge to gloat at America's imperfections and struggles ought to be resisted. People around the globe should be careful what they wish for. **America's failure to deal with its internal challenges would come at a steep price**. Indeed, the rest of the world's stake in American success is nearly as large as that of the US itself.

Part of the reason is economic. The US economy still accounts for about one-quarter of global output. **If US growth accelerates, America's capacity to consume other countries' goods and services will increase** thereby **boosting growth around the world**. At a time **when Europe is drifting and Asia is slowing, only the US** (or, more broadly, North America) **has the potential to drive global economic recovery**. The US remains a unique source of innovation. Most of the world's citizens communicate with mobile devices based on technology developed in Silicon Valley; likewise, the Internet was made in America. More recently, new technologies developed in the US greatly increase the ability to extract oil and natural gas from underground formations. This technology is now making its way around the globe, allowing other societies to increase their energy production and decrease both their reliance on costly imports and their carbon emissions. The US is also an invaluable source of ideas. Its world-class universities educate a significant percentage of future world leaders. More fundamentally, **the US has long been a leading example of what market economies and democratic politics can accomplish**. People and **governments around the world are far more likely to become more open if the American model is perceived to be succeeding**. Finally, **the world faces many serious challenges, ranging from** the need to halt **the spread of weapons of mass destruction, fight climate change and maintain a functioning world economic order that promotes trade and investment to regulating practices in cyberspace improving global health, and preventing armed conflicts**. **These problems will not simply go away or sort themselves out**. While Adam Smith's “invisible hand” may ensure the success of free markets, it **is powerless in the world of geopolitics**. **Order requires the visible hand of leadership** to formulate and realize **global responses to global challenges**. Don't get me wrong: None of this is meant to suggest that the US can deal effectively with the world's problems on its own. Unilateralism rarely works. It is not just that the US lacks the means; the very nature of contemporary global problems suggests that only collective responses stand a good chance of succeeding. But **multilateralism is much easier to advocate than to design and implement**. Right **now there is only one candidate for this role: the US. No other country has the necessary combination of capability and outlook**. This brings me back to the argument that **the US must put its house in order – economically**, physically, socially, and politically – **if it is to have the resources needed to promote order in the world**. Everyone should hope that it does: **The alternative to a world led by the US is not a world led by China, Europe, Russia, Japan, India, or any other country, but rather a world that is not led at all**. Such a world would almost certainly be **characterized by chronic crisis and conflict**. That would be bad not just for Americans, but **for the vast majority of the planet's inhabitants**.

impact—slow growth—china war

Continued slow growth causes diversionary conflict with China

John **Ross 17**, Senior Fellow at Chongyang Institute for Financial Studies, Renmin University of China, former Professor at Shanghai Jiao Tong University, 7/10/2017, “Trump's economy - cyclical upturn and long term slow growth”, <http://ablog.typepad.com/keytrendsinglobalisation/2017/07/trumps-economy-cyclical-upturn-and-long-term-slow-growth.html>

It is crucial for both economic and geopolitical perspectives to have an accurate analysis of trends in the US economy. The publication of the latest revised US GDP figures is therefore important as it provides the latest opportunity to verify these developments. This data confirms the fundamental trends in the US economy under Trump: The US remains locked in very slow medium and long-term growth – particularly in terms of per capita GDP growth. Due to extremely weak growth of the US economy in 2016 a purely short-term cyclical upturn is likely in 2017 - but any such short-term cyclical upturn will be far too weak to break out of this fundamental medium and long-term trend of US slow growth. This article analyses these economic trends in detail, considers some of their geopolitical consequences, and their impact on domestic US politics. US GDP and per capita GDP growth. In the 1st quarter of 2017 US GDP was 2.1% higher than in the first quarter of 2016. Making an international comparison to other major economic centres: US total GDP growth of 2.1% was the same as the EU's 2.1%. Making a comparison to the largest developing economies, US 2.1% growth was far lower than China's 6.9% or India's 6.2%. This data is shown in Figure 1. However, in terms of per capita GDP growth the US was the worst performing of the major international economic centres, because the US has faster population growth than any of these except India. US annual population growth is 0.7%, compared to 0.6% in China and 0.4% in the EU – India's is 1.3%. The result therefore, as Figure 2 shows, is that US per capita GDP growth in the year to the 1st quarter of 2017 was only 1.3% compared to the EU's 1.7%, India's 4.9% and China's 6.3%. In summary US per capita GDP growth is very weak – only slightly above 1%. Figure 1 image. Figure 2 image. Business cycle. In order to accurately evaluate the significance of this latest US data it is necessary to separate purely business cycle trends from medium/long term ones – as market economies are cyclical in nature failure to separate cyclical trends from long term ones may result in seriously distorted assessments. Purely cyclical effects may be removed by using a sufficiently long term moving average that cyclical fluctuations become averaged out and the long term structural growth rate is shown. Figure 3 therefore shows annual average US GDP growth using a 20-year moving average – a comparison to shorter term periods is given below. Figure 3 clearly shows that the fundamental trend of the US economy is long-term slowdown. Annual average US growth fell from 4.4% in 1969, to 4.1% in 1978, to 3.2% in 2002, to 2.2% by 1st quarter 2017. The latest US GDP growth of 2.1% clearly does not represent a break with this long-term US economic slowdown but is in line with it. Figure 3 image. Cycle and trend. Turning from long term trends to analysis of the current US business cycle, it may be noted that a 5-year moving average of annual US GDP growth is 2.0%, a 7-year moving average 2.1% and the 20-year moving average 2.2%. Leaving aside a 10-year moving average, which is greatly statistically affected by the severe recession of 2009 and therefore yields a result out of line with other measures of average annual growth of only 1.4%, US average annual GDP growth may therefore be taken as around 2% or slightly above. That is, fundamental structural factors in the US economy create a medium/long term growth rate of 2.0% or slightly above. Business cycle fluctuations then take purely short-term growth above or below this average. To analyse accurately the present situation of the US business cycle therefore recent growth must be compared with this long-term trend. Figure 4 therefore shows the 20-year moving average for US GDP growth together with the year on year US growth rate. This shows that in 2016 US GDP growth was severely depressed – GDP growth in the whole year 2016 was only 1.6% and year on year growth fell to 1.3% in the second quarter. By the 1st quarter of 2017 US year on year GDP growth had only risen to 2.1% - still below the 20-year moving average. As US economic growth in 2016 was substantially below average a process of 'reversion to the mean', that is a tendency to correct exceptionally slow or exceptionally rapid growth in one period by upward or downward adjustments to growth in succeeding periods, would be expected to lead to a short-term increase in US growth compared to low points in 2016. This would be purely for statistical reasons and not represent any increase in underlying or medium/long US term growth. This normal statistical process is confirmed by the acceleration in US GDP growth since the low point of 1.3% in the 2nd quarter 2016 – growth accelerating to 1.7% in 3rd quarter 2016, 2.0% in 4th quarter 2016 and 2.1% in 1st quarter 2017. Given the very depressed situation of the US economy in 2016 therefore some increase in speed of growth may be expected in 2017 for purely statistical reasons connected to the business cycle. Figure 4. The economic and domestic US political conclusions of the trends shown in the latest US data are therefore clear. US economic growth in 2016 at 1.6% was so depressed below even its long term average that some moderate upturn in 2017 is likely. President Trump's administration may of course claim 'credit' for the likely short-term acceleration in US growth in 2017 but any such short-term shift is merely a normal statistical process and would not represent any acceleration in underlying US growth. Only if growth continued sufficiently strongly and for a sufficiently long period to raise the medium/long term rate average could it be considered that any substantial increase in underlying US economic growth was occurring. This fall of US

per capita GDP growth to a low level clearly **has major political implications** within the US and underlies recent domestic political events. Very low US per capita growth, accompanied by increasing economic inequality, has resulted in US median wages remaining below their 1999 level – this prolonged stagnation of US incomes explaining recent intense political disturbances in the US around the sweeping aside of the Republican Party establishment by Trump, the strong support given to a candidate for president declaring himself to be a socialist Sanders, current sharp clashes among the US political establishment etc.¶ Even a short-term cyclical upturn in the US economy, however, is likely to be translated into increased economic confidence by US voters. This may give some protection to Trump despite current sharp political clashes in the US with numerous Congressional investigations of President related issues and virtually open campaigns by mass media such as the New York Times and CNN to remove the President. The latest opinion poll for the Wall Street Journal showed that men believed the economy had improved since the Presidential election by 74% to 25%, while women believed by 49% to 48% that the economic situation had not improved.¶ In terms of geopolitical consequences affecting China:¶ The short term moderate cyclical upturn in the US economy which is likely in 2017 will aid China's short term economic growth – particularly as it is likely to be synchronised with a moderate cyclical upturn in the EU. Both trends aid China's exports¶ Nevertheless, **due to the very low medium and long-term US growth rate the US will not be able to play the role of economic locomotive of the G20**. In addition to economic fundamentals IMF projections are that in the next five years China's contribution to world growth will be substantially higher than the US. It is therefore crucial China continues to push for economic progress via the G20 and China has the objective possibility to play a leading role in this.¶ **Very slow growth in the US** in the medium and longer term **creates a permanent temptation to the US political establishment to attempt to divert attention from this by reckless military action or 'China bashing'**. China's foreign policy initiatives to seek the best possible relations with the US are extremely correct but **the risks from such negative trends in the US situation, and** therefore of **sharp turns in US foreign policy, must also be assessed**.

US-China tensions rising now – aggressive actions escalate to nuke war

Polina **Tikhonova 17**, Reporter, MA from Oxford University, citing Bruce G. Blair, the National Bureau of Asian Research, and Union of Concerned Scientists, 7/27/2017, "If Trump Orders A Nuclear Strike On China, Here's What Happens", <https://www.valuewalk.com/2017/07/trump-orders-nuclear-strike-china/>

The fact **that Trump** now **has the obedience of the U.S. Pacific Fleet chief** in the hypothetical, yet possible, decision to launch nuclear strikes against Beijing **makes the whole let's-nuke-China scenario even faster and easier** to execute.¶ **Less than five minutes**. This is the approximate time that would elapse from President Trump's decision to launch a nuclear strike against China to shooting intercontinental ballistic missiles out of their silos, according to Bloomberg estimations. The publication, citing former Minuteman missile-launch officer **Bruce G. Blair**, also **estimates that it would take about 15 minutes** to fire submarine missiles from their tubes.¶ While the expert predicts that there might be some minor hiccups in the let's-nuke-China scenario – like some of the top brass trying to talk Trump out of launching a nuclear strike – it appears that **it would be easier for the President to nuke an enemy than expected now that he has the public support from the commander of the U.S. Navy's Pacific Fleet**.¶ US vs China Tensions Rising, But Is Nuclear War Imminent?¶ The mere thought of a nuclear war between the U.S. and China – the world's two biggest militaries – sounds intimidating. **Amid strained relations between Washington and Beijing, and with Trump recently giving U.S. Navy more freedom in South China Sea, the territory that China considers vital to its national and security interests, the possibility of the two nations going to a nuclear war cannot be ruled out** anymore.¶ **With Trump pledging to rein in China's aggressive territorial expansion** in the South China Sea during his presidential campaign, the **Trump administration has made quite a few moves that could be pushing the two nations to the point of no return**. In May, **Trump ordered the U.S. Navy to conduct a freedom-of-navigation operation** in the disputed area, which Beijing claims in its entirety despite the Philippines, Malaysia, Brunei, Vietnam and Taiwan also claiming parts of the disputed region.¶ **Earlier this month, the Trump administration sent an even scarier war message to Beijing to challenge its military buildup on the artificial islands in the South China Sea**. A U.S. destroyer passed through the international flashpoint in the South China Sea, a move that prompted a furious response from Chinese President Xi Jinping, who warned his American counterpart of "negative factors" in U.S.-China relations. The Chinese Foreign Ministry lambasted the incident as a "serious political and military provocation."¶ US vs China War Would Be 'Disastrous For Both'¶ Just last week, Trump approved the Pentagon's plan to challenge Chinese claims in the South China Sea, where Beijing has been actively building reefs into artificial islands capable of hosting military planes. Breitbart News's Kristina Wong exclusively reported that the President approved the plan to check China over its ongoing militarization of and actions in the South China Sea, a move that will most likely further stain U.S.-China relations.¶ **The latest heated exchange of**

hostile gestures between Beijing and Washington cannot but make experts wonder: what would happen if the U.S. and China went to war? That **would be “disastrous** for both sides – politically, economically, and militarily,” according to VICE citing senior vice president for political and security affairs at the National Bureau of Asian Research, Abraham Denmark.¶ **While the two nations continue working together to prevent a potential nuclear threat from China’s neighbor – North Korea – it seems like an even bigger nuclear conflict is brewing between Washington and Beijing.**¶ ‘Increased’ Possibility of Nuclear War¶ In ValueWalk’s recent comparison of the U.S., Chinese and Russian militaries, it was concluded that the outcome of any war involving the U.S. and China is quite impossible to predict, as there’s no telling what would be the scope and duration of the military confrontation and if nuclear weapons would be used.¶ It’s also unclear if Russia would join forces with its arguably one of the biggest allies – China. If it did, China’s chances of winning a war against Washington would considerably soar. After all, there are plenty of potential flashpoints in the relations between Washington and Beijing, notably Taiwan and the South China Sea. The U.S. has in its possession about 6,800 nuclear warheads – the world’s second largest nuclear arsenal after Russia – while China has only 270 nukes, according to recent estimations by the Arms Control Association.¶ According to a report by the Union of Concerned Scientists, published last year, the U.S. going to “nuclear war with China is not inevitable – but the possibility that it could occur has increased.” However, with Washington and Beijing not being able to find common ground on such a vital issue for China’s national and security interests as the South China Sea, and **with Trump ordering more actions that further strain U.S.-China relations, the risk of nuclear war between the world’s two biggest militaries could skyrocket.**

impact—slow growth—us leadership

Independently, slower growth wrecks US leadership which is a prerequisite to solving all impacts

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A large portion of the burden of creating and maintaining order at the regional or global level will fall on the United States. This is inevitable for several reasons, only one of which is that the United States is and will likely remain the most powerful country in the world for decades to come. The corollary to this point is that no other country or group of countries has either the capacity or the mind-set to build a global order. Nor can order ever be expected to emerge automatically; there is no invisible hand in the geopolitical marketplace. Again, a large part of the burden (or, more positively, opportunity) falls on the principal power of the day. There is more than a little self-interest at stake. The United States cannot remain aloof, much less unaffected by a world in disarray. Globalization is more reality than choice. At the regional level, the United States actually faces the opposite problem, namely, that certain actors do have the mind-set and means to shape an order. The problem is that their views of order are in part or in whole incompatible with U.S. interests. Examples would include Iran and ISIS in the Middle East, China in Asia, and Russia in Europe. It will not be an easy time for the United States. The sheer number and range of challenges is daunting. There are a large number of actors and forces to contend with. Alliances, normally created in opposition to some country or countries, may not be as useful a vehicle in a world in which not all foes are always foes and not all friends are always friendly. Diplomacy will count for a great deal; there will be a premium on dexterity. Consultations that aim to affect the actions of other governments and their leaders are likely to matter more than negotiations that aim to solve problems. Another reality is that the United States for all its power cannot impose order. Partially this reflects what might be called structural realities, namely, that no country can contend with global challenges on its own given the very nature of these challenges. The United States could reduce its carbon footprint dramatically, but the effect on global climate would be modest if India and China failed to follow suit. Similarly, on its own the United States cannot maintain a world trading system or successfully combat terrorism or disease. Adding to these realities are resource limits. The United States cannot provide all the troops or dollars to maintain order in the Middle East and Europe and Asia and South Asia. There is simply too much capability in too many hands. Unilateralism is rarely a serious foreign policy option. Partners are essential. That is one of the reasons why sovereign obligation is a desirable compass for U.S. foreign policy. Earlier I made the case that it represents realism for an era of globalization. It also is a natural successor to containment, the doctrine that guided the United States for the four decades of the Cold War. There are basic differences, however. Containment was about holding back more than bringing in and was designed for an era when rivals were almost always adversaries and in which the challenges were mostly related to classical geopolitical competition.¹ Sovereign obligation, by contrast, is designed for a world in which sometime rivals are sometime partners and in which collective efforts are required to meet common challenges. Up to this point, we have focused on what the United States needs to do in the world to promote order. That is what one would expect from a book about international relations and American foreign policy. But a focus on foreign policy is not enough. National security is a coin with two sides, and what the United States does at home, what is normally thought of as belonging to the domestic realm, is every bit as much a part of national security as foreign policy. It is best to understand the issue as guns and butter rather than guns versus butter. When it comes to the domestic side, the argument is straightforward. In order to lead and compete and act effectively in the world, the United States needs to put its house in order. I have written on what this entails in a book titled Foreign Policy Begins at Home.² This was sometimes interpreted as suggesting a turn away from foreign policy. It was nothing of the sort. Foreign policy begins at home, but it ends there only at the country's peril.³ Earlier I mentioned that the United States has few unilateral options, that there are few if any things it can do better alone than with others. The counterpart to this claim is that the world cannot come up with the elements of a working order absent the United States. The United States is not sufficient, but it is necessary. It is also true that the United States cannot lead or act effectively in the world if it does not have a strong domestic foundation. National security inevitably requires significant amounts of human, physical, and financial resources to draw on. The better the United States is doing economically, the more it will have available in the way of resources to devote to what it wants and needs to do abroad without igniting a divisive and distracting domestic debate as to priorities. An additional benefit is that respect for the United States and for the American political, social, and economic model (along with a desire to emulate it) will increase only if it is seen as successful. The most basic test of the success of the

model will be economic growth. U.S. growth levels may appear all right when compared with what a good many other countries are experiencing, but they **are below** what is needed and fall short of what is possible. There is no reason why the United States is not growing in **the range of 3 percent or even higher** other than what it is doing and, more important, not doing.⁴

The US is key---it solves hotspots that go nuclear

Kenneth **Lieberthal 12**, Brookings John L. Thornton China Center director, "The Real National Security Threat: America's Debt", 7-10, <http://www.brookings.edu/research/opinions/2012/07/10-economy-foreign-policy-lieberthal-ohanlon>

Alas, globalization and automation trends of the last generation have increasingly called the American dream into question for the working classes. Another decade of underinvestment in what is required to remedy this situation will make an isolationist or populist president far more likely because much of the country will question whether an internationalist role makes sense for America — especially if it costs us well over half a trillion dollars in defense spending annually yet seems correlated with more job losses. Lastly, **American economic weakness undercuts U.S. leadership abroad. Other countries sense our weakness** and wonder about our purport 7ed decline. If this perception becomes more widespread, and the case that we are in decline becomes more persuasive, **countries will begin to take actions that reflect their skepticism about America's future. Allies and friends will doubt our commitment and may pursue nuclear weapons** for their own security, for example; **adversaries will sense opportunity and be less restrained in throwing around their weight** in their own neighborhoods. **The crucial Persian Gulf and Western Pacific regions will likely become less stable. Major war will become more likely.** When running for president last time, **Obama eloquently articulated big foreign policy visions: healing America's breach with the Muslim world, controlling global climate change, dramatically curbing global poverty through development aid, moving toward a world free of [and] nuclear weapons.** These were, and remain, worthy if elusive goals. However, for Obama or his successor, there is now **a much more urgent big-picture issue: restoring U.S. economic strength. Nothing else is really possible if that fundamental prerequisite to effective foreign policy is not reestablished.**

impact—econ decline

Economic crisis causes global war---defense is wrong

Qian **Liu 18**, Managing Director of Greater China for The Economist Group, previously director of the global economics unit and director of Access China for the Economist Intelligence Unit, PhD in economics from Uppsala University, Sweden, 11/13/18, “The next economic crisis could cause a global conflict. Here's why,” <https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why/>

The response to the 2008 economic crisis has relied far too much on monetary stimulus, in the form of quantitative easing and near-zero (or even negative) interest rates, and included far too little structural reform. This means that the next crisis could come soon – and pave the way for a large-scale military conflict.

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict.

The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates.

But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.

Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment.

The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008.

In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929.

As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy.

If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard's Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war.

For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun.

To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.

According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels.

This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis.

Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world's unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump's US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen.

Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington, considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

at: covid thumper

COVIDs economic impact is overhyped---prefer expert economists

Sharma 20—Chief Global Strategist at Morgan Stanley Investment Management and the author of The Ten Rules of Successful Nations [Ruchir, May/June 2020, “The Comeback Nation: U.S. Economic Supremacy Has Repeatedly Proved Declinists Wrong”, 99 Foreign Aff. 70, Accessed through the Wake Forest Library] AMarb

For the first time since at least the 1850s, when record keeping began, the United States traversed a full decade without suffering a single recession. Although many Americans were initially disappointed with the pace of the recovery, the United States grew significantly faster than other developed economies, and faster than many developing economies, as well. Defying the many declinist forecasts—one major global bank predicted in 2010 that China would overtake the United States by 2020—the United States actually expanded its share of global GDP during the 2010s, from 23 percent to 25 percent. The 2020s have opened with the sudden shock of a global pan- demic. Economists are downgrading their growth forecasts for countries all over the world, and the United States' record-long economic expansion is at risk of coming to an abrupt end. But there is little evidence to suggest that the downturn will hit the United States disproportionately hard. As of this writing, the U.S. stock market has fallen less than most other stock markets, and investors have bid up the U.S. dollar given its safe-haven status.

at: link turn—penal sector jobs

Penal sector job growth is minimal

Thompson 12—historian on faculty of the University of Michigan in Ann Arbor in the departments of Afro-American and African Studies, History, and the Residential College [Heather Ann Thompson, August 2012, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy”, New Labor Forum, <https://newlaborforum.cuny.edu/2012/08/06/the-prison-industrial-complex/>] AMarb

Even those who land a prison job, such as a security staff position, have benefitted from mass incarceration far less than they realize. Firstly, **jobs in the penal sector are far less well-paid than the jobs people used to have within the manufacturing and agricultural sectors.** This is particularly true when such jobs are in private prisons since companies, such as the CCA, **are particularly determined to keep wages low** (with guards making two-thirds of the salary paid in public prisons) **and the prison workplace union-free.**

Just as importantly, **prison employees can't count on the penal institutions to hire their kids**—the next generation of America's workers. Even though prison populations have expanded, cost-cutting measures on the part of the federal government, state and local municipalities, and private companies have simply meant more **prison overcrowding—not more prison jobs.** Indeed, according to the Bureau of Labor Statistics, the “employment of correctional officers is expected to grow by 5 percent from 2010 to 2020, **slower than the average for all occupations.**” Although guard unions are right to speak out against the fact that closing prisons too often leads to more severe overcrowding in the prisons that remain (and, thus, even more dangerous working conditions), they should not imagine that prison jobs in any way solve our nation's social and economic problems.

at: link turn—prison jobs

Jobs created by prisons have no increases on growth---prefer experts and studies

Thompson 12—historian on faculty of the University of Michigan in Ann Arbor in the departments of Afro-American and African Studies, History, and the Residential College [Heather Ann Thompson, August 2012, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy”, New Labor Forum, <https://newlaborforum.cuny.edu/2012/08/06/the-prison-industrial-complex/>] AMarb

Notwithstanding prison labor’s many deadly pitfalls, Americans remain susceptible to the idea that a large penal system might offer society other economic benefits. Isn’t it the case that putting prisoners to work increases their employment opportunities once they are released? Isn’t it true that building more prisons means finally providing jobs to Americans who lost their jobs to deindustrialization? Isn’t it possible that the rise of the carceral state has been good for unions that represent, say, guards? The answer to all of these questions is a categorical “No.”

Despite the many claims about the benefits of prison labor for the incarcerated, research by economists, criminologists, and sociologists alike shows clearly that the formerly incarcerated have significantly higher lifetime unemployment rates than other workers do— even when they have been used as a cheap labor force.

According to one estimate, “ex-offenders are only one-half to one-third as likely as non-offenders to be considered by employers” and even though “nearly half of the state inmate population and almost all of the federal inmate population has some sort of work assignment while incarcerated,” studies indicate that “these jobs do not always provide work experience that appeals to employers on the outside.”

at: link turn—private prison jobs

Private prisons impede growth

Thompson 12—historian on faculty of the University of Michigan in Ann Arbor in the departments of Afro-American and African Studies, History, and the Residential College [Heather Ann Thompson, August 2012, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy”, New Labor Forum, <https://newlaborforum.cuny.edu/2012/08/06/the-prison-industrial-complex/>] AMarb

Not only did counties that hosted new prisons receive “no economic advantage as measured by per capita income,” but to the extent that there were any differences between non-prison and prison counties, “the non- prison counties performed marginally better.” This point has been made by **more than one study**. Indeed, another one, from Washington State University, found that the construction of new private prisons actually **“impeded economic growth,”** in part because, **“as government funds are allocated to prison construction, other public programs suffer.”**

at: link turn—rural jobs

Prison jobs do not spur rural economic growth

Thompson 12—historian on faculty of the University of Michigan in Ann Arbor in the departments of Afro-American and African Studies, History, and the Residential College [Heather Ann Thompson, August 2012, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy”, New Labor Forum, <https://newlaborforum.cuny.edu/2012/08/06/the-prison-industrial-complex/>] AMarb

But what of the possible benefits of prison growth for workers living outside of prison walls? Might locking up more people at least improve the economic security of, say, those living in our nation’s most depressed rural regions?

No. As one study—representing twenty-five years of economic data from rural New York State—makes clear, there has been “no significant difference or discernible pattern of economic trends between the seven rural counties in New York that hosted a prison and the seven rural counties that did not host a prison.”

disease advantage

internal—mandatory minimum overcrowding

Mandatory minimums overcrowd prisons

Gargano 15—Editorial assistant at Young Voices, a policy project of the international nonprofit Students For Liberty [Andrew Gargano, 4/29/2015, “Federal sentencing reform can reduce prison crowding and save money”, The Hill, <https://thehill.com/blogs/congress-blog/judicial/240340-federal-sentencing-reform-can-reduce-prison-crowding-and-save>] AMarb

Today, the average federal prison is overcrowded by 36 percent. In 2013, the total federal prison system had a capacity rated to hold 132,221 inmates, yet there were 176,484 inmates behind federal bars that year. In some correctional institutions, the inmate population has been 50 percent over the rated capacity.

The reason for this overcrowding is in part due to drug laws, and more specifically, mandatory minimum sentencing laws. While initially intended to deter drug use with harsh sentences, mandatory minimums have instead led to a surge of non-violent drug offenders locked in federal penitentiaries without any possibility to negotiate their sentencing.

Drug offenders are now given prison time as part of their sentences at much higher rates than prior to 1986, when Congress established mandatory minimum drug sentences. Moreover, the length of time drug offenders spend in prison has largely increased — drug offenders in federal prison in 2013 were facing an average sentence of 11 years (at a cost of \$79 per day for each inmate).

In 2013, more people were admitted to federal prison under drug charges than for any other crime. In fact, nearly half of all current federal prisoners are serving sentences for drug crimes. A main reason for this is because mandatory minimums result in more guilty convictions by shifting discretion from judges to prosecutors. On top of this, drug laws are filled with disparities that result in inordinate convictions.

internal—incarceration=hotspot

Prisons are a hotspot for spreading

Geneva 5/7—reporter covering criminal justice, drug policy, immigration, and politics. She's written for the Washington Post, RollingStone.com, Glamour, Gothamist, Vice, and the Stanford Social Innovation Review. Prior to that she was deputy editor of The Influence, a web magazine about drug policy and criminal justice. For years she served as the managing editor of AlterNet.org [Tana, 5/7/2020, "AMERICA'S CROWDED PRISONS ARE ABOUT TO CREATE A CORONAVIRUS CRISIS IN RURAL AMERICA", The Intercept, <https://theintercept.com/2020/05/07/coronavirus-america-rural-prisons/>] AMarb

"Another reason jails and prisons are primary sites is that the quality of access to medical care is limited at the best of times and has gotten even worse now that resources are stretched thin. Staff, including medical staff, **getting sick. Officers escorting people to medical appointments are getting sick**," Littman said. Nursing home staff have medical training that can help keep themselves and their wards safer; guards and prison cooks don't. "We focus too much on viruses going into the prison. But **prison is an incubator**," said Dr. Peter L. Scharf, a public health expert at the Louisiana State University Health Sciences Center New Orleans. "The guards go in and out. Social distancing for correctional officers is a non-starter. They have to directly supervise the inmates. There's the issue of correctional officers bringing it into prison or bringing it home from the prison and possibly infecting their families and others."

impact—covid

The strain evolves by the hour

Ranu S. **Dhillon 20**, MD, is an instructor at Harvard Medical School and a physician at Brigham and Women's Hospital in Boston. He works on building health systems in developing countries and served as an advisor to the president of Guinea during the Ebola epidemic. He also helped in the medical response to Hurricane Katrina and the 2010 earthquake in Haiti, Devabhaktuni Srikrishna is the founder of Patient Knowhow, which curates patient educational content on YouTube. He worked on the response to the Ebola outbreak in Guinea, 1/28/2020, What Will It Take to Stop Coronavirus?, <https://hbr.org/2020/01/what-will-it-take-to-stop-coronavirus>

The **2019-nCoV epidemic is evolving by the hour. We need to move swiftly to respond** to this threat.

impact—pandemic—terminal

Pandemics cause extinction—the US is key

Dhillon et al 17

Ranu S. Dhillon (MD, is an instructor at Harvard Medical School and a physician at Brigham and Women's Hospital in Boston. He works on building health systems in developing countries and served as an advisor to the president of Guinea during the Ebola epidemic), Devabhaktuni Srikrishna (the founder of Patient Knowhow, which curates patient educational content on YouTube. He worked on the response to the Ebola outbreak in Guinea), and David Beier (is a managing director of Bay City Capital. He previously served in several leadership roles at the intersection of government, policy, and technology, including chief domestic policy advisor to then-Vice President Al Gore, vice president for government affairs and policy at Genentech, senior vice president of global government affairs at Amgen, and counsel to the U.S. House Judiciary Committee). "The World Is Completely Unprepared for a Global Pandemic." Harvard Business Review. March 15th, 2017. <https://hbr.org/2017/03/the-world-is-completely-unprepared-for-a-global-pandemic>

We fear it is only a matter of time before we face a deadlier and more contagious pathogen, yet the threat of a deadly pandemic remains dangerously overlooked. Pandemics now occur with greater frequency, due to factors such as climate change, urbanization, and international travel. Other factors, such as a weak World Health Organization and potentially massive cuts to funding for U.S. scientific research and foreign aid, including funding for the United Nations, stand to deepen our vulnerability. We also face the specter of novel and mutated pathogens that could spread and kill faster than diseases we have seen before. With the advent of genome-editing technologies, bioterrorists could artificially engineer new plagues, a threat that Ashton Carter, the former U.S. secretary of defense, thinks could rival nuclear weapons in deadliness. The two of us have advised the president of Guinea on stopping Ebola. In addition, we have worked on ways to contain the spread of Zika and have informally advised U.S. and international organizations on the matter. Our experiences tell us that the world is unprepared for these threats. We urgently need to change this trajectory. We can start by learning four lessons from the gaps exposed by the Ebola and Zika pandemics. **Faster Vaccine Development** The most effective way to stop pandemics is with vaccines. However, with Ebola there was no vaccine, and only now, years later, has one proven effective. This has been the case with Zika, too. Though there has been rapid progress in developing and getting a vaccine to market, it is not fast enough, and Zika has already spread worldwide. Many other diseases do not have vaccines, and developing them takes too long when a pandemic is already under way. We need faster pipelines, such as the one that the Coalition for Epidemic Preparedness Innovations is trying to create, to preemptively develop vaccines for diseases predicted to cause outbreaks in the near future. **Point-of-Care Diagnostics** Even with such efforts, vaccines will not be ready for many diseases and would not even be an option for novel or artificially engineered pathogens. With no vaccine for Ebola, our next best strategy was to identify who was infected as quickly as possible and isolate them before they infected others. Because Ebola's symptoms were identical to common illnesses like malaria, diagnosis required laboratory testing that could not be easily scaled. As a result, many patients were only tested after several days of being contagious and infecting others. Some were never tested at all, and about 40% of patients in Ebola treatment centers did not actually have Ebola. Many dangerous pathogens similarly require laboratory testing that is difficult to scale. Florida, for example, has not been able to expand testing for Zika, so pregnant women wait weeks to know if their babies might be affected. What's needed are point-of-care diagnostics that, like pregnancy tests, can be used by frontline responders or patients themselves to detect infection right away, where they live. These tests already exist for many diseases, and the technology behind them is well-established. However, the process for their validation is slow and messy. Point-of-care diagnostics for Ebola, for example, were available but never used because of such bottlenecks. **Greater Global Coordination** We need stronger global coordination. The responsibility for controlling pandemics is fragmented, spread across too many players with no unifying authority. In Guinea we forged a response out of an amalgam of over 30 organizations, each of which had its own priorities. In Ebola's aftermath, there have been calls for a mechanism for responding to pandemics similar to the advance planning and training that NATO has in place for its numerous members to respond to military threats in a quick, coordinated fashion. This is the right thinking, but we are far from seeing it happen. The errors that allowed Ebola to become a crisis replayed with Zika, and the WHO, which should anchor global action, continues to suffer from a lack of credibility. **Stronger Local Health Systems** International actors are essential but cannot parachute into countries and navigate local dynamics quickly enough to contain outbreaks. In Guinea it took months to establish the ground game needed to stop the pandemic, with Ebola continuing to spread in the meantime. We need to help developing countries establish health systems that can provide routine care and, when needed, coordinate with international responders to contain new outbreaks. Local health systems could be established for about half of the \$3.6 billion ultimately spent on creating an Ebola response from scratch. Access to routine care is also essential for knowing when an outbreak is taking root and establishing trust. For months, Ebola spread before anyone knew it was happening, and then lingered because communities who had never had basic health care doubted the intentions of foreigners flooding into their villages. The turning point in the pandemic came when they began to trust what they were hearing about Ebola and understood what they needed to do to halt its spread: identify those exposed and safely bury the dead. With Ebola and Zika, we lacked these four things — vaccines, diagnostics, global coordination, and local health systems — which are still urgently needed. However, prevailing political headwinds in the United States, which has played a key role in combatting pandemics around the world, threaten to make things worse. The Trump administration is seeking drastic budget cuts in funding for foreign aid and scientific research. The U.S. State Department and

U.S. Agency for International Development may lose over one-third of their budgets, including half of the funding the U.S. usually provides to the UN. The National Institutes of Health, which has been on the vanguard of vaccines and diagnostics research, may also face cuts. The Centers for Disease Control and Prevention, which has been at the forefront of responding to outbreaks, remains without a director, and, if the Affordable Care Act is repealed, would lose \$891 million, 12% of its overall budget, provided to it for immunization programs, monitoring and responding to outbreaks, and other public health initiatives. Investing in our ability to prevent and contain pandemics through revitalized national and international institutions should be our shared goal. However, if U.S. agencies become less able to respond to pandemics, leading institutions from other nations, such as Institut Pasteur and the National Institute of Health and Medical Research in France, the Wellcome Trust and London School of Hygiene and Tropical Medicine in the UK, and nongovernmental organizations (NGOs have done instrumental research and response work in previous pandemics), would need to step in to fill the void. There is no border wall against disease. **Pandemics are an existential threat on par with climate change and nuclear conflict.** We are at a critical crossroads, where we must either take the steps needed to prepare for this threat or become even more vulnerable. It is only a matter of time before we are hit by a deadlier, more contagious pandemic. Will we be ready?

impact—pandemic—war

Pandemics cause global conflicts

Daniel **Altman 10**, North Yard Economics and New York University. “Causal Effects of Epidemics on Conflict: A Summary of the Evidence.” February. http://www.danielaltman.com/data/Altman_EpidemicsConflict.pdf.

Epidemics have consequences that are immediate and obvious, and also some that are subtler. They cause illness, death, and emotional stress, but they also eliminate productive working years and break up the family unit. Through various channels, epidemics may contribute to conflict as well. The links between epidemics and conflict are manifold and complex. Because conflict is such an obstacle to development for poor countries, the links certainly merit study. What follows is a discussion of the relevant empirical evidence gathered to date. The most difficult issue in interpreting the links between epidemics and conflict is that of causality. One can imagine several possible relationships between epidemics and conflict, with causality flowing in both directions. An epidemic may lead to conflict if it erodes economic conditions to the point where people are desperate enough to attack a ruling elite or to grab for resources in neighboring countries. Epidemics may also foment a civil conflict if a government’s inability to deal with them reduces confidence in its leadership. An epidemic may also export conflict, if refugees fleeing the spread of disease cause instability in the countries where they settle. Conversely, conflicts may help epidemics to spread. Military forces and their supply networks can cover great distances during a campaign, taking a disease along with them. Sometimes they may use sex as a weapon, creating contagion through forced intimacy. Disease also spreads easily in military camps, where many people are backed together in conditions that are not always sanitary. There are indirect effects, too; if a country is involved in conflict, it may also have less money to pay for the public health interventions that could stop a disease’s transmission. There is one important distinction to draw between these two directions of causality. Conflicts may worsen an epidemic, but they cannot start one (except via a biological weapon, which is virtually unheard of). Epidemics, by contrast, may be able to spark a conflict on their own or in combination with other factors. Epidemics and conflicts are both difficult to stop once they start, but this difference makes the first direction of causality – from epidemic to conflict – particularly interesting.

2. Empirical Context¶ As Iqbal and Zorn [2010] note, there has been relatively little econometric study of the epidemics-to-conflict direction of causality. Plenty of anecdotal evidence has been collected, however, and experts from academia and policy have identified several actual channels through which epidemics can contribute to conflict. Most of these publications deal with links between epidemics and conflict in developing countries. Schneider and Moodie [2002], in a comprehensive policy paper, describe how HIV/AIDS can be a source of political tension, as in the case of the African National Congress, the ruling party in South Africa, which has split into factions over how to handle the epidemic. They note that civil servants in sub-Saharan Africa are more likely to be infected with HIV than the general population, which may further weaken government effectiveness. They also describe how the decimation of military forces by epidemics can decrease the strength of international peacekeeping forces, leading to a higher risk of conflict in countries that may not even be affected by the diseases in question. In a medical paper, de Waal and Whiteside [2003] report that the spread of HIV/AIDS can contribute to famine, which is a substantial risk factor for conflict. Sagala [2006] shows how epidemics might reduce the readiness of military forces and erode command structures, thus making a country more vulnerable to attack. Price-Smith et al. [2007] point out that the epidemics are raising the level of inequality in South Africa, which could create instability in the long term. Feldbaum et al. [2006] provide a useful summary of other, mainly non-econometric studies. There is also a substantial literature about how the epidemics-to-conflict direction of causality can affect the interests of wealthy countries. Gow [2002] and Joireman [2004], for example, explicitly address how epidemics in the developing world may threaten the national security of the United States. Pereira [2009] asserts that the President’s Emergency Plan for AIDS Relief, a major American program launched in 2003, is actually a counterinsurgency technology. These papers followed the identification of HIV/AIDS as a threat to national security by the United States in 2000, which was followed by similar language in Resolution 1308 of the United Nations Security Council that same year.

impact—pandemic—at: burnout

Super-spreaders from the U.S. overwhelm burnout.

Yaneer **Bar-Yam 16**, Professor and President, New England Complex System Institute; PhD in Physics, MIT. “Transition to extinction: Pandemics in a connected world.” July 3. <http://necsi.edu/research/social/pandemics/transition>.

Watch as one of the more aggressive—brighter red—strains rapidly expands. After a time it goes extinct leaving a black region. Why does it go extinct? The answer is that it spreads so rapidly that it kills the hosts around it. Without new hosts to infect it then dies out itself. That the rapidly spreading pathogens die out has important implications for evolutionary research which we have talked about elsewhere [1–7].

In the research I want to discuss here, what we were interested in is the effect of adding long range transportation [8]. This includes natural means of dispersal as well as unintentional dispersal by humans, like adding airplane routes, which is being done by real world airlines (Figure 2).

When we introduce long range transportation into the model, the success of more aggressive strains changes. They can use the long range transportation to find new hosts and escape local extinction. Figure 3 shows that the more transportation routes introduced into the model, the more higher aggressive pathogens are able to survive and spread.

As we add more long range transportation, there is a critical point at which pathogens become so aggressive that the entire host population dies. The pathogens die at the same time, but that is not exactly a consolation to the hosts. We call this the phase transition to extinction (Figure 4). With increasing levels of global transportation, human civilization may be approaching such a critical threshold.

In the paper we wrote in 2006 about the dangers of global transportation for pathogen evolution and pandemics [8], we mentioned the risk from Ebola. Ebola is a horrendous disease that was present only in isolated villages in Africa. It was far away from the rest of the world only because of that isolation. Since Africa was developing, it was only a matter of time before it reached population centers and airports. While the model is about evolution, it is really about which pathogens will be found in a system that is highly connected, and Ebola can spread in a highly connected world.

The traditional approach to public health uses historical evidence analyzed statistically to assess the potential impacts of a disease. As a result, many were surprised by the spread of Ebola through West Africa in 2014. As the connectivity of the world increases, past experience is not a good guide to future events.

A key point about the phase transition to extinction is its suddenness. Even a system that seems stable, can be destabilized by a few more long-range connections, and connectivity is continuing to increase.

So how close are we to the tipping point? We don't know but it would be good to find out before it happens.

While Ebola ravaged three countries in West Africa, it only resulted in a handful of cases outside that region. One possible reason is that many of the airlines that fly to west Africa stopped or reduced flights during the epidemic [9]. In the absence of a clear connection, public health authorities who downplayed the dangers of the epidemic spreading to the West might seem to be vindicated.

As with the choice of airlines to stop flying to west Africa, our analysis didn't take into consideration how people respond to epidemics. It does tell us what the outcome will be unless we respond fast enough and well enough to stop the spread of future diseases, which may not be the same as the ones we saw in the past. As the world becomes more connected, the dangers increase.

Are people in western countries safe because of higher quality health systems? Countries like the U.S. have highly skewed networks of social interactions with some very highly connected individuals that can be “superspreaders.” The chances of such an individual becoming infected may be low but events like a mass outbreak pose a much greater risk if they do happen. If a sick food service worker in an airport infects 100 passengers, or a contagion event happens in mass transportation, an outbreak could very well prove unstoppable.

add ons

disease advantage—food add on

Health risks to rural communities jeopardizes food supplies and safety

Claire **Fitch et al 17**, **Food Policy Program Manager, Johns Hopkins Center for a Livable Future; MPH, Johns Hopkins. **Carolyn Hricko, MPH, Johns Hopkins. **Robert Martin, Director of Food System Policy. “Public Health, Immigration Reform and Food System Change.” Johns Hopkins Center for a Livable Future. Spring. https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/_pdf/research/clf_reports/public-health-immigration-reform-and-food-system-change.pdf.

Reform of the United States’ immigration laws has been the subject of contentious debate and a policy issue since the Kennedy Administration. Such reform has direct implications for the production and processing of the U.S. food supply, which employs millions of immigrant workers. The advocacy organization Farmworker Justice estimates that 50-75% of the nation’s 2 million farmworkers* are currently undocumented—lacking citizenship and temporary worker visas—and approximately 80% of farmworkers are immigrants.¹ According to the U.S. Department of Labor, hundreds of thousands more are employed in the slaughter plants and processing facilities that are an integral part of our current industrial agricultural system.²

The plight of migratory workers—many of whom are undocumented immigrants—laboring to harvest U.S. produce was significantly brought to the public’s attention in November of 1960 with the release of the CBS Reports program, Harvest of Shame. Newspapers and magazine articles, documentaries, and news programs have continued to show the conditions under which migratory and/or undocumented workers toil and live, revealing hazards like exposure to pesticides, unsafe procedures in processing facilities, lack of access to health care, inadequate housing, and poverty.

In recent years, there has also been increasing recognition that the industrial produce and animal production and processing systems in the U.S. would collapse without the immigrant and migratory workforce. Former Secretary of Agriculture Tom Vilsack said at the Agriculture Outlook conference in 2013, “Agriculture relies to a great extent on immigrant labor, and everybody in this room understands and appreciates that a good deal of that labor isn’t necessarily in this country legally. And that has been the case for a long time...this is a risk to agriculture, and we are beginning to see the implications of that risk.”³ Agriculture industry representatives also recognize the fragility of a food system that relies on migratory labor and undocumented workers who may be here under temporary and/or unsafe circumstances; National Chicken Council President Mike Brown was quoted as saying, “We are manufacturers, wanting a stable and permanent workforce that can help sustain the rural communities where we do business.”⁴

The obstacles and inefficiencies of the immigration system, which effectively prohibit many workers in the U.S. from obtaining legal work authorization and an eventual path to citizenship, contribute to agricultural and meat processing workers’ increased health risks and lack of representation. In turn, these health risks and barriers to advocating for improved working conditions jeopardize the resiliency of the food system by maintaining an unstable and vulnerable workforce, which may threaten the supply and safety of food. A reformed immigration system must acknowledge immigrant workers’ vital role in the U.S. food system, prioritize occupational health and safety, and enable agricultural and meat processing workers to demand fair and safe working conditions. This paper presents the public health threats facing U.S. agricultural and meat processing workers and their families, and ultimately the general U.S. population, due to the inherent risks associated with the predominant industrial model’s production protocols and system structure. It also provides a review of the health effects associated with low wages, poor housing conditions, and other challenges typically facing agricultural and meat processing workers, and concludes with recommendations for the reform of immigration policies from a public health perspective.

Disruption in US food supply goes global---foments civil conflict

Aled W. Jones 16, and Alexander Phillips *Director, Global Sustainability Institute, Anglia Ruskin University; PhD, Cosmology, Cambridge. **Research Assistant, GSI. “Historic Food Production Shocks: Quantifying the Extremes.” *Sustainability* 8: 427.

Global food supply is now a complex system. The interconnected nature of inter-country food dependence has increased dramatically over the last few decades [8]. A globalised market can make the system itself more resilient to localised shocks when food can be sourced from alternative places not experiencing the particular shock. However, if there are systemic linked events in different regions or across a wide region, or an event is of sufficient size, then this system can be perversely more fragile [9,10]. In particular the tele-connected nature of extreme weather events is becoming an increasing focus of research [9] and while the short to medium term dynamics are not well understood at present it is important to develop methods that can use the outputs of these models to assess potential social impacts. These systemic risks involving significant global losses of food production could have major societal and economic impacts both through availability and price. Previous production shocks have been linked to major global events such as civil unrest and, in turn, major upheaval [11–13]. Understanding the historic causes and transmission of shock through to societal impact is key [14,15]. A recent study examining the evolution of trade networks over the period 1992–2009 concluded: The global food system does exhibit characteristics consistent with a fragile one that is vulnerable to self-propagating disruptions. That is, in a setting where countries are increasingly interconnected and more food is traded globally over the (last two decades), a significant majority of countries are either dependent on imports for their staple food supply or would look to imports to meet any supply shortfalls. [10] A crop production shock results in a global food supply shock through trade and export restrictions [16,17]. The responses of markets and governments to production shocks have been the subject of numerous studies since the 2007/08 price shocks [18–27] and range from short term speculation to more fundamental changes in policies. While food systems are both inherently local, particularly in the case of subsistence farming, and global a useful unit to explore production shocks is the country level. An extreme shock in food production will invariably involve a response by a government at country level [16,25] in an attempt to manage local price increases and the impact of the shock. Therefore, developing a detailed understanding of the impact of production shocks would initially necessitate an analysis at country level to allow a comparison across different studies. While it has been noted previously that the impact of food production shocks on an individual country do not seem to be correlated with whether that country is a net food importer or exporter

[11] local infrastructure and processes will of course play an important part including transport, storage, policy responses and subsidies [9]. A common method to identify production shocks is therefore a first step in assessing whether an extreme loss constitutes a risk for a particular country or not. There is now a substantial effort underway in academic communities to better model the dynamics of the global food system. However, a pre-requisite to these endeavours is to understand past production shocks and their impacts. A common baseline to identify and quantify these past shocks is needed in different studies areas to be compared. This paper attempts to present a method to quantify the size of previous global food production shocks to allow an agreed approach to their measurement and use. These production shocks can then be used as a basis for historic event analysis to aid with better model and parameter development in this space. The paper does not attempt to reproduce the work of others on physical climate or weather modeling to explore the underlying causes of these production shocks nor does it attempt to match individual loss events with past extreme events. Section 2 presents our method for defining production shocks. Section 3 presents the results and Section 4 discusses those results and the limitations of our method. Finally we present some conclusions. 1. Production Shock Quantification Method In this section, we firstly outline the data availability at country level and detail a method to create a consistent database of country level food production trends. We then propose a method of quantification to be applied to this data to identify production shocks. Ideally our method leads to a list of countries who have experienced a food production shock and the year in which this production shock occurs. This then allows further research into particular shocks to start from the same basis which is the intention of the work presented in this paper. Comparison of analysis of the impact of food production shocks requires a similar assessment of the size of a particular shock. In this paper we outline an approach to quantifying two scales of food production shock—country level and global. While food production takes place at very local levels, understanding the impact of a physical food production shock on social systems usually involves modelling the impact on food prices. Changes in food price usually come as a supply-demand response through export markets [28–31] and, therefore, country level analysis is the most appropriate to study, at least initially. We constrain our choice of shocks as defined by the Food and Agriculture Organization (FAO). Cereals are directly impacted by extreme weather events, through droughts, extreme rainfall and temperature, and quantifying this is a key first step in understanding future climate change impacts on food systems in general. We explore production shocks over annual cycles as a basis for the analysis. As a baseline we look at global cereal production data over the past 17 years. We take data from the Food and Agriculture Organization Corporate Statistical Database (FAOSTAT) [32] for world cereal production from 1995 to 2011 and use this data to plot a linear regression line. Figure 1 shows the data and regression line for world cereal production. As can be seen this shows an increase in global cereal production over this period. If we assume that the trend line represents cereal production under normal conditions then deviations from this trend represent production gains due to ideal conditions or losses due to less favourable conditions. The standard deviation of the differences between the real vs reported in FAOSTAT [32] and trend data is 5.84%. The largest production shock observed over this period was in 2002 with a 13% shock. Does 2002 represent a production shock? At what level should we categorise a production shock? Given global level data only and using this as a basis for trends it is difficult to see how an objective quantified measure based on statistical analysis is possible. Therefore, more detailed analysis on a country by country basis may offer a better method to define an objective statistical measure for production shocks. To identify food production shocks, yearly cereal production data for 187 countries from 1995 to 2011 was taken from FAOSTAT [32] totaling 3197 data points. To quantify the size of a shock we first need to identify the underlying trend for production for a particular country. From the data obtained, linear or polynomial regression lines for each of the countries' time series were calculated depending on the trends in the data to minimize the coefficient of determination (R-squared). The form of the regression lines can be seen from Equations (1) and (2) (equations omitted) where x is the year in the time series, β_1 and β_2 are coefficients of x , y is the estimated production data and c is a constant. The data obtained from these regression estimations smooths out any production shocks observed in the raw data. These trend lines are assumed to be the "normal" production for that country assuming no shocks. A percentage difference between the raw data and the regression data for each country was then calculated. This was done in two ways—as a percentage of that particular country's production and as a percentage of global production, as seen in Equations (3) and (4) (equations omitted) where DC is the country level percentage difference, DT is the world level percentage difference, y is the raw country production data point, y_t is the regression estimation for that country in that year and y_t is the sum of all the raw data points for one year in the time series—the total production of cereal globally in that year. This gives us two tables with percentage of real observed cereal production away from "normal" production trends. These percentage deviations can be both positive—meaning a country has produced more cereal in a given year than its trend line, or negative—meaning a country has produced less cereal in a given year than its trend line. With no extreme production failures we would expect these production anomalies to follow a normal distribution around the mean trend lines. These trend lines, on average, have a positive gradient over this period of time meaning that global cereal production in 2011 is higher than it was in 1995. This is to be expected as food production has expanded over this period—both in terms of agricultural land and farming productivity. However, not all countries show an increase. We then calculate the standard deviation of these percentage production anomalies. This standard deviation allows us to estimate the expected size of production changes year on year across countries. We exclude countries that have zero production, and therefore zero percentage production anomalies, so these values do not skew the standard deviations. To explore shock events we assume a normal distribution in the underlying trend as a first approximation. A shock event is then defined as any deviation away from the trend line that has a significantly low probability of occurring. We take this point as falling outside of 99.7% of a normal distribution—that is 3 standard deviations. This roughly translates as an event with a recurrence of 1 in every 666 years if the distribution is truly normal. Shocks, or "3 sigma events", were therefore identified as data points that fall below three standard deviations from the estimated regression data for both country and global level shocks. At country level this represents a significant shock for that country and allows us to classify shocks per country. However, these shocks may be insignificant on a global level but of course represent a significant local event. At global level the percentage anomalies that their distribution is much smaller than at country level. This is because it is possible for one country to experience a shock of more than 50% of its own production in any year whereas a particular country's production contribution to global production is of course much smaller. Therefore a country level 3 sigma event is likely to represent a very significant loss in production for that country. The global food system experiences much smaller percentage production losses than individual countries due to the diversity of geographic growing areas. Global shocks occur when a number of smaller countries, or a major producer, experience a shock at the same time. Given this, the anomalies each year for production shocks are likely to have a smaller distribution at global level and major producers will have a higher impact on global supply than other countries. However, those global production shocks may not represent a country shock in those major producers using our definition of a 3 sigma event. For example, the US and China are both major cereal producing countries and while a particular event in those countries may be under a 3 sigma at country level it could still represent a higher than 3 sigma event at global level if the US lost under 50% of its production, while this may not be categorized as a country level shock, it would represent a global shock in production. By categorising shocks both at country level and global level we ensure that any event which will have an impact on country level supply and demand from both the import and export perspective is still categorized as a shock. If a country is categorized as having a shock this then allows the researcher to further explore those particular events to determine whether that shock represents a political or social risk for those countries or elsewhere. 3. Results Here, we present the results from applying the percentage anomaly calculations to both country and global levels. We then identify production shocks at country and global level and explore the difference between the two approaches. Table 1 shows an example of the country percentage DC for a set of countries. The standard deviations of the two sets of percentage differences obtained were then calculated. This equates to 19% to a country's own production and 0.2% relative to world production. Using the 3-sigma definition to identify a shock, at country level this corresponds to shocks in production of 58% while at global level this corresponds to an individual country contributing a shock of 0.6% to global production. An extreme shock is therefore identified for any country that experiences a drop of 58% or more away from trend or any country that contributes more than 0.6% global production drop below trend by itself. Figure 2 shows the distribution of percentage anomalies for country level production away from trend. As can be seen from the distribution at country level (Figure 2) there appears to be a small group of countries that do experience a significant shock event (larger than 58% loss in production) giving the distribution fat tails—a more common phenomenon in probability distributions such as this given the uncertainty of weather events. Assuming a normal, or Gaussian, distribution, will underestimate the frequency of these extreme "3-sigma events" which will be more common than in a normal distribution. However, the best approximation of a normal distribution for 3-sigma events is still valid as this is only used to identify extreme events for further analysis. We do not attribute likelihoods to these events but use them to explore further dynamics of the particular country production losses and how they impact on global food systems. To calculate probabilities of such events and the social consequences will require further analysis of the underlying distribution as well as assigning probabilities to the social responses to those events. This is out of the scope of the current paper. Figure 3 shows the distribution of percentage anomalies for country level production as a contribution to the global production away from trend. Due to the very small standard deviation compared to the fat-tailed outliers in Figure 3, we use a logarithmic scale to represent the shape of the fat-tailed distribution. Although at global level (Figure 3) we see outliers where production deviating from a country trend line amounts to nearly 2% of global production, in fact the largest shock here is 1.43%. But, these outliers are not displayed due to the logarithmic scale. Therefore, we see that a few events have contributed to significant shocks. We then classify the particular countries that fall outside the 3-sigma event and the year in which the shock occurs. This classification allows us to produce a list of countries that we highlight as having experienced a production shock themselves or those that contributed to a shock in global production. The years that particular countries experienced production shocks given the two criteria are listed in Tables 2 and 3. Table 2 shows the countries experiencing significant shocks relative to their own production are usually not major producers. It instead highlights countries that have the most variability in their annual food production are more likely to be smaller producers with less infrastructure and processes to manage major weather or political events that impact food production. These countries are less secure in their food availability and are more likely to need to increase their dependency on imports during these times of shock. Under usual conditions this may not represent a significant challenge however, if it were a problem or their shocks coincided with a global shock or import restrictions then this could represent a major potential impact on those countries. Furthermore, many of the nations identified are African and Middle Eastern states, arguably some of the most unstable parts of the world. There are production shocks in these nations in 1991, 1997, 1998, 1999, 2000, 2002, 2005, 2007 and 2008. If a major producer experienced a food production shock of 58% it would have catastrophic impacts on the

global food supply system. Table 3 shows the countries that experience the largest shocks relative to global production and are, as expected, the biggest producers. These production shocks ripple throughout the world's food system and affect the producing country as well as all other countries that rely on their exports. Global shocks are

experienced in every year except for 1996, 1997 and 2008. Global production shocks are more often than not the result of a single country experiencing a production loss. However, if more than one major producer experiences a production shock then the global loss can be very high. For example, in 2002 there was a loss of 7.98% of all global cereals in that single year. Depending on what else is happening in the food system, in particular associated with stock levels, these global losses could lead to significant social impacts. At country level at least one country experiences a major shock (loss of more than 58% of its production) every other year. Using purely global data (Figure 1) we also saw a production shock of 7.15% in 2002, which was less than a two sigma event using global only trend lines. However, using this new method we have shown that Australia, Canada, China, India and United States all having 3 sigma events in 2002 amounting to a 7.98% loss (the overall loss is slightly higher as the regression lines are done on a country by country basis and therefore the overall trend is slightly different to a global trend). In conducting this analysis we emphasise that it is the level of detail that is important and not the overall trend as displayed by

the global data. Global 3 sigma events identified using country level data help identify where shocks took place, explaining possible re-orientations of the trading system of food.¶ 4.

Discussion¶ Rises in global food prices can have a significant impact on societies and have in the past led to social unrest [11,13]. However, the causes of food price rises are myriad [27] and the subject of a lot of study. One underlying cause is the physical availability of food. In

particular shocks in cereal production are viewed as one of the causal factors in price shocks [16] although a cereal production shock does not always lead to a price shock and a price shock has not always been preceded by a production shock [9]. Never-the-less developing a policy response to food security and global food resilience requires a deep understanding of the food system. ¶ Surprisingly there is no one agreed method for quantifying or categorizing when a country has experienced a food production shock. This paper has presented a linked method to categorize a country level production shock and a shock at country level that leads to a global production shock. We have identified several production shocks over the period 1995–2011 and classed these as country or global shocks while listing the year and country in which the shock originated.¶ Research which has explored the food system and price shocks can be better grounded in underlying production shocks by using this method. We argue that this would allow for an easier comparison between different arguments for causality of food price shocks. In particular in building quantified models having a similar basis for including cereal production shocks would create a better method for validation and calibration of these models. The simple formulation of identifying 3 sigma shock events presented in this paper should be readily reproducible by other research groups.¶ Of course several limitations exist with this method when using it for detailed policy development not least the quality of the data contained within the FAOSTAT database. Another key limitation is that food price shocks are rarely directly linked into overall cereal production but rather a complex interaction with imports, exports and stock levels. Also, as previously highlighted, this method does not identify whether a particular country is at risk of political or social impacts as a result of the production shock. The risk factors are myriad and include political responses, transport, storage infrastructure, substitutability of grains with other sources of food, exchange rates and food subsidies. However, we believe an initial categorization of food production shocks using this simple and common method will allow better cross-comparison between studies while given a common basis for further study into these more detailed responses to production shocks. This method should allow an identification of key countries to examine in further detail as potential sources of either shocks to import demand or export capability. Identifying a particular country of course is only the first step in understanding the dynamics of the global food system.¶ 5. Conclusions¶ In this paper we present a method to categorize food production shocks at country level. We use data from FAOSTAT to list a set of extreme production shocks over the period 1995–

2011 and the countries and years in which these shocks occur. We show that global cereal production

shocks occur as a result of shocks in major cereal producers including US, China, Russia, Ukraine, India, Argentina, Canada and Australia. The largest global shock using our method was a 7.98% shock in 2002. Production shocks when an individual country experienced more than 58% loss in annual cereal production has occurred 21 times during that period in countries that are predominantly classed as developing countries.

That triggers nuclear escalation

FDI 12. A Research Institute providing strategic analysis of Australia's global interests; citing Lindsay Falvey, PhD in Agricultural Science and former Professor, University of Melbourne. "Food and Water Insecurity: International Conflict Triggers & Potential Conflict Points." May 25. <http://www.futuredirections.org.au/workshop-papers/537-international-conflict-triggers-and-potential-conflict-points-resulting-from-food-and-water-insecurity.html>.

There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. ¶ Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany's World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI's recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. ¶ In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI's March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note.¶ He writes (p.36), "...if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result." ¶ "Hunger feeds anarchy." ¶ This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if "large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow." ¶ He continues: "An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts." He also says: "The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources." ¶ As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. ¶ Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. ¶ A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this

phenomenon. The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

*****disad answers*****

top level thumper

The First Step Act thumps disads but do not solve the aff

Samuels 19—Senior fellow in the Justice Policy Center at the Urban Institute with extensive knowledge of the federal criminal justice system. At Urban, she examines issues related to growth in the federal prison system, federal justice case processing trends, and sentencing and corrections reform [Julie Samuels, Nancy G. La Vigne (vice president of justice policy at the Urban Institute. She manages a staff of more than 50 scholars and conducts her own research on policing, criminal justice technologies, and reentry from incarceration), and Chelsea Thomson (director of center operations in the Justice Policy Center at the Urban Institute, where she provides research and operational support. As a researcher, Thomson focuses on criminal justice reform and is the project director for the Justice Reinvestment Initiative), May 2019, “Next Steps in Federal Corrections Reform IMPLEMENTING AND BUILDING ON THE FIRST STEP ACT”, Justice Policy Center, https://www.prisonlegalnews.org/media/publications/Urban_Institute_-_Next_Steps_in_Federal_Corrections_Reform_Implementing_and_Building_on_the_First_Step_Act_2019.pdf] AMarb

First Step embodies much of the spirit and many of the recommendations of the Colson Task Force, though it is not nearly as ambitious. The act **curbs several excessive mandatory minimum penalties** and incentivizes people to reduce their risk of **recidivism and transfer to community custody** earlier. **Reforms include changes that can reduce length of stay in federal prison** (with transfer to supervised release 12 months or less prior to the end of the sentence), **required risk assessment and expanded recidivism reduction programming, and prescribed improvements to various policies and conditions of confinement governing those in BOP custody.** The legislation also adds reporting requirements to improve transparency and accountability. **First Step’s key provisions are** as follows: ■ **It applies the 2010 Fair Sentencing Act retroactively, reducing mandatory minimum penalties for crack offenses to benefit people sentenced before 2010;** ■ broadens the existing safety valve, giving judges greater discretion to sentence someone below a drug mandatory minimum penalty, based on criminal history; ■ **revises enhanced mandatory minimum penalties for people with prior drug felonies,** reducing mandatory life without parole for a third felony drug offense to 25 years and **reducing the 20- year mandatory minimum for a second felony drug offense to 15 years;** ■ **reduces** the severity of “stacking” 18 U.S.C. § 924(c) gun offenses, ensuring that people with first-time firearm offenses cannot receive the 25-year **mandatory minimum sentence intended for those with repeat offenses;** ■ revises good conduct time calculation, increasing the credit from 47 days to 54 days per year of the sentence imposed (15 percent) and applying the credit retroactively; ■ reforms compassionate release program for people facing “extraordinary and compelling” circumstances to increase its use and the transparency of the approval process; ■ reauthorizes the elderly pilot with modified age and time served criteria, broadening eligibility for the program, which allows people to be placed on home confinement earlier than would otherwise be allowed; ■ requires development and implementation of a risk and needs assessment instrument for the entire population that is reviewed by an outside Independent Review Committee (IRC) and made publicly available (BOP must also expand in-prison programming and services tailored to the risk and needs of the population); and ■ establishes incentives and rewards for participation and completion of evidence-based programming and productive activities, including phone and visitation privileges, transfer to an institution closer to release residence, additional benefits to be developed by BOP, and time credits for those who are eligible. o Eligibility to earn time credits is based on a person’s offense of conviction, and there is a long list of ineligible offenses, including people convicted of certain fentanyl, heroin or methamphetamine trafficking offenses, sex offenses, gun offenses, violent offenses, and terrorism. Almost 50,000 people are excluded by these carve-outs (USSC 2019). The amount of credit that can be earned is determined by risk level. o For those assessed at low or minimum risk, earned time credits can be applied toward early transfer to prerelease custody—either in a halfway house, home confinement, or (in certain instances) early supervised release. The law holds great promise in both incentivizing and improving programming for people housed in BOP, reducing their risk of recidivism, allowing early transfer to prerelease custody for some, and shortening time served for almost all federally sentenced people currently in BOP custody, provided it is implemented as intended. However, translating First Step into practice will be challenging because of the law’s complexity and the need for multiple agencies to change how they do business. Successful implementation will require the commitment and buy-in of the DOJ and BOP, education and training for relevant government officials and practitioners (as well as potential beneficiaries of the act), adequate funding for the law’s new requirements, faithful development and execution of the risk and needs assessment tool, and outside oversight to monitor progress (including concerns about

disparate outcomes) and hold government officials accountable. DOJ commitment and buy-in. Although some parts of First Step are very prescriptive, BOP and DOJ retain considerable discretion in how the law will be implemented. Some provisions (i.e., sentencing and compassionate release) became effective when the law was enacted in December, while others (e.g., risk and needs assessment system and expanded programming) are scheduled to become effective over the next few years. An overarching question is whether DOJ/BOP will adopt an expansive or restrictive view as it drafts new policies and guidelines governing these policy changes, including rules for earning time credits and transferring to prelease custody or supervised release. More specifically, overarching questions include the following: ■ How quickly will BOP and other government actors move to implement the various provisions? Will statutory deadlines be met? » When will the first beneficiaries of the revised good time credit be released: July 2019, or will their release be linked to the release of the risk assessment tool, which could be delayed? » When can people incarcerated in BOP facilities begin accruing time credits under the revised calculation given it hinges on a final risk and needs assessment tool? ■ Will input from outside experts, such as the IRC, be incorporated into BOP/DOJ decisions, and how open will the process be for input from stakeholders and the public? ■ How will prosecutors respond to the sentencing reforms and expanded opportunities for early release through compassionate release and the elderly pilot? Will they embrace the spirit of the changes or develop work-arounds? The precise meaning and limits of many of the law's provisions are likely to be litigated and decided by the courts. Although clarifying good conduct time is the most straightforward of First Step's provisions (and the only one that can benefit almost all BOP residents similarly),² other provisions may not have their intended impact or could yield a disparate impact, particularly on people of color, those without the means to retain private counsel or outside advocates, and non-English speakers. Concerns about possible disparities apply to the implementation of various provisions: sentencing reforms, modified compassionate release and elderly policies, the risk and needs assessment tool, and incentives and rewards, including earned time credits. A priority should be ensuring that people who could benefit from the various reforms are well-informed and well-represented in any required administrative or judicial proceeding and that criminal justice stakeholders are advised about the threat of disparate application of the provisions and take actions to mitigate such outcomes. The statutorily required reports will examine possible disparities in implementation, particularly regarding the new risk and needs assessment system, which should also aid in preventing disparate outcomes. Education and training. As with any new law, it is critical to explain the policy changes to the practitioners responsible for implementing them and to those whose lives could be changed by them. Information about the changes should be widely disseminated. Practitioners, who may not agree with the policy changes, can promote or undermine implementation efforts, so it will be important to emphasize the rationale and intent behind the policies. As part of the education process, concerns about the provisions having a disparate effect (particularly on people of color or with limited means) should be highlighted. The sentencing provisions and revised compassionate release policy require educating judges and other stakeholders, including prosecutors, probation officers, and federal defenders to promote equal application across federal districts. DOJ, the judiciary, and the federal public defenders have already provided some guidance to their representatives in the field. The US Sentencing Commission does not currently have a quorum, however, which will prevent it from promulgating any new guidelines related to First Step provisions this amendment cycle. Advocates, federal defenders, and the defense bar are working to ensure that people who may be eligible can receive the benefits of the law for the prospective sentencing changes, for the retroactive application of the Fair Sentencing Act (which requires each individual to petition the court for a sentence adjustment), and for the compassionate and elderly release policies. Identifying eligible individuals can be resource intensive and the federal defenders may need additional financial and training/technical assistance support. Focus on risk and needs assessment tool. Much of the success of First Step hinges on the development, release, and application of a risk assessment tool. If the tool is delayed beyond the July 2019 statutory deadline, so too will its application, potentially postponing the benefits people can receive from the incentives and rewards, including time earned toward release to supervised custody as well as the retroactive application of the seven-day good time credit adjustment. Yet developing a tool that accurately predicts risk of recidivism, does not have a racially disparate effect, and includes dynamic factors that can measure the positive impact of BOP's rehabilitative programming impact on risk will be difficult. The law requires the establishment of an IRC of experts to advise the attorney general on the risk and needs assessment system. The host for the IRC was named in early April, later than the statutory deadline of January 2019. All of these provisions demand oversight and accountability, making the IRC critical to ensuring the risk assessment tool is methodologically sound, validated, and applied in a manner that does not perpetuate or exacerbate racial bias in the system. The risk and needs assessment system is to be aligned with evidence-based programs. BOP, with the advice of the IRC, must review its own programs, scan correctional programming across the country, and determine how to modify and expand its program offerings. Some of BOP's programming (e.g., RDAP and UNICOR/FPI) have been evaluated and are evidence-based, but a systematic review will be required (Pelissier et al. 2001; Saylor and Gaes 1994). One method for assessing how well BOP's programming matches the needs of its population is CJ-TRAK, which can help correctional systems identify any gaps in their programming.³ Although First Step states that people may start earning incentives and rewards at the time the risk assessment is released, there are several reasons why that could be delayed, particularly for the earned time credits. BOP may choose to require individuals to have a new risk assessment and/or associated individualized case plan before they can start accruing time credits. In addition, programming needs to be expanded in order for people to comply with their case plans, and internal policies and procedures governing the time credits also need to be in place. BOP should be explicit about when it will permit people to start earning credits, allowing Congress and/or other stakeholders to clarify if their intent was for people to earn credits more quickly. Funding. It is also critical that Congress appropriate the \$75 million⁴ authorized in First Step for implementing the risk and needs assessment system and new and evidence-based programs aligned to the population's needs. There was no First Step request in BOP's 2020 Congressional budget, purportedly because BOP had not yet estimated the funds needed for implementation (DOJ 2019). In early April, the President indicated that there would be an additional request for resources to fully implement First Step, but that request has yet to be made. Oversight/accountability. Transparency about implementation activities would promote accountability and afford an opportunity for those outside the government to highlight instances where implementation choices deviate from the intent or spirit of the law. In addition to the statutorily required reports by the Attorney General, the IRC, and the Government Accountability Office (GAO), it would be helpful to receive regular updates from the BOP/DOJ and the US Sentencing Commission, which will learn about most of the beneficiaries of the law. When the attorney general announced the host for the IRC,⁵ he also summarized the progress

to date under First Step, which was a helpful update for the field. What Additional Reforms are Needed? Without question, the First Step is an important accomplishment and its impact is already being felt by individuals and families across the country, primarily through the retroactive application of the Fair Sentencing Act and the revised policy on compassionate release. In addition to the positive impact various reforms will likely have over the coming years, the legislation recognizes important principles that can spur future reform: individualizing sentencing and corrections decisions, employing incarceration judiciously, using research and data to improve public safety, and improving transparency about the sentencing and corrections system. However, though some First Step provisions are essentially the same as several of those recommended by the Task Force, many do not go as far as the Task Force and some recommendations are not addressed at all (for a comparison of the how the key First Step provisions map against the Colson Task Force recommendations, see the appendix). Substantial reform work remains to be done. Key areas for future reform include filling the gaps in the First Step Act (e.g., expanding eligibility for earned time credits and making all sentencing provisions retroactive) and embracing additional and more impactful reforms recommended by the Colson Task Force on Federal Corrections (e.g., reducing or eliminating mandatory minimum penalties and creating a second look provision) that were not included in First Step. Specific suggestions are presented below, using the Colson framework.

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Partisanship ensures no broad CJR agenda

Curtis 19—worked at The New York Times, The Baltimore Sun, The Charlotte Observer, as national correspondent for Politics Daily, and is a senior facilitator with The OpEd Project [Mary C., 8/22/2019, “Criminal justice reform had a bipartisan minute. Then **2020 reared its head**”, Roll Call, <https://www.rollcall.com/2019/08/22/criminal-justice-reform-had-a-bipartisan-minute-then-2020-reared-its-head/>] AMarb

OPINION — **That didn’t last long.**

For a while, it looked as though the distance between the parties had narrowed on the issue of criminal justice reform. Bipartisan cooperation passed the **First Step Act**, a small step indeed toward remedying America’s mass incarceration crisis that disproportionately, in a historically skewed system, burdens minorities and the poor in everything from arrests to sentencing. Increasingly, though, the **rhetoric resembles a partisan return to form.**

But is the public changing?

With a nudge from viral videos and reasons to doubt the “official” story, as well as attention paid to inequities built into the history of policing in America, more aware citizens may have evolved more than politicians.

For past presidential candidates like Richard Nixon, “**law and order**” became mantra as well as code, a promise to protect a silent (white) majority from young people protesting war, African Americans demanding equality, anyone looking to shake up the status quo. It was a page from a very old playbook — and it worked for those afraid of change.

You can hear the refrain, amplified, from the current president, when he **bolsters law enforcement on the border and speaks of an invasion**. Donald Trump may take a cue from “consultants” such as Kanye West and Kim Kardashian when he intervenes in the individual case of a nonviolent drug offender or feuds with Sweden over a jailed rapper. **But the president has always seemed more comfortable when he has advised police officers not to be “too nice” to suspects or maligned cities as criminal cesspools** — even when the city was El Paso, Texas, relatively peaceful until a white domestic terrorist echoing the president’s words blasted its tranquility to bits.

With 2020 looming, other members of the administration and other Republicans are falling in line and reverting to the past.

Former Attorney General Jeff Sessions, so eager to release police departments from agreed-upon consent decrees to reform corruption and misconduct, had nothing on successor William Barr.

In a recent speech to the Fraternal Order of Police conference in New Orleans, **Barr took a partisan blowtorch to the legitimacy of duly elected prosecutors, saying the appointment of progressive district attorneys is “demoralizing to law enforcement and dangerous to public safety” because they “spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law.”**

In a column in The Washington Post, Parisa Dehghani-Tafti, Democratic nominee for commonwealth’s attorney in Arlington, Mark Gonzalez, district attorney for Nueces County, Texas, and Wesley Bell, county prosecutor for St. Louis County, Missouri, hit back, writing: “We are dedicated to safety and justice. We understand that our current criminal legal system throws away too many people, breaks up too many families, destroys too many communities and wastes too much money. And we refuse to accept that a wealthy democracy cannot figure out how to keep its people safe without criminalizing as many things as possible, prosecuting as hard as possible and punishing people for as long as possible.”

These are officials who campaigned on the promise to respect all citizens instead of reflexively treating entire populations as potential perps. As someone who grew up in an urban neighborhood that was at once under protected and over policed, I recognize the challenges these prosecutors were elected to alleviate.

Because of videos and education, the general public and those not affected by unequal treatment have learned, as well, of the names and cases of Tamir Rice, Sandra Bland, Philando Castile — and the list goes on. Former Chicago Mayor Rahm Emanuel’s decision not to run for another

term was hastened by the delayed release of the video of Officer Jason Van Dyke, now serving time for his crime, shooting 17-year-old Laquan McDonald 16 times.

When Daniel Pantaleo, the New York City officer who placed Eric Garner in an illegal chokehold before he died, recently was fired, the police union president was the loudest voice objecting to the move, and now Patrick Lynch is hinting at a work slowdown in response. To those haunted by the voice of Garner saying “I can’t breathe” 11 times and the sight of officers and EMT personnel standing by, Pantaleo was lucky no charges were filed.

Props must also be given to efforts such as The New York Times’ “1619 Project,” which examines, it says, “the consequences of slavery” and the contributions of black Americans at the very center of the story we tell ourselves about who we are. Its all-too-true stories draw the line from injustices then to those that persist, including the fact that law enforcement throughout the country’s history was often the brutal enforcer of repressive policies.

In the 2020 presidential race, Democratic candidates are not afraid to be vocal about criminal justice and police reform plans. In fact, candidates have had to explain their past records as mayors and prosecutors and, in front-runner Joe Biden’s case, his role in helping to write the 1994 crime bill, acknowledged to have played a large role in the mass incarceration that followed.

It’s a big change from when Democrats were reluctant to speak out, afraid of being judged “soft on crime.”

so, while for a moment it seemed Democrats and Republicans might be moving closer to a tentative truce on the issue, unfortunately the importance of seeking a more just “justice” is becoming, like so much else, another opportunity to disagree.

Mandatory minimum reform creates more momentum for more sentencing reforms

Ford 15—Former associate editor at The Atlantic [Matt, 2/25/2015, “Can Bipartisanship End Mass Incarceration?”, The Atlantic, <https://www.theatlantic.com/politics/archive/2015/02/can-bipartisanship-end-mass-incarceration/386012/>] AMarb

This **carceral fever could be close to breaking at last.** The Coalition for Public Safety, a **new alliance of political groups and think tanks, is the latest signal that opposition to mass incarceration has gone mainstream.**

The organization unites left-leaning organizations like the ACLU and Center for American Progress with conservative and libertarian organizations like FreedomWorks, Americans for Tax Reform, and Right on Crime. Koch Industries is opening its checkbook for the venture; the ACLU received a \$50 million grant from George Soros’ Open Society Foundation in December to cut national incarceration rates.

The **alliance’s initial goals are modest and tangible** ones. On their inaugural conference call last Thursday, **group leaders frequently invoked** civil-asset forfeiture and **mandatory minimum sentences as their first targets for reform.** “If civil-asset forfeiture is the first one we can jump on, let’s go with that and put points on the board,” said Anthony Romero, the executive director of the ACLU. Until these reforms come about, the Coalition’s greatest success could simply be inertial.

Launching a trans-partisan effort may seem odd in this polarized political climate, but it has a certain logic in the context of criminal justice. Mass incarceration, after all, was a triumph of bipartisanship. Republican contributions often receive the most attention. Ronald Reagan oversaw the dramatic expansion of the war on drugs. Willie Horton’s impact in the 1988 presidential election helped deliver George H.W. Bush the presidency while suffocating criminal-justice reforms in Massachusetts and elsewhere. Conservative states like Texas, Louisiana, and Alabama saw the fastest rise in incarceration rates.

But many prominent Democrats also contributed to the carceral state’s growth. Senator Ted Kennedy championed the use of mandatory sentencing guidelines and worked with Strom Thurmond to secure the Sentencing Reform Act’s passage in 1984. Bill Clinton’s 1994 omnibus crime bill, which passed Congress with the strong support of Joe Biden, Kennedy, and other major Democratic lawmakers, added \$9.7 billion in new funding for prisons. As the incarceration rate jumped during the 1990s, Congress passed and Clinton signed the Prison Litigation Reform Act in 1996. The law added new barriers to prisoner lawsuits that challenged their treatment and conditions.

Liberal governors and state legislators also played their part. New York Governor Mario Cuomo, a Democratic standard-bearer in the 1980s, built dozens of new prisons during his twelve-year tenure to fill the demand created by the state's Rockefeller drug laws. To avoid raising taxes, Cuomo turned to the state's Urban Development Corporation to finance new prison construction. The corporation was originally designed to fund housing projects for New York's poorest. In a dystopian way, it succeeded.

What changed the bipartisan consensus? Perhaps the most important development is **the sharp decline in crime since the turbulence of the early 1990s**. New research shows that incarceration bore little to no responsibility for the decline in crime, although the exact causal mechanisms are still heavily debated. Another major factor was the **Great Recession**, which forced states and the federal government to reckon with the high costs of large-scale imprisonment. New York City spent nearly \$100,000 per inmate at Rikers Island in 2014; a year's tuition at New York University costs roughly \$46,000 per student by comparison. Finally, scholars like Marc Mauer and Michelle Alexander re-framed how Americans view crime, race, and poverty in the public sphere. Like "climate change" or "immigration reform," the phrase "mass incarceration" brings semantic order to a disordered set of interconnected concepts.

These **shifts blunted the "tough-on-crime" mentality** that had suffused American political discourse for decades. Even the nation's highest law-enforcement official embraced the change. "Today, a vicious cycle of poverty, criminality, and incarceration traps too many Americans and weakens too many communities," said Attorney General Eric Holder in a 2013 speech to the American Bar Association. "And many aspects of our criminal justice system may actually exacerbate these problems, rather than alleviate them." **Democratic stalwarts** like Patrick Leahy and Cory Booker **and conservative Republicans** like Rand Paul and Ted Cruz **now plan to propose sentencing reforms** that would have been considered unthinkable a decade ago. President Obama met with some of the Smarter Sentencing Act's sponsors on Wednesday.

The plan is a huge reform not incremental

Ford 15—Former associate editor at The Atlantic [Matt, 2/25/2015, "Can Bipartisanship End Mass Incarceration?", The Atlantic, <https://www.theatlantic.com/politics/archive/2015/02/can-bipartisanship-end-mass-incarceration/386012/>] AMarb

At its core, mass incarceration is a story about people—over 2 million of them behind bars, with millions more on parole or probation. With a system so vast, almost any single reform may seem inconsequential. **But even modest and incremental changes can change thousands of lives, when applied to such an enormous population**. And the consequences of these reforms can also be measured by the individuals they affect. **Eliminating or even substantially reducing mandatory-minimum sentences could save a person from years, perhaps decades, behind bars**. Curtailing the use of solitary confinement as a form of punishment could preserve their mental health. Juvenile-justice reforms can reshape the course of a young person's entire life. **None of that is smallness**.

No internal link---if the plan snowballs into more reforms they will die down---empirics

George 17—Former Washington, D.C., correspondent for The Marshall Project [Justin, 6/6/2017, "Can Bipartisan Criminal-Justice Reform Survive in the Trump Era?", The New Yorker, <https://www.newyorker.com/news/news-desk/can-bipartisan-criminal-justice-reform-survive-in-the-trump-era>] AMarb

In the nineteen-nineties, when John Malcolm was a federal prosecutor in Atlanta, the nation's prisons were being filled up with small-time drug dealers. The war on drugs was at its height, and the number of Americans in prison was rising dramatically. Now a legal scholar at the Heritage Foundation, the influential conservative think tank, **Malcolm has watched with approval**, in recent years, **as lawmakers and law-enforcement officials have begun to support criminal-justice policies aimed less at punishing anyone caught with drugs and more at targeting violent offenders and drug kingpins**.

Malcolm has been a member of an unlikely alliance that hopes to end America's status as the world's most prolific jailer: liberals who find the criminal-justice system racist, inequitable, and inhumane are joining forces with conservatives—such as Malcolm—who find it wasteful, harmful to families, and heavy-handed. Last year, **reformers on both sides agreed to support a proposed law that would relax mandatory minimum sentences**, giving federal judges somewhat more discretion in sentencing and helping low-level offenders avoid prison time. **It was a modest proposal**, compared to the size of the problem, **but the bill attracted a rare amount of bipartisan support in Washington**.

Despite that support, however, the **measure failed to pass Congress**. Some **Republicans wanted the law to include a provision on “mens rea” reform, which would expand the category of crimes in which a defendant’s criminal intent is a factor in determining guilt**. Democrats, convinced that such a provision would make it harder for prosecutors to go after corporate crime, **resisted**. The **bill stalled**, then **died**—and so did **some of the spirit of common cause**. Last year, as the contentious Presidential election neared its conclusion, the **alliance started to come undone**.

Nuclear war demolishes food supply

Easterbrook 18—Author of eleven books, he has been a staff writer, national correspondent or contributing editor of The Atlantic for nearly 40 years, was a fellow in economics, then in government studies, at the Brookings Institution, and a fellow in international affairs at the Fulbright Foundation [Gregg, February 2018, *It's Better Than It Looks: Reasons for Optimism in an Age of Fear*, Chapter 11: We'll Never Run Out of Challenges..., pgs 272-73, Google Play] AMarb

The **world's nuclear arsenal** has contracted, but the **risk remains grave**. Researchers Alan **Robock** of Rutgers University and Owen **Toon** of the University of Colorado **calculate that even a limited nuclear exchange** (another strange qualifier) **between India and Pakistan “would produce so much smoke that temperatures would plunge around the world, threatening the global food supply.”** The global cooling that followed the 1991 eruption of Mount Pinatubo made researchers realize that **smoke pumped high into the atmosphere lasts much longer than low-altitude smoke**, and Mount Pinatubo emitted a fraction of what might be caused by a “limited” nuclear exchange. Early in the atomic era, **radioactive fallout from the bomb seemed an existential threat to civilization—smoke in the stratosphere might be as bad**. The trouble is that it's not clear what can be done to prevent nations from losing their collective minds and using nuclear munitions—other than continue the ongoing global project of making humanity understand that **war has become counterproductive**.

internal link defense—1ar

Even if the link is true more reforms are unlikely

Clark 19—Political reporter for NBC News [Dartunorro Clark and Janell Ross (a reporter for NBC BLK who writes about race, politics and social issues), 11/24/2019, “The First Step Act promised widespread reform. What has the criminal justice overhaul achieved so far?”, NBC News, <https://www.nbcnews.com/politics/politics-news/first-step-act-promised-widespread-reform-what-has-criminal-justice-n1079771>] AMarb

Nearly a year after the First Step Act's passage, NBC News spoke to over a dozen people, including former and current elected officials, liberal and conservative advocates, and formerly incarcerated individuals, among others, who championed the reforms. They all agreed that the law's effects are tangible, and many believe the bipartisan coalition that produced it appears durable.

“I think the biggest win is that this is now a safe issue after years and years and years of the two parties trying to use criminal justice as a way to tear each other down,” said Jessica Jackson, co-founder of #cut50, a bipartisan criminal justice reform nonprofit.

However, some are **skeptical the alliance can hold**. Many of the next steps advocates have underscored as necessary to bring about true change, like reexamining lengthy sentences for violent offenses and restructuring policing practices, may be a **tougher sell**.

“As some people might say, it's easier to kind of agree on some of the **low-hanging fruits**, but the higher you reach, the **more difficult consensus is going to be**,” said Tim Head, the executive director for the Faith & Freedom Coalition, a conservative nonprofit that supports the act as well as other criminal justice reform efforts.

uq—general—1ar

Incrementalism is inevitable BUT there will never be consensus on comprehensive reform

Hopwood 19—Associate Professor of Law at Georgetown University Law Center, where he is an expert on federal courts, criminal procedure (including federal sentencing), and prisoners' rights [Shon, 2/25/2019, “The Effort to Reform the Federal Criminal Justice System”, The Yale Law Journal, <https://www.yalelawjournal.org/forum/the-effort-to-reform-the-federal-criminal-justice-system>] AMarb

The second way federal reform progress could be stymied is by criminal justice reform organizations **holding out for comprehensive reform**, or the perfect bill, when the politics of the moment will only allow for incremental reform.⁸⁴ While there have been many reforms at the state and local level in the past few years,⁸⁵ people incarcerated in the federal prison system have not experienced the same relief. As noted above, the very modest Sentencing Reform and Corrections Act was stalled in Congress for years,⁸⁶ and until the First Step Act, the last time Congress passed a federal prison-reform bill was in **2007**—with the even more modest Second Chance Act.⁸⁷ In my lifetime, federal criminal justice reform has moved only incrementally, because it is **exceedingly difficult to obtain broad consensus** on criminal justice issues in Congress.⁸⁸ When Congress has actually tackled comprehensive reform, the results have been mixed, no matter which party was in the majority.⁸⁹ If this Congress tried tackling bold and comprehensive reform, I would have grave concerns. Imagine the tradeoffs that would have to be attached to any bill for it to successfully clear the Senate.⁹⁰

While public opinion is rapidly moving towards reform, Congress has not moved at the same pace. Even when it does move on reform, the inevitable political compromises often produce bad policy. Many in the federal reform community, for example, advocated against the list of exclusions from the First Step Act's earned-time credit.⁹¹ These exclusions prevent those who have committed certain crimes—such as violent, sexual, and certain white-collar crimes—from obtaining the earned-time credit and serving part of their sentence in home confinement rather than a federal prison.⁹² The First Step Act's exclusions will negatively affect public safety because those who have committed violent crimes will not be incentivized to successfully complete meaningful rehabilitation programming. But that does not mean they will never be released; it just means that fewer of those convicted of violent crimes will come out of federal prison rehabilitated as a result.⁹³ The exclusions were a compromise to which many in the House quickly acceded—some Democrats included—even as the reform community pressed for reducing the exclusion list, and even though many other parts of the bill changed substantially. In the current political climate, the best evidence-based practices are often excluded from legislation; in this, the First Step Act was no different.

After spending a year speaking with lawmakers on Capitol Hill, I did not see significant consensus—particularly from members elected from states in the Midwest and South—to pass comprehensive reform. And holding out for comprehensive reform will only prevent those currently in the federal system from receiving any relief while serving long sentences in deplorable conditions with little hope of accessing meaningful rehabilitative programs. Those in federal prison and their families should not have to wait for the perfect administration, the perfect Congress, and the perfect bill. The way forward is through incremental and bipartisan reform.⁹⁴

Republicans will not budge---momentum is lost and it's a difficult atmosphere

George 17—Former Washington, D.C., correspondent for The Marshall Project [Justin, 6/6/2017, “Can Bipartisan Criminal-Justice Reform Survive in the Trump Era?”, The New Yorker, <https://www.newyorker.com/news/news-desk/can-bipartisan-criminal-justice-reform-survive-in-the-trump-era>] AMarb

Since President Trump took office, the strain on the coalition has only intensified. Democrats have hunkered down as the party of resistance, while Republicans are **calibrating their loyalty to the new President** and to his Attorney General, Jeff Sessions, a law-and-order hard-liner with a particular animus toward drug crimes and illegal immigrants, who, last year, while still a senator, was a notable foe of the reform effort.

Some disheartened members of the reform club, such as Pat Nolan, the director of the American Conservative Union Foundation's Center for Criminal Justice Reform, say that the movement should turn its attention to the states, where most criminal justice is dispensed. (Federal inmates account for only nine per cent of the 2.2 million people incarcerated in the United States.) Since 2010, dozens of states have enacted criminal-justice-reform measures, such as bail reform, job training for inmates, and raising the age at which defendants are treated as adults. "The whole idea of federalism isn't working here, because the feds aren't looking at what the states have done that's successful," Nolan said.

Groups from the right and left still meet regularly on criminal-justice issues, including at a monthly work luncheon that Malcolm hosts, at the Heritage Foundation. But **momentum has been hard to regain. "Hurt feelings are impacting meaningful discussion,"** Malcolm said.

"For the right, the criticism of the left is 'Your messaging stinks and you don't make it easy to pass stuff because you make this difficult for conservatives to sign on to,' " Kevin Ring, the president of Families Against Mandatory Minimums, said. **"And, for the left, the criticism of the right was 'You didn't try that hard.' "**

Many believe that the **prospects for reform at the federal level now depend largely on** two men: Sessions and Jared **Kushner**, the President's adviser and son-in-law, who has added criminal justice to his thick portfolio. In March, Kushner discussed the failed criminal-justice-reform bill at a meeting with Senator Mike Lee, of Utah, a Republican supporter of reform; Senator Chuck Grassley, of Iowa, the chairman of the Senate Judiciary Committee; and Senator Dick Durbin, of Illinois, the Democratic Whip. According to the Times, Kushner supports reform. His father, the real-estate developer Charles Kushner, spent two years in federal prison for tax evasion, witness tampering, and illegal campaign donations—and prisoner advocates hope that this personal experience might make Jared an ally.

So far, however, **Kushner has been quiet** while Sessions has moved quickly to set a tougher-on-crime course for the Administration. One of his first acts as Attorney General was to reverse Obama-era instructions to federal prosecutors that discouraged the pursuit of charges with mandatory minimums of prison time. In a speech in late May, in Memphis, Sessions reiterated his belief that the ongoing opioid epidemic and rises in violent crime are linked. "Drug trafficking is an inherently violent business," he said. "If you want to collect a drug debt, you can't file a lawsuit in court. You collect it by the barrel of a gun."

Ed Chung, the vice-president for criminal-justice reform at the liberal Center for American Progress, who served as a Justice Department adviser during the Obama Administration, said that Sessions's order on charging defendants indicates that **it will be more difficult to secure Republican help on significant federal reform. "It's a difficult political atmosphere,"** he said. **"Especially with the way the Administration has characterized what is needed as far as public safety and criminal justice."**

uq—thumper—1ar

PPP disqualifications and Kushner focus undermines CJR efforts

Diamond 4/22—White House correspondent for CNN based in Washington, D.C., where he covers the Trump administration [Jeremy, 4/22/2020, “Some ex-felons excluded from small business relief in spite of Trump’s criminal justice reform platform”, CNN Politics, <https://www.cnn.com/2020/04/22/politics/trump-ex-felons-small-business-relief/index.html>] AMarb

(CNN)Like millions of other small business owners facing the financial weight of the coronavirus pandemic, Vincent Bragg saw the federal government’s Payroll Protection Program as a potential lifeline. But the fifth question on the loan application immediately disqualified Bragg from securing a loan to help pay the salaries of the nine people on the company payroll: “Is the Applicant ... subject to an indictment ... or presently incarcerated, or on probation or parole?” Bragg, who served five years in prison on a drug conspiracy charge, has one year left on probation. “It’s kind of discouraging,” said Bragg, the CEO of the creative agency, ConCreates. “I’ve gotten out of prison and I feel like I’ve done everything right. So, to be penalized for my past ...” Under regulations issued by the Small Business Administration, formerly convicted felons like Bragg who are still on probation or have been convicted, pleaded guilty or pleaded no contest to a felony in the last five years, are disqualified from the loan program. The exclusionary rules cut a stark contrast to the criminal justice reform bill President Donald Trump signed into law in 2018 and the policies his reelection campaign is highlighting -- including in a powerful Super Bowl ad this year -- in an appeal to minority voters in the 2020 election. Trump appeared unaware of the policy when asked about it at a briefing on Monday. But on Tuesday, Treasury Secretary Steve Mnuchin said the rules had already been tweaked early on and were unlikely to change further. “There were people that had misdemeanors who weren’t allowed to access the program. It was much longer than five years,” Mnuchin said of the original restrictions. “So, we have already taken that into account.” Hundreds of thousands of loan applicants without criminal histories have also been left waiting after funding dried up. But while Congress is in the midst of approving a second tranche of \$310 billion for the program, the latest bill does not include a fix to allow those with certain criminal records to access the funds. But criminal justice reform advocates point out that the original legislation that funded the small business loan program, known as PPP, included no language barring people with criminal records from accessing the financial relief. And the Small Business Administration has changed its PPP rules at the White House’s request on other issues, such as ensuring religious organizations could access the funds. “Given the amount of bipartisan support that we’ve seen bubble up over the last five years for the issue of criminal justice reform and second chances for people coming home, this is incredibly disappointing,” said Jessica Jackson, a criminal justice reform activist who worked with the White House to pass the First Step Act and is now the chief advocacy officer for the REFORM Alliance. “I’m hopeful that his administration is going to work to remove this discriminatory provisions from the rule.” But so far, there has been no movement. Jackson and other criminal justice reform advocates have been lobbying the White House and Capitol Hill to address this rule for more than three weeks. Rep. Cedric Richmond, a Democrat from Louisiana, first penned a letter to Mnuchin and SBA Administrator Jovita Carranza on April 6 on behalf of 10 other members of Congress, warning of the impact not only on small business owners with criminal records, but their employees. “The Paycheck Protection Program was designed by Congress to give all small businesses a lifeline. The employees of the formerly incarcerated are just as entitled to remaining on payroll as other Americans,” Richmond wrote. A coalition of conservative-minded criminal justice reform advocates have also appealed directly to Trump, reminding him in a letter on Monday that he recognized April as “Second Chances Month.” “With respect to your proclamation we respectfully request that your Administration recommend the inclusion of those small business owners who have paid their debt to society and earned a second chance,” wrote the group, which includes Americans for Prosperity, FreedomWorks and the Faith & Freedom Coalition among others. A source familiar with discussions between criminal justice reform advocates and the White House said White House officials have said they are still working on the issue. But the advocates are missing the support of a top White House official who could otherwise force through the logjam: Jared Kushner, the President’s son-in-law who has spearheaded criminal justice reform efforts at the White House but is now focused on medical supply chain issues.

*****counterplan answers*****

states cp deficit—disease adv

Federal action is key---states are too fragmented for coordinated reporting, responsibility or accountability which makes disease spread occur much quicker

Speri 5/6—Writes about justice, immigration, and civil rights at the Intercept, She has reported from Palestine, Haiti, El Salvador, Colombia, and across the United States [Alice Speri, 5/6/2020, “MASS INCARCERATION POSES A UNIQUELY AMERICAN RISK IN THE CORONAVIRUS PANDEMIC”, The Intercept, <https://theintercept.com/2020/05/06/coronavirus-prison-jail-mass-incarceration/>] AMarb

Part of the reason **there’s no official comprehensive dataset tracking** the impact of the **coronavirus** in the U.S. prison system is **because there is no unified system, but rather a tangle of federal, state, and local jurisdictions.** “It’s always been a decentralized fight, state by state, county by county,” said Dolovich.

That presents both a **massive challenge** and an **opportunity**, added Dolovich. **Because there is no centralized body overseeing Covid-19 responses in prisons and jails, advocates have been lobbying hundreds of officials across the country,** while armies of lawyers have been working around the clock on behalf of individual clients and entire classes of people. **They have filed motions with dozens of courts arguing for relief that can range from diversion to lower sentences to compassionate release.** “The level of advocacy effort and involvement is actually astonishing and inspiring right now,” Dolovich said. “There’s no easy levers. So people are basically slamming their heads against the wall and trying to see if there’s any kind of weakness they can take advantage of to help their clients.”

“We’ve had 40 years of a legal system that’s been crafted with the effect of making it extremely hard to provide any kind of meaningful constitutional relief for people,” she added. **“We respond to any kind of social crisis with incarceration, and what we’re seeing now is the fruits of those efforts.”**

Each Its Own Universe

The **fragmentation** of the U.S. criminal justice system — a **sprawling, decentralized bureaucracy with thousands of jurisdictions and powerholders** — has long **served to hide the full cost of mass incarceration. Comprehensive data** on those the U.S. deprives of their freedom **is virtually impossible to obtain in a timely fashion,** if at all. The **coronavirus** crisis has **laid bare this systemic failure more than ever.** The **country’s more than 3,000 jails,** in particular, function like **fiefdoms.** While state corrections departments oversee prisons, and the Bureau of Prisons runs federal facilities, **jails operate under the authority of thousands of local officials. Only a handful of states collect data from their jails.**

“There isn’t centralized reporting, responsibility, or accountability.” said Insha Rahman, director of strategy and new initiatives at the Vera Institute of Justice, which has long sought to fill in the gaps in official data and recently launched a new tracker monitoring Covid-19 responses across the jail system. “It’s actually literally going county by county to get that information.”

“It’s so hard to know what’s happening across the entire country,” echoed Udi Ofer, the director of the ACLU’s Justice Division. **“We don’t have one criminal justice system in the United States, we literally have thousands of criminal justice systems. ... It’s so decentralized that every jail, every prison is its own universe.”**

The ACLU model attempted to account for the “uniqueness of every jail and community,” said Lucia Tian, the organization’s chief analytics officer, adding that their model was the combination of “over 1,200 individual models with tailored information from those particular jail systems and counties.” The model predicted that, with highly effective social distancing in place, accounting for jails would increase U.S. Covid-19 deaths by 98 percent — from a projected 101,000 to 200,000. **With less effective social distancing, jails could bump up the death toll by 188,000, for a predicted total of 1,177,000.**

*****drug trafficking pic answers****

2ac violent drug offenders pic

False positives create more mass incarceration AND replacements trigger the net benefit

Luna 17—Amelia D. Lewis Professor of Constitutional & Criminal Law, Arizona State University Sandra Day O'Connor College of Law [Erik, 2017, "Mandatory Minimums" in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release*, The Academy for Justice, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf] AMarb

Mandatory minimum sentences are also unlikely to reduce crime by incapacitation,⁶¹ at least given the **overbreadth of such laws** and their **failure to focus on those most likely to recidivate**. Among other things, **offenders typically age out of the criminal lifestyle**, usually in their 30s,⁶² meaning that long mandatory sentences may require the **continued incarceration of individuals who would not be engaged in crime**. In such cases, the extra years of imprisonment will not incapacitate otherwise active criminals and thus will not result in reduced crime. Instead, prisons become geriatric facilities.⁶³ Although selective incapacitation—choosing offenders based on certain predictors of future criminality⁶⁴—may work in discrete circumstances, mandatory minimums sentences work as meat cleavers, not scalpels, and thus generate high levels of false positives (i.e., incapacitated offenders who would not otherwise be committing crimes). Moreover, certain offenses subject to mandatory minimums can draw upon a large supply of potential participants. With **drug organizations**, for instance, an arrested dealer or courier may be quickly replaced by another, eliminating any crime-reduction benefit.⁶⁵ More generally, any incapacitation-based effect from mandatory minimums was likely achieved years ago, due to the diminishing marginal returns of locking more people up in an age of mass incarceration.⁶⁶

Impact inevitable---Mandatory minimums rarely cover kingpins or leaders

Luna 17—Amelia D. Lewis Professor of Constitutional & Criminal Law, Arizona State University Sandra Day O'Connor College of Law [Erik, 2017, "Mandatory Minimums" in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release*, The Academy for Justice, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf] AMarb

There is a genuine question as to the propriety of extracting information and guilty pleas through the threat of mandatory minimums.⁷⁶ Such practices impose a sort of "trial tax" on defendants who exercise their constitutional rights to trial by jury, proof beyond a reasonable doubt, and other trial-related guarantees— the tax being the mandatory minimum sentence that otherwise would not have been imposed. Moreover, the statistics seem to challenge any categorical assertions of government necessity.⁷⁷ In the federal system, in fact, the rate of 73 cooperation in mandatory minimum cases is comparable to the average in all federal cases.⁷⁸ **As it turns out, most recipients of federal drug minimums are couriers, mules, and street-level dealers, not kingpins or leaders in international drug cartels**.⁷⁹ "Were there no mandatories, defendants now affected by them would remain subject to all the pressures that face every criminal defendant," Professor Michael Tonry has noted. "They would simply no longer face out-of-the-ordinary—and therefore unfair—pressures resulting from the rigidity and excessive severity of mandatory minimum sentencing laws."⁸⁰

Mandatory minimums have a low deterrent effect on drug crime

Pew 18 [This brief was prepared by Pew staff members Adam Gelb, Phillip Stevenson, Adam Fifield, Monica Fuhrmann, Laura Bennett, Jake Horowitz, and Erinn Broadus. The team thanks Pew colleagues Alex Duncan, Casey Ehrlich, Justine Calcagno, Peter Wu, Timothy Cordova, and Abby Walsh for research

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The absence of any relationship between states’ rates of drug imprisonment and drug problems suggests that expanding imprisonment is **not likely to be an effective national drug control and prevention strategy**. The statelevel analysis reaffirms the findings of previous research demonstrating that imprisonment rates have scant association with the nature and extent of the harm arising from illicit drug use. For example, a 2014 National Research Council report found that mandatory minimum sentences for drug and other offenders “have few, if any, deterrent effects.”²² The finding was based, in part, on decades of observation that when street-level drug dealers are apprehended and incarcerated they are quickly and easily replaced.

Highest risk of the net benefit starts at 25%---be extremely skeptical of their evidence

Mauer 10—Executive Director of The Sentencing Project [Marc, July-August 2010, “The impact of mandatory minimum penalties in federal sentencing”, JUDICATURE Volume 94, Number 1, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Judicature-Impact-of-Mandatory-Minimum-Penalties-in-Federal-Sentencing.pdf>] AMarb

Even aside from this problem, measuring the impact of harsh sentencing policies on crime rates is a **complex undertaking**. While it is the case that crime rates have generally been declining since the early 1990s and that this has taken place at a time when the prison population was rising, this does not necessarily suggest that there is a clear and unambiguous relationship between these two factors. Just prior to the beginnings of the crime decline, in the period 1984-91, incarceration rates increased substantially and yet crime rates increased as well. Looking a bit more expansively, a comparison of trends in the U.S. and Canada in recent decades is instructive. While there has been a great deal of attention focused on the U.S. crime decline of the 1990s, similar declines were achieved in Canada as well, yet these occurred while the prison population was actually declining. Thus, we should be **exceedingly cautious** in attributing any substantial causal effect between rising incarceration and declining crime rates. While incarceration has some impact on crime, this effect is generally more modest than many believe. The most optimistic research to date on the crime decline of the 1990s finds that **25 percent** of the decline in violent crime can be attributed to rising imprisonment,² but other scholarly work concludes that this effect may be as small as **10 percent**.³ And in either case, such studies do not tell us whether using resources to support expanded incarceration is more effective than targeted social interventions, such as expanded preschool programming, substance abuse treatment, or improving high school graduation rates, all of which have been demonstrated to improve public safety outcomes. Further, the rise in incarceration over the past two decades is a function of a range of factors, including increased drug arrests, harsher sentencing policies, reduced parole releases, and increased parole revocations. Federal mandatory sentencing penalties play a relatively small role in this overall scheme.

at: trafficking impact

Impact inevitable—cartels are more likely to be financially sustained by other activities than drugs

Patrick **Corcoran 13**, analyst for Insight Crime, September 2013, “Mexico’s shifting criminal landscape: changes in gang operation and structure during the past century,” Trends in Organized Crime, Vol. 16, No. 3, p. 306-328

Mexico’s battles with criminal groups, organized primarily around the drug trade, are a longstanding source of trouble for the North American nation. They also represent a major bilateral issue for the US, not least because of countless examples of the Mexican government protecting organized crime. But though concern over drug smuggling has been constant on both sides of the border for more than four decades, there has been an enormous amount of change within the criminal landscape during that time period.

As this essay will argue, the gangs that replaced the small-time opium runner of half a century ago are more sophisticated and globalized today. However, a decades-long trend of steady consolidation has reversed; since 1990, the industry has grown far more fractured, despite the increased overall sophistication within the industry. Today’s smaller gangs are also more likely to make their money from activities other than drug trafficking, and have grown steadily more violent in recent years.

at: environment impact

The environment is resilient---every barometer has been positive for decades

Easterbrook 18—still writing the same cards 23 years later [Gregg, February 2018, *It's Better Than It Looks: Reasons for Optimism in an Age of Fear*, Chapter 3: Will Nature Collapse?, pg 52, Google Play] AMarb

INSTEAD, IN 2017, I WATCHED a bald eagle glide peacefully above my home near Washington, DC. North American eagles have proliferated so much that the International Union for the Conservation of Nature (IUCN), which keeps the books on species gains and losses, now classifies the bird under "least concern." The eagle flew through air that was free of smog, as air almost always is in American cities. Newspapers in my driveway reported that oversupply of petroleum and natural gas was pushing energy prices toward record lows. "Oil Glut Worries"—here, Wall Street Journal, March 10, 2017; "Natural Gas Glut Deepens," same paper, same page, a week later. Society was expected by now to be in full panic mode regarding oil and gas exhaustion, and instead the apprehension is too much fuel. Another newspaper in the driveway reported so many otters frolicking off California that tourists were crowding seaside enclaves to watch. Acid rain was nearly stopped, the stratospheric ozone hole was closing. Water quality alarms were ongoing in Flint, Michigan, and along Long Island Sound, but in general cleanliness was rising, with Boston Harbor, Chesapeake Bay, Puget Sound, and other major water bodies, filthy a generation ago, mostly safe for swimming and fishing, meeting the 1972 Clean Water Act's definition of success. Nearly every environmental barometer in the United States was positive and had been so for years if not decades. Watching the bald eagle soar did not make me feel complacent regarding the natural world, rather, made me feel that greenhouse gases can be brought to heel, just as other environmental problems have been. Climate change reforms will be the subject of a coming chapter. Here, let's contemplate why nature did not collapse, despite ever more people consuming ever more resources. Man-made damage to nature can be atrocious. Think of the Exxon Valdez oil spill, which destroyed forever the wildlife in Prince William Sound, Alaska. At least that's what was said in 1989 when the tanker struck Bligh Reef. Today most sea and intertidal life in Prince William Sound has returned to pre-spill numbers, while the sound's combination of beauty and biology makes it a popular destination for whale-watching tours. Exxon, now ExxonMobil, deserved the billions in fines and settlements the company paid. But the whole thing was over in a snap of the fingers in geologic terms. Humanity is hardly the only force that damages nature. In 1980, pressurized magma inside Mount Saint Helens in Washington State exploded with the power of about 1,500 Hiroshima bombs. "Some 19 million old-growth Douglas firs, trees with deep roots, were ripped from the ground and tossed about like cocktail swizzles," one analyst wrote. Hundreds of square miles burned to cinders, animals and fifty-seven people near the eruption turned to char. Commentators of the time called the Mount Saint Helens area destroyed forever. When I hiked the blast zone in 1992, I was amazed to behold areas that had been lifeless moonscapes in 1980; just a dozen years later, they were bright with biology: wildflower, elk, sapling firs. Today Mount Saint Helens National Volcanic Monument is a recommended destination for backpackers. Through the eons, nature has healed after insults far worse than the worst ever done by people—ice ages, asteroid strikes, thousand-year periods of volcanism so extreme that global ash clouds blocked the sun for years at a time. The mega-volcanism that long ago created Siberia is estimated to have unleashed three billion times the force of the Hiroshima blast, plus far more smoke than humanity's wars and factories combined. Nature has evolved defenses against such harm in the same way that the body has evolved defenses against pathogens. This does not make harm to nature insignificant, any more than having an immune system makes germs insignificant. But before asking whether nature will collapse, it's good to remind ourselves that our ongoing existence is evidence that the biosphere is a green fortress.

deficit—econ advantage

The PIC exacerbates successful reentry which means they cannot facilitate growth

Mauer 10—Executive Director of The Sentencing Project [Marc, July-August 2010, “The impact of mandatory minimum penalties in federal sentencing”, JUDICATURE Volume 94, Number 1, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Judicature-Impact-of-Mandatory-Minimum-Penalties-in-Federal-Sentencing.pdf>] AMarb

Mandatory penalties may adversely affect recidivism. Whatever one may think about the wisdom of mandatory sentencing, it is undeniable that such penalties serve to **increase the length of time that offenders serve in prison by restricting the discretion of judges and corrections/parole officials.** By doing so, these policies may have a **criminogenic effect.** A 2002 review conducted by leading Canadian criminologists involved a metaanalysis of 117 studies measuring various aspects of recidivism. The researchers concluded that longer periods in prison were “associated with a small increase in recidivism” and that “the results appear to give some credence to the prison as ‘schools of crime’ perspective.”⁴ Federal mandatory penalties **increase the challenges for successful reentry.** While not a problem exclusive to mandatory sentencing, the combination of expanded federal prosecution of drug offenses along with lengthier prison terms produced by mandatory penalties **exacerbates the challenges of reentry.** This is due to the fact that since federal prisoners can be housed anywhere in the country, many are in prisons far from their homes and are also serving long prison terms. This combination of circumstances contributes to eroding ties to family and community, the critical ingredients of successful reentry.

no deterrence—1ar

Deterrence value is minimal

Mauer 10—Executive Director of The Sentencing Project [Marc, July-August 2010, “The impact of mandatory minimum penalties in federal sentencing”, JUDICATURE Volume 94, Number 1, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Judicature-Impact-of-Mandatory-Minimum-Penalties-in-Federal-Sentencing.pdf>] AMarb

While there is little relevant data on the overall impact of federal mandatory penalties, there is nonetheless a broad range of evidence that suggests that it is unlikely that mandatory penalties for drug offenses have a significant impact on enhancing public safety. This is the case for several reasons: Deterrence is primarily a function of the certainty, not severity, of punishment. To the extent that sentencing policies may deter individuals from engaging in crime, the research literature generally shows that increases in the certainty of punishment are much more likely to produce an effect than enhancements to the severity of punishment. That is, if we can increase the prospects that a given offender is apprehended, some persons will be deterred by that knowledge. But merely extending the amount of punishment that will be imposed, when most offenders don't believe they will be apprehended, does little to add to any deterrent effect. In this regard, mandatory penalties increase severity, but have no direct impact on increasing certainty, and are therefore not likely to provide any significant additional deterrent effects.

replacement alt cause—1ar

Replacement offenses mean the mandatory minimum effect is limited

Mauer 10—Executive Director of The Sentencing Project [Marc, July-August 2010, “The impact of mandatory minimum penalties in federal sentencing”, JUDICATURE Volume 94, Number 1, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Judicature-Impact-of-Mandatory-Minimum-Penalties-in-Federal-Sentencing.pdf>] AMarb

Mandatory penalties are particularly ineffective in addressing drug crimes. While there is an ongoing debate about the effect of imprisonment on reducing crime, **drug offenses are particularly immune to being affected by more and longer prison terms.** This is largely due to the **“replacement” nature of these offenses,** the fact that **there is a virtually endless supply of potential offenders in the drug trade.** Since the vast majority of incarcerated drug offenders are from the lower and middle ranks of the drug trade, their **imprisonment** in effect **creates a “job opportunity” for someone else seeking to earn some quick money.** **As long as there is a demand for illegal drugs, there will be a large pool of potential sellers, as evidenced by the fact that the number of persons incarcerated for a drug offense has increased by more than 1000 percent since 1980.** Since federal mandatory penalties are disproportionately employed for drug offenses, this suggests that their **overall impact is similarly limited.**

*****kritik answers*****

perm/reformism/movements good

Ending mandatory minimums spurs a mass approach that can recognize economic and racial justice while pursuing mass reformism and interventionism even if they are contradictory at times

Levin 18—Associate Professor, University of Colorado Law School [Benjamin, 2018, “The Consensus Myth in Criminal Justice Reform”, 117 Mich. L. Rev. 259 (2018). Available at: <https://repository.law.umich.edu/mlr/vol117/iss2/3>] AMarb

To be clear, though, this Article is meant to be neither a call for ideological purity nor a critique of incrementalism. To that end, the over/mass distinction is not intended to be a stand-in (or disguise) for the incremental/ radical distinction.²⁹⁷ Indeed, while the mass critique is fundamentally radical and sweeping, that does not mean that the critique is incompatible with pragmatism or incremental reforms.²⁹⁸ Existing mass critiques—both inside and outside of the academy—often do include concrete steps or policy solutions designed to redistribute political, social, and economic power.²⁹⁹ Putting aside, for a moment, a range of over-style policy solutions that would address mass concerns (e.g., drug decriminalization; ending mandatory minimum sentencing), it is important to recognize that many of the most vital criminal justice reform efforts on the ground reflect a mass approach.³⁰⁰ For example, consider the movements to end cash bail and the push to reduce fines and fees in the criminal system. In recent years, scholars and activists have focused on the problem of cash bail: people who cannot afford bail must languish in jail as they await trial or resolution of their case.³⁰¹ The movement to address cash bail gained steam following the suicide of Kalief Browder, a young man who spent three years incarcerated at Riker’s Island awaiting trial for allegedly stealing a backpack.³⁰² The over response to the problem focuses on whether the right people are being detained (i.e., courts should use algorithms to determine if a given defendant poses a societal danger); if so, she should remain in custody pretrial.³⁰³ That response addresses over concerns (i.e., more people are being detained than necessary). That said, mass responses reflecting different concerns and priorities have attracted significant attention and backing. Perhaps most notable has been the rise of the community bail fund—a fund established by community members to pay bail for people awaiting trial.³⁰⁴ The idea being that the court is detaining defendants in the name of the community, but the community does not believe that the court represents its voice(s).³⁰⁵ This mass approach to the problem does not focus on optimizing detention; rather, its goal is to resituate power and voice in the criminal system.³⁰⁶ By providing bail money to defendants, community members are able to override official decisions that might have disparate impacts or that might not accurately reflect popular will.³⁰⁷ As a part of a broader political project of community empowerment and a less punitive criminal system, the bail fund represents an incremental solution. Relatedly, media coverage has helped shed light on the problem of fines and fees in the criminal system, and a range of scholars and activists have taken up the cause.³⁰⁸ Like the cash bail issue, this is a problem deeply rooted in issues of economic and racial justice.³⁰⁹ Poor arrestees and defendants often wind up deep in debt, rearrested, or incarcerated because they are unable to pay fines or fees that courts and police departments impose.³¹⁰ The critique of this practice is fundamentally a mass one, rather than an over one: the issue is not that the fines should be lower, that the wrong class of defendants is being fined, or even that the fines or fees are sometimes levied against people who have not been convicted. Rather, the concern is that the criminal system is driving people further into poverty and helping to drive a cycle in which people remain court-involved after their case is resolved. In some cases, the state and law enforcement entities are enriching themselves on the backs of poor and marginalized defendants. This line of criticism and law reform, then, explicitly confronts the place of the criminal system as a driver of inequality and as inextricably linked to distributive justice. A growing body of scholarship addresses these issues, and advocates are working to end these practices via impact litigation and legislative activism.³¹¹ While these are only two examples, they both demonstrate the capacity of mass critiques to translate into on-the-ground legal and policy solutions. That is, while the critique itself may be sweeping and less appealing as a way to frame legal or policy arguments, it is important to recognize that the mass critique can yield mass reform movements and interventions that are pragmatic and incremental in scope.³¹² It might be that these movements find support among some critics adopting an over frame, just as it may well be that mass

critiques support over-inflected solutions. But recognizing the **different motivations, priorities, frames, and goals** should be an **important component of our understanding** of the **criminal justice reform** movement as a **collection of—at times complementary, and at times contradictory— movements.**

mandatory minimums=racial wealth gap

Mandatory minimums create a racial wealth gap that disproportionately target people of color

Grawert 18—Senior Counsel and John L. Neu Justice Counsel, Brennan Center for Justice [Ames Grawert and Priya Raghavan (Counsel, Brennan Center for Justice), December 2018, “Criminal Justice Reform Must Start with Sentencing Reform”, FEDERAL SENTENCING REPORTER • VOL. 31, NO. 2, <https://fsr.ucpress.edu/content/ucpfsr/31/2/101.full.pdf>] AMarb

While they didn’t solve America’s crime problem, mandatory minimums did help fill federal prisons. By 2016, more than half of those in federal custody were convicted of an offense carrying a mandatory minimum penalty.¹² Mandatory minimums also exacted a devastating toll among communities of color. In 2016, more than 70% of those convicted of an offense carrying a mandatory minimum penalty were people of color, with Hispanic offenders representing the largest group (40.4%), followed by black offenders (29.7%).¹³ But this destructive trend can be reversed: by reducing unnecessarily long sentences, we can reduce incarceration without endangering public safety.¹⁴ After 2013, the federal prison population began to taper down slightly, dropping by roughly 15% from a high of 219,298 in 2013 to 185,617 in 2017.¹⁵ This decline coincided with policies enacted during the Obama Administration by Attorney General Eric Holder that limited the application of mandatory minimums in some drug cases.¹⁶ It remains unclear how much of the drop can be attributed to those policies. However, the number of incarcerated drug offenders—the very population targeted by those reforms—fell sharply over the same period, from a little over 100,000 to a little under 80,000.¹⁷ III. The Urgency of Sentencing Reform These recent declines suggest that the trend toward everhigher incarceration can be reversed. This is good news, because America’s prisons have reached a tipping point, especially in the federal system. Federal prisons are overcrowded, posing dangerous conditions for incarcerated people and guards alike.¹⁸ On January 20, 2017—President Trump’s inauguration day—the federal prison system supervised a total of 189,450 people.¹⁹ That total has continued to decline, but we cannot assume that the federal prison population will continue falling.²⁰ Even as the prison population declines unevenly, research on the damage caused by overly long sentences continues to pile up. Formerly incarcerated people face trouble finding work, contributing to lower economic productivity and translating, by some estimates, to a 1.0% reduction in overall employment.²¹ In 2016, President Obama’s White House put the issue starkly, explaining that mass incarceration is an economic issue as well as a question of fairness.²² (Future Brennan Center research will expand on this finding.) People of color bear the brunt of the economic loss caused by the criminal justice system; after accounting for incarceration, the “real” unemployment rate among black men rises from 11% to 19%.²³ Of course, a broadening racial wealth gap is just one of the damaging social consequences of that divide. Amid all these harms, social science research now indicates that lengthening of prison sentences has diminishing returns with regard to crime reduction and can even lead to higher recidivism rates.²⁴ Recognizing the damage done by federal mandatory minimum sentences, for the past decade reform efforts have focused on reducing sentences, or restoring judicial discretion, with the goal of blunting the impact of overly long federal drug sentences. Starting with the Fair Sentencing Act of 2010 (FSA), legislators began targeting the worst, most unnecessarily punitive or discriminatory aspects of federal drug sentencing. The FSA achieved two key reform priorities: first, it eliminated a prior mandatory minimum for simple possession offenses. Second, it reduced the sentencing disparity between crack cocaine and powder cocaine.²⁵ Previously, a single gram of crack incurred the same punishment as 100 grams of powder, and the FSA reduced this to an 18:1 disparity.²⁶ The 100:1 disparity had no scientific basis and promoted stark racial disparities: crack was more accessible to poor Americans, many of whom were black, and powder cocaine was more accessible to white, affluent Americans. Unfortunately, the FSA failed to entirely close the gap between drugs that present the same harm, though it helped diminish what had been a significant driver of incarceration in communities of color.²⁷ Notably, the bill counted then Senator Jeff Sessions (R-AL) as a sponsor.²⁸ Five years later, the Sentencing Commission reported that the FSA had accelerated a downtrend in crack cocaine prosecutions, produced more equitable sentences, reduced the federal prison population—and accomplished all that without compromising law enforcement objectives. Crack cocaine use continued to decline after the FSA, and offenders continued to cooperate with law enforcement at the same rate—defanging two arguments frequently used by reform skeptics.²⁹

Ending mandatory minimums alleviates unjust targeting of people of color and decreases overpopulating prisons

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Dear Senators Specter and Leahy, and Representatives Sensenbrenner and Conyers: Twenty years ago, on October 27, 1986, President **Reagan signed the Anti-Drug Abuse Act of 1986. One of its major provisions added mandatory minimum sentences** for most federal drug trafficking offenses to the 1970 Controlled Substances Act. The mandatory minimums were reported out of committee without any hearings. Congress said it intended to encourage the Justice Department to focus on major drug traffickers. But **the quantity triggers for mandatory sentences are absurdly low.** Only five grams of crack cocaine trigger a sentence of at least five years up to forty years. Fifty grams of crack cocaine trigger a sentence of at least ten years up to life imprisonment. Fifty grams is the weight of a candy bar, which is not the large quantity shipped by major traffickers. Even the largest quantities, 5 kilograms of powder cocaine, or about 12 pounds, fit in a large lunch box or a modest briefcase. A quantity of five kilograms of powder cocaine is a courier quantity -- not kingpin quantity.

The U.S. Sentencing Commission has found that the overwhelming majority of federal cocaine defendants – roughly 10,000 cases in 2000 – are low level offenders like bodyguards, lookouts, or street level sellers. Simply put, the **current mandatory minimums are undermining public safety by providing perverse incentives for federal law enforcement agencies to**

focus on minor offenders instead of major traffickers. This is the opposite of what Congress intended. The law has **helped drive in an increase in the federal prison population from 36,000 in 1986 to over 192,000 today.** The law has also **been unfairly targeted at people of color. Only one in four federal drug offenders is white – the rest are Black, Hispanic, Asian or Native American. This law was a major mistake.** In general, judges appointed by the President and confirmed by the United States Senate have the maturity and judgment to determine the appropriate and just punishment for criminal violations. **There is nothing inherent or uniquely abhorrent in a drug offense that requires mandatory sentencing, especially when sentencing guidelines provide numerous opportunities to enhance sentences when aggravating factors exist.** As a scholar of criminology, sociology, public policy, or law, **I join my colleagues around the nation to urge the U.S. Congress to** review the 1986 anti-drug sentencing provisions and **adopt amendments that will eliminate mandatory minimum sentences in order to enable federal judges to hand down sentences to comport with the spirit of the Sentencing Reform Act of 1984. Such sentences should,** consistently with 18 U.S.C. section 3553(a) : – **reflect the nature and circumstances of the offense (including its seriousness), – reflect the history and characteristics of the defendant, – promote respect for the law, – provide adequate deterrence to criminal conduct, – provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner, – avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and – provide restitution to any victims of the offense.** In my opinion, the **mandatory minimum sentencing provisions** of the 1986 Anti-Drug Abuse Act have **fostered injustice, created disrespect for the law, and should be repealed.**

at: prison abolition k

Eliminating mandatory minimums is in line with prison abolitionist goals

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3. **Eliminate Sentencing Guidelines and Mandatory Minimums** **While the purist prison abolitionist point of view may want sentencing guidelines eliminated entirely, and we should strive for that goal, “the dangerous few” may still require some structure for sentencing.**¹⁹⁴ Regardless, **sentencing guidelines are unreliable and do not equally apply to everyone.**¹⁹⁵ First, **sentencing guidelines are terribly restrictive.** Second, in Minnesota, “[a]s use of the Guidelines evolved, it became apparent that their **sentencing numbers were not really based on anything.**”¹⁹⁶ **This defeats the purpose of guidelines, because the guidelines are supposed to be fair and justly applied.** But “[w]hat is the true ‘just desert’ of someone who possesses half an ounce of cocaine? Should it be probation? Twelve months in prison? Eighty-six months—as it is now—in the post ‘War on Drugs’ era?”¹⁹⁷ One judge interviewed for this Article stated the following: **[Sentencing guidelines] can take away the luck of the draw involved in your particular judge’s sentencing approach. It hurts the justice system when there are wildly different sentences for individuals with the same background and engaging in the same conduct.**¹⁹⁸ On the other hand, **they take away a judge’s ability to exercise the judgment necessary to recognize circumstances that make it inappropriate to send someone to prison.**¹⁹⁹ Like sentencing guidelines, **mandatory minimum sentences need to be eliminated.** The **role of mandatory minimum sentences in the mass incarceration boom is widely known.**²⁰⁰ Even when a judge wants to give a sentence they believe is fair, mandatory minimums **prevent the judge’s discretion.** Judges are supposed to serve as an independent administrator of justice. But **when a judge cannot do anything but pronounce a mandatory minimum sentence, they are unable to execute their independent role.** As one judge noted, “[T]oo many mandatory sentences are a product of political expediency. My perspective is that **too many of our lawmakers vote for long mandatory sentences, so they are seen as tough on crime without any real thought to whether they truly are in the public’s best interest.**”²⁰¹ The judge then shared a story about just how cruel sentencing guidelines and mandatory minimums can be: I had a woman before me for a drug sentence. She got involved in drugs and the criminal world through her abusive boyfriend. Thanks to him, she picked up a huge addiction and some serious legal trouble. Following the charge in my case, the woman bonded out. She turned her life around—dumped the boyfriend, got sober, got a job, got her kids back, became a mentor for young, drug-addicted women, found God, and became everything you would want her to be. Her probation officer came in on the day of her sentencing crying because it was such a waste to have to send the woman to prison for a really long time. But I had to because the callous and cruel guidelines gave me absolutely no discretion.²⁰² **Giving judges absolutely no discretion to hand down a just and fair sentence is counterproductive to a prison abolitionist framework, which is a sad result of “prison-backed policing.”**²⁰³ A prosecutor interviewed for this article noted the problem when those with high criminal history scores commit a low-level offense, they end up falling into a presumptive commit to prison based on their record. She does not see justice “when defendants with high criminal history scores are charged with Third Degree Burglary for stealing twenty dollars of merchandise from a store after previously being trespassed. I don’t necessarily see the justice in sending someone to prison for that kind of offense simply because the guidelines call for it.”²⁰⁴

general

at: reformism links

Reformism is necessary for incremental change---they are paternalistic

Richard **Delgado 13**, 2013; J.D. from UC-Berkeley, B.A. in Philosophy from the University of Washington, Professor of Law at the University of Alabama, acclaimed scholar and civil rights activist; Arguing About Law, "Does Critical Legal Studies Have What Minorities Want?" p. 589)

2. The CLS critique of piecemeal reform Critical scholars reject the idea of piecemeal reform. **Incremental change, they argue, merely postpones the wholesale reformation that must occur** to create a decent society. Even worse, an unfair social system survives by using piecemeal reform to disguise and legitimize oppression. Those who control the system weaken resistance by pointing to the occasional concession to, or periodic court victory of, a black plaintiff or worker as evidence that the system is fair and just. In fact, Crits believe that teaching the common law or using the case method in law school is a disguised means of preaching incrementalism and thereby maintaining the current power structure." To avoid this, CLS scholars urge law professors to abandon the case method, give up the effort to find rationality and order in the case law, and teach in an unabashedly political fashion. **The CLS critique of piecemeal reform is familiar, imperialistic and wrong.** **Minorities know from bitter experience that occasional court victories do not mean the Promised Land** is at hand. **The critique** is imperialistic in that it **tells** minorities and other **oppressed peoples how they should interpret events** affecting them. **A court order directing a housing authority to disburse funds for heating** in subsidized housing **may postpone the revolution, or it may not. In the meantime, the order keeps** a number of **poor families warm. This may mean more to them than** it does to **a comfortable academic** working in a warm office. **It smacks of paternalism to assert that** the possibility **of revolution** later **outweighs the certainty of heat now**, unless there is evidence for that possibility. The Crits do not offer such evidence. Indeed, some **incremental changes** may **bring revolutionary changes closer**, not push **them** further **away**. Not all small **reforms** induce complacency; some may **whet the appetite for further combat**. The welfare family may hold a tenants' union meeting in their heated living room. CLS scholars' critique of piecemeal reform often **misses these possibilities**, and neglects the question of whether total change, when it comes, will be what we want.

disease securitization good

Our scenarios are epistemologically sound---only the aff can stop diseases from becoming inevitable

Osterholm and Olshaker 17 – Regents Professor and director of the Center for Infectious Disease Research and Policy at the University of Minnesota AND New York Times bestselling author and an Emmy-winning filmmaker with a specialty in public health [Michael T. Osterholm and Mark Olshaker, 2017, *Deadliest Enemy: Our War Against Killer Germs*, Introduction, Google Books] AMarb

In 2005, I wrote an article for the journal *Foreign Affairs* entitled "Preparing for the Next Pandemic." I concluded with the following warning: **This is a critical point in history. Time is running out to prepare for the next pandemic. We must act now with decisiveness and purpose.** Someday, after the next pandemic has come and gone, a commission much like the 9/11 Commission will be charged with determining how well government, business, and public health leaders prepared the world for the catastrophe when they had clear warning. What will be the verdict? In the eleven years that have passed since I wrote those words, I don't see that much has changed. **We could try to scare you out of your wits** with bleeding eyeballs and inner organs turned to mush as some books and films have attempted to do, **but in the vast majority of instances, those images are a misrepresentation and not relevant. The truth and the reality should prove sufficiently concerning to scare us all into our wits.** I'm not trying to give either an optimistic or a pessimistic spin on the challenges in facing our deadliest enemy. **I'm trying to be realistic. The only way we are going to confront and deal with the ever-present threat of infectious disease is to understand those challenges so that the unthinkable does not become the inevitable.**

Raising the threat level is important as well---the aff's political goals can't be accomplished absent securitization

Brian **Mastroianni 17**, covers science and technology for CBSNews.com, 3-16-2017, ""We are not ready": Experts warn world is unprepared for next Ebola-size outbreak," <http://www.cbsnews.com/news/study-says-world-underprepared-ebola-level-outbreaks/>

Pandemics as global security threats What happens next time a health crisis threatens to spiral out of control? Moon said **an "ideal system" would "see all countries of the world have some basic level of preparedness" when there seems to be a "suspicious pattern of infectious disease."** **But it's not just about medical practices — some experts say governments need to view pandemics as security threats.** "The Neglected Dimension of Global Security," a 2016 report from public health officials published by the National Academy of Medicine, looks at how **the wave of large-scale infectious disease outbreaks over the past few decades** — not just Ebola, but others like HIV/AIDS and SARS — **exposed how economically and politically vulnerable nations are** in the face of the ravages of future pandemics. The report finds that a range of factors, from growing population numbers to environmental degradation to increasing economic globalization, have shifted the dynamics of how **disease outbreaks can affect countries.** **"We have not done nearly enough** to prevent or prepare for such potential pandemics," Peter Sands, the commission's chair, wrote in the preface. "While there are certainly gaps in our scientific defenses, the bigger problem is that **leaders at all levels have not been giving these threats anything close to the priority they demand.**" Sands called this **the "neglected dimension of global security."** **This report essentially places global pandemics on the same level of seriousness as a military assault** on a country. **Since pandemics are generally viewed as "health problems" rather than "security risks," the study argues that public health departments tend to put outbreak preparedness on the back burner.** **Rather than building up defenses as one would for a war or a terrorist attack, potential pandemics are relatively ignored.** The commission issued 10 recommendations for building more effective public health resources in countries that are particularly prone to being decimated by an Ebola-level pandemic, such as developing universal benchmarks for preparedness that nations have to meet. Economic assistance for at-risk countries is also needed — and the report argues that money spent on preparedness would more than pay for itself. For instance, the study contends that if nations invested \$4.5 billion a year to safeguard against the next major outbreak, \$60 billion a year in losses from future pandemics could be avoided.

Even the most extreme forms of securitization don't result in military interventions

Michael J. **Selgelid 12**, Associate Professor and Director of the Centre for Human Bioethics at Monash University, Director of a World Health Organization Collaborating Centre for Bioethics at The Australian National University, "HIV/AIDS, Security and Ethics," Chapter 3 of Ethics and Security Aspects of Infectious Disease Control: Interdisciplinary Perspectives, ed. Enemark and Selgelid, 2012

Perhaps the best reason to hesitate in characterizing HIV/AIDS as a security threat is that this could portray the disease as an extreme threat requiring an extreme response. Such reasoning is behind the warning issued by Elbe and others that if HIV/AIDS is securitized this might jeopardize the rights of people living with HIV. **Desperate times do not, however, always require resort to desperate measures.** Furthermore, those who have been most visible in advocating recognition of HIV/AIDS as a security threat have tended to **offer health- and development-oriented recommendations** about how the threat should be dealt with. **Examples include:** increasing **access to medication**; preventing HIV transmission by promoting safe sex, (marital) fidelity or abstinence; vaccine development; poverty relief and capacity building; and education and awareness-raising. Virtually **none of the** recent high-profile **advocacy for the securitization** of HIV/AIDS **has included** suggestions that responding to the threat requires infringements of the rights of people living with HIV/AIDS, privacy violations, **(military) imposition of isolation and quarantine**, mandatory HIV testing, and so forth. **The UN** (1998), for example, has (through the Security Council) **officially declared HIV/AIDS to be a security threat, and at the same time has consistently advocated** (through its health and human development agencies, such as UNAIDS) **that a human rights approach must be central** to HIV/AIDS prevention and control. **The UN is thus an important counterexample to the notion that framing an issue in security terms involves endorsement of extreme response measures.** It is widely acknowledged within public health circles that a human rights approach to HIV/AIDS is necessary because more restrictive/intrusive responses would likely be ineffective or counterproductive—for example, by driving the epidemic underground and thus exacerbating the threat. From an ethical perspective, furthermore, it is widely believed that the least restrictive means should be employed in the pursuit of public health goals. **An extreme threat would not justify extreme response measures if the threat could be reduced without resort to such measures. The claim of those who warn against characterizing HIV/AIDS as a security threat is that such characterization may eventually lead to extreme response measures even if that was not the intention** of the initial securitizing actors (such as the UN) whose aim was to highlight an extreme threat justifying extra spending (which does not count as an extreme response measure for the purpose of this discussion). Our conclusion, however, is that **such a claim is at best questionable and in need of (additional) empirical justification**

Structural violence doesn't explain disease

Katherine **Hirschfeld 17**, Department of Anthropology, University of Oklahoma, "Rethinking "Structural Violence,"" Society April 2017, Volume 54, Issue 2, pp 156–162

Rigorous comparative ethnographic and archival **research** that explores the intersection of politics, economics (including illicit economies of political corruption) and the natural environment **should be the starting point for scholars interested in social and economic determinants of epidemic infectious disease.** But **the field does not take this approach.** Instead of developing **empirical questions** that could help refine theory and improve definitional clarity of core concepts, **contemporary researchers** collect narratives that validate Lenin's assumptions about imperialism. This approach makes Galtung's model unfalsifiable and **substitutes a moral argument against imperialism in place of objective historical or ethnographic research** exploring how macro level structures configure patterns of disease.

Epidemics move through time and space in predictable ways, configured by variations in **human immunity, population density and pathogen virulence.** Variables in the social environment like **malnutrition, housing, and sanitation also play a role** in configuring human vulnerability. But **over-reliance on poorly defined concepts like structural violence erases these axes of variation and explains all epidemics** in post-colonial countries **with one predetermined, unfalsifiable narrative.**

Research linking imperialism to poor health conditions in post-colonial countries had more credibility in the 1970s when Galtung's writing first became popular. But the world has changed since that time and many of his original assumptions are no longer accepted due to their inability to explain or predict events that have occurred in the new millennium. In Galtung's era, international health and development specialists assumed modernization of mortality patterns was a one-way process that could not be reversed. So a country that underwent modernization of its mortality profile through control of infectious disease was not expected to regress to an earlier developmental stage.

But the 1990s and the early 2000s there were many examples of reverse mortality transitions involving resurgence of preventable infectious diseases in industrialized countries. These were common in states with high levels of political corruption, civil wars and conflict between Violent Non-State Actors²⁸ like organized crime groups. One scholar, for instance, described Russia in the 1990s as undergoing a process of "thirdworldization" whereby the former industrial superpower became afflicted by problems typical of impoverished underdeveloped countries. These included "mass poverty, hunger, regional conflicts and ethnic wars, deindustrialization and huge foreign debt, corruption of the elites and governing juntas, bloody coups d'etat, outbreaks of long forgotten diseases, refugee problems, environmental degradation and societal and state collapse".²⁹

The political economy of state failure, epidemiological underdevelopment and "thirdworldization" are still not fully theorized, but some common patterns have been identified.³⁰ The Fund For Peace (a non profit security studies group), for instance, has created an index of fragility to rank states according to their potential for failure or collapse. In 2015 Haiti was categorized as "high alert" status meaning it was in the second riskiest tier, together with other chronically unstable regions with high rates of water borne diseases like Afghanistan, Iraq and Zimbabwe.³¹

Do the same political and economic processes that create state failure and fragility also produce widespread poverty and epidemics of preventable diseases like cholera? There is some anecdotal evidence to support this argument. One anthropologist, for instance, has described witnessing Haitian officials loot foreign aid intended to alleviate poverty, improve health and promote socioeconomic development in the country.³² According to Schwartz, this has led to a perverse scenario whereby increasing foreign aid has actually resulted in negative health and mortality trends for one region. "When the money, materials and food arrived...the Haitian employees, politicians, administrators, pastors, priests and school directors embezzled it and when they had accrued enough money, most of them migrated to Miami...This left the poorer peasants behind to deal with the disaster...".

Have predatory officials also looted aid money and supplies intended to prevent cholera from spreading? Are life-saving rehydration supplies and equipment being stolen from public clinics so that poor patients have no access to treatment? These are the kinds of questions social scientists should be asking about Haiti's current health crisis—empirical questions that can be answered through a combination of historical and ethnographic research exploring how interlocking structures at international, state and local levels have configured population vulnerability to lethal infectious disease.

But **scholars do not seem interested in conducting grounded empirical research exploring how the unique political economy of fragile states facilitates resurgent epidemics of preventable disease. They rely instead on a predetermined Leninist narrative that implicitly defines epidemics in poor countries as manifestations of imperial or structural violence. This narrative is often presented without supporting historical research, so the story of imperialism in a given location is not a literal history of a specific place and time, but moral story of unjust suffering at the hands of temporally and geographically remote, vaguely defined malevolent structures.** In this sense, **imperialism and structural violence resemble twenty-first century miasma—a vaporous, unscientific theory of disease that draws appeal from scholars' collective revulsion against anything that smells like colonialism, but contributes little to understanding patterns of emerging infectious disease in the twenty first century.**

economic modeling good

Economic methodology is good --- it's key to making accurate and progressive predictions in policy debates --- any alt fails

Gregory R. **Beabout 8** is an adjunct fellow of the Center for Economic Personalism and Associate Professor of Philosophy at Saint Louis University Challenges to Using the Principle of Subsidiarity for Environmental Policy; 5 U. St. Thomas L.J. 210 (2008)

Economics offers many insights into how the world around us works, much more than would be possible to summarize even in a full-length law review article with many footnotes.⁵ From among those many insights, I have selected three "propositions" that demonstrate the fundamental points that economics is necessary, but not sufficient, to address environmental issues and that economics is necessary, but not sufficient, to reconcile the obligations of faith toward the poor and the need to protect the environment.

By "propositions" I mean fundamental truths about human behavior and the natural world that we ignore at our peril, truths as basic as the laws of gravity or humanity's susceptibility to sin. We can write statutes or regulations that ignore these and Congress, legislatures, and regulators the world over frequently do-but such measures risk the same fatal results as bridges built without accounting for gravity. These propositions I will offer are economic "theory," but they are theory in the sense that the laws of gravity are a theory and are founded upon economic insights spanning hundreds of years of careful analyses, testing of hypotheses, and rigorous debates. That does not mean all economists agree on all policy implications or that every prediction by an economist comes true. It does mean that the core principles of the discipline are not mere matters of opinion and that economics is not a "point of view" to be accorded equal weight with folk tales or political preferences. All theories of how the world works are not equal -some work better than others and the ones that work deserve greater weight in policy debates than the ones that do not. Economics' great strength is that it is a concise and powerful theory that explains the world remarkably well. Those who ignore its insights are doomed to fail.

Science fiction author Robert Heinlein coined the phrase "TANSTAAFL" as a shorthand way of saying "There Ain't No Such Thing As A Free Lunch" in his classic 1966 science fiction novel *The Moon is a Harsh Mistress*, in which he described a revolution by residents of lunar colonies against oppressive governments on Earth in 2076.⁶ Heinlein had the revolutionaries emblazon TANSTAAFL on their flag and wove the principle through the free lunar society he imagined-a place where even air cost people money.

"No free lunch" means that everything costs something. Everything. No exceptions. At a minimum, if I spend my time doing one activity, I cannot spend that time doing something else. Economists refer to the idea that resources devoted to one activity are unavailable for other activities as "opportunity cost." If we do X, we cannot use those resources to do Y. The failure to recognize that there is an opportunity cost to committing resources to any given use can have disastrous consequences because when we do not recognize that our actions have costs we cannot intelligently consider our alternatives. And if we cannot assess the costs and benefits of our alternatives, we cannot make reasoned choices among them.⁷ In short, tradeoffs matter, and we need to pay attention to them.

Economics good and inevitable

Barton H. **Thompson 3**, Jr, Vice Dean and Robert E. Paradise Professor of Natural Resources Law, Stanford Law School, SYMPOSIUM: SYNERGY OR CONFLICT: THE ROLES OR ETHICS, ECONOMICS, AND SCIENCE IN ENVIRONMENTAL POLICY DECISIONS: PANEL: What Good Is Economics?, U.C. Davis Law Review November, 2003 37 U.C. Davis L. Rev. 175

One cannot study environmental law today without encountering economic analyses. Economics is everywhere - in legislative hearings and debates, regulatory documents, judicial opinions, legal casebooks, and academic articles. People interested in working in the environmental field or understanding environmental policy, therefore, need to be fluent in economics. Otherwise, they risk missing or misunderstanding much of the debate.⁴ Yet many people active

or interested in the environmental field **question the value** and even the legitimacy **of using economics to decide environmental questions.** To them, **environmental protection is not about** maximizing the **economic value** of the environment to humans. **Rather, it is about honoring rights to a healthy and sustainable environment,** maximizing the spiritual potential of humanity, or preserving the integrity of the entire biotic community.ⁿ¹ From this perspective, any suggestion to decide environmental goals based on an exacting economic balancing of the costs and benefits of proposed measures **seems simply wrong-headed.** Those who believe in a strong code of environmental ethics, a group I will label "environmental moralists," frequently see the prevalence of economic analysis in current environmental policy debates as an error to be remedied.[¶] **My goal in this Article is to convince environmental moralists that economics may provide far more value than they assume - that economics may be more friend than foe.** Economics may even provide environmental moralists with a tool for promoting broader environmental ethics within society, as I discuss in Part IV of this Article. Economic enthusiasts and ethical pragmatists should find this Article valuable for its cataloguing of the ways in which **economics can be used in the pursuit of environmental goals.** My target audience, however, is the **environmental moralist who is skeptical of, or downright averse to, using economics** to address environmental issues.[¶] Economics can play a variety of roles in environmental policy. Some uses of economics may conflict with the ethical precepts of environmental moralists and perhaps even threaten their strategic goals. [*177] In other contexts, however, **economics may provide the environmental moralist with a valuable strategic or practical tool.** Environmental moralists who reject all forms of economic analysis because some uses of economics conflict with their ethical beliefs risk **undermining their goals** of improving and protecting the environment and changing our relationship with the environment. Far from being inherently inconsistent with environmental ethics, **economics may actually be essential to accomplishing ethical ends.**[¶] Economics can be used in at least four partially overlapping ways. First, it **can be used as a normative tool to determine the appropriate type and level of environmental protection.** This is the realm of cost-benefit analysis, where the **economic benefits of various environmental proposals** in the form of avoided health injuries, increased recreational opportunities, species value, and the like **are balanced against the economic costs of lost jobs, new equipment, and reduced consumer choices.** Much of the criticism of economic analysis in the environmental context has focused on this normative use of economics. To the environmental moralist, **cost-benefit analysis errs at the outset by focusing on** the Heaven-rejected "lore of nicely-calculated less or more"ⁿ² **rather than the ethical importance** of a healthy and sustainable environment.[¶] **Beyond the question of whether cost-benefit analysis uses the correct criteria, critics also object to how the government makes cost-benefit comparisons.** Critics, for example, have challenged the methods used to measure the benefits of environmental programs, the decision to measure benefits based on individuals' current preferences, the comparison of benefits and costs that environmental moralists find economically "incommensurable," and the decision to discount future benefits (such as lives saved many decades from now due to current environmental protection measures).ⁿ³[¶] Economics, however, can be used for purposes other than normative evaluations of potential environmental measures. A second use to which economics is frequently put, for example, is as a diagnostic tool to determine why society is not achieving the desired type and level of environmental protection (regardless of how the desired types and levels of protection are determined). **Garrett Hardin's famous discussion of the [*178] "tragedy of the commons" is a good example of this diagnostic use of economics: when a common resource is free, users enjoy all of the benefits of use but share the losses and thus tend to overutilize the resource.**ⁿ⁴ Used as a diagnostic tool, **economics can help point to the reasons for, and thus the most effective solutions** to, a wide variety of environmental problems.[¶] Third, environmental advocates can use economics as a **strategic political tool** to help overcome opposition to environmental measures and increase the chances of successful adoption. Economic concerns often generate opposition to environmental measures, and opponents frequently cite economic concerns as a rationale for not enacting the measures. Although proponents might view many of these economic concerns as normatively irrelevant or misconceived, the **concerns are nonetheless a political reality.** Economic analysis can sometimes **disprove the basis for these concerns** and thus hopefully eliminate them as a source of political opposition. Studies of a particular measure, for example, may demonstrate that the measure will not reduce employment as

unions fear. In other cases, environmental proponents can use economic analysis to find means of minimizing economic impacts on key political stakeholders while still achieving environmental goals.¶ Finally, economics can be used as a design tool to evaluate and devise approaches or techniques for achieving various environmental goals. Economics lies behind the market concepts that have been much in vogue over the last several decades - pollution taxes, tradable pollution permits, water markets, individual tradable quotas (ITQs) for fisheries, mitigation banks for wetlands and species habitat. Economic theory suggests that such measures can protect the environment in a more effective and less costly manner than purely directive measures. n5 Beyond the identification and creation of market-based approaches, economic analysis can help determine the effect of various other regulatory alternatives on technological innovation, compliance, and other relevant measures, and thus guide policymakers. Most interestingly, psychological research suggests that, while some forms of economic incentives may undermine altruistic behavior, other forms of **economic rewards may actually sustain and encourage ethical action.**

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Plan

The United States federal government should eliminate federal mandatory minimum sentences.

Advantage- Judicial Discretion

Advantage 1 is Judicial Discretion

Mandatory minimums constrain judicial discretion—it's the last barrier to an independent judiciary

Exum, Jelani Jefferson. "A Commentary on Judicial Discretion, Mandatory Minimums, and Sentencing Reform." *Federal Sentencing Reporter* 28.3 (2016): 209-210. [Jelani Jefferson Exum joined the Detroit Mercy Law faculty as the Philip J. McElroy Professor of Law in 2019. She is a nationally recognized expert in sentencing law and procedure. Professor Exum is a member of the Editorial Board of the *Federal Sentencing Reporter*, and her work has been featured on prominent sentencing blogs, such as *Sentencing Law and Policy*. She is a graduate of Harvard Law School and graduated magna cum laude from Harvard College. Prior to joining the Detroit Mercy Law faculty, she was a Professor of Law and Associate Dean for Diversity and Inclusion at the University of Toledo College of Law, an associate professor at the University of Kansas School of Law, and a visiting associate professor at the University of Michigan Law School. Professor Exum has also been a Forrester Fellow and Instructor in Legal Writing at Tulane Law School. Before joining academia, Professor Exum served as a law clerk for the Honorable James L. Dennis, United States Circuit Judge for the for the Fifth Circuit Court of Appeals, and the Honorable Eldon E. Fallon, United States District Judge for the Eastern District of Louisiana. She has taught Constitutional Law, Criminal Law, Criminal Procedure, Comparative Criminal Procedure, Federal Sentencing, and Race and American Law. Professor Exum mainly writes in the area of sentencing law and policy, but her research interests also include comparative criminal law and procedure, policing, and the impact of race on criminal justice]. <CJC>

Now that we have seen a decade since the Supreme Court decided *United States v. Booker*, 1 it is fair to ask just what impact Booker has really had on federal sentencing. Studies have been conducted looking at every angle of the postBooker world—from measuring the amount of racial disparity that remains in sentencing,² to the rate at which district judges continue to give within-Guidelines sentences.³ The underlying message is that judicial discretion in an advisory Guidelines world could possibly result in drastically changed sentencing outcomes. However, what is often the missing piece in the post-Booker analysis is the handcuffing role of mandatory minimum sentencing laws. Even as the Supreme Court says that sentencing judges are free to disagree with the policies set forth in the Sentencing Guidelines and to sentence according to their own views of what makes a sentence reasonable under the factors found in 18 U.S.C. 3553(a),⁴ Congress has put limitations on that discretion by mandating minimum sentences for several offenses. Over the years, there has been mounting criticism of these mandatory minimums from several stakeholders, including judges, policymakers, legislators, and defense attorneys.⁵ Removing mandatory minimum laws in order to reduce incarceration has become a theme in sentencing reform discussions.⁶ There is a link, then, between sentencing reform and judicial discretion. When one talks about how sentencing has changed with the theoretical increase of judicial sentencing discretion post-Booker, one must also acknowledge the role that mandatory minimum sentencing has played in curbing that discretion. Further, when one talks about reducing the use of mandatory minimum sentencing laws, one should acknowledge the increased sentencing freedom that such a move will grant to district court judges. In this way, the reform of sentencing laws has the potential to heighten the impact that Booker will have on federal sentencing in the next decade. Current economic conditions tell us that sentencing reform is inevitable. Just as many states are feeling the consequences of costly over-incarceration, so too is the federal government aware of the fiscal burden of overreliance on prisons. In its FY 2014 Annual Report, the United States Sentencing Commission explained: In light of the increasing costs of incarceration and the ongoing overcapacity of the federal prison system, beginning in fiscal year 2014, the Commission made implementing its mandate at Section 994(g) of the Sentencing Reform Act, which requires that the guidelines “minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons,” an overarching policy priority.⁷ According to the report, the Bureau of Prisons was 32 percent overcapacity in FY 2014, with a majority of inmates being drug offenders.⁸ Consequently, federal sentencing reform has focused heavily on adjusting the sentences applicable to drug trafficking offenses.⁹ Of course, when drug sentencing is at issue, so are mandatory minimum laws. The U.S. Sentencing Commission has reported that “[i]n 23.6% of all cases in 2014, the offender was convicted of an offense carrying a mandatory minimum penalty.”¹⁰ Over two-thirds of these cases—67.8 percent, to be exact—were drug trafficking offenses.¹¹ In 2014, just over half (52%) of federal drug offenders were convicted of an offense carrying a mandatory minimum sentence.¹² Although not all of those offenders were ultimately

sentenced to a mandatory minimum penalty, 46 percent were, which is still a hefty proportion of drug offenders.¹³ The actual sentencing outcomes were meaningful, with drug offenders subject to a mandatory minimum penalty and receiving an average sentence of 127 months, which was 87 months longer than the average sentence for a drug offender not convicted of an offense carrying a mandatory minimum sentence.¹⁴ Mandatory minimums make an impact outside of drug offenses as well. For example, 77.5 percent of 924(c) firearms offenders¹⁵ were subject to a mandatory minimum penalty at sentencing.¹⁶ The number was 78.0 percent for Armed Career Criminals.¹⁷ Some might say that such mandatory sentencing is appropriate, given a concern about gun violence. Whatever your position on this subject, what is clear is that the applicable sentences are quite lengthy for a high percentage of offenders—an average 171 months for 924(c) offenders and 206 months for Armed Career Criminals.¹⁸ Although it's unknown what judges would do if these mandatory minimum sentences were repealed, **it is obvious that the mandatory minimum sentences have a real bearing on the sentences imposed.** Of course, we already live in an age where not all offenses are subject to a mandatory minimum sentence, so in those cases, judges arguably already have wide sentencing discretion. However, as already explained, current mandatory minimum sentencing laws affect a large number of cases, and either a majority or nearly a majority of cases in specific categories. If those mandatory laws did not apply, the world of applicable sentences would open greatly for judges sentencing those offenses. What is unclear is to what extent judges would take advantage of this freedom. Although it might be obvious that removing or reducing mandatory minimum sentencing laws would increase judicial discretion, it is worth stressing that the sentencing reform efforts should make room for the development of alternative resources to inform judicial discretion. This is especially significant in the case of drug crimes—a category of offenses for which reform calls are the loudest. If mandatory minimum sentencing laws were no longer an issue in many cases, judges would be left with the Federal Sentencing Guidelines as their sole source of formalized sentencing information. However, in this decade post-Booker, judges are slowly increasing their discretion to sentence outside of the Guidelines range. In 2013, 51.2 percent of all cases were sentenced within the applicable Guidelines range.¹⁹ This number dropped to 46 percent in 2014.²⁰ Whereas most (78.5%) of the sentences imposed in 2014 were in accord with requests from the Government, the Sentencing Commission reported that, “[i]n fiscal year 2014, 21.4 percent of the sentences imposed were departures or variances below the guideline range other than at the government’s request, compared to 18.7 percent in fiscal year 2013.”²¹ Apparently, judges are (slowly) becoming more willing to impose sentences that neither the prosecution nor the Sentencing Guidelines recommend. It is important, then, to have other sources of data to inform judges on how to best accomplish sentencing goals and purposes. If a prior mandatory minimum sentencing law was too long, and the advisory Guidelines range is not reasonable under the 3553(a) factors, then how should a judge decide what sentence is actually appropriate? We could return to preSentencing Reform Act days, when judges used their own intuitions about punishment to make these decisions. However, if sentencing reform is going to truly reform the practice of sentencing, there must be a focus on sentencing purposes and goals.²² One way of doing this is to develop and use sentencing resources—experts, studies, data, and the like—that will give judges relevant information on available types of sentences and their likely impacts on individuals, families, communities, and other offenders. Removing mandatory minimum sentences may be the last barrier in fully unleashing judicial discretion in the manner allowed by Booker. In this way, reforming sentencing laws could play a meaningful role in shaping the impact of the Booker decision and the reach of judicial sentencing discretion. The question is, if the abolition of many of the mandatory minimum sentences is realized (which this author believes would be a good thing), what will become the new guide for judges in fashioning reasonable sentences? One hopes this inquiry will not be lost as sentencing reform efforts gain traction.

Specifically, mandatory minimums undermine the separation of powers doctrine—they concentrate power in the hands of political actors with motivation to be tough on crime

Riley 10 (Kieran Riley, JD Boston University School of Law, “TRIAL BY LEGISLATURE: WHY STATUTORY MANDATORY MINIMUM SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE” *Boston University Public Interest Law Journal* 19, pp. 285-310, p. 302-303, <https://www.bu.edu/pilj/files/2015/09/19-2RileyNote.pdf>)wtk

Statutory mandatory minimum sentences allow the legislature to improperly use its power to establish definitive punishment for crimes, improperly grant the executive branch broad authority to impose that punishment, and relegate the role of the judiciary to bureaucratic affirmation of the process. For this reason, **such statutes violate the separation of powers doctrine and should be abolished.** Criminal statutes that mandate minimum prison terms benefit both legislators and prosecutors, to the detriment and exclusion of judges. This is due to the inherent partnership between legislators and prosecutors, who share the same incentives.¹⁶¹ Both legislators and prosecutors seek to win public favor by prosecuting the crimes the public wants prosecuted and by winning those cases.¹⁶² Congress has an incentive to pass criminal laws that make it easier for prosecutors to convict and punish criminals.¹⁶³ This is especially true of convictions for the crime du jour, the crimes that have grabbed the public's attention and become a talking point of the day.¹⁶⁴ Legislators do not win votes by being soft on crime. Federal prosecutors are appointed, not elected, but gaining public favor through a number of prominent convictions can be a great career boost.¹⁶⁵ This politicization of the criminal law leads to its ever growing size and harsher punishments; individual justice is often left behind. Only federal judges, who serve for life and are impartial by duty, are likely to opt for narrower criminal rules rather than broader ones.¹⁶⁶ This unique position of the judge should act as a check on the power of the other branches in our system of separation of powers. This does not happen, however, when judges lack sentencing discretion due to statutory mandatory minimum sentences, which disproportionately concentrate sentencing power in the hands of one or, at most, two branches of government.¹⁶⁷ Mandatory sentences also deny judges their discretion in setting the appropriate sentence. Although the Supreme Court based its holding in *Booker* on the Sixth Amendment right to a trial by jury, there is a strong implication that the separation of powers doctrine was also at work in that case and that the real concern was the need for judicial discretion in sentencing.¹⁶⁸ Supreme Court precedent, including *Booker*, reveals that one similarity between all sentencing systems that the Court has deemed unconstitutional is their lack of judicial discretion.¹⁶⁹ Likewise, sentencing systems deemed valid by the Court have allowed judges to use their discretion and rely on sentencing factors to make their decisions.¹⁷⁰ The Supreme Court appears to recognize when judges are not playing a sufficient role in sentencing, and has consistently found those situations to be unconstitutional. The sentencing hearing provides more insight into the legislative and executive encroachment into judicial authority by illustrating the judicial nature of the criminal sentencing process. Under the Federal Rules of Criminal Procedure, every defendant receives a sentencing hearing after his conviction of a federal offense.¹⁷¹ At that hearing, the judge weighs facts and evidence in order to create a fair sentencing result. Mandatory minimum sentences prohibit the judiciary from fully conducting one of its basic tasks: weighing the evidence in individual cases in order to produce just outcomes. Although defendants who face statutory mandatory minimum sentences still receive a sentencing hearing, the discretion of the judge in applying the proper sentence is often curtailed through the inability to impose a less severe sentence than that required by the legislature. The legislature, with no knowledge of what might be just and fair in individual cases, **oversteps its sphere of power by mandating blanket minimum sentences.**

Judicial independence is the core of American Democracy—mandatory minimums undermine the essential function of the constitution

Luna 17 (Erik Luna is the Amelia D. Lewis Professor of Constitutional and Criminal Law in the Sandra Day O'Connor College of Law at Arizona State University. "Mandatory Minimums" Chapter in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release* Edited by Erik Luna, 2017, p.133-135 https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf)wtk

Mandatory sentencing laws are not only unfair—they distort the legal framework. In particular, mandatory minimums effectively transfer sentencing authority from trial judges to prosecutors, who may pre-set punishment through creative investigative and charging practices.⁸¹ Undoubtedly, law enforcement is well-intentioned in many cases. But it would be a mistake to assume that good faith will prevent the misuse of mandatory minimums. Serious and violent offenders may have served as the inspiration for mandatory minimums, but, as mentioned earlier, the statutes themselves are not tailored to these criminals alone and instead act as grants of power to prosecutors to apply the laws as they see fit, even to minor participants in nonviolent offenses. Expressing a view held by many jurists, Justice Kennedy described as "misguided" the "transfer of sentencing discretion" from judges to prosecutors, "often not much older than the defendant." Often these attorneys try in good faith to be fair in the exercise of discretion. The policy, nonetheless, **gives the decision to an assistant prosecutor not trained in the exercise of discretion and takes discretion from the trial judge.** The trial judge is the one actor in the system most experienced with

exercising discretion in a transparent, open, and reasoned way. Most of the sentencing discretion should be with the judge, not the prosecutors.⁸² Prosecutors and judges occupy distinct but overlapping roles in the criminal justice system. The prosecutor is empowered with the discretion to instigate charges against a defendant, amass evidence of crime, and seek convictions as an adversary in the trial process. It has long been held that the prosecutor is more than an ordinary party, however, given the power he wields and the principal he represents (i.e., the citizenry). Still, prosecutors are influenced by the ordinary human motivations that may at times cause a loss of perspective—path dependence, career advancement, immodesty, and occasional vindictiveness⁸³—leading to the misapplication of mandatory minimums. In most cases, however, no external check prevents the imposition of an unjust mandatory term. By contrast, the judge functions as a neutral arbiter and dispassionate decision-maker in individual cases. The sentencing judge is the one neutral party in the courtroom who benefits from neither harsh punishment nor lenient treatment; he has no vested interest in the outcome of a case other than that justice be done. Indeed, trial court judges are in the best position to make the highly contextual, fact-laden decision about the proper punishment in particular cases. They are familiar with the environment in which offenses occur; they have been involved in every part of the court process; they have seen the evidence firsthand; and they have been in a position to evaluate the credibility of each witness and each argument. And as Justice Kennedy mentioned, trial judges have the benefit of experience in reasoned, transparent discretion, making them the precise individuals who should decide the complicated, fact-specific issues of sentencing. But with mandatory minimums, judges are denied this authority as sentences inevitably follow from prosecutorial choices in charging. But the shift in power is more than misguided—it implicates the separation-of-powers doctrine. Liberal society has long been concerned with arbitrary, oppressive authority stemming from the accumulation of too much power in too few hands. The Framers' solution was to create a system of checks and balances, distributing power across government institutions in a manner that prevents any entity from exercising excessive authority and sets each body as a restraint on the others. Along these lines, the U.S. Constitution (and, indeed, every state government) employs a separation of powers among coequal branches—the legislative, executive, and judicial—each having “mutual relations” in a series of checks and balances.⁸⁴ As a matter of history and experience, an autonomous court system under the guidance of impartial jurists is considered the most indispensable aspect of American constitutional democracy. An independent judiciary was meant to protect individuals from the prejudices and heedlessness of political actors and the public.⁸⁵ To check such abuses, the courts were historically entrusted with certain fundamental legal decisions, including dispositive criminal justice issues that demand evenhanded judgment. Among these quintessential judicial functions is the imposition of punishment on another human being. “Traditionally,” noted the U.S. Supreme Court in 1993, “sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant.”⁸⁶ This eclectic approach attempted to accommodate the diverse rationales for punishment—from retributive principles of just deserts to consequential considerations of deterrence, rehabilitation, and incapacitation—thus allowing trial judges to craft a proper sentence based on an array of factors and legitimate conceptions of justice.

US is key to global democracy and Trump is not an alt cause

Diamond 19 – PhD in Sociology, professor of Sociology and Political Science at Stanford University (Larry, “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition)

In every region of the world, autocrats are seizing the initiative, democrats are on the defensive, and the space for competitive politics and free expression is shrinking. Established democracies are becoming more polarized, intolerant, and dysfunctional. Emerging democracies are facing relentless scandals, sweeping citizen disaffection, and existential threats to their survival. From Turkey and Hungary to the Philippines, wily autocrats are destroying constitutional checks and balances. And with the global winds blowing their way, authoritarian leaders are becoming more nakedly dictatorial. These unfavorable gusts are not simply the exhaust fumes of decaying democracies. They are blowing hard from the two leading centers of global authoritarianism, Russia and China. And if the United States does not reclaim its traditional place as the keystone of

democracy, Vladimir Putin, Xi Jinping, and their admirers may turn autocracy into the driving force of the new century. Many other analyses are missing this crucial point. The extraordinary progress of democracy from the mid-1970s to the early 2000s was a global phenomenon, heavily facilitated by the strength, idealism, and energetic support of the United States and Western Europe. The gathering retreat of freedom is also a global phenomenon, driven this time from Moscow and Beijing. A reviving autocracy and an emerging Communist superpower are investing heavily—and often effectively—in efforts to promote disinformation and covertly subvert democratic norms and institutions. Their increasingly brazen challenge demands a vigorous global response: a reassertion of global democratic leadership, rooted in Washington’s renewed understanding of its far-reaching responsibilities, and a new worldwide campaign to promote democratic values, media, and civic institutions. Part of that, I argue, must involve a serious attack on the soft underbelly of these autocracies: kleptocracy. The money being looted from public coffers in corrupt autocracies is not only sustaining abusive rulers; it is also being laundered into the banking and property systems of the world’s democracies, corroding our own rule of law and undermining our will to confront the spread of despotism. We can be the kleptocrats’ foes or their bankers, but not both. By fighting kleptocracy and money laundering, we can help reverse authoritarian trends both at home and abroad. But as the old saying goes, you can’t beat something with nothing. We cannot defend and renew free government around the world unless we do so at home. Stopping the desecration of democratic norms and institutions by Donald Trump (and budding autocrats elsewhere) is vital but insufficient. The decline of American democracy did not begin with Trump, and it will not end with his departure from the White House. Our republic’s sickness has its roots in decades of rising political polarization that has turned our two parties into something akin to warring tribes, willing to skirt bedrock principles of fairness and inclusion for pure partisan advantage. America’s constitutional order has long been scarred by racism, deep injustices in our criminal justice system, and the soft corruption of our systems of lobbying and campaign finance. Now these deep-rooted problems are quickening in a society that has forgotten the purpose of civic education and is increasingly in thrall to social media, which privileges the profits of sensationalism and groupthink above the prophets of facts and evidence-based debate. None of this is a cry of despair; all of it is a call to arms. As I explain in this book’s final chapters, it doesn’t have to go on like this. Promising and viable reforms are available. We can improve, empower, and heal our democracy—and much can be done even while Trump is in power. We can change this. We—democratic societies—must change this. But this effort starts with each of us as an individual. The Powerless In 1978, the Czech playwright Václav Havel—who would go on to become the first president of post-Communist Czechoslovakia—wrote one of the most important dissident treatises ever published. In “The Power of the Powerless,” Havel insisted that the oppressed have the power to overcome their powerlessness by “living within truth” and refusing to bend to the will and lies of dictatorship. His key theme is individual responsibility and the ability of citizens, through daily acts of defiance, to make a difference even under tyrannical rule. In four decades of studying democracy, there is no maxim of which I have become more convinced than this: individuals can determine the fate of democracy. “It is from numberless diverse acts of courage and belief that human history is shaped,” said Senator Robert F. Kennedy in a moving 1966 address to South African students at the University of Cape Town, in the heyday of that country’s apartheid tyranny. At the time, those words became my conviction. After many decades of research and experience, they have become my conclusion. And sometimes, I have found, people in new democracies like today’s South Africa may remember RFK’s lesson better than the often comfortable, complacent, or even self-pitying citizens of older republics, who have forgotten how quickly liberty can die. Eager to think of itself as a science, the academic study of politics these days is often dismissive of the role that leaders play in shaping political outcomes. But it is not abstract economic or social forces that bring about democracy or make it work. It is individuals—ordinary and extraordinary citizens—who stake claims, shape programs, form organizations, forge strategies, and move people. Making a difference involves risk and sacrifice. And when liberty is on the line, the risks may be daunting and the sacrifice may be mortal. But across the continents and the decades, what has most inspired me has been the willingness of people—in the end, just people, like you and me—to risk everything they have in the fight for freedom. Today, in the United States, it is our turn. And the fate of global democracy rests on all our shoulders.

Democracy puts a cap on conflict, and authoritarianism makes all of their impacts more likely

Diamond 19 – PhD in Sociology, professor of Sociology and Political Science at Stanford University (Larry, “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition)

To make our republics more perfect, established democracies must not only adopt reforms to more fully include and empower their own citizens. They must also support people, groups, and institutions struggling to achieve democratic values elsewhere. The best way to counter Russian rage and Chinese ambition is to show that Moscow and Beijing are on the wrong side of history; that people everywhere yearn to be free; and that they can make freedom work to achieve a more just, sustainable, and prosperous society. In our networked age, both idealism and the harder imperatives of global power and security argue for more democracy, not less. For one thing, if we do not worry about the quality

of governance in lower-income countries, we will face more and more troubled and failing states. Famine and genocide are the curse of authoritarian states, not democratic ones. Outright state collapse is the ultimate, bitter fruit of tyranny. When countries like Syria, Libya, and Afghanistan descend into civil war; when poor states in Africa cannot generate jobs and improve their citizens' lives due to rule by corrupt and callous strongmen; when Central American societies are held hostage by brutal gangs and kleptocratic rulers, people flee—and wash up on the shores of the democracies. Europe and the United States cannot withstand the rising pressures of immigration unless they work to support better, more stable and accountable government in troubled countries. The world has simply grown too small, too flat, and too fast to wall off rotten states and pretend they are on some other planet. Hard security interests are at stake. As even the Trump administration's 2017 National Security Strategy makes clear, the main threats to U.S. national security all stem from authoritarianism, whether in the form of tyrannies from Russia and China to Iran and North Korea or in the guise of antidemocratic terrorist movements such as ISIS. ¹ By supporting the development of democracy around the world, we can deny these authoritarian adversaries the geopolitical running room they seek. Just as Russia, China, and Iran are trying to undermine democracies to bend other countries to their will, so too can we contain these autocrats' ambitions by helping other countries build effective, resilient democracies that can withstand the dictators' malevolence. Of course, democratically elected governments with open societies will not support the American line on every issue. But no free society wants to mortgage its future to another country. The American national interest would best be secured by a pluralistic world of free countries—one in which autocrats can no longer use corruption and coercion to gobble up resources, alliances, and territory. If you look back over our history to see who has posed a threat to the United States and our allies, it has always been authoritarian regimes and empires. As political scientists have long noted, **no two democracies have ever gone to war with each other—ever.** It is **not** the **democracies** of the world that are supporting international terrorism, proliferating weapons of mass destruction, or threatening the territory of their neighbors.

Judicial discretion prevents mechanical sentencing and restores public trust—that's key to broad legitimacy of the courts

Hofer, Paul. [Senior Policy Analyst, Sentencing Resource Counsel Project of the Federal Public and Community Defenders. The views expressed here are those of the author and do not necessarily reflect views of the Federal Public and Community Defenders or their committees and projects] "After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform." University of Toledo Law Review, vol. 47, no. 3, Spring **2016**, p. 649-694. HeinOnline, (accessed 06/27) <CJC>

4. Disconnected and Unexplained Guidelines To decide whether to follow the Guidelines in a particular case, judges need to understand how they were intended to achieve the statutory purposes of sentencing.²⁸ Without this, applying the Guidelines is merely mechanical, an end in itself rather than a means to the statutory ends. To recognize when a guideline is missing the mark, judges need an explanation of how this particular offense level, with these particular adjustments, were meant to track the seriousness of the offense, or identify offenders who need to be incapacitated for public safety, or rehabilitate the offender. The statutory purposes are stated generally, but the Guidelines are very detailed, adding small and large units of punishment for numerous aggravating factors. There are countless ways for the many different adjustments to go wrong or to interact in unpredictable ways. The original Commission could not agree on a consistent theory underlying the Guidelines and neither they nor subsequent Commissions have explained the purposes of sentencing are advanced by the Guidelines as a whole, or any particular guideline or guideline amendment.²⁹ The failure to clearly explain and justify the Guidelines also meant the Commission had no principles with which to resist political interference.³⁰ As one of many examples, in response to a perceived epidemic of use among the young, Congress directed the Commission in 2000 to increase penalties for "ecstasy."³¹ The Commission amended the Guidelines to treat ecstasy more severely than powder cocaine and to treat a typical dose of ecstasy as severely as four to ten doses of heroin.³² But the Commission had received extensive information from the scientific and medical communities in public comment and testimony showing that ecstasy is less harmful than cocaine or heroin, so this treatment could not be justified by the sentencing purpose of punishment proportionate to the seriousness of the crime.³³ It is also well-established that increases in punishment for a crime do not deter others from committing it, so this purpose can also not justify the amendment.³⁴ If the Commission had designed the drug guidelines based on a theory of punishment—for example, matching the severity of punishment to the harmfulness of the

drug-it would have been in a better position to explain to Congress why its directive was misguided.'³⁵ But, when "there is little sense that the Guidelines have been carefully calibrated to punish proportionately to the seriousness of the crime, then Congress, or the Commission itself, feels less pressure to avoid actions that would distort proportionality." ^{3 6} The Commission's explanations of its amendments have generally been minimal and often inscrutable.' ^{3 7} The chief reason the Commission cannot provide specific explanations of how the Guidelines achieve the statutory purposes is that it cannot honestly do so, given that the origin of many of the guidelines lies in mandatory minimums and congressional directives.' Any other explanation would be post hoc rationalization. Unlike the Commission, Congress is under no obligation to ensure that its policies meet the purposes of sentencing, to conduct empirical research, or to consult with all stakeholders. Nor is Congress obliged to ensure that its various enactments are consistent with each other, or with the Guidelines, or with any overarching theory of how to best achieve the purposes of sentencing. Congress is free to legislate piecemeal in response to a highly publicized case, or in response to lobbying by the Department of Justice or other interest groups seeking sentence increases for purposes other than those set forth in § 3553(a). If the Commission cannot be persuaded to increase penalties, the Department has not hesitated to threaten, and to seek, the necessary legislation from Congress. ^{13 9} In the words of Professor Frank Bowman, a former federal prosecutor, the truth is that the Guidelines have been amended in a "one-way upward ratchet increasingly divorced from considerations of sound public policy and even from the commonsense judgments of frontline sentencing professionals who apply the rules." ^{4 0} Another consequence of congressional micromanagement has been that the sources and responsibility for the sentences reflected in the Guidelines has been obscured. When defendants receive mandatory minimum sentences, Congress's responsibility for the sentences is clear. ^{14 1} Many judges have felt compelled to explain to defendants that their judgment is that a mandatory minimum sentence is unfair and excessive. ^{14 2} The public then understands the basis for the sentence and the political mechanisms that created and could change the penalties.' ⁴³ But given the roles defined for judges and the Commission by the SRA, responsibility for guideline sentences is not clear. Does the guideline recommendation reflect the Commission's institutional expertise and the procedures outlined in the SRA? Does the sentence reflect the judge's reliance on that expertise to conclude that the sentence is fair and achieves the purposes of sentencing? Defendants and the public should be able to expect that the Guidelines reflect careful study by an expert agency located in the Judicial Branch charged with marshalling the best empirical research available for the development of sentencing policy. Congressional micromanagement of guideline development confounds these expectations and has risked violating a warning in *Mistretta*, the case that upheld the guidelines against a Separation of Powers constitutional challenge: "**The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.** That reputation may not be borrowed by the political Branches to cloak their work in the neutral colors of judicial action.'" ⁴ Unfortunately, today's Guidelines do cloak penalties created by the political branches as the product of an independent agency in the Judicial Branch.

Compromising judicial independence is perceived internationally and destroys the ability for the US to lead and undermines the liberal international order

Sigurdson, 18 – editor of the Sigurdson Post; The Sigurdson Post was developed for the legal profession, business, political decision makers, and the general public to engage and inform and provide a framework for reflection (Eric, "A Toxic Brew: The Politicization of the Rule of Law and Judicial Independence" 9/30, <http://www.sigurdsonpost.com/2018/09/30/a-toxic-brew-the-politicization-of-the-rule-of-law-and-judicial-independence/>)

Ideology has been part of the Supreme Court, but a sharp partisan division on the court has been particularly recognized along party lines since 2010. The legitimacy of the judges who interpret the law as impartial arbiters rests on a delicate public perception of judicial independence. Politicians and political parties who "weaponize the court itself as an instrument of partisan domination" – perceptually turning the judicial branch into a political "wing" of their party – will undermine if not destroy judicial independence and public confidence in the Courts as "an impartial arbiter of our most intractable disputes", particularly if dramatically out of step with the larger shape of society and its citizens, etc). [170]

There are also broader implications as the perception of a compromised judiciary (in respect to judicial independence and impartiality) impacts on transnational and international trust and legitimacy, specifically impacting international agreements and disputes, stability, and order in the world. [171] The

“most damning criticism of the court is that it is too ideological, too political, that its members reflect the views of the president who appointed them”.[172]

Heg decline causes power vacuums and overlapping spheres of influence in every region—great power war.

Brands and Edel, 3-6-2019 - *Hal Brands, Henry Kissinger Distinguished Professor of Global Affairs in the Johns Hopkins School of Advanced International Studies and a senior fellow at the Center for Strategic and Budgetary Assessments **Charles Edel, senior fellow at the United States Studies Centre at the University of Sydney and previously served on the U.S. Secretary of State's policy planning staff; "The End of Great Power Peace," *National Interest*, <https://nationalinterest.org/feature/end-great-power-peace-46282?page=0%2C1>

As recently as 2010, Barack Obama could observe a strategic landscape where the “major powers are at peace.” Yet if great-power war has not returned, the era of deep great-power peace is over. Relations between the world's strongest states are increasingly defined by undisguised rivalry and even conflict; there is ever-sharper jostling for power and ever-greater contestation of global norms and principles. From East Asia to the Middle East to Eastern Europe, authoritarian actors are testing the vulnerable peripheries of American power and seeking to restore their own privileged spheres of regional dominance. In doing so, they are putting the system under pressure on all key geographical fronts at once.

China is leading the way. Although Beijing has been a leading beneficiary of a liberal economic order that has allowed it to amass great prosperity, Chinese leaders nonetheless always regarded American primacy as something to be endured for a time rather than suffered forever. America's preeminent position in the Asia-Pacific represents an affront to the pride and sense of historical destiny of a country that still considers itself “the Middle Kingdom.” And as Aaron Friedberg notes, China's authoritarian leaders have long seen a dominant, democratic America as “the most serious external threat” to their domestic authority and geopolitical security. As China's power has increased, Beijing has strived to establish mastery in the Asia- Pacific. A Chinese admiral articulated this ambition in 2007, telling an American counterpart that the two powers should split the Pacific with Hawaii as the dividing line. Yang Jiechi, China's foreign minister, made the same point in 2010. In a modern-day echo of the Melian Dialogue's “the strong do what they can, the weak suffer what they must,” he lectured the nations of Southeast Asia that “China is a big country and other countries are small countries, and that's just a fact.”

Policy has followed rhetoric. To undercut America's position, Beijing has harassed American ships and planes operating in international waters and airspace; People's Republic of China (PRC) media organs warn U.S. allies that they may be caught in the crossfire of a Sino- American war unless they distance themselves from Washington. China has simultaneously attacked the credibility of U.S. alliance guarantees by using strategies—island-building in the South China Sea, for instance—that are designed to shift the regional status quo in ways even the U.S. Navy finds difficult to counter. Through a mixture of economic aid and diplomatic pressure, Beijing has also divided international bodies, such as the Association of Southeast Asian Nations (ASEAN), through which Washington has sought to rally opposition to Chinese assertiveness. All the while, China has been steadily building formidable military tools designed to keep the United States out of the region and thereby give Beijing a free hand. As America's sun sets in the Asia-Pacific, Chinese leaders calculate, the shadow China casts will only grow longer.

The counterparts to these activities are initiatives meant to bring the neighbors into line. China has islands as staging points to project military power. Military and paramilitary forces have harassed, confronted, and violated the sovereignty of countries from Vietnam to the Philippines to India; China has consistently exerted pressure on Japan in the East China Sea. Economically, Beijing uses its muscle to reward those who comply with China's policies and punish those who don't, and to advance geo-economic projects, such as the Belt and Road Initiative (BRI), Asian Infrastructure Investment Bank (AIIB), and Regional Comprehensive Economic Project (RCEP), designed to bring the region closer into its orbit. Strikingly, China has also abandoned its long-professed principle of non-interference in other countries' domestic politics, extending the reach of Chinese propaganda and using

investment and even bribery to coopt regional elites. Payoffs to Australian politicians are as critical to China's regional project as development of "carrier killer" missiles.

By blending intimidation with inducement, Beijing is seeking to erect a Sino-centric regional order—a new Chinese tribute system for the twenty-first century. It is trying to reorder its external environment to its own liking, a profoundly normal rising-power behavior that only seems odd or surprising against the abnormal backdrop of the post-Cold War era. It is using the wealth and power the U.S.-led international order helped it develop to mount the most formidable challenge that order has faced in decades. And it is doing so in full cognizance that this implies progressively more acute rivalry with Washington.

Make no mistake—these efforts are having an impact. Chinese coercion short of war has dramatically shifted perceptions of power and momentum in the region, while the Chinese buildup has made the outcome of a Sino-American war more doubtful from a U.S. perspective. "America has lost" in Asia, president of the Philippines Rodrigo Duterte announced in 2016; Manila must now reposition itself accordingly. Similarly, RAND Corporation analysts assessed in 2015 that "over the next five to 15 years . . . Asia will witness a progressively receding frontier of U.S. dominance." The region could soon hit a series of "tipping points" at which U.S. commitments to partners such as Taiwan, or even the Philippines and Japan, become less credible. As the power balance shifts, the United States could find itself in a position where it might actually lose a war in the Western Pacific—or it could simply lose the region without a shot being fired as countries make their calculations and accommodate Beijing.

If China represents the greatest long-term challenge to the American-led system, the resurgence of great-power competition is even more acute in Europe. For many Russians, the post-Cold War era was not a time of triumph and tranquility. It was a time of weakness and humiliation, a period when Russia lost its great-power status and was impotent to resist the encroachment of U.S. and Western influence. As Russia has regained a degree of strength, then, it has sought to reassert primacy along its periphery and restore lost influence further abroad, often through measures less subtle and more overtly aggressive than China's.

Moscow has twice humiliated and dismembered former Soviet republics that committed the sin of tilting toward the West or throwing out pro-Russian leaders, first in Georgia and then in Ukraine. Following the latter conflict, Russian president Vladimir Putin invoked the concept of Russkiy Mir, or "Russian World," staking a proprietary claim to dominance of the states on Moscow's periphery. To further this project, Russia has also worked to weaken the institutions that maintain European security. It has sought to undermine NATO and the European Union via cyberattacks, military intimidation and paramilitary subversion, financial support for anti-EU and anti-NATO politicians, and dissemination of fake news and other forms of intervention in European and U.S. political processes. In 2016, Russian intelligence operatives reportedly tried to decapitate and overthrow the government of Montenegro to prevent it from joining NATO—a cold-blooded, if unsuccessful, act of competition with the West. In 2013, Russia's chief of general staff, Valery Gerasimov, described such tactics as "new generation warfare." That label describes a blending of military, paramilitary, economic, informational, and other initiatives to sow conflict and unrest within an enemy state or coalition, and it reflects the deadly serious nature of the struggle in which Russian leaders believe they are engaged.

As Gerasimov's writings indicate, military muscle and other forms of coercion are not Moscow's only tools. Russia has simultaneously used energy flows to keep the states on its periphery economically dependent, and it has exported corruption and illiberalism to non-aligned states in the former Warsaw Pact area and Central Asia to prevent further encroachment of liberal values. And while Russia's activities are most concentrated in these areas, Russian forces also intervened in Syria in 2015 to prop up Bashar al-Assad and expand Kremlin influence in the broader Middle East. Since then, Moscow has worked to position itself as a security patron to countries and actors from Libya to Iran, and thereby create a geopolitical counterpoise to U.S. influence.

In doing all this, Russia has upended the basically peaceful European order that emerged after the Cold War and once again made interstate aggression a tool of regional politics. Its leadership has shown a penchant for risk-taking that has repeatedly thrown foreign observers off-balance; it has adopted bold and creative strategies that play on Western complacency and divisions. Russian leaders have explicitly called for the emergence of a "post-West world order," leaving little doubt as to their dissatisfaction with any liberal international system based on American primacy. And as with China, these actions have been underwritten by a significant military buildup that has enhanced Russian power-projection capabilities and left NATO "outnumbered, outranged, and outgunned" on its eastern flank. "If I wanted," Putin reportedly bragged in 2014, "in two days I could have Russian troops not only in Kiev, but also in Riga, Vilnius, Tallinn, Warsaw, and Bucharest."²⁹ That

same year, secretary of state John Kerry was mocked for describing Russian behavior as something out of the nineteenth century. Yet what he captured was that Russia was simply behaving like Russia again. It was asserting its great-power prerogatives in ways that seemed anomalous only to those with very short historical memories.

Finally, geopolitical revisionism is alive and well in the Middle East. Iran, the primary state author of that revisionism, is not in the same power-political league as China or even Russia. But it is a proud civilization that never accepted a Middle Eastern order led by Washington, as well as a revolutionary state that has long sought to export its ideology and influence. Amid the vacuum of regional power that was created first by the U.S. invasion of Iraq and then by the Arab Spring, Iran has been making its bid for primacy. “Our borders have spread,” announced Qassem Soleimani, the leader of Iran’s Quds Force, in 2011. “We must witness victories in Egypt, Iraq, Lebanon, and Syria.”³⁰

Iran has sought those victories by intervening, either directly or through proxy forces in conflicts in Syria, Yemen, and Iraq; by promoting a sectarian agenda that seeks to polarize the region and create wedges for Iranian influence; and by investing in its nuclear program and niche capabilities such as ballistic missiles and special operations forces. As of mid-2018, the nuclear program had apparently been frozen for several years (although how long that would remain the case was becoming increasingly uncertain), but other initiatives have proceeded apace. And if Iran has fewer material means than other revisionist powers, it compensates—like Moscow—with asymmetric strategies and a high tolerance for risk.

Iran used the Syrian civil war, for instance, as an occasion to flood that country with Shia militias, to push its military presence ever closer to Israel’s northern frontier, to arm its proxy, Hezbollah, with ever more advanced missiles and other weapons, and even to launch its first-ever military attacks on Israel itself. Likewise, it used the Yemeni civil war to provide Huthi rebels with the ballistic missiles that they subsequently fired at Saudi Arabia. Through these and other gambits, Iran has come into deeper conflict and even violence with traditional U.S. partners such as Israel, Saudi Arabia, and the United Arab Emirates, and it has fueled—while also benefiting from—intensifying strife across the Middle East. Most worrying, it has steadily ratcheted up the chances of an outright war that could easily take on regional dimensions.

Each of these geopolitical challenges is different, and each reflects the distinctive interests, ambitions, and history of the country undertaking it. Yet there is growing cooperation between the countries that are challenging the regional pillars of the U.S.-led order. Russia and China have collaborated on issues such as energy, sales and development of military technology, opposition to additional U.S. military deployments on the Korean peninsula, and naval exercises from the South China Sea to the Baltic. In Syria, Iran provided the shock troops that helped keep Russia’s ally, Bashar al-Assad, in power, as Moscow provided the air power and the diplomatic cover. “Our cooperation can isolate America,” supreme leader Ali Khamenei told Putin in 2017. More broadly, what links these challenges together is their opposition to the constellation of power, norms, and relationships that the U.S.-led order entails, and in their propensity to use violence, coercion, and intimidation as means of making that opposition effective. Taken collectively, these challenges constitute a geopolitical sea change from the post-Cold War era.

The revival of great-power competition entails higher international tensions than the world has known for decades, and the revival of arms races, security dilemmas, and other artifacts of a more dangerous past. It entails sharper conflicts over the international rules of the road on issues ranging from freedom of navigation to the illegitimacy of altering borders by force, and intensifying competitions over states that reside at the intersection of rival powers’ areas of interest. It requires confronting the prospect that rival powers could overturn the favorable regional balances that have underpinned the U.S.-led order for decades, and that they might construct rival spheres of influence from which America and the liberal ideas it has long promoted would be excluded. Finally, it necessitates recognizing that great-power rivalry could lead to great-power war, a prospect that seemed to have followed the Soviet empire onto the ash heap of history.

Both Beijing and Moscow are, after all, optimizing their forces and exercising aggressively in preparation for potential conflicts with the United States and its allies; Russian doctrine explicitly emphasizes the limited use of nuclear weapons to achieve escalation dominance in a war with Washington. In Syria, U.S. and

Russian forces even came into deadly contact in early 2018. American airpower decimated a contingent of government-sponsored Russian mercenaries that was attacking a base at which U.S. troops were present, an incident demonstrating the increasing boldness of Russian operations and the corresponding potential for escalation. The world has not yet returned to the epic clashes for global dominance that characterized the twentieth century, but it has returned to the historical norm of great-power struggle, with all the associated dangers.

Those dangers may be even greater than most observers appreciate, because if today's great-power competitions are still most intense at the regional level, who is to say where these competitions will end? By all appearances, Russia does not simply want to be a "regional power" (as Obama cuttingly described it) that dominates South Ossetia and Crimea. It aspires to the deep European and extra-regional impact that previous incarnations of the Russian state enjoyed. Why else would Putin boast about how far his troops can drive into Eastern Europe? Why else would Moscow be deploying military power into the Middle East? Why else would it be continuing to cultivate intelligence and military relationships in regions as remote as Latin America?

Likewise, China is today focused primarily on securing its own geopolitical neighborhood, but its ambitions for tomorrow are clearly much bolder. Beijing probably does not envision itself fully overthrowing the international order, simply because it has profited far too much from the U.S.-anchored global economy. Yet China has nonetheless positioned itself for a global challenge to U.S. influence. Chinese military forces are deploying ever farther from China's immediate periphery; Beijing has projected power into the Arctic and established bases and logistical points in the Indian Ocean and Horn of Africa. Popular Chinese movies depict Beijing replacing Washington as the dominant actor in sub-Saharan Africa—a fictional representation of a real-life effort long under way. The Belt and Road Initiative bespeaks an aspiration to link China to countries throughout Central Asia, the Middle East, and Europe; BRI, AIIB, and RCEP look like the beginning of an alternative institutional architecture to rival Washington's. In 2017, Xi Jinping told the Nineteenth National Congress of the Chinese Communist Party that Beijing could now "take center stage in the world" and act as an alternative to U.S. leadership.

These ambitions may or may not be realistic. But they demonstrate just how significantly the world's leading authoritarian powers desire to shift the global environment over time. The revisionism we are seeing today may therefore be only the beginning. As China's power continues to grow, or if it is successful in dominating the Western Pacific, it will surely move on to grander endeavors. If Russia reconsolidates control over the former Soviet space, it may seek to bring parts of the former Warsaw Pact to heel. Historically, this has been a recurring pattern of great-power behavior—interests expand with power, the appetite grows with the eating, risk-taking increases as early gambles are seen to pay off. This pattern is precisely why the revival of great-power competition is so concerning—because geopolitical revisionism by unsatisfied major powers has so often presaged intensifying international conflict, confrontation, and even war. The great-power behavior occurring today represents the warning light flashing on the dashboard. It tells us there may be still-greater traumas to come.

Independently, undermining judicial legitimacy collapse Afghan judicial independence --- causes instability

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Underlying the ritual furor, though, is a set of deeper concerns. Constitutional experts worry that the president's comments reveal an authoritarian chief executive who may prove unwilling to be checked or balanced by the judiciary. By scorning norms of comity and respect for a coequal branch of government, Trump's comments also strike at the bedrock of America's global leadership, which is grounded in the rule of law. By disrespecting the court and spurning the authoritativeness of judicial interpretations of

the U.S. Constitution, Trump has cast doubt on whether he will willingly submit to limitations on his power. Trump has cast doubt on whether he will willingly submit to limitations on his power. For a nation that since World War II has argued that power should always be conferred and confined by law, Trump's latest remarks are damaging not just at home but around the world.

The president has said the following about the courts and judiciary over the last week in the context of two unfavorable rulings on his immigration ban: He called Seattle-based District Judge James Robart a "so-called judge" and dubbed his opinion in the immigration case "ridiculous." He then tweeted that the judge's "terrible decision" would be to blame if "very bad and dangerous people" poured into the country. He commented that even a "bad high school student" would understand that he, Trump, has the authority to limit entry to the United States. And ahead of a ruling by the 9th Circuit Court of Appeals, he remarked: "If the U.S. does not win this case as it so obviously should, we can never have the security and safety to which we are entitled. Politics!" The president called the 9th Circuit's judicial proceedings "disgraceful" and described the courts as "so political." In the wake of his insults, threats from Trump supporters directed at the judges involved in the case have led federal authorities to provide them with round-the-clock security protection.

Insulting courts is not the same as dissing, say, Nordstrom, Chicago, Mexico, BuzzFeed, the New York Times, or CNN. No matter how ill-considered and damaging, those aspersions are unquestionably protected by the First Amendment and comparable international legal protections. But the law treats certain types of invective toward the judiciary differently, recognizing that speech can dangerously undermine a branch of government whose authority vests in proceedings, opinions, and orders rather than in force. The judiciary can overturn the actions of Congress or the president yet must rely on enforcement powers controlled by the other branches to put its judgments into effect. That intricate interdependence is at the core of the rule of law, and the system has laws in place to insulate against efforts to subvert it.

In the United States, insult and defiance toward the court are addressed by laws of contempt, which can punish disrespectful and insulting comments made in a courtroom setting. The American Bar Association (ABA) has defined criminal contempt to include "any conduct, verbal or non-verbal, that embarrasses or obstructs the court, derogates from the court's authority or dignity, [or] brings the administration of justice into disrepute." While the First Amendment has led U.S. courts to be more circumspect than those in Europe about punishing contempt of court that occurs out of a judge's earshot, that, too, may qualify as contempt depending on the circumstances. Just last month, a New Orleans prosecutor was brought up on contempt charges for "insolent, inappropriate and disrespectful" text messages directed toward a judge. While no one has dared propose that Trump be held in contempt, were he not the president of the United States it is conceivable that one of the judges whom he has insulted could pursue a contempt order, which can lead to fines or jail time, in response to his statements — indeed, experts have begun to debate whether and how a court judgment might be enforced against him. (Though of course, when contempt occurs out of earshot of the court, the accused is entitled to notice and a chance to defend himself.)

Around the world, attacks by political leaders against the judiciary are treated as a serious incursion on the rule of law and a reflection of weakness in democratic systems. In 2015, South Africa's chief justice, Mogoeng Mogoeng, took the matter head on, scheduling a meeting with President Jacob Zuma to discuss attacks by top African National Congress officials accusing provincial courts of being biased against the government and taking bribes. "We want to meet with President Jacob Zuma over unfair attacks on the courts. Judges are open to criticism, but it should be fair, specific. General, gratuitous

criticism is unacceptable,” he stressed. Just last month, the prime minister of Guyana, Moses Nagamootoo, publicly scolded his own attorney general and minister of legal affairs for attacking the judiciary over a pending case testing presidential term limits, saying: “Our government does not encourage attacks on the legislature and the judiciary. It is not government’s policy or decision to besmirch the character of any judicial officer.” Of note, in both cases the criticisms against the judiciary came from lower-ranked officials, making it possible for the head of state to step in and reject them. Not so when it comes to President Trump.

Trump’s comments have not gone unnoticed around the world. The chair of Ireland’s bar council dubbed them “sinister,” commenting that “we have an executive head of state attacking judges who are required to act independently without fear or favor because he disagrees with their interpretation of the law.” Martin Solc, the president of the International Bar Association, representing 190 bar associations in 160 countries, said: “The rule of law, the centuries-old legal principle that law should govern a nation, is something that is being chipped away at each time President Trump publicly attacks and disrespects a judge.... It damages public confidence in the judicial system.”

For the U.S. president to be accused on the international stage of so brazenly undercutting the rule of law threatens the country’s credibility as a promoter of legal norms around the world. In 2006, the ABA launched its World Justice Project, aiming to establish a broadly accepted definition for the rule of law globally. Both Republican and Democratic administrations have invested billions of dollars to strengthen the rule of law around the world, including more than \$1 billion to build the judicial, corrections, and legal systems in Afghanistan. The premise behind these investments is that rule of law is the best defense to prevent countries from descending into bloodshed and corruption. Embassies around the world have “rule of law” advisors who work to build the legitimacy and expertise of local lawyers, judges, and lawmakers. All of this effort rests on the notion that, despite serious flaws, the American system of government and legal rule is among the world’s strongest and most stable. Whether American advisors can still, with a straight face, counsel international counterparts on respect for the judiciary in the face of Trump’s remarks remains to be seen.

“Rule of law” as an underpinning of American power globally goes beyond international development, human rights, or nation-building efforts. Allies in Europe, Asia, and elsewhere want the friendship and protection of a powerful Washington because they trust the United States to uphold international norms that preserve their sovereignty and autonomy. The same cannot be said of Russia and China, whose assertions of power are generally greeted more warily. If the United States can no longer be trusted to be rule-bound at home, others will expect the same to be true abroad. Trump’s comments about dismissing treaties and international instruments compound the problem.

Strong Afghan institutions solves nuclear war

Rubin 11 - President of the Washington Strategy Group and Director of Policy and Government Affairs at Ploughshares Fund (Joel, “Nuclear Concerns After the Afghanistan Withdrawal,” https://www.huffingtonpost.com/joel-rubin/middle-east-nuclear-threat_b_891178.html)

The national security calculus of keeping U.S. forces in Afghanistan has shifted. Any gains that we made from keeping 100,000 American soldiers in harm’s way are now questionable, especially since al Qaeda has been dealt a significant blow with the killing of Osama bin Laden. President Obama’s decision to end the surge by late next year only reinforces this reality. Yet many of the underlying sources of conflict and tension in South and Central Asia will remain after an American withdrawal. In a region that has deep

experience on nuclear matters – with nuclear aspirant Iran bordering Afghanistan on one side and nuclear-armed Pakistan and India on the other – the United States must take into account the potential for regional nuclear insecurity caused by a poorly executed drawdown in Afghanistan. As much as we may like to, we can't just cut and run. So as the United States draws down its forces, **we must** take care to **leave stable systems and relationships** in place; **failure** to do so **could exacerbate historic regional tensions and potentially create new national security risks**. It is therefore essential that Washington policymakers create a comprehensive nuclear security strategy for the region as part of its Afghanistan withdrawal plans that lays the groundwork for regional stability. We have only to look to our recent history in the region to understand the importance of this approach. In the 1980s, the U.S. supported the Mujahedeen against the Soviet Union. When that conflict ended, we withdrew, only to see the rise of al Qaeda — and its resultant international terrorism — in the 1990s because we didn't pull out responsibly from Afghanistan. Our **choices** now **in Afghanistan will determine the shape of our security challenges in the region for the foreseeable future**. And we can't afford for nuclear weapons to become to South and Central Asia in the 21st century what al Qaeda was in the 1990s to Afghanistan. To avoid such an outcome, several key objectives must be included in any Afghanistan withdrawal plan. First, **current levels of regional insecurity** — which already are extremely high — **will continue to drive tensions, and quite possibly conflict, amongst the regional powers**. Therefore, we must ensure the implementation of a regional approach to military withdrawal. These efforts must bring all relevant regional players to the table, particularly the nuclear and potentially nuclear states. Iran and all the countries bordering Afghanistan must be part of this discussion. Second, **the United States must be mindful to not leave a governance vacuum inside Afghanistan**. While it is clear that the current counter-insurgency policy being pursued in Afghanistan is not working at a pace that meets either Western or Afghan aspirations, **it is still essential that Afghanistan not be allowed to implode**. We do not need 100,000 troops to do this, and as the Afghanistan Study Group has recommended, credible political negotiations that emphasize power-sharing and political reconciliation must take place to keep the country intact while the United States moves out. Third, while the rationale for our presence in Afghanistan — to defeat al Qaeda — has dissipated, a major security concern justifying our continued involvement in the region — potential nuclear conflict between India and Pakistan — will remain and may actually rise in importance. It is crucial that we keep a particularly close eye on these programs to ensure that all is done to prevent the illicit transfer or ill-use of nuclear weapons. Regardless of American troop levels in Afghanistan, the U.S. must maximize its military and intelligence relationships with these countries to continue to both understand their nuclear intentions and help prevent potential conflict. **We must avoid a situation where any minor misunderstanding or even terrorist act, as happened in Mumbai in 2008, does not set off escalating tensions that lead to a nuclear exchange**. Ultimately, the U.S. will one day leave Afghanistan — and it may be sooner than anyone expects. **The key here is to leave in a way that promotes regional stability and cooperation, not a power vacuum** that could foster proxy conflicts. To ensure that our security interests are protected and that the region does not get sucked in to a new level of insecurity and tension, a comprehensive strategy to enhance regional security, maintain a stable Afghanistan, and keep a watchful eye on Pakistan and India is essential. **Taking such steps will help us to depart Afghanistan in a responsible manner that protects our security interests, while not exacerbating the deep strategic insecurities of a region that has the greatest risk of arms races and nuclear conflict** in the world.

No alt causes—mandatory minimums are the biggest factor in judicial discretion

Price 19 (Mary Price, JD from Georgetown University Law Center, general council for Families Against Mandatory Minimums, “Weaponizing Justice: Mandatory Minimums, the Trial Penalty, and the Purposes of Punishment” *Federal Sentencing Reporter* 31(4-5), April/June 2019)wtk

“[T]here is no department of the criminal law more damaging to judicial sentencing discretion, or more egregious in its transfer of sentencing power to prosecutors, than the mandatory-minimum penalty.”³ The Sentencing Reform Act of 1984 (SRA) transformed criminal sentencing by ushering in determinate sentencing, eliminating parole, and curtailing good time. It established a Sentencing Commission to craft guidance for judges and mandated at 18 U.S.C. § 3553(a) that a judge impose a sentence “sufficient but no greater than necessary to” advance the purposes of punishment. The SRA instructed the judge to consider a menu of factors relating to the crime and the defendant in reaching a proportionate sentence. Notwithstanding its embrace of judicial discretion in the SRA, **Congress nearly simultaneously adopted the modern class of drug mandatory minimums in response to concerns over the growing drug trade and news of violent crime associated with it. That decision**, coupled with the Commission’s decision to make the sentencing guidelines mandatory, **was momentous and far-reaching. The criminal justice system**, now poised by the SRA to support the judiciary in a search for proportionality, instead **“devolve[d] into an unbalanced system that shifted power and discretion away from judges ... and toward the interests of prosecutors.”**⁴ Today, even in cases where the now-advisory sentencing guidelines

govern, prosecutorial decisions to drive up the amount of loss or accumulate drug quantity provide plenty of material with which to threaten defendants. This power can be traced to the decision by the first U.S. Sentencing Commission to link the new federal Sentencing Guidelines for drug offenses to the five- and ten-year mandatory minimum penalties called for in the Anti-Drug Abuse Act of 1986.⁵ These drug guidelines were set somewhat higher than the corresponding mandatory minimum to provide prosecutors some leverage in negotiating plea agreements with defendants.⁶ The system was set up so that as drug quantities increased, so did guideline ranges, because those ranges were based principally on type and quantity of the drug.

Advantage- Plea Bargains

Advantage 2 is plea bargains

Mandatory minimums incentivize over-use of plea bargains—that erodes trials and undermine constitutional protections

Gleeson 18 (John Gleeson, Partner Debevoise & Plimpton, Former United States District Judge, Eastern District of New York, writing the Foreword of “THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It” 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>)wtk

This report is a major contribution to the discussion of one of the most important issues in criminal justice today: the vanishing trial. Once the centerpiece of our criminal justice ecosystem, the trial is now spotted so infrequently that if we don’t do something to bring it back, we will need to rethink many other features of our system that contribute to fair and just results only when trials occur in meaningful numbers. The first task in solving a problem is identifying its causes, and this report nails that step. Mandatory minimum sentencing provisions have played an important role in reducing our trial rate from more than 20% thirty years ago to 3% today. Instead of using those blunt instruments for their intended purpose — to impose harsher punishments on a select group of the most culpable defendants — the Department of Justice got in the habit long ago of using them broadly to strong-arm guilty pleas, and to punish those who have the temerity to exercise their right to trial. The Sentencing Guidelines also play an important role, providing excessively harsh sentencing ranges that frame plea discussions when mandatory sentences do not. Finally, the report correctly finds that federal sentencing judges are complicit as well. In too many cases, excessive trial penalties are the result of judges having internalized a cultural norm that when defendants “roll the dice” by “demanding” a trial, they either win big or lose big. The same judges who will go along with a plea bargain that compromises a severe Guidelines range are too reticent to stray very far from the sentencing range after trial. The report’s principles and recommendations will stimulate some much-needed discussion. Today’s excessive trial penalties, it concludes, undermine the integrity of our criminal justice system. Putting the government to its proof is a constitutional right, enshrined in the Sixth Amendment; no one should be required to gamble with years and often decades of their liberty to exercise it. The report properly raises the “innocence problem,” that is, the fact that prosecutors have become so empowered to enlarge the delta between the sentencing outcome if the defendant pleads guilty and the outcome if he goes to trial and loses that even innocent defendants now plead guilty. But there’s an even larger hypocrisy problem. Our Constitution claims to protect the guilty as well, affording them a presumption of innocence and protecting them from punishment unless the government can prove them guilty beyond a reasonable doubt. A system characterized by extravagant trial penalties produces guilty pleas in cases where the government cannot satisfy that burden, hollowing out those protections and producing effects no less pernicious than innocents pleading guilty. The report’s recommendations range from the sweeping (ban those mandatory minimums) to the technical (eliminate the motion requirement for the third “acceptance” point), and include suggested modifications to the “relevant conduct” principle at the heart of the Guidelines, pre-plea disclosure requirements, “second looks” at lengthy sentences, and judicial oversight of plea discussions. A particularly attractive recommendation would require judges sentencing a defendant who went to trial to pay greater attention to the sentences imposed on co-defendants who pled guilty; few things place today’s excessive trial penalty in sharper relief. There is no such thing as a perfect criminal justice system. But a healthy one is constantly introspective, never complacent, always searching for injustices within and determined to address them. The sentencing reform movement a generation ago disempowered judges and empowered prosecutors. Federal prosecutors have used that power to make the trial penalty too severe, and the dramatic diminution in the federal trial rate is the result. Our system is too opaque and too severe, and everyone in it — judges, prosecutors, and defense attorneys — is losing the edge that trials once gave them. Most important of all, a system without a critical mass of trials cannot deliver on our constitutional promises. Here’s hoping that this report will help us correct this problem before it is too late.

That creates a trial penalty that punishes people for exercising their right to trial

Price 19 (Mary Price, JD from Georgetown University Law Center, general council for Families Against Mandatory Minimums, “Weaponizing Justice: Mandatory Minimums, the Trial Penalty, and the Purposes of Punishment” *Federal Sentencing Reporter* 31(4-5), April/June 2019)wtk

Federal prosecutors derive their power to pressure and punish from the fact that they often hold the keys to how much prison time a defendant will receive. In extreme (but hardly rare) cases, a prosecutor can dictate the sentence by manipulating charges and enhancement notices. In mandatory minimum cases, discretion to fashion a sentence is removed from the judge and given to the prosecutor. That practice distorts the functioning of our system of justice at its most critical stage, the punishment phase. **Mandatory minimums are essential to the trial penalty.** Prosecutors use them to redirect sentencing from a process that advances the goals of punishment to one that is driven by resource and case management concerns, at the cost of individual liberty and the legitimacy of our criminal justice system. The trial penalty is the means by which mandatory minimums become weaponized by the government. Much has been written about how mandatory minimums short-circuit the *court’s* obligation to impose a sentence that is proportionate, individualized, and that advances the purposes of punishment. Prosecutors also have a duty to consider their actions in light of the purposes of punishment and avoid coercive practices. Mandatory minimums provide a powerful incentive that diverts prosecutors from this duty. Because the aim of the trial penalty is to pressure a defendant to plead guilty and cooperate (and punish her if she does not), there is no reason for a prosecutor to evaluate her choices in terms of the purposes of punishment. The trial penalty is the prosecutor’s affirmative decision to turn her back on that duty in favor of securing a swift conviction. This article examines how mandatory minimums and long sentencing guidelines give prosecutors a strong advantage in plea negotiations despite rules that prosecutors are supposed to follow in negotiating pleas. It explores some of the rationales for using coercive plea practices and trial penalties, and how the trial penalty works in practice. Finally, it briefly explains how the trial penalty results in unjust sentences that undermine the purposes of punishment and suggests some reforms to end the trial penalty.

Elimination of mandatory minimums is key to solve

Dhaliwal 7/1 (Sandeep, JD and Lawyer, “How Mandatory Minimums Are Weaponized” *New York Times* 7/1/2020 <https://www.nytimes.com/2020/07/01/opinion/mandatory-minimum-sentences-protest.html>)wtik

Though the First Step Act brought an increment of progress, most mandatory minimums remain on the books, despite consistent criticism that these penalties have contributed to over-incarceration. This statistic is well known but worth reiterating: Though the United States has less than 5 percent of the world’s population, it has over 20 percent of the world’s prisoners. Harsh mandatory penalties resulting in needlessly long sentences are an undeniable contributing factor. While it doesn’t involve stacked 924(c) counts, the 45-year mandatory minimum penalty that Mr. Mattis and Ms. Rahman face is part of an all too familiar pattern of prosecution. The goal is to coerce people to plead guilty to charges carrying harsh sentences in exchange for the dismissal of charges that mandate unconscionable ones. The message that prosecutors send to them and to so many other defendants is clear: If you consider exercising your **fundamental right to trial**, we will seek penalties that are so excessive that you will think twice, because we have the power to take sentencing authority away from the judiciary. When this regime of mandatory minimums began more than 30 years ago, 20 percent of federal criminal cases were resolved by trial. Today, fewer than 3 percent are, and more than 97 percent of cases are resolved by pleas. No rational observer would conclude that Mr. Mattis and Ms. Rahman should spend a majority of their lives behind bars for an alleged act that caused harm to no one. To put the threat of a 45-year mandatory sentence into some perspective, according to data compiled by the U.S. Sentencing Commission, the median sentence for murder in the Second Circuit from 2015 through 2019 was 16 years. The extreme 45-year sentences they face are a reminder that real people and families and communities are at the receiving end of these devastating penalties. As lawmakers in Congress propose sweeping changes to policing spurred by society’s broad

awakening to systemic racism, they must also make changes to eliminate federal mandatory minimums, rein in overcharging and help restore the right to trial.

Mandatory minimums are the comparatively largest driving force of trial penalties

Reimer and Sabelli 19 (NORMAN L. REIMER, Executive Director, National Association of Criminal Defense Lawyers, and MARTIN ANTONIO SABELLI, Second Vice President, National Association of Criminal Defense Lawyers, “The Tyranny of the Trial Penalty: The Consensus that Coercive Plea Practices Must End” *Federal Sentencing Reporter* 31(4-5), April/June 2019. <http://everyones-business.org/cache/NACDL-Coercive-Plea-Practices-Must-End.pdf>)wtk

Perhaps the single most powerful driving force behind the trial penalty is the mandatory minimum sentence. The availability of a mandatory minimum sentence, combined with the unfettered discretion of prosecutors to control the charging process, creates an insuperable weapon that so burdens the exercise of the rights afforded to an accused person as to render them a nullity. In *Weaponizing Justice:*

Mandatory Minimums, the Trial Penalty, and the Purposes of Punishment, FAMM’s General Counsel Mary Price describes the trial penalty as “one of the most lethal tools in the prosecutor’s kit.” The article dissects precisely how federal mandatory minimum sentences are manipulated by prosecutors to coerce guilty pleas. Through the prism of the case of Mr. Evans Ray, Ms. Price shows how federal prosecutors use their charging power to deploy mandatory minimums without regard for their own internal standards and for the sole purpose of punishing those who insist upon a trial. Mr. Ray’s life sentence, which fortunately was eventually commuted by President Barack Obama, stands as a classic example of a punishment that fits neither the crime nor the purposes of punishment. It is also Exhibit A in proving the tyranny of the trial penalty.

Trial penalties undermine core constitutional checks on liberty and government authoritarianism

Jones et al 18 (Rick Jones, President of the National Association of Criminal Defense Lawyers, Gerald B. Lefcourt, President of the Foundation for Criminal Justice, Barry J. Pollack, Immediate Past President NACDL, Norman L. Reimer, Executive Director of the NACDL, and Kyle O’Dowd, Associate Executive Director for Policy of NACDL, “THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It” 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>)wtk

The Scope of the Problem In the words of John Adams, “[r]epresentative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.”¹ President Adams’ colorful language reflected the strength of his view — a view shared by his contemporaries — that the right to trial by jury protects our liberties every bit as much the right to cast votes for our representatives. To the modern ear, this view comes as a surprise. While Americans celebrate the notion of representative government just as much now as they did in the time of the Framers, few still think of trial by jury as a bulwark against the arbitrary and capricious use of government power. Why does this notion seem so surprising to the modern observer? What has become of the sense — so natural for Mr. Adams and his contemporaries — that trial by jury protects freedom? The answer, is simple: over the last fifty years, trial by jury has declined at an ever-increasing rate to the point that this institution now occurs in less than 3% of state and federal criminal cases.² Trial by jury has been replaced by a “system of [guilty] pleas”³ which diminishes, to the point of obscurity, the role that the Framers envisioned for jury trials as the primary protection for individual liberties and the principal mechanism for public participation in the criminal justice system. Guilty pleas have replaced trials for a very simple reason: individuals who choose to exercise their Sixth Amendment right to trial face **exponentially higher sentences** if they invoke the right to trial and lose. Faced with this choice, individuals almost uniformly surrender the right to trial rather than insist on proof beyond a reasonable doubt, defense lawyers spend most of their time negotiating guilty pleas rather than ensuring that police and the government respect the boundaries of the law including the proof beyond a reasonable doubt standard, and judges dedicate their time to administering plea allocutions rather than evaluating the constitutional and legal aspects of the government’s case and police conduct. Equally important, the public rarely exercises the oversight function

envisioned by the Framers and inherent in jury service. Further, the pressure to plead guilty and plead early, is often accompanied by a requirement that accused persons waive many valuable rights, including the right to challenge unlawfully procured evidence and the right to appeal issues which have an impact not only in their cases but also for society at large. While scholars still debate the theoretical justifications for and against plea bargaining, neither the government nor the public have exhibited any significant resistance to its rise to dominance. This is not altogether surprising given the ostensible advantages of plea bargaining. Trials are lengthy, expensive processes that can leave victims waiting for years to obtain restitution and closure. Plea bargaining presents a seemingly reasonable alternative that promotes efficiency while providing defendants an opportunity for leniency and putting them on an early road to rehabilitation. Conventional wisdom understandably views this as a win/win solution, particularly because the Constitution affords defendants the right to choose to go to trial if they wish to do so. For most, however, **the right to a trial is a choice in name only.** Empirical studies and exoneration data have revealed that **the pressures defendants face in the plea bargaining process are so strong even innocent people can be convinced to plead guilty to crimes they did not commit.** ⁴ **This disturbing figure casts doubt on the assumption that defendants who plead guilty do so voluntarily.** As this Report illustrates, **there is ample evidence that federal criminal defendants are being coerced to plead guilty because the penalty for exercising their constitutional rights is simply too high to risk.** This “trial penalty” results from the discrepancy between the sentence the prosecutor is willing to offer in exchange for a guilty plea and the sentence that would be imposed after a trial. If there were no discrepancy at all, there would be far less incentive for defendants to plead guilty. But the gap between post-trial and post-plea sentences can be so wide, it becomes an overwhelming influence in a defendant’s consideration of a plea deal. When a prosecutor offers to reduce a multi-decade prison sentence to a number of years — from 30 years to 5 years, for example — any choice the defendant had in the matter is all but eliminated. Although comprehensive data regarding plea offers remains largely unavailable, anecdotal evidence suggests that offers of this nature are common. **Prosecutors enjoy enormous discretion to force a defendant’s hand. While some may view prosecutors’ actions as generous, their willingness to reduce sentences so drastically raises serious doubt that the initial sentences were reasonable in the first place.**

Reject even one invasion of liberty

Petro 74 (Sylvester, Professor of Law at Wake Forest University School of Law, “CIVIL LIBERTY, SYNDICALISM, AND THE NLRA” *Toledo Law Review* Volume 5, 1974, p. 480, accessed via KU Online Libraries)

However, one may still insist, echoing Ernest Hemingway—**“I believe in only one thing: liberty.”**⁷ And it is always well to bear in mind David Hume’s observation: **“It is seldom that liberty of any kind is lost all at once.”** Thus, **it is unacceptable to say that the invasion of one aspect of freedom is of no import because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, and the end of all human aspiration.** Ask Solzhenitsyn. Ask Milovan Djilas. In sum, **if one believes in freedom as a supreme value and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then every invasion of freedom must be emphatically identified and resisted with undying spirit.**

Over-reliance on plea bargains undermine the rule of law—they’re coerced by prosecutors using mandatory minimums

Neily 18 (Clark, JD from the University of Texas School of Law, Vice President for Criminal Justice, Cato Institute, “Bring Back The Jury Trial” 9/17/18)wtk

Today’s criminal justice system differs from the one prescribed by the Constitution in a particularly striking way: **The lack of jury trials.** I believe this offends both the spirit and, in cases where the defendant’s decision to forego a jury trial is not truly voluntary, the letter of the Constitution. For the Founders, the criminal jury was not some quaint nod to participatory democracy, nor did they share the modern misconception of the criminal jury as a purely fact-finding body. Instead, they understood that an equally if not more important role of jurors is to protect their fellow citizens from the illegitimate application of criminal laws. (If you’re wondering what might constitute an “illegitimate application of criminal law,” consider that the federal mandatory minimum for growing

1,000 or more marijuana plants—a modest commercial operation in a place like Colorado or Oregon—is 10 years in prison.[1] Ten. Years.) Article Three of the Constitution provides that “The Trial of all Crimes...shall be by Jury.”[2] And the Bill of Rights devotes more words to the topic of juries than any other subject.[3] At the Founding, criminal proceedings were, virtually without exception, resolved by juries, and plea bargaining was unknown. Today, it’s the opposite: 95% of criminal convictions are obtained through plea bargains, and criminal jury trials are practically unknown—especially in the federal system.[4] To appreciate the significance of that development, consider the following metaphor. To someone who did not understand the role that honeybees play in nature (they are the world’s most important pollinator of food crops), the elimination of a single, sometimes annoying species of insect might seem like no big deal. But in fact it would be devastating, both for the ecosystem and for individual human beings. So it is with criminal jury trials, the practical elimination of which has been an unmitigated disaster for liberty, limited government, and the rule of law. But unlike the recent global die-off of honeybees, there is no mystery about what is killing off the criminal jury trial: **Coercive plea bargaining.** For those who have never experienced coercive plea bargaining and aren’t sure what it looks like, here’s a taste: Imagine you’re looking at a mandatory minimum sentence of 10 years—/ain prison for some non-wrongful act like growing marijuana plants on your family farm.[5] But the charge-stacking prosecutor has included a conspiracy count, so you’re actually looking at a potential life sentence if things go badly. You don’t have money to hire a lawyer (perhaps because the government has seized all your assets using civil forfeiture for the specific purpose of impairing your defense, which is a thing that actually happens).[6] So, like 80% of criminal defendants, you’ll get an overworked, under-resourced public defender whom you might meet for the first time on the day of your trial—a day that could be several years in the future, particularly if you’re unfortunate enough to be arrested in a jurisdiction that trains its prosecutors to delay trials in order to keep defendants rotting in a dirty, dangerous “hellhole” like Rikers Island.[7] And it’s not just your future that hangs in the balance; prosecutors have been less than subtle in noting that the farm on which you (allegedly) grew the marijuana technically belongs to your parents. “Say, that’s a nice family you got there—be a shame if something happened to it.” Are you likely to consider a plea offer regardless of whether you’re guilty or not? You’d better believe it.

Rule of law prevents extinction

Deller, et al, 2—researcher and consultant for Institute for Energy and Environmental Research and Lawyers’ Committee on Nuclear Policy (Nicole, with Arjun Makhijani, president of the Institute for Energy and Environmental Research, and John Burroughs, executive director of the Lawyers’ Committee on Nuclear Policy, “Rule of Power or Rule of Law?,” <http://lcnp.org/pubs/RuleofLawPDF.pdf>, dml)

The concept of the rule of law was integral to the founding of the United States, which has been one of its staunchest advocates. The rule of law in international affairs is still emerging, evolving quickly as global forces drive countries closer together. Its development is largely a response to the demands of states and individuals living within a global society with a deeply integrated world economy. In this global society, the repercussions of the actions of states, non-state actors and individuals are not confined within borders, whether we look to greenhouse gas accumulations, nuclear testing, the danger of accidental nuclear war, or the vast massacres of civilians that have taken place over the course of the last hundred years and still continue. The people of the United States are part of this global society and failures at the global level will affect their security and well-being adversely, along with that of people elsewhere. The importance and weight of the United States makes a U.S. withdrawal from the global legal process except when its gets its own way a dangerous course for security as well as the environment.

Specifically, Rule of law solves war, terrorism, and failed states

Feldman ‘8 [Noah Feldman, a contributing writer for the magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, “When Judges Make Foreign Policy”, NEW YORK TIMES, 9—25—08, www.nytimes.com/2008/09/28/magazine/28law-t.html]

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what

direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn't the court defer to the decisions of the elected president and Congress? Aren't judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, when the court exercises its own independent political judgment, it still does so in a distinctively legal way. For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. This, too, is an effective constraint on the way the court exercises its policy judgment. Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law. Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates new dangers of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration's lawyers often insisted that law was a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of "lawfare" as a threat to the United States is based on a misunderstanding of the very essence of how law operates. Law comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker people or states by promising them rules and a fair hearing than by threatening them constantly with force. After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

Al-Qaeda is seeking nuclear weapons

Bunn et al. 19 (Matthew Bunn is an American nuclear and energy policy analyst, currently a professor at the Harvard Kennedy School at Harvard University. He is the Co-principal Investigator for the Belfer Center's Project on Managing the Atom; Nickolas Roth is director of the Stimson Center's Nuclear Security Program and an Associate of the Project on Managing the Atom at the Harvard Kennedy School's Belfer Center for Science and International Affairs. Roth was a senior research associate at the Project on Managing the Atom; William Tobey was Deputy Administrator for Defense Nuclear Nonproliferation at the National Nuclear Security Administration and is a Senior Fellow of Belfer Center for Science and International Affairs; "Combating Complacency about Nuclear Terrorism"; Harvard Kennedy School Belfer Center for Science and International Affairs; March 2019; https://www.belfercenter.org/sites/default/files/2019-03/NuclearSecurityPolicyBrief_2.pdf?fbclid=IwAR30cJ37tRb4y-Qpk1PctFChMXE8lWrzrhLTT9VA1_3-IWh1Sg6ZK8EvEj8; ERB)

Have terrorists pursued nuclear weapons?1

Yes. Ambitious, well-financed, sophisticated **terrorist groups employing apocalyptic rhetoric have sought nuclear weapons**. The terrorist cult Aum Shinrikyo released sarin nerve gas in Matsumoto and in the Tokyo subway in 1995 and attempted to acquire both nuclear and biological weapons. **Al Qaeda, whose leader declared acquisition of nuclear and chemical weapons to be a “religious duty,” had a focused nuclear weapons effort that reported directly to Ayman al-Zawahiri (now the group’s leader)**. This effort included repeated attempts to get nuclear material and recruit nuclear expertise and progressed as far as carrying out crude but sensible tests of conventional explosives in the Afghan desert. Chechen terrorists planted a stolen radiological source in a Moscow park as a warning, repeatedly threatened to sabotage nuclear reactors, and reportedly carried out reconnaissance on both nuclear weapon storage sites and nuclear weapon transport trains. So far, there is no public evidence of a focused Islamic State effort to acquire nuclear weapons, despite some hints, including video monitoring of the home of a top official of a Belgian nuclear research center.

Nuclear terrorism is likely and escalates to nuclear war – multiple warrants

Bunn and Roth 17 (Matthew Bunn is a professor of practice at the Harvard Kennedy School. A former advisor in the White House Office of Science and Technology Policy, he is the author or co-author of over 20 books or major technical reports, and over 100 articles in publications ranging from Science to The Washington Post.; Nickolas Roth is director of the Stimson Center’s Nuclear Security Program. Prior to joining the Stimson Center, Roth was a senior research associate at the Project on Managing the Atom at the Harvard Kennedy School’s Belfer Center for Science and International Affairs. His work has focused on nuclear security, US nuclear weapons policy, and arms control.; “The effects of a single terrorist nuclear bomb”; Bulletin of the Atomic Scientists; September 28th, 2017; <https://thebulletin.org/2017/09/the-effects-of-a-single-terrorist-nuclear-bomb/>; ERB)

The escalating threats between North Korea and the United States make it easy to forget the “nuclear nightmare,” as former US Secretary of Defense William J. Perry put it, that could result even from the use of just a single terrorist nuclear bomb in the heart of a major city. At the risk of repeating the vast literature on the tragedies of Hiroshima and Nagasaki—and the substantial literature surrounding nuclear tests and simulations since then—we attempt to spell out here the likely consequences of the explosion of a single terrorist nuclear bomb on a major city, and its subsequent ripple effects on the rest of the planet. Depending on where and when it was detonated, the blast, fire, initial radiation, and long-term radioactive fallout from such a bomb could leave the heart of a major city a smoldering radioactive ruin, killing tens or hundreds of thousands of people and wounding hundreds of thousands more. Vast areas would have to be evacuated and might be uninhabitable for years. Economic, political, and social aftershocks would ripple throughout the world. A single terrorist nuclear bomb would change history. The country attacked—and the world—would never be the same. The idea of terrorists accomplishing such a thing is, unfortunately, not out of the question; it is far easier to make a crude, unsafe, unreliable nuclear explosive that might fit in the back of a truck than it is to make a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. Numerous government studies have concluded that it is plausible that a sophisticated terrorist group could make a crude bomb if they got the needed nuclear material. And in the last quarter century, there have been some 20 seizures of stolen, weapons-usable nuclear material, and at least two terrorist groups have made significant efforts to acquire nuclear bombs. Terrorist use of an actual nuclear bomb is a low-probability event—but the immensity of the consequences means that even a small chance is enough to justify an intensive effort to reduce the risk. Fortunately, since the early 1990s, countries around the world have significantly reduced the danger—but it remains very real, and there is more to do to ensure this nightmare never becomes reality. Brighter than a thousand suns. Imagine a crude terrorist nuclear bomb—containing a chunk of highly enriched uranium just under the size of a regulation bowling ball, or a much smaller chunk of plutonium—suddenly detonating inside a delivery van parked in the heart of a major city. Such a terrorist bomb would release as much as 10 kilotons of explosive energy, or the equivalent of 10,000 tons of conventional explosives, a volume of explosives large enough to fill all the cars of a mile-long train. In a millionth of a second, all of that energy would be released inside that small ball of nuclear material, creating temperatures and pressures as high as those at the center of the sun. That furious energy would explode outward, releasing its energy in three main ways: a powerful blast wave; intense heat; and deadly radiation. The ball would expand almost instantly into a fireball the width of four football fields, incinerating essentially everything and everyone within. The heated fireball would rise, sucking in air from below and expanding above, creating the mushroom cloud that has become the symbol of the terror of the nuclear age. The ionized plasma in the fireball would create a localized electromagnetic pulse more powerful than lightning, shorting out communications and electronics nearby—though most would be destroyed by

the bomb's other effects in any case. (Estimates of heat, blast, and radiation effects in this article are drawn primarily from Alex Wellerstein's "Nukemap," which itself comes from declassified US government data, such as the 660-page government textbook *The Effects of Nuclear Weapons*.) At the instant of its detonation, the bomb would also release an intense burst of gamma and neutron radiation which would be lethal for nearly everyone directly exposed within about two-thirds of a mile from the center of the blast. (Those who happened to be shielded by being inside, or having buildings between them and the bomb, would be partly protected—in some cases, reducing their doses by ten times or more.) The nuclear flash from the heat of the fireball would radiate in both visible light and the infrared; it would be "brighter than a thousand suns," in the words of the title of a book describing the development of nuclear weapons—adapting a phrase from the Hindu epic the *Bhagavad-Gita*. Anyone who looked directly at the blast would be blinded. The heat from the fireball would ignite fires and horribly burn everyone exposed outside at distances of nearly a mile away. (In the Nagasaki Atomic Bomb Museum, visitors gaze in horror at the bones of a human hand embedded in glass melted by the bomb.) No one has burned a city on that scale in the decades since World War II, so it is difficult to predict the full extent of the fire damage that would occur from the explosion of a nuclear bomb in one of today's cities. Modern glass, steel, and concrete buildings would presumably be less flammable than the wood-and-rice-paper housing of Hiroshima or Nagasaki in the 1940s—but many questions remain, including exactly how thousands of broken gas lines might contribute to fire damage (as they did in Dresden during World War II). On 9/11, the buildings of the World Trade Center proved to be much more vulnerable to fire damage than had been expected. Ultimately, even a crude terrorist nuclear bomb would carry the possibility that the countless fires touched off by the explosion would coalesce into a devastating firestorm, as occurred at Hiroshima. In a firestorm, the rising column of hot air from the massive fire sucks in the air from all around, creating hurricane-force winds; everything flammable and everything alive within the firestorm would be consumed. The fires and the dust from the blast would make it extremely difficult for either rescuers or survivors to see. The explosion would create a powerful blast wave rushing out in every direction. For more than a quarter-mile all around the blast, the pulse of pressure would be over 20 pounds per square inch above atmospheric pressure (known as "overpressure"), destroying or severely damaging even sturdy buildings. The combination of blast, heat, and radiation would kill virtually everyone in this zone. The blast would be accompanied by winds of many hundreds of miles per hour. The damage from the explosion would extend far beyond this inner zone of almost total death. Out to more than half a mile, the blast would be strong enough to collapse most residential buildings and create a serious danger that office buildings would topple over, killing those inside and those in the path of the rubble. (On the other hand, the office towers of a modern city would tend to block the blast wave in some areas, providing partial protection from the blast, as well as from the heat and radiation.) In that zone, almost anything made of wood would be destroyed: Roofs would cave in, windows would shatter, gas lines would rupture. Telephone poles, street lamps, and utility lines would be severely damaged. Many roads would be blocked by mountains of wreckage. In this zone, many people would be killed or injured in building collapses, or trapped under the rubble; many more would be burned, blinded, or injured by flying debris. In many cases, their charred skin would become ragged and fall off in sheets. The effects of the detonation would act in deadly synergy. The smashed materials of buildings broken by the blast would be far easier for the fires to ignite than intact structures. The effects of radiation would make it far more difficult for burned and injured people to recover. The combination of burns, radiation, and physical injuries would cause far more death and suffering than any one of them would alone. The silent killer. The bomb's immediate effects would be followed by a slow, lingering killer: radioactive fallout. A bomb detonated at ground level would dig a huge crater, hurling tons of earth and debris thousands of feet into the sky. Sucked into the rising fireball, these particles would mix with the radioactive remainders of the bomb, and over the next few hours or days, the debris would rain down for miles downwind. Depending on weather and wind patterns, the fallout could actually be deadlier and make a far larger area unusable than the blast itself. Acute radiation sickness from the initial radiation pulse and the fallout would likely affect tens of thousands of people. Depending on the dose, they might suffer from vomiting, watery diarrhea, fever, sores, loss of hair, and bone marrow depletion. Some would survive; some would die within days; some would take months to die. Cancer rates among the survivors would rise. Women would be more vulnerable than men—children and infants especially so. Much of the radiation from a nuclear blast is short-lived; radiation levels even a few days after the blast would be far below those in the first hours. For those not killed or terribly wounded by the initial explosion, the best advice would be to take shelter in a basement for at least several days. But many would be too terrified to stay. Thousands of panic-stricken people might receive deadly doses of radiation as they fled from their homes. Some of the radiation will be longer-lived; areas most severely affected would have to be abandoned for many years after the attack. The combination of radioactive fallout and the devastation of nearly all life-sustaining infrastructure over a vast area would mean that hundreds of thousands of people would have to evacuate. Ambulances to nowhere. The explosion would also destroy much of the city's ability to respond. Hospitals would be leveled, doctors and nurses killed and wounded, ambulances destroyed. (In Hiroshima, 42 of 45 hospitals were destroyed or severely damaged, and 270 of 300 doctors were killed.) Resources that survived outside the zone of destruction would be utterly overwhelmed. Hospitals have no ability to cope with tens or hundreds of thousands of terribly burned and injured people all at once; the United States, for example, has 1,760 burn beds in hospitals nationwide, of which a third are available on any given day. And the problem would not be limited to hospitals; firefighters, for example, would have little ability to cope with thousands of fires raging out of control at once. Fire stations and equipment would be destroyed in the affected area, and firemen killed, along with police and other emergency responders. Some of the first responders may become casualties themselves, from radioactive fallout, fire, and collapsing buildings. Over much of the affected area, communications would be destroyed, by both the physical effects and the electromagnetic pulse from the explosion. Better preparation for such a disaster could save thousands of lives—but ultimately, there is no way any city can genuinely be prepared for a catastrophe on such a historic scale, occurring in a flash, with zero warning. Rescue and recovery attempts would be impeded by the destruction of most of the needed personnel and equipment, and by fire, debris, radiation, fear, lack of communications, and the immense scale of the disaster. The US military and the national guard could provide critically important capabilities—but federal plans assume that "no significant federal response" would be available for 24-to-72 hours. Many of those

burned and injured would wait in vain for help, food, or water, perhaps for days. The scale of death and suffering. How many would die in such an event, and how many would be terribly wounded, would depend on where and when the bomb was detonated, what the weather conditions were at the time, how successful the response was in helping the wounded survivors, and more. Many estimates of casualties are based on census data, which reflect where people sleep at night; if the attack occurred in the middle of a workday, the numbers of people crowded into the office towers at the heart of many modern cities would be far higher. The daytime population of Manhattan, for example, is roughly twice its nighttime population; in Midtown on a typical workday, there are an estimated 980,000 people per square mile. A 10-kiloton weapon detonated there might well kill half a million people—not counting those who might die of radiation sickness from the fallout. (These effects were analyzed in great detail in the Rand Corporation's *Considering the Effects of a Catastrophic Terrorist Attack* and the British Medical Journal's "Nuclear terrorism.") On a typical day, the wind would blow the fallout north, seriously contaminating virtually all of Manhattan above Gramercy Park; people living as far away as Stamford, Connecticut would likely have to evacuate. Seriously injured survivors would greatly outnumber the dead, their suffering magnified by the complete inadequacy of available help. The psychological and social effects—overwhelming sadness, depression, post-traumatic stress disorder, myriad forms of anxiety—would be profound and long-lasting. The scenario we have been describing is a groundburst. An airburst—such as might occur, for example, if terrorists put their bomb in a small aircraft they had purchased or rented—would extend the blast and fire effects over a wider area, killing and injuring even larger numbers of people immediately. But an airburst would not have the same lingering effects from fallout as a groundburst, because the rock and dirt would not be sucked up into the fireball and contaminated. The 10-kiloton blast we have been discussing is likely toward the high end of what terrorists could plausibly achieve with a crude, improvised bomb, but even a 1-kiloton blast would be a catastrophic event, having a deadly radius between one-third and one-half that of a 10-kiloton blast. These hundreds of thousands of people would not be mere statistics, but countless individual stories of loss—parents, children, entire families; all religions; rich and poor alike—killed or horribly mutilated. Human suffering and tragedy on this scale does not have to be imagined; it can be remembered through the stories of the survivors of the US atomic bombings of Hiroshima and Nagasaki, the only times in history when nuclear weapons have been used intentionally against human beings. The pain and suffering caused by those bombings are almost beyond human comprehension; the eloquent testimony of the Hibakusha—the survivors who passed through the atomic fire—should stand as an eternal reminder of the need to prevent nuclear weapons from ever being used in anger again. Global economic disaster. The economic impact of such an attack would be enormous. The effects would reverberate for so far and so long that they are difficult to estimate in all their complexity. Hundreds of thousands of people would be too injured or sick to work for weeks or months. Hundreds of thousands more would evacuate to locations far from their jobs. Many places of employment would have to be abandoned because of the radioactive fallout. Insurance companies would reel under the losses; but at the same time, many insurance policies exclude the effects of nuclear attacks—an item insurers considered beyond their ability to cover—so the owners of thousands of buildings would not have the insurance payments needed to cover the cost of fixing them, thousands of companies would go bankrupt, and banks would be left holding an immense number of mortgages that would never be repaid. Consumer and investor confidence would likely be dramatically affected, as worried people slowed their spending. Enormous new homeland security and military investments would be very likely. If the bomb had come in a shipping container, the targeted country—and possibly others—might stop all containers from entering until it could devise a system for ensuring they could never again be used for such a purpose, throwing a wrench into the gears of global trade for an extended period. (And this might well occur even if a shipping container had not been the means of delivery.) Even the far smaller 9/11 attacks are estimated to have caused economic aftershocks costing almost \$1 trillion even excluding the multi-trillion-dollar costs of the wars that ensued. The cost of a terrorist nuclear attack in a major city would likely be many times higher. The most severe effects would be local, but the effects of trade disruptions, reduced economic activity, and more would reverberate around the world. Consequently, while some countries may feel that nuclear terrorism is only a concern for the countries most likely to be targeted—such as the United States—in reality it is a threat to everyone, everywhere. In 2005, then-UN Secretary-General Kofi Annan warned that these global effects would push "tens of millions of people into dire poverty," creating "a second death toll throughout the developing world." One recent estimate suggested that a nuclear attack in an urban area would cause a global recession, cutting global Gross Domestic Product by some two percent, and pushing an additional 30 million people in the developing world into extreme poverty. Desperate dilemmas. In short, an act of nuclear terrorism could rip the heart out of a major city, and cause ripple effects throughout the world. The government of the country attacked would face desperate decisions: How to help the city attacked? How to prevent further attacks? How to respond or retaliate? Terrorists—either those who committed the attack or others—would probably claim they had more bombs already hidden in other cities (whether they did or not), and threaten to detonate them unless their demands were met. The fear that this might be true could lead people to flee major cities in a large-scale, uncontrolled evacuation. There is very little ability to support the population of major cities in the surrounding countryside. The potential for widespread havoc and economic chaos is very real. If the detonation took place in the capital of the nation attacked, much of the government might be destroyed. A bomb in Washington, D.C., for example, might kill the President, the Vice President, and many of the members of Congress and the Supreme Court. (Having some plausible national leader survive is a key reason why one cabinet member is always elsewhere on the night of the State of the Union address.) Elaborate, classified plans for "continuity of government" have already been drawn up in a number of countries, but the potential for chaos and confusion—if almost all of a country's top leaders were killed—would still be enormous. Who, for example, could address the public on what the government would do, and what the public should do, to respond? Could

anyone honestly assure the public there would be no further attacks? If they did, who would believe them? In the United States, given the practical impossibility of passing major legislation with Congress in ruins and most of its members dead or seriously injured, some have argued for passing legislation in advance giving the government emergency powers to act—and creating procedures, for example, for legitimately replacing most of the House of Representatives. But to date, no such legislative preparations have been made. In what would inevitably be a desperate effort to prevent further attacks, traditional standards of civil liberties might be jettisoned, at least for a time—particularly when people realized that the fuel for the bomb that had done such damage would easily have fit in a suitcase. Old rules limiting search and surveillance could be among the first to go. The government might well impose martial law as it sought to control the situation, hunt for the perpetrators, and find any additional weapons or nuclear materials they might have. Even the far smaller attacks of 9/11 saw the US government authorizing torture of prisoners and mass electronic surveillance. And what standards of international order and law would still hold sway? **The country attacked might well lash out militarily at whatever countries it thought might bear a portion of responsibility.** (A terrifying description of the kinds of discussions that might occur appeared in Brian Jenkins' book, *Will Terrorists Go Nuclear?*) **With the nuclear threshold already crossed in this scenario—at least by terrorists—it is conceivable that some of the resulting conflicts might escalate to nuclear use.** **International politics could become more brutish and violent, with powerful states taking unilateral action, by force if necessary, in an effort to ensure their security.** After 9/11, the United States led the invasions of two sovereign nations, in wars that have since cost hundreds of thousands of lives and trillions of dollars, while plunging a region into chaos. Would the reaction after a far more devastating nuclear attack be any less? In particular, the idea that each state can decide for itself how much security to provide for nuclear weapons and their essential ingredients would likely be seen as totally unacceptable following such an attack. **Powerful states would likely demand that others surrender their nuclear material or accept foreign troops (or other imposed security measures) to guard it.** That could well be the first step toward a more profound transformation of the international system. **After such a catastrophe, major powers may feel compelled to more freely engage in preventive war, seizing territories they worry might otherwise be terrorist safe havens, and taking other steps they see as brutal but necessary to preserve their security.** For this reason, foreign policy analyst Stephen Krasner has argued that **“conventional rules of sovereignty would be abandoned overnight.”** Confidence in both the national security institutions of the country attacked and international institutions such as the International Atomic Energy Agency and the United Nations, which had so manifestly failed to prevent the devastation, might erode. The effect on nuclear weapons policies is hard to predict: One can imagine new nuclear terror driving a new push for nuclear disarmament, but **one could also imagine states feeling more certain than ever before that they needed nuclear weapons.** Prevention: The essential remedy. Given the horrifying consequences of such an event, while there is certainly a need to be better prepared to respond, the primary focus must be on prevention. Fortunately, there is good news on this front. To date, there is no evidence that nuclear weapons or the materials needed to make them have ever fallen into the hands of a terrorist group; even large and sophisticated terrorist groups that have tried to get nuclear weapons have failed to do so; and the international community has taken a wide range of actions over the past quarter-century (and particularly over the 2010-2016 period of the nuclear security summits) that have drastically improved the security measures for nuclear weapons and materials around the world. Nevertheless, while the chance of such a nightmare unfolding is probably small, it is certainly not small enough to justify complacency. **Al Qaeda had a focused effort to acquire nuclear weapons that reported directly to Ayman al-Zawahiri, now the group's leader, and included multiple attempts to get nuclear material and recruit nuclear expertise; Al Qaeda progressed as far as carrying out crude conventional explosive tests for their bomb program in the Afghan desert.** The Japanese terror cult Aum Shinrikyo—the group that launched nerve gas attacks in the Tokyo subway in 1995—also pursued nuclear weapons. To date, **there are only hints of nuclear interest from the Islamic State, but if it did turn to nuclear pursuits, even with the imminent defeat of its geographic caliphate in Iraq and Syria, it still has more money, people, and ability to recruit experts globally than most past terrorist groups, raising a serious concern.** With at least two terrorist groups having pursued nuclear weapons over the past quarter-century, and possibly more, it is unlikely they will be the last. Moreover, the **past seizures of stolen weapons-usable nuclear material demonstrate that nuclear security failures have occurred at some point in the past.** While nuclear security has improved dramatically in many countries in the past quarter-century, **the possibility that terrorists could get the essential ingredients of a nuclear bomb still cannot be ruled out.**

Failed states cause extinction

Manwaring 5 [Max G., adjunct professor of international politics at Dickinson, retired U.S. Army colonel, “Venezuela’s Hugo Chávez, Bolivarian Socialism, and Asymmetric Warfare,” October 2005, pg. PUB628.pdf]

President Chávez also understands that the process leading to state failure is the most dangerous long-term security challenge facing the global community today. The argument in general is that failing and failed state status is the breeding ground for instability, criminality, insurgency, regional conflict, and terrorism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as Bolivarianismo. More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. These means of coercion and persuasion can spawn further human rights violations, torture, poverty, starvation, disease, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking and proliferation of conventional weapons systems and WMD, genocide, ethnic cleansing, warlordism, and criminal anarchy. At the same time, these actions are usually unconfined and spill over into regional syndromes of poverty, destabilization, and conflict.⁶² Peru’s Sendero Luminoso calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.⁶³ Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, instability and the threat of subverting or destroying such a government are real.⁶⁴ But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, the longer dysfunctional, rogue, criminal, and narco-states and people’s democracies persist, the more they and their associated problems endanger global security, peace, and prosperity.⁶⁵

1AC V2

Advantage- Inequality

Mandatory minimums are cruel and ineffective – they result in unfair and disproportionate outcomes and put 5 million children at risk because of mass incarceration

Gertner and Bains 17, Nancy Gertner was a federal district judge in Boston from 1994 to 2011, has taught sentencing law for 19 years, and is a professor at Harvard Law School and Chiraag Bains is former senior counsel to the head of the at the Civil Rights Division of the Department of Justice, where he was involved in pattern-or-practice cases and was also a prosecutor, 5-15-2017, "Mandatory minimum sentences are cruel and ineffective. Sessions wants them back," Washington Post, <https://www.washingtonpost.com/posteverything/wp/2017/05/15/mandatory-minimum-sentences-are-cruel-and-ineffective-sessions-wants-them-back//BUBU>

***This card also can be answering the crime DA since it talks about mandatory minimums being a bad strategy and not cost-effective overall

Last week, Attorney General Jeff Sessions instructed the nation's 2,300 federal prosecutors to pursue the most serious charges in all but exceptional cases. Rescinding a 2013 policy that sought to avoid mandatory minimums for low-level, nonviolent drug offenders, Sessions wrote it was the "moral and just" thing to do. Sessions couldn't be more wrong. We served as a federal prosecutor and a federal judge respectively. In our experience, mandatory minimums have swelled the federal prison population and led to scandalous racial disparities. They have caused untold misery at great expense. And they have not made us safer. **Mandatory federal drug sentencing is unforgiving. A person with one prior drug felony who is charged with possession of 10 grams of LSD, 50 grams of methamphetamine, or 280 grams of crack cocaine with intent to distribute faces 20 years to life.** With two priors — no matter how long ago they occurred — the penalty is life without parole. As one federal judge has written, these are sentences that "no one — not even the prosecutors themselves — thinks are appropriate." **They waste human potential. They harm the 5 million children who have or have had a parent in prison — including one in nine black children.** And they wreak economic devastation on poor communities. Studies have found, for example, that formerly incarcerated employees make 10 to 40 percent less money than similar workers with no history of incarceration and that the probability of a family being in poverty increases by almost 40 percent when a father is imprisoned. Still, in 2003 then-Attorney General John Ashcroft pushed line prosecutors to charge mandatory minimums whenever possible. His policy helped grow the federal prison population from 172,000 to nearly 220,000 over the next 10 years. This was part of a wider national trend that grew the country's incarcerated population to 2.2 million, almost 60 percent of them black and Latino. In 2013, Attorney General Eric Holder recognized that this system of mass incarceration was at odds with the Justice Department's values. He told attorneys to reserve the most severe penalties for the most serious offenses. That meant charging cases in a way that would not trigger mandatory minimums for a specific group of defendants: nonviolent, low-level drug offenders, with no ties to gangs or cartels, no involvement in trafficking to minors, and no significant criminal history. Holder's policy was part of an emerging criminal justice reform movement. Since 2009, more than half the states have passed legislation to relax mandatory minimums and restore judicial discretion — including deep-red Georgia, Louisiana, Mississippi, Oklahoma, and South Carolina. A new crop of prosecutors is openly questioning the use of long prison terms for minor drug crimes. And a bill to ease federal sentencing has bipartisan support in Congress. Sessions is bent on reversing this progress. It would be one thing if Holder's reform efforts had failed — but they did not. The federal prison population fell for the first time after 40 years of exponential growth. It is down 14 percent over the past 3½ years. While we need a wider conversation about how we sentence all offenders, including violent offenders, state and federal, this was a start. The 2013 policy sent a message about the need to be smart, not just tough, on crime, and the role of prosecutors in that effort. **Sessions's assault on the past few years of progress might also make sense if mandatory minimums for minor drug offenses were necessary to combat crime — but they are not.** A 2014 study by the U.S. Sentencing Commission found that defendants released early (based on sentencing changes not related to mandatory minimums) were not more likely to reoffend than prisoners who served their whole sentences. That is, for drug charges, shorter sentences don't compromise public safety. Indeed, research shows it is the certainty of punishment — not the severity — that **deters crime.** Sessions's fixation on mandatory minimums might also be more palatable if they were[n't] cost-effective — **but they are not.** Federal prison costs have ballooned to \$7 billion, more than a quarter of DOJ's budget, driven by a population that is nearly half drug offenders. And yet as detailed by the conservative American Legislative Exchange Council last year, most experts believe that expending public resources to incarcerate these offenders is profoundly inefficient. Sessions's defenders will say his policy only requires prosecutors to charge the defendant's true conduct and apply the statutes

Congress enacted. But floor statements from legislators show that Congress intended these mandatory minimums to be used against “kingpins” and “middle-level dealers,” not the minor offenders to whom they have been applied. One of us served as a federal prosecutor under Holder and had mandatory minimum charges at his disposal. The message from the top down was that prosecutors were to pursue justice. Winning did not mean getting the longest sentence possible. It meant getting the right sentence, one that fit the crime and that respected the interests of victims, defendants, and the public. The other of us served as a federal judge for 17 years, including during the heyday of the Ashcroft regime. She believes that roughly 80 percent of the sentences she was obliged to impose were unjust, unfair and disproportionate. Mandatory penalties meant that she couldn't individualize punishment for the first-time drug offender, or the addict, or the woman whose boyfriend coerced her into the drug trade. Under Sessions, prosecutors will be required almost always to charge mandatory minimums, however unjust. They will bind judges' hands even when the facts cry out for more measured punishment. **The result will be great suffering. And there is no good reason for it.**

We have multiple internal links to inequality—First is Racial Disparity

The growth of mandatory minimum polices dramatically increased racial sentencing disparities and increased the number of minorities who were prosecuted

Cox 15, Robynn J.A. Cox, Economic Policy Institute, 1-16-2015 (Robynn Cox is an assistant professor in the Economics Department at Spelman College and a RCMAR Scholar at the USC Leonard D. Schaeffer Center for Health Policy and Economics. Her research investigates the economic and social consequences of mass incarceration, and its effect on racial inequality. "Where Do We Go from Here? Mass Incarceration and the Struggle for Civil Rights", <https://www.epi.org/publication/where-do-we-go-from-here-mass-incarceration-and-the-struggle-for-civil-rights//BUBU>)

Over the past 40 years U.S. incarceration has grown at an extraordinary rate. However, this has not always been the case. Figure A provides historical estimates of the imprisonment rate in state and federal facilities and it demonstrates that from 1925 until about the middle of the 1970s the rate did not rise above 140 persons imprisoned per 100,000 of the population. However, the extraordinary growth of the imprisonment rate after 1974 eventually led to unprecedented levels of incarceration. While the increase in incarceration could be driven by changes in policy and/or changes in criminal behavior, Raphael and Stoll (2013) find that the lion's share of the growth in the prison population can be accounted for by society's choice for tough-on-crime policies (e.g., determinate sentencing, truth-in-sentencing laws, limiting discretionary parole boards, etc.) resulting in more individuals (committing less serious offenses) being sentenced to serve time, and longer prison sentences. Stated differently, individuals are imprisoned for crimes that they would not have been incarcerated for in the past, and those who committed offenses that would have previously warranted confinement receive much longer prison terms. Lastly, a large fraction of society is on parole, and parolees are more likely to violate parole and return to prison than in the past (Raphael and Stoll 2013). Raphael and Stoll (2013) attribute no more than 9 percent of the increase in state incarceration since 1984 to changes in criminal behavior. They find little to no evidence for the most common factors posited for the extraordinary increase in the U.S. incarceration rate: 1) changes in the relative returns to legal activity (e.g., declining low-skill wages) relative to illegal activity (changes in drug markets in general, and crack cocaine in particular), 2) increases in criminal behavior (e.g., violent crime) due to the introduction of crack cocaine, and 3) the deinstitutionalization of the mentally ill.

FIGURE B Male lifetime likelihood of going to state or federal prison, by race and ethnicity, 1974–2001 Black male White male Hispanic male All male 1974 13.4% 2.2% 4% 3.6% 1979 13.4 2.5 6 4.1 1986 17.4 3.6 11.1 6 1991 29.4 4.4 16.3 9.1 1997 31 5.4 18 10.6 2001 32.2 5.9 17.2 11.3 Year of birth Black male Hispanic male All male White male 1975 1980 1985 1990 1995 2000 0 10 20 30 40% ChartData Notes: The black and white categories exclude persons of Hispanic origin. Percents represent the chances of being admitted to state or federal prison during a lifetime. Estimates were obtained by applying age-specific first incarceration and mortality rates for each group to a hypothetical population of 100,000 births. See methodology section in Bonczar (2003). Source: Bonczar (2003) Share Tweet Embed Download image

FIGURE C Female lifetime likelihood of going to state or federal prison, by race and ethnicity, 1974–2001 Black female White female Hispanic female All women 1974 1.1% 0.2% 0.4% 0.3% 1979 1.4 0.2 0.4 0.4 1986 1.8 0.3 0.9 0.6 1991 3.6 0.5 1.5 1.1 1997 4.9 0.7 2.2 1.5 2001 5.6 0.9 2.2 1.8 Year of birth Black female Hispanic female All women White female 0 2 4 6% -2 1975 1980 1985 1990 1995 2000 ChartData Notes: The black and white categories exclude persons of Hispanic origin. Percents represent the chances of being admitted to state or federal prison during a lifetime. Estimates were obtained by applying age-specific first incarceration and mortality rates for each group to a hypothetical population of 100,000 births. See methodology section in Bonczar (2003). Source: Bonczar (2003) Share Tweet Embed Download image

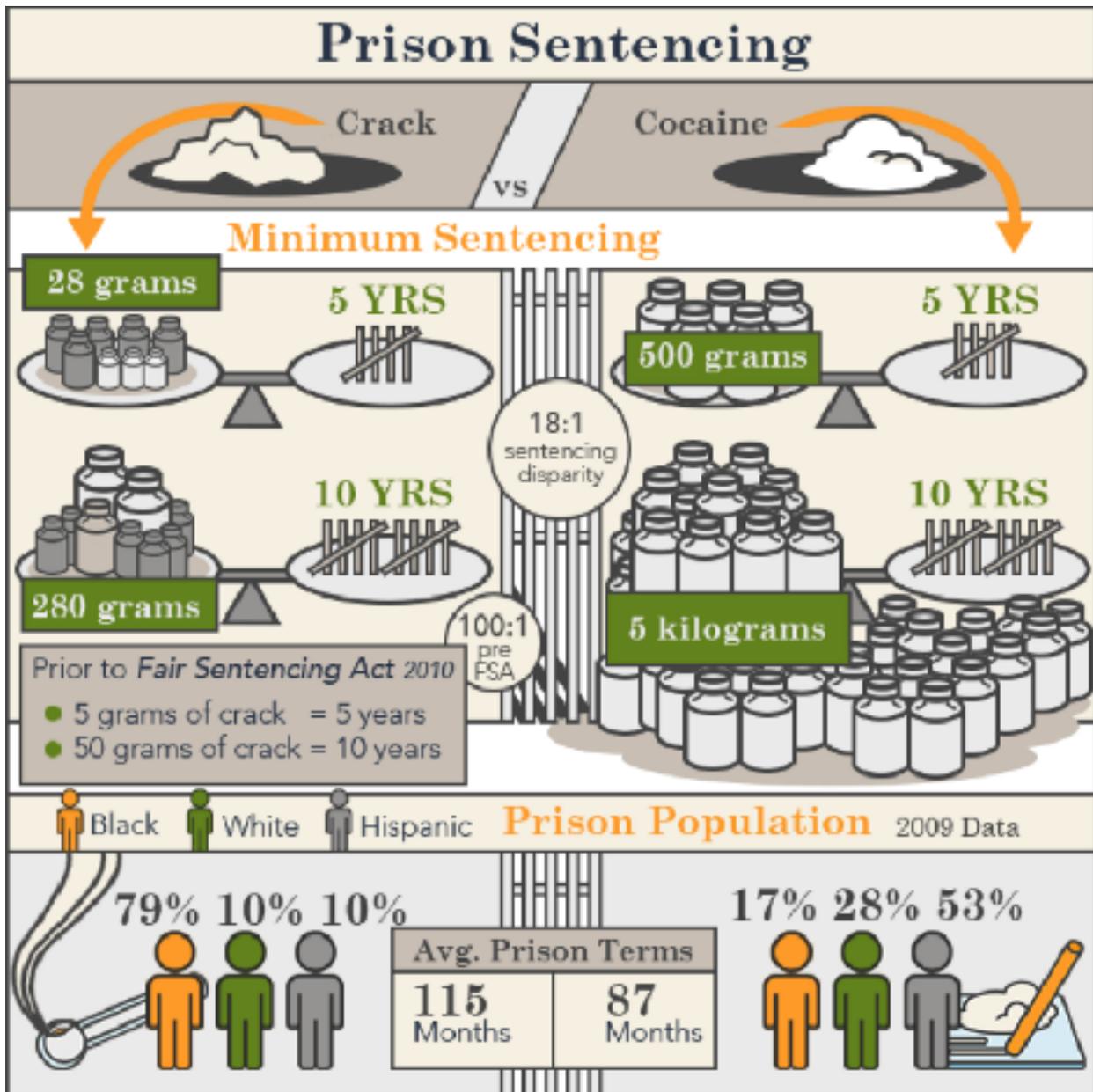
Figures B and C plot the lifetime likelihood of a first incarceration at a state or federal prison for individuals born between 1974 and 2001 disaggregated by race and ethnicity for men and women respectively. The lifetime likelihood of a first incarceration has greatly increased over time and this is especially true for blacks and Hispanics. The rate of change for men is greatest between 1986 and 1991 while the rate of change for women is highest between 1986 and 1997.1 The years of the extreme increase in slope coincides with the Reagan administration's enhancement of Nixon's war on drugs2 through the Anti-Drug Abuse Act of 1986. One significant piece of this legislation, which is held responsible for the disproportionate rates of incarceration among African Americans in federal prisons, is the mandatory minimums for drug offenses including the disparities in sentencing between cocaine and the cheaper crack cocaine (see Raphael and

Stoll 2013). However, the version of this bill passed in 1988 also provided substantial monetary incentives for state and local police agencies to implement the war on drugs (which was not previously a priority) through the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (Byrne Program).

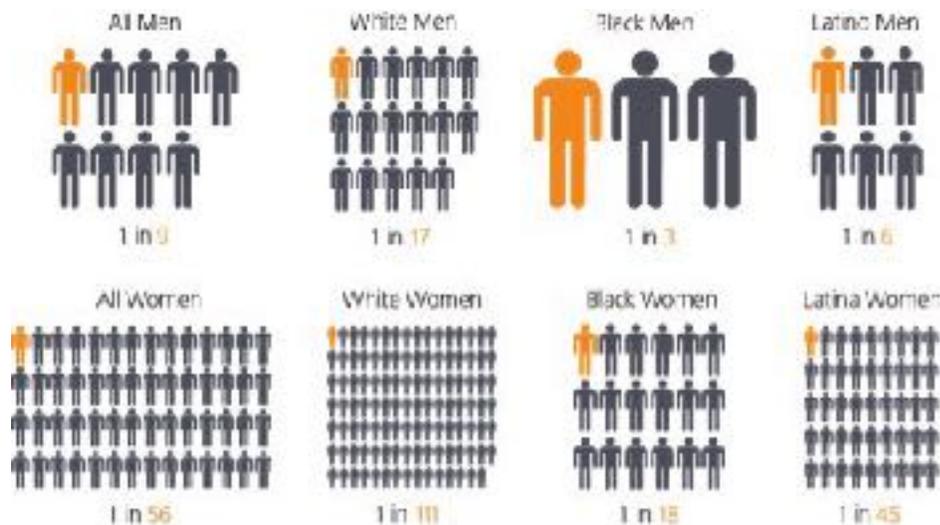
Mandatory minimums are the primary tool of racial targeting- they have resulted in expansion of black prison populations

Gillon 18 (Ronika Gillon is an entrepreneur and 2017 NLC-St. Louis fellow dedicated to helping individuals FULLY RECHARGE their careers or business. "Mandatory Minimum — Destroying the Lives of the Black Community" 5/16/18 <https://medium.com/the-new-leader/mandatory-minimum-destroying-the-lives-of-the-black-community-e23165664f79>)wtk

The war on the BLACK community and other people of color has proven that America is not the land of the free, the land of opportunities or the land of love. Historically, since being brought to America involuntarily racial inequalities between Blacks and White America has always been an issue and many laws have been introduced and passed to continue to hinder the progressiveness of the black community. Currently, our country houses more than 2.2 million people in incarcerated this increase is more than 500 percent in 40 years. It is not the crimes rate that has caused this increase but the changes and implementation of laws such as mandatory minimum. From the 1970s until present day prisons went from 263,000 inmates to almost 2,000,000 inmates. This huge increase in numbers was due to disparities both federally and statewide. Examining facts will explain the disparities in drug sentencing, enforcement and criminalizing nonviolent criminals. A Losing Battle "A War on Drugs, Public Enemy Number One" In 1977 before the war on drugs began to increase to what it is today, President Jimmy Carter stated, "Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself"; and where they are, they should be changed. Nowhere is this clearer than in the laws against possession of marijuana in private for personal use... Therefore, I support legislation amending Federal law to eliminate all Federal criminal penalties for the possession of up to one ounce [28g] of marijuana." [1] Though he was not an advocate of the legalization of marijuana he also was not a proponent of the disproportionate laws that raged the war on blacks. However, he was too late. Nixon had already declared the war on black people disguised as a war on drugs. Equipped with 1500 agents and 75 million the administration was ready to tackle this issue head on. In fact, a little over 20 percent of states had implemented mandatory minimum laws by the end of 1970s. [2] Once Reagan became President, Nixon's initiative was increased federally with the Congress Passage in 1986 of The Anti-Drug Abuse Act establishing mandatory minimums for federal drug offenses and institutes the 100:1 powder-to-crack cocaine sentencing ratio. [3] Through this act, Blacks were sentenced to longer sentences for crack cocaine for the same amount of powder cocaine. In the end, the federal government had grown to over 5,000 agents and 1.3 billion dollars funding the war.



By 2009, because of Nixon, Reagan and other influential and prejudice individuals more than 80 percent of the prison population in jail for drug possession were Black men. [4] These laws were and still are detrimental and have exacerbated racial disparities by impeding the growth of black men and black communities, and contributing to the lack of black male figures in households, single parent homes, homeless families and even a decrease in education. America successfully destroyed the foundation of the black community by passing laws that incarcerate black males at an alarming rate as depicted in the picture above. Families are ripped apart for nonviolent crimes because of the mandatory minimums created by the federal and state government. **The mandatory minimums became the new Jim Crow Laws**, as discussed in Michelle Alexander's book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, and these laws have prevented many from becoming productive members of society by punishing black men at a young age.



Statistics show, “sentencing policies, implicit racial bias, and socioeconomic inequity contribute to racial disparities at every level of the criminal justice system.” Today, people of color make up 37 percent of the U.S. population but 67 percent of the prison population. Overall, Blacks are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to face stiff sentences. Black men are six times as likely to be incarcerated as white men and Hispanic men are more than twice as likely to be incarcerated as non-Hispanic white men.” [5] Imagine having a 1 in 3 chance of being incarcerated. Imagine knowing that the justice system that is supposed to protect and serve is instead destroying the lives of people like you.

Specifically, mandatory minimums result in more people serving life without parole which uniquely causes mass incarceration and inequality

Cohen 13 [Andrew Cohen, senior editor at the Marshall Project, the nonprofit criminal justice news organization, “Wasting Their Lives Away (The Case Against Mandatory Minimums)”, 9/20/13, <https://www.brennancenter.org/our-work/research-reports/wasting-their-lives-away-case-against-mandatory-minimums>, NZ]

Four hours after the Senate Judiciary Committee began a hearing on the wisdom of limiting the impact of “mandatory minimum” sentences in criminal cases, the folks at the Sentencing Project, a nonpartisan advocacy group, issued a report titled “Life Goes On” about the pervasive use of life-without-parole sentences around the nation. “The number of prisoners serving life sentences continues to grow,” the authors wrote in their summary, “even while serious, violent crime has been declining for the past 20 years and little public safety benefit has been demonstrated to correlate with increasingly lengthy sentences.” The details of the report are stunning: As of 2012, there were 159,520 people serving life sentences, an 11.8 percent rise since 2008. One of every nine individuals in prison is serving a life sentence. The population of prisoners serving life without parole (LWOP) has risen more sharply than those with the possibility of parole: there has been a 22.2 percent increase in LWOP since just 2008, an increase from 40,174 inmates to 49,081. Approximately 10,000 lifers have been convicted of nonviolent offenses. Nearly half of lifers are African American and 1 in 6 are Latino. More than 10,000 life-sentenced inmates have been convicted of crimes that occurred before they turned 18 and nearly 1 in 4 of them were sentenced to LWOP. More than 5,300 (3.4 percent) of the life-sentenced inmates are female. As with just about everything else about America’s criminal justice systems the racial disparity is jaw-dropping. “Nationally,” the report tells us, “almost half (47.2 percent) of life-sentenced inmates are African American, though the black population of lifers reaches much higher in states such as Maryland (77.4 percent), Georgia (72.0 percent), and Mississippi (71.5 percent). In the federal system, 62.3 percent of the life-sentenced population is African American. Non-whites constitute nearly two-thirds of the total population serving life sentences.” But the unequal justice is not limited to the race or ethnicity of

offenders. It also matters a great deal where you committed the crime. From the report: Though LWOP is available in nearly every state, 11 such prisoners are disproportionately represented in Florida, Pennsylvania, Louisiana, California, and Michigan. Combined, these five states account for over half (57.7percent) of all LWOP sentences nationwide. In seven states—Alabama, California, Massachusetts, Nevada, New York, Utah, and Washington—more than 15percent of the prison population is sentenced to life. Additionally, in 22 states and the federal government, at least 35percent of the lifer population is ineligible for parole. If the Sentencing Report paper reminds us of the immediate need for essential reform—which is why Senator Patrick Leahy (D-Vt) and other federal lawmakers finally are beginning to stir—the reaction to those statistics by and among conservatives creates reasonable hope that the reform may actually come. For example, citing a Rand Institute study that “found mandatory minimums for nearly all drug offenders are not cost-effective,” Marc Levin, of the Texas Public Policy Foundation, told lawmakers at Tuesday’s hearing that Congress and the courts (and prosecutors and prison officials) have simply gone too far in reaction to generations-old perceptions about crime: As crime began increasing in the 1970s, Americans and particularly conservatives were correct to react against the attitudes and policies that stemmed from the 1960s, which included an “if it feels good, do it” mentality and a tendency to emphasize purported societal causes of crime while disregarding the fundamental individual responsibility for crime. In the ensuing couple of decades, a six-fold increase in incarceration occurred, some of which was necessary to ensure violent and dangerous offenders were kept off the streets. However, the pendulum shift while necessary went a bit too far, sweeping too many nonviolent, low-risk offenders into prison for long terms while at the same time recent years have yielded new research and techniques on everything from drug courts to actuarial risk assessments to electronic monitoring to pharmacological interventions to treat heroin addiction. Inimai Chettiar, the Director of the Justice Program at the Brennan Center, agrees, emphasizing one particular kind of “mandatory minimum” that amounts to a “maximum” in many states. “The overuse of life without parole sentences adds to the country’s mass incarceration problem,” she told me Thursday. “Punishment by its very definition should include some sense of proportionality to the crime committed. Life sentences for violent crimes often do not make sense. These types of sentences are one of the reasons we have so many elderly prisoners. Older prisoners pose little safety risk, yet are very costly to house.” The authors of the Sentencing Report study also emphasized the role of life sentences in the calculus of mandatory minimums. “Lifers continue to be largely excluded from the discussion of sentencing reform,” they conclude. This is a terrible mistake. In many cases the most egregious cases of injustice—and the most costly to taxpayers—involve prisoners serving life sentences without parole. Indeed, consider the sad story of Herman Wallace, a 68-year-old man long ago convicted of murder and sentenced to life without parole. Wallace now has cancer and the case against him, which was deplorable to begin with, has fallen apart at virtually every level. Yet his claim for relief has been pending in federal court for two years. There is no reason why the taxpayers of Louisiana should be paying to keep this sick old man in prison for a crime he likely did not commit. If Levin and the folks at the Sentencing Project can agree on that there is no reason why Congress can’t either.

The second internal link is prosecutorial discretion

Elimination of mandatory minimums is key to solve

Dhaliwal 7/1 (Sandeep, JD and Lawyer, “How Mandatory Minimums Are Weaponized” New York Times 7/1/2020 <https://www.nytimes.com/2020/07/01/opinion/mandatory-minimum-sentences-protest.html>)wtik

Though the First Step Act brought an increment of progress, most mandatory minimums remain on the books, despite consistent criticism that these penalties have contributed to over-incarceration. This statistic is well known but worth reiterating: Though the United States has less than 5 percent of the world’s population, it has over 20 percent of the world’s prisoners. Harsh mandatory penalties resulting in needlessly long sentences are an undeniable contributing factor. While it doesn’t involve stacked 924(c) counts, the 45-year mandatory minimum penalty that Mr. Mattis and Ms. Rahman face is part of an all too familiar pattern of prosecution. The goal is to coerce people to plead guilty to charges carrying harsh sentences in exchange for the dismissal of charges that mandate unconscionable ones. The message that prosecutors send to them and to so many other defendants is clear: If you consider exercising your fundamental right to trial, we will seek penalties that are so excessive that you will think twice, because we have the power to take sentencing authority away from the judiciary. When this regime of mandatory minimums began more than 30 years ago, 20 percent of federal criminal cases were resolved by trial. Today, fewer than 3 percent are, and more than 97 percent of cases are resolved by pleas. No rational observer would conclude that Mr. Mattis and Ms. Rahman should spend a majority of their lives behind bars for an

alleged act that caused harm to no one. To put the threat of a 45-year mandatory sentence into some perspective, according to data compiled by the U.S. Sentencing Commission, the median sentence for murder in the Second Circuit from 2015 through 2019 was 16 years. The extreme 45-year sentences they face are a reminder that real people and families and communities are at the receiving end of these devastating penalties. As lawmakers in Congress propose sweeping changes to policing spurred by society's broad awakening to systemic racism, they must also make changes to eliminate federal mandatory minimums, rein in overcharging and help restore the right to trial.

Mandatory minimums incentivize over-use of plea bargains—that causes wrongful convictions

Gleeson 18 (John Gleeson, Partner Debevoise & Plimpton, Former United States District Judge, Eastern District of New York, writing the Foreword of "THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It" 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>)wtk

This report is a major contribution to the discussion of one of the most important issues in criminal justice today: the vanishing trial. Once the centerpiece of our criminal justice ecosystem, the trial is now spotted so infrequently that if we don't do something to bring it back, we will need to rethink many other features of our system that contribute to fair and just results only when trials occur in meaningful numbers. The first task in solving a problem is identifying its causes, and this report nails that step. Mandatory minimum sentencing provisions have played an important role in reducing our trial rate from more than 20% thirty years ago to 3% today. Instead of using those blunt instruments for their intended purpose — to impose harsher punishments on a select group of the most culpable defendants — the Department of Justice got in the habit long ago of using them broadly to strong-arm guilty pleas, and to punish those who have the temerity to exercise their right to trial. The Sentencing Guidelines also play an important role, providing excessively harsh sentencing ranges that frame plea discussions when mandatory sentences do not. Finally, the report correctly finds that federal sentencing judges are complicit as well. In too many cases, excessive trial penalties are the result of judges having internalized a cultural norm that when defendants "roll the dice" by "demanding" a trial, they either win big or lose big. The same judges who will go along with a plea bargain that compromises a severe Guidelines range are too reticent to stray very far from the sentencing range after trial. The report's principles and recommendations will stimulate some much-needed discussion. Today's excessive trial penalties, it concludes, undermine the integrity of our criminal justice system. Putting the government to its proof is a constitutional right, enshrined in the Sixth Amendment; no one should be required to gamble with years and often decades of their liberty to exercise it. The report properly raises the "innocence problem," that is, the fact that prosecutors have become so empowered to enlarge the delta between the sentencing outcome if the defendant pleads guilty and the outcome if he goes to trial and loses that even innocent defendants now plead guilty. But there's an even larger hypocrisy problem. Our Constitution claims to protect the guilty as well, affording them a presumption of innocence and protecting them from punishment unless the government can prove them guilty beyond a reasonable doubt. A system characterized by extravagant trial penalties produces guilty pleas in cases where the government cannot satisfy that burden, hollowing out those protections and producing effects no less pernicious than innocents pleading guilty. The report's recommendations range from the sweeping (ban those mandatory minimums) to the technical (eliminate the motion requirement for the third "acceptance" point), and include suggested modifications to the "relevant conduct" principle at the heart of the Guidelines, pre-plea disclosure requirements, "second looks" at lengthy sentences, and judicial oversight of plea discussions. A particularly attractive recommendation would require judges sentencing a defendant who went to trial to pay greater attention to the sentences imposed on co-defendants who pled guilty; few things place today's excessive trial penalty in sharper relief. There is no such thing as a perfect criminal justice system. But a healthy one is constantly introspective, never complacent, always searching for injustices within and determined to address them. The sentencing reform movement a generation ago disempowered judges and empowered prosecutors. Federal prosecutors have used that power to make the trial penalty too severe, and the dramatic diminution in the federal trial rate is the result. Our system is too opaque and too severe, and everyone in it — judges, prosecutors, and defense attorneys — is losing the edge that trials once gave them. Most important of all, a system without a critical mass of trials cannot deliver on our constitutional promises. Here's hoping that this report will help us correct this problem before it is too late.

Plea bargains result in racist trial penalties that have broad explanatory power for disproportionate incarceration

Jones and Cornelissen 19 (Rick Jones, Lecturer in law at Columbia Law School and Executive Director of the Neighborhood Defender Service, and Cornelius Cornelissen, JD from University of Chicago Law School, Judicial Law Clerk for the US District Courts, Policy Fellow for the Neighborhood Defender Service, “Coerced Consent: Plea Bargaining, the Trial Penalty, and American Racism” *Federal Sentencing Reporter* 31(4-5) April/June 2019, pp. 265-271)wtk

Introduction The trial penalty—the often severe and unjustifiable difference between a pre-trial offer and a post-trial sentence— affects some people much more than others. Given profound systemic biases in the criminal justice system, people of color feel the impact of the trial penalty much more frequently and intensely than others, just as they feel the impact of heavy-handed policing, prosecution, and sentencing. This should be no surprise: bargaining in a context of systemic racism subjects people of color to disproportionate and unjustifiable penalties, thereby undermining the integrity of the system and ruining lives. This article will lay out the evidence for the disparate impact of the trial penalty on people of color, and explore the rise of the trial penalty, its scope, and several potential solutions to this problem. Recognizing injustice and its roots is the first step in preventing future wrongs and remedying past injustices. II. Racial Disparity in the Application of the Trial Penalty There are troubling racial disparities in the trial penalty, resulting in longer sentences for Black and Brown people for similar convictions. A study from Professors Jeffrey Ulmer and Mindy Bradley found that the trial penalty for Black individuals convicted of serious violent offenses increased proportionally based on the percentage of a county’s population comprised of Black people.¹ Ulmer and Bradley reference a 2005 paper by Steven Barkan and Steven Cohn in hypothesizing that racial prejudice may be driving a desire to “send a message” to the larger community that certain types of crime (associated with race) will be handled swiftly and severely.² A. Pre-Existing Prejudice A more recent study by Jeffrey Ulmer, Noah Painter-Davis, and Leigh Tinik used sentencing data from Pennsylvania and U.S. District Courts to further investigate race as a factor in the application of the trial penalty. In *Disproportional Imprisonment of Black and Hispanic Males: Sentencing Discretion, Processing Outcomes, and Policy Structures*, they note the pre-existing disparity among Black and Hispanic males: Blacks are already three times as likely as Whites to be imprisoned, and Hispanics are more than four times as likely. Sentence length disparity is similarly pronounced, with 50 percent longer sentences for Blacks and 17 percent longer sentences for Hispanics.³ Ulmer, PainterDavis, and Tinik then statistically control for a multitude of factors that may explain the increased incarceration rate and sentence length, including the offense type, conviction history, guidelines, mandatory minimums, and departures. Markedly, a full 90 percent of Black male prison length disparity can be controlled—or explained—by overall imprisonment odds, guidelines and minimums, offense type, multiple charges, and criminal history. B. The Role of Prosecutors The study above notes how the criminalization of, and the systemic attention devoted to, individuals of color can explain at least part of the sentencing disparities seen at the back end of a case. Notable for not playing a large part in sentence length, downward departures based upon prosecutorial discretion account for only a 5 percent and 1 percent decrease in Black and Hispanic imprisonment odds, respectively.⁴ The importance of factors largely decided or dictated well before the sentencing phase once again suggests the outsized role that the discretion of prosecutors plays in the adjudication of criminal cases. Both charge reduction and sentencing negotiations, in particular, rest in the hands of prosecutors and have a profound impact on the racial disparity seen in outcomes.

The aff is the biggest factor in eliminating those trial penalties

Reimer and Sabelli 19 (NORMAN L. REIMER, Executive Director, National Association of Criminal Defense Lawyers, and MARTIN ANTONIO SABELLI, Second Vice President, National Association of Criminal Defense Lawyers, “The Tyranny of the Trial Penalty: The Consensus that Coercive Plea Practices Must End” *Federal Sentencing Reporter* 31(4-5), April/June 2019. <http://everyones-business.org/cache/NACDL-Coercive-Plea-Practices-Must-End.pdf>)wtk

Perhaps the single most powerful driving force behind the trial penalty is the mandatory minimum sentence. The availability of a mandatory minimum sentence, combined with the unfettered discretion of prosecutors to control the charging process, creates an insuperable weapon that so burdens the exercise of the rights afforded to an accused person as to render them a nullity. In *Weaponizing Justice:*

Mandatory Minimums, the Trial Penalty, and the Purposes of Punishment, FAMM’s General Counsel Mary Price describes the trial

penalty as “one of the most lethal tools in the prosecutor’s kit.” The article dissects precisely how federal mandatory minimum sentences are manipulated by prosecutors to coerce guilty pleas. Through the prism of the case of Mr. Evans Ray, Ms. Price shows how federal prosecutors use their charging power to deploy mandatory minimums without regard for their own internal standards and for the sole purpose of punishing those who insist upon a trial. Mr. Ray’s life sentence, which fortunately was eventually commuted by President Barack Obama, stands as a classic example of a punishment that fits neither the crime nor the purposes of punishment. It is also Exhibit A in proving the tyranny of the trial penalty.

That outweighs—even one coerced wrongful conviction is unjustifiable

Jones et al 18 (Rick Jones, President of the National Association of Criminal Defense Lawyers, Gerald B. Lefcourt, President of the Foundation for Criminal Justice, Barry J. Pollack, Immediate Past President NACDL, Norman L. Reimer, Executive Director of the NACDL, and Kyle O’Dowd, Associate Executive Director for Policy of NACDL, “THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It” 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>)wtk

In closing, it is important to reiterate what is at stake if the trial penalty continues to hold sway over defendants’ free exercise of their Constitutional rights. **A system that coerces even one innocent person to plead guilty should not be condoned**. Nor should the rights of the accused to hold the government to its burden of proof be impeded by fear of severe retribution. Unless the freedom of choice to exercise the right to a jury trial is fully restored, a great hypocrisy will endure — one that espouses lofty principles of criminal justice but insists that the system for administering criminal justice cannot afford to honor those principles except in an insignificant percentage of cases.

Additionally, mandatory minimums create a chilling effect that prevents taking action against wrongful policing

Hechinger 19 (Scott, senior staff attorney and the director of policy at Brooklyn Defender Services, “How Mandatory Minimums Enable Police Misconduct” 9/25/19 <https://www.nytimes.com/2019/09/25/opinion/mandatory-minimum-sentencing.html>)wtk

Police departments rightfully get blamed for the crisis in violent and corrupt policing. The recent firing of Daniel Pantaleo, the New York Police Department officer who strangled Eric Garner to death, lied about it, kept his job for five years and got terminated only after international pressure and the recommendation of a Police Department judge, underscores why. But the near impossibility of getting fired is only part of the crisis of impunity. **An overlooked but significant culprit is mandatory minimum sentencing**. In criminal courts throughout this country, victims of police abuse — illegal stops and frisks, car stops and searches, home raids, manufactured charges and excessive force — routinely forgo their constitutional right to challenge police abuse in a pretrial hearing in exchange for plea deals. They do so because the alternative is to risk the steep mandatory minimum sentence they would face if they went to trial and lost. Prosecutors use the fear of these mandatory minimums to their advantage by offering comparatively less harsh plea deals before pretrial hearings and trials begin. The result is not only the virtual loss of the jury trial — today, 95 percent of convictions come from guilty pleas instead of jury verdicts — but also the loss of the only opportunity to confront police misconduct in criminal proceedings. In New York City, for example, less than 5 percent of all felony arrests that are prosecuted have hearings to contest police misconduct. For misdemeanor arrests that are prosecuted — a third of which are initiated by the police — less than .5 percent of cases go to a hearing. A guilty plea also has the effect of insulating police from any civil rights lawsuit asserting false arrest because a plea of guilty serves as an admission that the officers’ arrest was justified.

Eliminating mandatory minimums solves—if they have the tool, prosecutors will use it

Hechinger 19 (Scott, senior staff attorney and the director of policy at Brooklyn Defender Services, “How Mandatory Minimums Enable Police Misconduct” 9/25/19 <https://www.nytimes.com/2019/09/25/opinion/mandatory-minimum-sentencing.html>)wtk

We must abolish mandatory minimum sentences. Aside from denying individualized justice and driving mass punishment, they usurp the role of the jury, coerce guilty pleas and, yes, insulate police misconduct. But as Jacob's case underscored, even in the rare cases where officers are forced to testify and a judge finds them unbelievable, there is no mechanism to ensure that they are halted from being able to contribute to future prosecutions. Fortunately, there is a growing national conversation among forward-thinking district attorneys and prosecutors to take police accountability more seriously. District attorneys like Larry Krasner in Philadelphia and Kim Gardner in St. Louis have developed "do not call" lists of officers whom they refuse to rely upon based on previous findings of incredibility or misconduct. If more prosecutors start rejecting arrests from bad officers, a strong message can be sent and their ability to continue hurting people can be stymied. **Prosecutors must also end the practice of the "hearing penalty," where a plea offer made is forever lost once the hearing starts.** A plea offer, once made, should not depend on a person's having the audacity to exercise their constitutional rights. **A system that provides no disincentive for misbehavior and no accountability for those with the greatest responsibility and the power to take away a person's liberty is profoundly dangerous.**

Plan

The United States federal government should eliminate federal mandatory minimum sentences.

Framing

Evaluate ongoing violence first – apocalyptic scenarios are fear mongering that distort rational impact calculus- you should treat big impacts as inherently unlikely

Evans 12, Dylan Evans holds a PhD in philosophy from the London School of Economics and is a lecturer in behavioral science at University College Cork School of Medicine in Ireland, 04/02/2012, “Nightmare Scenario: The Fallacy of Worst-Case Thinking”, Risk Management, <http://www.rmmagazine.com/2012/04/02/nightmare-scenario-the-fallacy-of-worst-case-thinking//BUBU>

There’s something mesmerizing about apocalyptic scenarios. Like an alluring femme fatale, they exert an uncanny pull on the imagination. That is why what security expert Bruce Schneier calls “worst-case thinking” is so dangerous. It substitutes imagination for thinking, speculation for risk analysis and fear for reason. One of the clearest examples of worst-case thinking was the so-called “1% doctrine,” which Dick Cheney is said to have advocated while he was vice president in the George W. Bush administration. According to journalist Ron Suskind, Cheney first proposed the doctrine at a meeting with CIA Director George Tenet and National Security Advisor Condoleezza Rice in November 2001. Responding to the thought that Al Qaeda might want to acquire a nuclear weapon, Cheney apparently remarked: “If there’s a 1% chance that Pakistani scientists are helping Al Qaeda build or develop a nuclear weapon, we have to treat it as a certainty in terms of our response. It’s not about our analysis...It’s about our response.” **By transforming low-probability events into complete certainties whenever the events are particularly scary, worst-case thinking leads to terrible decision making.** For one thing, it’s only half of the cost/benefit equation. “Every decision has costs and benefits, risks and rewards,” Schneier points out. **“By speculating about what can possibly go wrong, and then acting as if that is likely to happen, worst-case thinking focuses only on the extreme but improbable risks and does a poor job at assessing outcomes.”** An epidemic of worst-case thinking broke out in the United States in the aftermath of the Three Mile Island accident in 1979. A core meltdown in the nuclear power station there led to the release of radioactive gases. The Kemeny Commission Report, created by presidential order, concluded that “there will either be no case of cancer or the number of cases will be so small that it will never be possible to detect them,” but the public was not convinced. As a result of the furor, **no new nuclear power plants were built in the United States for 30 years.** The coal- and oil-fueled plants that were built instead, however, surely caused far more harm than the meltdown at Three Mile Island, both directly via air pollution and indirectly by contributing to global warming. The impact of the Three Mile Island accident was probably reinforced by the release, 12 days before the meltdown, of *The China Syndrome*, a movie in which a catastrophic accident at a nuclear power plant is averted by the courageous actions of the protagonists. The movie’s title is a direct reference to a worst-case scenario—the most dangerous kind of nuclear meltdown, where reactor components melt through their containment structures and into the underlying earth, “all the way to China.” The question of whether environmental impact statements should include discussion of worst-case scenarios is still the subject of intense debate. Environmental groups tend to advocate such discussion, in part to grab the attention of the general public. **The U.S. government originally required discussion of worst-case scenarios but later changed its mind, apparently on the ground that such discussions tend to provoke overreactions. This is a move in the right direction; if the chance that the worst case will happen is extremely low, the benefits of considering it will be far outweighed by the unnecessary fear that such consideration would provoke.** Like radiation, **fear damages health and is costly to clear up.** As Schneier observes, “Any fear that would make a good movie plot is amenable to worst-case thinking.” With that in mind, he runs an annual “Movie-Plot Threat Contest.” Entrants are invited to submit the most unlikely, yet still plausible, terrorist attack scenarios they can come up with. The purpose of this contest is “absurd humor,” but Schneier hopes that it also makes a point. He is critical of many homeland security measures, which seem designed to defend against specific “movie plots” instead of against the broad threats of terrorism. “We all do it,” admits Schneier. “Our imaginations run wild with detailed and specific threats. We imagine anthrax spread from crop dusters. Or a contaminated milk supply. Or terrorist scuba divers armed with almanacs. Before long, we’re envisioning an entire movie plot, without Bruce Willis saving the day. And we’re scared.” Psychologically, this all makes a certain basic sense. **Worst-case scenarios are compelling because they evoke vivid mental images that overwhelm rational thinking.** Box cutters and shoe bombs conjure up vivid mental images. “We must protect the Super Bowl” packs more emotional punch than the vague “We should defend ourselves against terrorism.” **Fear alone is, however, not a sound basis on which to make policy.** The long lines at airports caused by the introduction of new airport security procedures, for example, have led more people to drive rather than fly, and that in turn has led to thousands more road fatalities than would otherwise have occurred, because driving is so much more dangerous than flying. Fear of “stranger danger” has also led to huge changes in parental behavior over the past few decades, which may have a net cost for child welfare. That, at least, is what the sociologist Frank Furedi argues in his challenging book *Paranoid Parenting*. Parents have always been worried about their kids, of course, but Furedi argues that their concerns have intensified in a historically unprecedented way since the late 1970s, to the extent that these

days virtually every childhood experience comes with a health warning. The result is that parents look at each experience from the point of view of a worst-case scenario and place increasing restrictions on what their kids can do; in the past few decades, for example, there has been a steep decline in the number of children who are allowed to bicycle to school and in the distance from home that kids are allowed to go to play unsupervised. There has also been an increase in the amount of time that parents spend on child rearing; contrary to the common wisdom that parents have less time for their children these days, a working mom today actually spends more time with her kids than a nonworking mom did in the 1970s. I am not aware of any studies that have attempted to measure the psychological changes that have driven this cultural shift. It would be interesting to measure the risk intelligence of parents by, for example, comparing their estimates of certain risks with objective data about the frequency of those risks. Anecdotal evidence, however, suggests that it might be hard to gather such data. The problem with paranoid parenting is that, like other cases of worst-case thinking, it ignores half of the cost-benefit equation. In worrying about stranger danger, for example, parents focus on the extreme but improbable risk of a child molester attacking or abducting their children and fail to weigh it against the more mundane but far more likely benefits of exercise, socialization and independence that children gain from being allowed greater freedom. To put it another way, worried parents tend to focus on the risks of giving their children greater leeway and fail to consider the risks of not doing so. The long-term developmental consequences of paranoid parenting include isolation from peers, infantilism and loss of autonomy. Unlike the chance of abduction, though, those risks are highly probable.

Large-scale threats of future suffering collapse ethics and create a form of temporal blackmail where we are willing to sacrifice urgent bodies now for the sake of magnitude. Instead, you should refuse that bribery and prioritize what cannot wait.

Olson 15 (Elizabeth, professor of geography and global studies at UNC Chapel Hill, 'Geography and Ethics I: Waiting and Urgency,' *Progress in Human Geography*, vol. 39 no. 4, pp. 517-526)

Though toileting might be thought of as a special case of bodily urgency, geographic research suggests that the body is increasingly set at odds with larger scale ethical concerns, especially large-scale future events of forecasted suffering. Emergency planning is a particularly good example in which the large-scale threats of future suffering can distort moral reasoning. Žižek (2006) lightly develops this point in the context of the war on terror, where in the presence of fictitious and real ticking clocks and warning systems, the urgent body must be bypassed because there are bigger scales to worry about:¶ What does this all-pervasive sense of urgency mean ethically? The pressure of events is so overbearing, the stakes are so high, that they necessitate a suspension of ordinary ethical concerns. After all, displaying moral qualms when the lives of millions are at stake plays into the hands of the enemy. (Žižek, 2006)¶ In the presence of large-scale future emergency, the urgency to secure the state, the citizenry, the economy, or the climate creates new scales and new temporal orders of response (see Anderson, 2010; Baldwin, 2012; Dalby, 2013; Morrissey, 2012), many of which treat the urgent body as impulsive and thus requiring management. McDonald's (2013) analysis of three interconnected discourses of 'climate security' illustrates how bodily urgency in climate change is also recast as a menacing impulse that might require exclusion from moral reckoning. The logics of climate security, especially those related to national security, 'can encourage perverse political responses that not only fail to respond effectively to climate change but may present victims of it as a threat' (McDonald, 2013: 49). **Bodies that are currently suffering cannot be urgent, because they are excluded from the potential collectivity that could be suffering everywhere in some future time.** Similar bypassing of existing bodily urgency is echoed in writing about violent securitization, such as drone warfare (Shaw and Akhter, 2012), and also in intimate scales like the street and the school, especially in relation to race (Mitchell, 2009; Young et al., 2014).¶ As large-scale urgent concerns are institutionalized, the urgent body is increasingly obscured through technical planning and coordination (Anderson and Adey, 2012). The predominant characteristic of this institutionalization of large-scale emergency is a 'built-in bias for action' (Wuthnow, 2010: 212) that circumvents contingencies. The urgent body is at best an assumed eventuality, one that will likely require another state of waiting, such as triage (e.g. Greatbath et al., 2005). Amin (2013) cautions that in much of the West, governmental need to provide evidence of laissez-faire governing on the one hand, and assurance of strength in facing a threatening future on the other, produces 'just-in-case preparedness' (Amin, 2013: 151) of neoliberal risk management policies. In the US, 'personal ingenuity' is built into emergency response at the expense

of the poor and vulnerable for whom '[t]he difference between abjection and bearable survival' (Amin, 2013: 153) will not be determined by emergency planning, but in the material infrastructure of the city.¶ In short, the urgencies of the body provide justifications for social exclusion of the most marginalized based on impulse and perceived threat, while large-scale future emergencies effectively absorb the deliberative power of urgency into the institutions of preparedness and risk avoidance. Žižek references Arendt's (2006) analysis of the banality of evil to explain the current state of ethical reasoning under the war on terror, noting that people who perform morally reprehensible actions under the conditions of urgency assume a 'tragic-ethic grandeur' (Žižek, 2006) by sacrificing their own morality for the good of the state. But his analysis fails to note that bodies are today so rarely legitimate sites for claiming urgency. In the context of the assumed priority of the large-scale future emergency, the urgent body becomes literally nonsense, a non sequitur within societies, states and worlds that will always be more urgent.¶ If the important ethical work of urgency has been to identify that which must not wait, then the capture of the power and persuasiveness of urgency by large-scale future emergencies has consequences for the kinds of normative arguments we can raise on behalf of urgent bodies. How, then, might waiting compare as a normative description and critique in our own urgent time? Waiting can be categorized according to its purpose or outcome (see Corbridge, 2004; Gray, 2011), but it also modifies the place of the individual in society and her importance. As Ramdas (2012: 834) writes, 'waiting ... produces hierarchies which segregate people and places into those which matter and those which do not'. The segregation of waiting might produce effects that counteract suffering, however, and Jeffery (2008: 957) explains that though the 'politics of waiting' can be repressive, it can also engender creative political engagement. In his research with educated unemployed Jat youth who spend days and years waiting for desired employment, Jeffery finds that 'the temporal suffering and sense of ambivalence experienced by young men can generate cultural and political experiments that, in turn, have marked social and spatial effects' (Jeffery, 2010: 186). Though this is not the same as claiming normative neutrality for waiting, it does suggest that waiting is more ethically ambivalent and open than urgency.¶ In other contexts, however, our descriptions of waiting indicate a strong condemnation of its effects upon the subjects of study. Waiting can demobilize radical reform, depoliticizing 'the insurrectionary possibilities of the present by delaying the revolutionary imperative to a future moment that is forever drifting towards infinity' (Springer, 2014: 407). Yonucu's (2011) analysis of the self-destructive activities of disrespected working-class youth in Istanbul suggests that this sense of infinite waiting can lead not only to depoliticization, but also to a disbelief in the possibility of a future self of any value. Waiting, like urgency, can undermine the possibility of self-care two-fold, first by making people wait for essential needs, and again by reinforcing that waiting is '[s]omething to be ashamed of because it may be noted or taken as evidence of indolence or low status, seen as a symptom of rejection or a signal to exclude' (Bauman, 2004: 109). This is why Auyero (2012) suggests that waiting creates an ideal state subject, providing 'temporal processes in and through which political subordination is produced' (Auyero, 2012: loc. 90; see also Secor, 2007). Furthermore, Auyero notes, it is not only political subordination, but the subjective effect of waiting that secures domination, as citizens and non-citizens find themselves 'waiting hopefully and then frustratedly for others to make decisions, and in effect surrendering to the authority of others' (Auyero, 2012: loc. 123).¶ Waiting can therefore function as a potentially important spatial technology of the elite and powerful, mobilized not only for the purpose of governing individuals, but also to retain claims over moral urgency. But there is growing resistance to the capture of claims of urgency by the elite, and it is important to note that even in cases where the material conditions of containment are currently impenetrable, arguments based on human value are at the forefront of reclaiming urgency for the body. In detention centers, clandestine prisons, state borders and refugee camps, geographers point to ongoing struggles against the ethical impossibility of bodily urgency and a rejection of states of waiting (see Conlon, 2011; Darling, 2009, 2011; Garmany, 2012; Mountz et al., 2013; Schuster, 2011). Ramakrishnan's (2014) analysis of a Delhi resettlement colony and Shewly's (2013) discussion of the enclave between India and Bangladesh describe people who refuse to give up their own status as legitimately urgent, even in the context of larger scale politics. Similarly, Tyler's (2013) account of desperate female detainees stripping off their clothes to expose their humanness and suffering in the Yarl's Wood Immigration Removal Centre in the UK suggests that demands for recognition are not just about politics, but also about the acknowledgement of humanness and the irrevocable possibility of being that which cannot wait. The continued existence of places like Yarl's Wood and similar institutions in the USA nonetheless points to the challenge of exposing the urgent body as a moral priority when it is so easily hidden from view, and also reminds us that our research can help to explain the relationships between normative dimensions and the political and social conditions of struggle.¶ In closing, geographic depictions of waiting do seem to evocatively describe otherwise obscured suffering (e.g. Bennett, 2011), but it is striking how rarely these descriptions also use the language of urgency. Given the discussion above, what might be accomplished – and risked – by incorporating urgency more overtly and deliberately into our discussions of waiting, surplus and abandoned bodies? Urgency can clarify the implicit but understated ethical consequences and normativity associated with waiting, and encourage explicit discussion about harmful suffering. Waiting can be productive or unproductive for radical praxis, but urgency compels and requires response. Geographers could be instrumental in reclaiming the ethical work of urgency in ways that leave it open for critique, clarifying common spatial misunderstandings and representations. There is good reason to be thoughtful in this process, since moral outrage towards inhumanity can itself obscure differentiated experiences of being human, dividing up 'those for whom we feel urgent unreasoned concern and those whose lives and deaths simply do not touch us, or do not appear as lives at all' (Butler, 2009: 50). But when the urgent body is rendered as only waiting, both materially and

discursively, it is just as easily cast as impulsive, disgusting, animalistic (see also McKittrick, 2006). Feminist theory insists that the urgent body, whose encounters of violence are 'usually framed as private, apolitical and mundane' (Pain, 2014: 8), are as deeply political, public, and exceptional as other forms of violence (Phillips, 2008; Pratt, 2005). Insisting that a suffering body, now, is that which cannot wait, has the ethical effect of drawing it into consideration alongside the political, public and exceptional scope of large-scale futures. It may help us insist on the body, both as a single unit and a plurality, as a legitimate scale of normative priority and social care.¶ In this report, I have explored old and new reflections on the ethical work of urgency and waiting. Geographic research suggests a contemporary popular bias towards the urgency of large-scale futures, institutionalized in ways that further obscure and discredit the urgencies of the body. This bias also justifies the production of new waiting places in our material landscape, places like the detention center and the waiting room. In some cases, waiting is normatively neutral, even providing opportunities for alternative politics. In others, the technologies of waiting serve to manage potentially problematic bodies, leading to suspended suffering and even to extermination (e.g. Wright, 2013). One of my aims has been to suggest that moral reasoning is important both because it exposes normative biases against subjugated people, and because it potentially provides routes toward struggle where claims to urgency seem to foreclose the possibilities of alleviation of suffering. Saving the world still should require a debate about whose world is being saved, when, and at what cost – and this requires a debate about what really cannot wait. My next report will extend some of these concerns by reviewing how feelings of urgency, as well as hope, fear, and other emotions, have played a role in geography and ethical reasoning.¶ I conclude, however, by pulling together past and present. In 1972, Gilbert White asked why geographers were not engaging 'the truly urgent questions' (1972: 101) such as racial repression, decaying cities, economic inequality, and global environmental destruction. His question highlights just how much the discipline has changed, but it is also unnerving in its echoes of our contemporary problems. Since White's writing, our moral reasoning has been stretched to consider the future body and the more-than-human, alongside the presently urgent body – topics and concerns that I have not taken up in this review but which will provide their own new possibilities for urgent concerns. My own hope presently is drawn from an acknowledgement that the temporal characteristics of contemporary capitalism can be interrupted in creative ways (Sharma, 2014), with the possibility of squaring the urgent body with our large-scale future concerns. Temporal alternatives already exist in ongoing and emerging revolutions and the disruption of claims of cycles and circular political processes (e.g. Lombard, 2013; Reyes, 2012). Though calls for urgency will certainly be used to obscure evasion of responsibility (e.g. Gilmore, 2008: 56, fn 6), they may also serve as fertile ground for radical critique, a truly fierce urgency for now.

Prioritizing existential risks equate to Pascal's Wager, foreclosing the ability to take incremental steps to better the world.

Munthe 15 – Christian Munthe, PhD, Practical Philosophy Professor Associate Head of Department for Research at the University of Gothenburg. [Why Aren't Existential Risk / Ultimate Harm Argument Advocates All Attending Mass? Philosophical Comment, 2-1-15, <http://philosophicalcomment.blogspot.com/2015/02/why-arent-existential-risk-ultimate.html>]/BPS

An increasingly popular genre in the sort of applied philosophy and ethics of technology, which does not so much engage with actual technological development as more or less wild phantasies about possibly forthcoming ones is the notions of "existential risks" or "ultimate harms", or similar expressions. The theme is currently inspiring several research environments at world-leading universities, such as this one and this one (where you can find many links to other sources, articles, blog posts, and so on), and given quite a bit of space in recent scholarly literature on a topic often referred to as the ethics of emerging technology. Now, personally and academically, as it has actually proceeded, I have found much of this development being to a large extent a case of the emperor's new clothes. The fact that there are possible threats to human civilizations, the existence of humanity, life on earth or, at least, extended human well-being, is not exactly news, is it? Neither is there any kind of new insight that some of these are created by humans themselves. Also, it is not any sort of recent revelation that established moral ideas, or theories of rational decision making, may provide reason for avoiding or mitigating such threats. Rather, both these theses follow rather trivially from a great many well-established ethical and philosophical theories, and are well-known to do so since hundreds of years. Still, piece after piece is being produced in the existential risk genre making this out as some sort of recent finding, and exposing grand gestures at proving the point against more or less clearly defined straw-men.

At the same time, quite a bit of what is currently written on the topic strikes me as philosophically shallow. For instance, the notion that the eradication of the human species has to be a bad thing seems to be far from obvious from a philosophical point of view - this would depend on such things as the source of the value of specifically human existence, the manner of the imagined extinction (it certainly does not have to involve any sort of carnage or catastrophe), and what might possibly come instead of humanity or currently known life when extinct and how that is to be valued. Similarly, it is a very common step in the typical existential risk line to jump rather immediately from the proposition of such a risk to the suggestion that substantial (indeed, massive) resources should be spent on its prevention, mitigation or management. This goes for everything from imagined large scale geo-engineering solutions to environmental problems, dreams of outer space migration, to so-called human enhancement to adapt people to be able to handle otherwise massive threats in a better way. At the same time, the advocates of the existential risk line of thought also urges caution in the application of new hitherto unexplored technology, such as

synthetic biology or (if it ever comes to appear) "real" A.I. and android technology. However, also there, the angle of analysis is often restricted to this very call, typically ignoring the already since long ongoing debates in the ethics of technology, bioethics, environmental ethics, et cetera, where the issue of how much of and what sort of such caution may be warranted in light of various good aspects of different the technologies considered. And, to be frank, this simplification seems to be the only thing that is special with the existential risk argument advocacy: the idea that the mere possibility of a catastrophic scenario justifies substantial sacrifices, without having to complicate things by pondering alternative uses of resources.

Now, this kind of argument, is (or should be) **well-known to anyone with a philosophical education, since it seems to share the basic form of the philosophical classic known as Pascal's Wager**. In this argument, French enlightenment philosopher and mathematician, Blaise Pascal offered a "proof" of the rationality of believing in God (the sort of God found in abrahamic monotheistic religion, that is), based on the possible consequences of belief or non-belief, given the truth or falsity of the belief. You can explore the details of Pascal's argument, but the basic idea is that in the face of the immense consequences of belief and non-belief if God exists (eternal salvation vs. eternal damnation), **it is rational to bet on the existence of God, no matter what theoretical or other evidence for the truth of this belief exists and no matter the probability of this truth. It seems to me that the typical existential risk argument advocacy subscribes to a very similar logic**. For instance, the standard line to defend that resources should be spent on probing and (maybe) facilitating, e.g., possible extraterrestrial migration for humanity, seems to have the following form:

- 1) Technology T might possibly prevent/mitigate existential risk, E
- 2) It would be really, really, very, very bad if E was to be actualised
- 3) Therefore: If E was otherwise to be actualised, it would be really, really, very, very good if E was prevented
- 4) Therefore: If E was otherwise to be actualised, it would be really, really, very, very good if we had access to a workable T
- 5) Therefore: there are good reasons to spend substantial resources on probing and (maybe, if that turns out to be possible) facilitating a workable T

That is, what drives the argument is the (mere) possibility of a massively significant outcome, and the (mere) possibility of a way to prevent that particular outcome, thus doing masses of good. Now, I'm sure that everyone can see that this argument is far from obviously valid, even if we ignore the question of whether or not premise 2 is true, and this goes for Pascal's Wager too in parallel ways. For instance, **the existential risk argument above seems to ignore that there seems to be an innumerable amount of thus (merely) possible existential risk scenarios, as well as innumerable (merely) possibly workable technologies that might help to prevent or mitigate each of these, and it is unlikely (to say the least) that we have resources to bet substantially on them all, unless we spread them so thin that this action becomes meaningless**. Similarly, there are innumerable possible versions of the god that lures you with threats and promises of damnation and salvation, and what that particular god may demand in return, often implying a ban on meeting a competing deity's demands, so the wager doesn't seem to tell you to try to start believing in any particular of all these (merely) possible gods. Likewise, **the argument above ignores completely the (rather high) likelihood that the mobilised resources will be mostly wasted, and that, therefore, there are substantial opportunity costs attached to not using these resources to use better proven strategies with better identified threats and problems (say, preventing global poverty) - albeit maybe not as massive as the outcomes in the existential risk scenarios**. Similarly, Pascal's Wager completely ignores all the good things one needs to give up to meet the demands of the god promising eternal salvation in return (for instance, spending your Sundays working for the alleviation of global poverty). **None of that is worth any consideration**, the idea seems to be, **in light of the massive stakes of the existential risk / religious belief or non-belief scenarios**.

Now, I will not pick any quarrel with the existential risk argument as such on these grounds, although I do think that more developed ways to analyse risk-scenarios and the ethical implications of these already in existence and used in the fields I referred above will mean lots of troubles for the simplistic aspects already mentioned. What I do want to point to, however, is this: **if you're impressed by the existential risk argument, you should be equally impressed by Pascal's Wager**. Thus, in accordance with Pascal's recommendation that authentic religious belief can be gradually installed via the practice of rituals, you should – as should indeed the existential risk argument advocates themselves – spend your Sundays celebrating mass (or any other sort ritual demanded by the God you bet on). **I very much doubt**, however, **that you** (or they) in fact **do** that, **or even accept** the conclusion that **you** (or they) **should** be doing that.

Especially because each life improved could solve an existential catastrophe.

Kaczmarek 17 – Patrick Kaczmarek, PhD at the University of Glasgow, a Senior Researcher at Effective Giving, Visiting Researcher at the Future of Humanity Institute at the University of Oxford and a Visiting Scholar at the Department of Philosophy at the University of Pittsburgh. [How Much is Rule-Consequentialism Really Willing to Give Up to Save the Future of Humanity? *Utilitas*, 29(2), <https://www.cambridge.org/core/journals/utilitas/article/how-much-is-ruleconsequentialism-really-willing-to-give-up-to-save-the-future-of-humanity/F867301151A79F7DA566A14DF71749B3>]/BPS

Notice, the problem can be cast two different ways. First, the loss associated with humanity's premature extinction is so great that even if the probability of a catastrophic event is very low, an expected value calculation suggests that we should strive to prevent its possible occurrence. And yet, **there is something deeply puzzling about ruining the lives of all actual persons for the sake of humanity eking out a longer stay in the universe.**

Second, you may have realized that **the above implication bears close resemblance to the dreaded Repugnant Conclusion.** The Repugnant Conclusion states that for any population, all with a very high quality of life, there must be some larger imaginable population whose existence, all else being equal, would be better despite their lives being barely worth living.¹⁹ The mistake, as countless critics have noted, is that quantity (that is, size of population) should not be able to compensate for a stark reduction to their average quality of life.

I'm inclined to agree that this looks worrisome. For some, if this were the end of the story, it would surely act as a *reductio ad absurdum* of the view. But this is not the full story.

AN INDIRECT APPROACH TO LOWERING THE THREAT OF EXTINCTION

In setting out our earlier comparison of the two populations it was assumed that only costs go up, never benefits. That is to say, A was fixed and the total sum of goods went up merely because the size of the population grew, despite internalization costs reducing average quality of life. Colouring in the picture, this corresponds to the scenario where, all else being equal, existential threats are directly targeted. To illustrate, this could amount to putting a lot of resources towards asteroid deflection programmes.²⁰

I now wish to argue that **we could instead reduce existential risk by indirect means, and in so doing make the world in two ways go better.** As noted earlier, **we would prolong humanity's place in the cosmos.** Furthermore, **an indirect approach improves the average welfare of persons, particularly the worse-off in our population.**

Certainly, it would be a mistake to concentrate exclusively on indirectly lowering the probability of doomsday. Returning to our earlier example, reducing global poverty cannot prevent an Earth-bound asteroid the size of Texas from making impact. Nevertheless, **if we were also to adopt an indirect approach, then this would contribute to existential risk reduction by curbing the negative ripple effects** of readily preventable illnesses, global hunger, and so forth.

Ripple effects are a class of phenomena that **affect the far future in significant ways**, shaping how our history unfolds over time.²¹ A ripple effect is initiated by a particular event that has some causal influence on the course of events that follow it. **These events**, in turn, may have their own **impact** on how **further** events play out. And so on it goes, **reaching wider and wider as time passes.**

Consider the following example. **A doctor** is in a position to **cure some infant's blindness.** Sure, **the infant will** probably **have a better life after the operation.** Most of us are quick to hone-in on this feature of the situation. And many other goods go unacknowledged by us as a result. **Just a few** of the proximate **advantages** we might reasonably expect to find after curing the infant's blindness include: **her parents** will be **less worried about her**, subsequently finding **more free time** to develop their own personal projects; the **government** will **spend fewer resources on** providing **her education**; **this child will grow up** with more opportunities, as well as perhaps **being inspired to start a grassroots initiative or develop an anti-malarial drug.** All of these consequences will have some role in shaping our future due to their own ripple effects. **This network of ripple effects might go so far as causing '[her] country's economy to develop very slightly more quickly, or make certain technological or cultural innovations arrive more quickly'**.²²

Any disad will have thousands of unstated assumptions—those should be considered which means the DA begins at a low probability.

Conetta 98 (Carl, Director of the Project on Defense Alternatives, Research Fellow of the Institute for Defense and Disarmament Studies, researcher and awarded author at the Pentagon, US State Department, US House Armed Services Committee, Army War College, National Defense University, and UNIDIR, "Dueling with Uncertainty: The New Logic of American Military Planning," March 1998, <http://www.bu.edu/globalbeat/usdefense/conetta0398.html>)

Cards Without doubt, simulations -- including nonstandard ones -- can aid planning. The question is: To what end? And to what effect? Exploring "wild cards" in order to identify warning signs or to define limits is one thing; using them to establish force structure or modernization requirements, quite another. Especially suspect would be using scenarios that are detached from declared US interests to define current requirements; this would put the military "cart" before the political "horse." Another, broader concern is how the effusion of improbable conflict scenarios affects public policy discourse overall.

Conflict scenarios, both wild and tame, can gain more credibility in the telling than they deserve. Cognitive researcher Massimo Piattelli-Palmarini calls this the "Othello effect," referring to the trail of **plausible but false suppositions** that led Othello to murder his wife, Desdemona. Even the most farfetched scenarios comprise a number of steps or links each of which may seem plausible or even probable given the one that came before. Although the likelihood of the scenario dwindles with each step, the residual impression is one of plausibility. Omitted are the many branches at each step that would lead to a neutral or even positive outcome. The resulting snapshots, although numerous, offer a highly-selective view of what the future may hold. And the fact that only the negative outcomes are articulated and exercised can distort the general public impression of risk.

Living with Uncertainty

There is no escape from uncertainty, but there is relief from uncertainty hysteria. It begins with recognizing that instability has boundaries -- just as turbulence in physical systems has discernable onset points and parameters. The turbulence of a river, for instance, corresponds to flow and to the contours of the river's bed and banks. It occurs in patches and not randomly. The weather also is a chaotic system that resists precise long-range forecasting, but allows useful prediction of broader trends and limits.

Despite uncertainty, statements of probability matter. They indicate the weight of evidence -- or whether there is any evidence at all. The uncertainty hawks would flood our concern with a horde of dangers that pass their permissive test of "non-zero probability." However, by lowering the threshold of alarm, they establish an impossible standard of defense sufficiency: absolute and certain military security. Given finite resources and competing ends, something less will have to do. Strategic wisdom begins with the setting of priorities -- and priorities demand strict attention to what appears likely and what does not.

Justifications matter—reform efforts must prioritize addressing racial disparities in mass incarceration—other justifications undermine reform which means the CP's net benefit undercuts solvency

Southerland 14 (Vincent, Criminal Justice Practice, NAACP Legal Defense and Education Fund, "Private: The Immorality of Mass Incarceration" 5/7/14 <https://www.acslaw.org/expertforum/the-immorality-of-mass-incarceration/>)wtk

Attorney General Holder's comments strike at the heart of the problem: mass incarceration has devastated African-American communities, families, and lives all around the country. Sustained changes to the policies and attitudes that created this epidemic, however, are the real key. In order for that change to happen, our nation's moral orientation with mass incarceration and criminal justice will have to adjust accordingly. At bottom, criminal justice reforms need to be driven by the moral imperative of repairing all that is wrong with the current system. As advocates for change, WE must make sure that the reform narrative includes the human costs of mass incarceration and a broken

criminal justice system, not just the concern over dollars and cents. The Moral Monday movement—a multi-issue, grassroots, multiracial campaign active in the courtroom, streets, and the ballot box—offers a salient example of how ethics and the lived experiences of real people can drive change and incite action. The movement shifted North Carolina’s political discourse toward morality while focusing on individual stories and the damage done to real people by real, and unjust, policies. To date, the financial crisis and the Great Recession have forced a closer look at the financial costs associated with America’s incarceration of 5 percent of the world’s population and 25 percent of the world’s prisoners. Prisons and jails are overcrowded—in the federal system alone, they are operating at 40 percent beyond capacity. Counsel for the poor are under-resourced and over-worked. And across the country, police departments are stretched beyond capacity, having committed resources to America’s misadventure with mass incarceration. To be sure, the financial incentives for progressive change are incredibly powerful. Conservatives and liberals alike have voiced concerns about the expense of continuing down a path of perpetual incarceration. In fact, there has been much discussion over the savings borne of reforms that could be reinvested to improve public safety and police practices, particularly as the costs of prisons and incarceration constitute an increasingly disproportionate share of state and federal budgets. And change—at least in the direction we seem to be slowly moving—is definitely a good thing. Ohio, Georgia, Texas, Kentucky, South Carolina and New York serve as examples of states that have worked to reduce their prison population without sacrificing public safety. Even Congress is getting into the act. Partisan rancor and age-old arguments about the size and role of government have—at least in one instance—have begun to yield to legislative action on mass incarceration. The Smarter Sentencing Act, a piece of bipartisan legislation co-sponsored by Senators Dick Durbin (D-Ill.) and Mike Lee (R-Utah) and supported by senators like Ted Cruz (R-Texas) and Jeff Flake (R-Ariz.), recently cleared the Senate Judiciary Committee, making it ripe for consideration by Congress. The Smarter Sentencing Act would reduce mandatory minimums for federal drug offenses, expand the discretion and authority of federal judges to craft appropriate sentences for low level offenders, and give full effect to Congress’ 2010 reduction of the manifestly unjust and discriminatory 100-to-1 sentencing ratio which treated crack cocaine 100 times more severely than powder cocaine. Currently, nearly 9,000 individuals—almost 90 percent of whom are African-American—are serving federal prison sentences under that old 100-to-1 regime. Yet the impetus for these changes will be short-lived unless America faces the harsh realities—and staggering moral consequences—of its obsession with mass incarceration. For decades, we have responded to a public health problem—drug addiction and abuse—with a criminal justice remedy, failing to fully understand the complex web of conditions that spur drug abuse. In Attorney General Holder’s words late last year, we have grown “coldly efficient” at warehousing generations of people—the majority of them young men of color. Stark racial disparities are apparent at every stage of the system, from encounters with police, to the severity of charges sought by prosecutors, to the sentences handed down by judges. These systems have ravaged communities, hurt families and relegated generations to a hopeless form of second-class citizenship, devoid of any real political or economic power. As the dollars once again begin to flow in the wake of the nation’s financial recovery, the real barometer of change will be America’s continued willingness to grapple with its addiction to incarceration and other criminal justice practices that fuel unfairness and calcify discrimination. Hopefully, we will still be willing to do the right thing—not only because it is fiscally prudent, but because it is simply the right thing to do.

Justifications matter because they shape the outcome of criminal justice policy. Attempts to solve the aff by using conservative forms of rick calculus are incompatible with the ethical demands of the plan and should be treated as terminal solvency deficits to any counterplan

Robinson 17

(Nathan J. Robinson, 2-21-2017, Editor of Current Affairs, columnist for the Guardian, JD from Yale, "Even When It Doesn't Save Money," Current Affairs, <https://www.currentaffairs.org/2017/02/even-when-it-doesnt-save-money>, JKS)

It is frequently tempting to justify policies by pointing to the money that will be saved by implementing them. This is a mistake. Or rather, it’s dangerous. Because if you suggest that the reason to do something morally good is that it saves people money, then you’re stuck if it turns out that this morally good thing actually doesn’t save people money, or turns out to cost quite a bit of money. Cost-saving arguments are frequently made by people on the left in order to defend their policy preferences. Giving prisoners college degrees, for example, is good because it ends up saving the state money in the long run by reducing rates of reoffending. The death penalty is bad because it’s extremely costly to actually implement, given the complex legal procedures necessary in order to successfully execute someone. Drug-testing welfare applicants is bad because it costs a lot of money without yielding many results. Each of these arguments has something in

common: **they support a left-wing policy position, without requiring a left-wing set of moral preferences.** They try to show conservatives that one doesn't need to be on the left in order to support educating prisoners, **ending the death penalty**, and declining to give drug tests to welfare applicants. It's enough just to care about saving money. And everyone wants to save money! But **by making these kinds of arguments, people on the left both come across as dishonest and stake their claims on highly risky propositions.** There's something dishonest here because the real reasons why many people on the left support these things have nothing whatsoever to do with cost-saving. They don't like the death penalty because they find it barbaric, they think prisoners should have access to education because they believe everyone deserves an opportunity to better themselves, and they don't like drug-testing welfare applicants because they think it's intrusive and demeaning. **How can one be certain that it's not really "cost-saving" that motivates these positions?** Well, **because if it turned out that the policy in question didn't save money, or there was a way to save even more money by doing the opposite, many people advancing these arguments would become somewhat uncomfortable.** The easiest response to the cost-saving argument against the death penalty is that the death penalty would become much cheaper if we just took people behind the courthouse and shot them immediately after they were found guilty. And what if we find an incredibly cheap, yet even more invasive, way of drug testing welfare applicants? Would an opponent's position waver even slightly? **The truth is that most leftist positions are motivated by moral instincts,** and everyone knows it. **It's convenient that educating prisoners or ending the death penalty might be good for the government's coffers, but it's certainly not why we care about those things.** You're also doing something very risky when you make a big deal out of cost-saving arguments: **you're depending on the facts to always back you up.** The moment the economics change, **the argument that was in your favor is now just as powerful a reason not to listen to you.** As Current Affairs has previously noted, many pragmatic cases for liberal immigration policy are of this sort. **People will say that immigrants grow the economy,** or they put more into the system than they take out, or they don't decrease native-born employment. **But if the facts change,** and someday immigrants do take out more than they put in, **would the advocates of liberal immigration policy thereby change their minds? Many of them wouldn't, because immigration is actually a moral issue** (people should be free to move about the world, especially when a land of prosperity has more than enough to go around) rather than a matter of pure economic self-interest. The fact that these arguments are premised on appeals to self-interest is another reason why leftists should be careful about them. **If we say that people should help prisoners because it is in their self-interest to do so, we are telling them that the reason they should care about prisoners has little to do with empathy and altruism. But that means that we're affirming the legitimacy of selfishness and callousness, instead of grounding our appeals in the moral imperatives that come with being human.** The fact is that many of the things we believe in aren't going to be cost-savers. In fact, they're going to be very expensive. It's extremely costly, for example, to provide prisoners with good healthcare. If we want to follow the cost-saving criterion, we should just let prisoners die when they get sick. But that's abhorrent. And it's abhorrent because it shows a lack of willingness to sacrifice anything in order to ensure all people have the basics of life guaranteed to them. The same type of problem plagues progressive arguments about economic inequality. Opponents of inequality frequently suggest that inequality is not just bad for those at the bottom. In fact, it's bad for everyone, including those who seem to benefit. Robert Frank suggests that people at the top are forced into a status competition that even they don't get anything out of, while others have reported that health, happiness, and trust in a society can be worsened by high levels of inequality. The Washington Center for Equitable Growth (WCEG), an anti-inequality think tank, seeks research on the various effects inequality might have on everyone: How, if at all, does economic inequality affect the development of human capital?... Do different levels or kinds of inequality impact the potential for talent to emerge across the income, earnings, or wealth distributions, and, if so, how? We are interested in proposals that investigate the myriad mechanisms through which economic inequality might work to alter the development of human potential across the generational arc, including children, young workers, prime-age workers, and older Americans. But note: many progressives are not against inequality because they believe it harms everyone. They are against inequality because they believe it harms the poor, but proof that it harms everyone would be a very convenient way to make a strong case for getting rid of it. After all, if you don't need people to be altruistic, but just need them to care about themselves, it's easier for you to persuade the rich that reducing inequality would be a very good thing. What if inequality isn't bad for everyone, though? What if it's fantastic for everybody at the top? What if the only people who are seriously deprived are the huge numbers of people who lose out? Then what? If the case against inequality is that we're all hurt by it (somewhat counterintuitive, since it seems as if the wealthiest among us probably aren't hurt at all), then what happens if that case turns out to be shaky? **If you've carefully avoided the moral appeal, you've got very little left.** But it may well turn out to be true that some things are going to have to require sacrifice, period. They're not going to "help the rich as well." **Not everything is win-win, and if you try to frame everything as win-win, you are avoiding making the honest and difficult moral demands upon people that are necessary to build a more just world.** This is not to take a position that the empirical findings showing the harmful effects of inequality are wrong. They may well be right. But it's clear that the WCEG, which is, after all, committed to equitable growth, would very much like it if the research it produced turned out to give reasons why inequality is bad. It's true that in their call for proposals, the Center doesn't say that you have to find inequality has harmful effects on human capital. But I am not sure they want to end up producing a pile of research showing that inequality doesn't have wide-ranging effects. (The instinct to use purely neutral and technocratic arguments, as against explicitly moral ones, can lead you to some strange contortions indeed. The WCEG even has an article explaining how slavery was bad in part because it was bad for the slaveholders, by inhibiting "economic creativity" and innovation. If it had been great for economic creativity, would it have been justified?) Now, none of this is to say that it doesn't matter what something costs, or that we shouldn't consider the effects of a policy on everybody before deciding whether it is a good idea. Instead, I am saying that our values should be presented honestly and frankly, and that we should be clear about just how much our position is actually being influenced by the empirical considerations of cost-saving. **If you bury your morals, and talk as if you're just about the numbers, you'll quickly be exposed as inconsistent when you have to fudge or bury the numbers on an issue where they conflict with your morality.** (For example, people on the left say that racial profiling doesn't work. But if it did, would it be okay, or would we end up trying to avoid or massage the statistics in order to continue to maintain that it didn't work? Legal philosopher Ben Eidelson has suggested that the real reason we should be against racial profiling is that it's a hideous affront to human dignity that singles people out based on a pernicious demographic characteristic.) There is sometimes a tendency among liberals to be cowardly about their own supposed values, and to try to argue based on conservative premises (we're the real patriots), on the theory that Americans are mostly conservative in their instincts and need things framed accordingly. But Republicans will always make better Republicans than Democrats will, and when you appropriate someone else's values and disguise your own, you just

sound cowardly and vermicular. As I have argued before, with Democrats losing at nearly every level of government, it's more important than ever for progressives to develop a clear and persuasive political message. I am skeptical of messages that do not offer an obvious coherent moral worldview. Cost-saving arguments risk muddying the values one is trying to express, because it becomes unclear whether one cares about the conservative principle of small government or the leftist principle of giving people help. And sometimes it's just going to be true that you can't have everything, that we are going to have to be asking some people to sacrifice or care about things for reasons other than self-interest. While it's not impossible to make multiple kinds of arguments in succession, all of which point toward the same end, it's also important to stick by your values, and tell people why you hold them, instead of pretending that you are just following their own values and their own logic. People just might respond better to some honesty. I don't like the death penalty because I believe in mercy, even when it's hard. I don't like inequality because it's an obscenity for some people to be billionaires while others can't pay for their children's cancer care. And I don't like drug tests or profiling because they are vicious and spiteful and rob people of their humanity. Saving money is a bonus. But when it's not why we care about what we care about, it's not what we should spend our time talking about.

Solvency- General

Solvency advocates- eliminate

Repealing mandatory minimums is the solution and will lead to fairer sentences

FAMM 2020 (Families Against Mandatory Minimums, nonprofit organization founded in 1991 working to end mandatory minimums, “Mandatory Minimum Repeal,” <https://famm.org/our-work/u-s-congress/repeal/#:~:text=Mandatory%20minimum%20sentences%20result%20in,%2C%20or%20%E2%80%9Crepeal%E2%80%9D%20them.,> Accessed June 20, 2020)

The Problem: Mandatory minimum sentencing laws require judges to give all offenders convicted of a certain crime the same punishment — regardless of whether it fits the crime or the offender or is necessary to keep the public safe. Judges are not allowed to consider any special facts or unique circumstances, the offender’s role, the person’s motive or profit, whether someone was actually injured, and whether the person is likely to reoffend or can be rehabilitated. Mandatory minimum sentences result in lengthy, excessive sentences for many people, leading to injustices, prison crowding, high costs for taxpayers — and less public safety. **Solution:** One way to reform mandatory minimum sentences is simply to get rid of them — to strike them out of the federal code, or “repeal” them. Repealing mandatory minimum sentences would not give judges full and unfettered discretion to sentence however they wanted to — without mandatory minimums, federal judges would still have to do what they do in all federal criminal cases, which is apply the federal sentencing guidelines to determine the person’s sentence. The federal sentencing guidelines are written by a panel of criminal justice experts and give judges instruction on how to sentence. However, guidelines also provide greater flexibility to take all the facts into consideration and impose a sentence that fits. FAMM supports repealing federal mandatory minimum sentences.

Mandatory minimum must be reformed and reduced –

Law Enforcement Leaders, No Date, (Law Enforcement Leaders are group of 200 current and former police chiefs, federal and state chief prosecutors, attorneys general, and correctional officials from all 50 states who advocate for reforms, “Reforming mandatory minimums,” <http://lawenforcementleaders.org/issues/reforming-mandatory-minimums//BUBU>)

The Problem **Mandatory minimum**, three strikes you’re out, and truth in sentencing laws are typically overly punitive. They often impose excessively long sentences for crimes. Their consequences are felt throughout the country: The average prison stay has increased 36 percent since 1990. The federal inmate population grew more than 400 percent since the late 1980s; now, their prisons are 39 percent beyond capacity. Research has shown that increasing time served does not help keep the public safe. Studies show that longer sentences have minimal or no benefit on future crime. Even worse, research shows a strong correlation between increased prison time and repeat offenses, meaning prison may create more serious and violent offenses when overused. For example, a 2002 study indicates that sentencing low-level drug offenders to prison may increase the likelihood they will commit crimes upon release. Research from the Arnold Foundation indicates that longer pretrial detention is associated with new criminal activity even after the case is resolved. Our Solution Law Enforcement Leaders members support reforming mandatory minimum laws. We urge Congress and state legislatures to reduce mandatory minimum sentences set by law, and also reduce maximum sentences. We will identify and speak out against unnecessarily harsh and counterproductive laws. **Judges should be allowed more flexibility in sentencing and the discretion to determine appropriate punishments.** With proportional sentences, we can reduce both sentence lengths and the likelihood individuals will commit further crimes. Successes Several states have done this while continuing to see crime fall to historic lows: New York. New York State passed the “Rockefeller drug laws,” imposing harsh mandatory sentences for drug possession in 1973. As a direct result, the state’s prison population increased six-fold with striking racial disparities. In 2009, to slow the growth of its prison system, New York removed the law’s mandatory minimums for low-level drug offenses, choosing instead to allow judges to use their discretion to determine appropriate sentence lengths or decide to send

someone to treatment instead. Since 2009, the number of people sent to prison and the length of sentences has declined statewide. Sentencing disparities between minority and white defendants also narrowed by one-third. Now, those sent into treatment have only a 36 percent chance of committing a repeat offense, versus 54 percent for those incarcerated before the new law went into effect. Kentucky. In 1992, Kentucky enacted a series of laws triggering mandatory minimums for drug possession within 1,000 yards of schools. In many urban communities, this covered virtually every neighborhood, leading to an inflation of the state's prison population. Worse still, these laws did little to secure public safety, instead fiercely punishing community members for low-level and nonviolent drug possession. In 2011, Kentucky passed ^{HB 463}, which limited the use of mandatory minimums to within 1,000 feet of schools rather than 1,000 yards. It reinvested the savings from the reduced prison costs into drug treatment services. In one year, the prison population dropped by more than 1,400 people, saving the state \$20,000 per person annually. Kentucky's crime rate is still at an all-time low.

Solvency Advocate—Eliminate for Drug Offenses

Mandatory minimums exacerbate crimes and were weaponized against minorities – repealing is key

ACLU 17, American Civil Liberties Union of Massachusetts, March 2017, “Repeal Mandatory Minimum Sentences for Drug Offenses,” Page 1-3, American Civil Liberties Union of Massachusetts, known as ACLU, is a private, nonpartisan organization with more than 82,000 supporters across the Commonwealth and over 100,000 online activists <https://www.aclum.org/sites/default/files/wp-content/uploads/2017/03/Mandatory-Minimums-fact-sheet-1.pdf//BUBU>

Mandatory minimum sentences for drug offenses are holdovers from the failed war on drugs. It’s time for Massachusetts to move past this one-size-fits-all prosecutorial approach to a public health problem. We must repeal mandatory minimums for all drug offenses and allow prisoners who are now serving such sentences to become eligible for parole.

THE PROBLEM – Undue Power for Prosecutors, Unjust Outcomes Mandatory minimum sentencing for drug offenses takes sentencing power from impartial judges and gives it to prosecutors. Judges are forced to impose lengthy sentences on people convicted of certain drug offenses or accept pleas leveraged with the threat of a mandatory minimum sentence. Mandatory minimums are a big reason why more than 90% of prosecutions in Massachusetts end in plea agreements without trials—a serious threat to due process. These unjust sentencing laws also exacerbate racial disparities. Despite the fact that people of color and white people use and distribute drugs at comparable rates, and Blacks and Latinos make up less than 25% of the Commonwealth’s population, people of color represent 75% of individuals serving mandatory

minimum drug sentences. THE MYTH – Nothing to See Here, the Status Quo is Just Fine Prosecutors defend the status quo by citing the statistic that fewer than 900 individuals are serving sentences under a mandatory minimum charge in Massachusetts. However, this figure only represents one third of the people charged with mandatory minimum drug offenses. The threat of serving a mandatory minimum sentence forces people to plead guilty and accept a sentence that prosecutors decide is best. If Massachusetts were an independent nation it would have the 10th highest incarceration rate in the world. Moreover, the racial disparities throughout our criminal justice system are significantly – disturbingly – higher than the national average. Mandatory minimum sentencing drives those numbers, and repealing mandatory minimum sentencing for drug offenses is essential to fixing the problem. THE SOLUTION – Let Judges Judge; Create Opportunities and Incentives

These bills will allow judges, not prosecutors, to decide the proper sentence on a case-by-case basis, considering the particular facts. They will: - Eliminate mandatory sentencing for all drug offenses. - Repeal mandatory minimum sentences for offenses in “school zones,” which disproportionately impact people of color in urban communities. - Remove minimum amounts for optional court-imposed fines. - Allow courts to sentence a drug offender to a lengthy sentence, if warranted (up to 30 years for heroin offenses, 15 to 20 years for all others), or to craft a sentence that might include probation, a shorter sentence, drug treatment, or a combination of approaches to address an individual’s risks and needs. They will also create opportunities and incentives for people currently incarcerated for drug offenses. Specifically, they will allow people to: - engage in educational and vocational programs and earn “good time” credits; - develop job skills by participating in work release programs; - be eligible for parole after serving half of the mandatory minimum for their offense, building on similar reforms passed in 2012; and - give people something to work towards and ensure supervision upon their release.

AT: Sentencing Guidelines Thump

Sentencing guidelines don't thump—USSC is better equipped due to stronger research methods and insulation from political interests

Hofer, Paul. [Senior Policy Analyst, Sentencing Resource Counsel Project of the Federal Public and Community Defenders. The views expressed here are those of the author and do not necessarily reflect views of the Federal Public and Community Defenders or their committees and projects] "After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform." University of Toledo Law Review, vol. 47, no. 3, Spring **2016**, p. 649-694. HeinOnline (accessed 06/27) <CJC>

A. Policy Guidance from an Independent Expert Agency If sentencing reform was to succeed, reformers recognized it must contain several key elements. Perhaps chief among them was policy making based on research and consultation'⁹ and insulated from partisan politics.²⁰ Congress created the Sentencing Commission as an independent agency in the Judicial Branch.²¹ Its seven voting members could contain no more than four from the same political party and would include at least three federal judges. ²² One of the first Commissioners, the Honorable Stephen Breyer, is now an Associate Justice of the United States Supreme Court. Justice Breyer authored the remedial opinion in Booker, which made the guidelines advisory.²³ The Commission's first purpose under the SRA is to establish guidelines and policy statements that assure the purposes of sentencing are met and that also provide "certainty and fairness," avoid unwarranted sentencing disparities, and maintain "sufficient flexibility to permit individualized sentences."²⁴ The Guidelines were intended to reflect "advancement in knowledge of human behavior."²⁵ Underscoring the importance of research, the second purpose of the Commission identified in the statute is to "develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing."²⁶ The SRA set out specific procedures for policy development based on research and consultation. As described by the Supreme Court in an important post-Booker case, the Commission's "characteristic institutional role" is "to base its determinations on empirical data and national experience." ²⁸ Research is what can make the Guidelines useful to judges. Judges need reliable information on many empirical questions: the harms caused by different types of crimes, risk factors that can help predict recidivism and dangerousness, and the availability of resources to sanction, treat, and train defendants fairly and effectively. Decision making on these questions can be improved when it is guided by research.²⁹ Empirical research can also help correct mistaken impressions caused by unrepresentative anecdotes, sensationalized media, or mistaken conventional wisdom. The guidelines era has had several examples of Commission research correcting widespread misunderstanding. Empirical evidence demonstrated that the harms of crack cocaine were not as great as Congress thought when it passed the ADAA, which contained the infamous 100-to-1 quantity ratio between powder and crack cocaine. ³⁰ The Commission has also found that large portions of drug offenders who receive five- or ten-year prison terms under the ADAA perform low-level functions (i.e., street-level dealer, courier/mule, loader, lookout),³¹ even though Congress thought the quantity thresholds in the Act would result in such lengthy terms only for "major" or "serious traffickers."³² The SRA directed both judges and the Commission to treat federal prison space as a scarce resource. ³³ The Commission was to "insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense ..." ³⁴ State sentencing commissions have used research to write guidelines to control prison crowding without endangering the public.³⁵ The SRA also envisioned an evolving system that would respond to feedback from judges. ³⁶ The original Commission also expected the Guidelines to evolve, with judges playing an essential role. ³⁷ More recently, writing for the Supreme Court in *Rita v. United States*, Justice Breyer again emphasized that the Commission's work is "ongoing," that "[t]he statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process."³⁸ The Commission would "collect and examine" sentencing data and judges' stated reasons for sentences outside the guideline range and "can revise the Guidelines accordingly."³⁹

Judicial Discretion

Solvency—Judicial Discretion

Mandatory minimums deteriorate judicial discretion. Guidelines by an outside agency are more effective.

Hofer, Paul. [Senior Policy Analyst, Sentencing Resource Counsel Project of the Federal Public and Community Defenders. The views expressed here are those of the author and do not necessarily reflect views of the Federal Public and Community Defenders or their committees and projects] "After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform." University of Toledo Law Review, vol. 47, no. 3, Spring **2016**, p. 649-694. HeinOnline, (accessed 06/27) <CJC>

In the case of United States v. Booker, the Supreme Court returned some sentencing discretion to judges. The Court held that the Guidelines violated the Sixth Amendment right to jury trial because judges, not juries, found facts that increased the guideline range." To remedy the problem, the Court held that judges could continue to find the facts needed to determine the guideline range, but should treat the Guidelines as "effectively advisory."² Judges are required to calculate and consider the guidelines, but may also take account of mitigating factors the guidelines deem irrelevant. And judges may reject guideline recommendations that are more severe than necessary to achieve the purposes of sentencing.³ Booker did not, however, establish the balance needed in federal sentencing. Mandatory minimums remain in effect and continue to override judicial discretion, and the guidelines recommendations, in thousands of cases a year.⁴ Many guidelines continue to be distorted by mandatory minimum statutes, most notably for drug trafficking offenses, where the guidelines recommendations remain linked to the drug quantity thresholds in the statutes. Other guidelines recommendations reflect congressional directives, or the Commission's own unsound decisions. The advisory guidelines exert a gravitational pull even when they recommend sentences far greater than necessary. Sentencing reform was a good idea, but the federal system has yet to try it. II. THE PROMISE OF SENTENCING REFORM The SRA identified four purposes of sentencing and established procedures for policy development and individualized sentencing. Those purposes are identified as "the need for the sentence imposed- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner."¹⁵ To ensure that the government does not inflict needless punishment, the SRA also established a parsimony principle, which requires that the sentence imposed be "sufficient, but not greater than necessary" to achieve these purposes.¹⁶ With the SRA, Congress succinctly stated how the government's power to punish can be wielded fairly and effectively to vindicate the interests of society without imposing needless harm on defendants and their families. The long legislative history of the SRA has been described in previous accounts and has been subject to varying interpretation.¹⁷ Its core purpose was to provide honesty and uniformity in sentencing by eliminating parole and providin judges with sentencing guidelines developed by a special-purpose agency. Guidelines developed by an independent agency would achieve better outcomes because they would reflect the best practices that research could identify. The Guidelines would allocate punishments rationally to protect the public and punish defendants fairly within the limits of available correctional resources.

Solvency—SOP

Mandatory minimums erode judicial independence which undermines separation of powers

Riley 10 (Kieran Riley, JD Boston University School of Law, "TRIAL BY LEGISLATURE: WHY STATUTORY MANDATORY MINIMUM SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE" *Boston University Public Interest Law Journal* 19, pp. 285-310, p. 285-286, <https://www.bu.edu/pilj/files/2015/09/19-2RileyNote.pdf>)wtk

The separation of powers is one of the core foundational ideals of the U.S. Constitution, and its guarantee of fairness and protection must continue as long as the Constitution stands. Over time, however, application of the separation of powers doctrine has eroded. The current system of criminal law in the United States is an unbalanced regime in which the legislative and executive branches share incentives and tacitly cooperate with each other, to the exclusion and increasing marginalization of the judiciary.⁷ This is especially true in the area of criminal sentencing, where the legislature has created statutes that establish terms of punishment for certain crimes by mandating minimum prison terms for the violation of those statutes. These mandatory minimum sentences provide plenary decision-making power to prosecutors of the executive branch, while heavily restricting the discretion of the judiciary.⁸ Mandatory minimum sentences place an absolute bar on a judge's ability to set a sentence lower than that written in the applicable statute.⁹

Although the constitutionality of such mandatory minimum sentences has been challenged under the separation of powers doctrine in certain circuit courts,¹⁰ the Supreme Court has not decided what separation of powers requires when the government proceeds in a criminal action.¹¹

AT: Other Sentencing problems thump discretion

Mandatory minimums are the reason for other sentencing problems—overcomes all causes

Berman, Douglas A. "Sentencing guidelines." Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform 4 (2017): 95-116.

II. UPS AND DOWNS OF FEDERAL SENTENCING AND ITS GUIDELINES The federal guideline sentencing system was built on Judge Frankel's sound foundational vision, but most scholars and practitioners have viewed the implementation and evolution of the system deeply flawed.

Congress and the U.S. Sentencing Commission have been roundly criticized for producing sentencing laws and guidelines marked by excessive complexity, rigidity, and severity. A major Supreme Court ruling has at best tempered (or perhaps aggravated) the system's flaws by making the federal sentencing guidelines advisory rather than mandatory. Since their inception and to the present day, many have come to single out the federal sentencing guidelines in the landscape of sentencing systems primarily as an example of how not to implement Judge Frankel's reform ideas. A. CONGRESS EMBRACES THEN DISTORTS A GUIDELINE SENTENCING SYSTEM In 1975, Sen. Edward Kennedy introduced a bill to reform the federal sentencing system, calling for, among other things, the abolition of parole and the creation of a federal sentencing commission to produce sentencing guidelines.²¹ Kennedy's bill served as the foundation for what became, after a lengthy legislative process, the Sentencing Reform Act of 1984 (SRA). The SRA created the United States Sentencing Commission to develop the particulars of federal sentencing standards within a guideline regime, and the SRA's "sweeping" reforms seemed poised to, in the words of Norval Morris, "at last bring principle, coherence, predictability, and justice to sentencing criminal offenders."²² Unfortunately, in the years that followed the passage of the SRA, Congress and the Sentencing Commission made mistakes large and small that contributed to myriad problems within the federal sentencing system. Congress's primary transgressions involved disrespecting and disrupting the SRA's institutional structure for sentencing lawmaking through the enactment of a series of severe and rigid mandatory minimum sentencing statutes. The same year it enacted the SRA, Congress also established mandatory minimum penalties for certain drug and gun offenses, and the 1986 Anti-Drug Abuse Act included mandatory minimum 5- and 10-year prison terms linked to precise drug quantities for all trafficking offenses.²³ Over the next decade, Congress continued to enact new sentencing mandates—including the federal version of "three strikes and you're out"—in successive federal crime bills.²⁴ As a matter of substantive sentencing policy, these mandatory sentencing laws have always been unwise. Researchers and practitioners have documented that, in practice, mandatory sentencing laws regularly produce unjust outcomes, both in the individual case and across a range of cases, because they base prison terms on a single factor and functionally shift undue sentencing power to prosecutors when selecting charges and plea terms.²⁵ In a cogent and comprehensive 1991 report, the U.S. Sentencing Commission confirmed that the mandatory sentencing laws Congress enacted throughout the 1980s were not achieving their purported goals.²⁶ In a 1995 report, the Sentencing Commission documented that Congress's disparate treatment of powder cocaine and crack cocaine in mandatory sentencing laws had a disproportionate and unduly severe impact on minority defendants.²⁷ Beyond their substantive deficiencies, Congress's enactment of mandatory sentencing statutes undermined the SRA's structure and philosophy for sound sentencing lawmaking. Mandatory sentencing laws, which require a specific sentencing outcome based on one aspect of an offense, are inherently incompatible with the SRA's guideline system calling for sentences based on "the nature and circumstances of the offense and the history and characteristics of the defendant."²⁸ Particularly problematic were the broad and severe mandatory drug-sentencing provisions Congress enacted while the Sentencing Commission was developing its initial guidelines. The Commission had to alter its initial guidelines in an effort to harmonize, as best it could, the mandatory sentences imposed by Congress with a sound guideline structure.²⁹ But because of the narrow focus of mandatory provisions, these statutes necessarily precluded the Commission from fulfilling fully the SRA's commitment to "enhance the individualization of sentences [by requiring] a comprehensive examination of the characteristics of the particular offense and the particular offender."³⁰

AT: Guidelines Alt Cause

Abolition solves—sentencing guidelines allow judicial discretion and independence

Riley 10 (Kieran Riley, JD Boston University School of Law, "TRIAL BY LEGISLATURE: WHY STATUTORY MANDATORY MINIMUM SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE" *Boston University Public Interest Law Journal* 19, pp. 285-310, p. 310, <https://www.bu.edu/pilj/files/2015/09/19-2RileyNote.pdf>)wtk

Congress exceeds its constitutional authority when it passes criminal statutes that mandate minimum punishments. These statutes create a system of criminal punishment in the United States where the legislature and the prosecution control the future of citizens convicted of crimes. These laws deprive the judiciary of its basic constitutional function, which is weighing facts in each case to ensure a just outcome for each criminal defendant. This violates the constitutional doctrine of separation of powers. These laws persist despite lopsided results between the crime and the punishment when applied across the board to each individual defendant. **Statutory mandatory minimums should therefore be abolished.** Congress should listen to the growing number of American citizens opposed to statutory mandatory minimum sentences and repeal these laws. If Congress does not take this action, the Supreme Court and other federal courts should embrace their authority and declare these laws unconstitutional. If statutory mandatory minimum sentences are abolished, we will be left with a federal sentencing regime in which the Sentencing Commission takes the time and effort to research the appropriate punishment for each crime. The resulting Guidelines will be advisory to sentencing judges. Sentencing judges will then have the discretion during sentencing hearings to review and weigh all pertinent facts. If sentencing judges depart from the advisory Guidelines, they will make a record of their reasons for doing so that can be reviewed by appellate judges for reasonableness. This would allow for individuality in sentencing, give credence to the research undertaken by the Sentencing Commission, decrease the problem of lopsided and unjust criminal punishments, and bring criminal sentencing law in accordance with the separation of powers doctrine and the U.S. Constitution.

AT: Squo Solves- Judicial Safety Valves

No Judicial safety valves—only prosecutors have them

Riley 10 (Kieran Riley, JD Boston University School of Law, "TRIAL BY LEGISLATURE: WHY STATUTORY MANDATORY MINIMUM SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE" *Boston University Public Interest Law Journal* 19, pp. 285-310, p. 298-299, <https://www.bu.edu/pilj/files/2015/09/19-2RileyNote.pdf>)wtk

The Role of the Executive Branch in Sentencing The executive branch also plays a critical role in sentencing today. Federal prosecutors decide which charges to bring against each defendant.¹²⁷ The prosecutor's decision dramatically impacts the length of any prison term to which the defendant is sentenced, because the charge dictates the Guidelines range and the application of a statutory mandatory minimum sentence.¹²⁸ The criminal law is overly-broad and yet ever-expanding.¹²⁹ This means that in most offenses, more than one criminal statute has been violated.¹³⁰ The prosecution can determine which of these violations to charge against the defendant, including filing no charges or filing all applicable charges.¹³¹ The more violations the prosecution chooses to charge, the longer the potential sentence against the defendant.¹³² This is called charge-stacking, and it is useful to federal prosecutors as an aid in plea bargaining.¹³³ Bringing multiple charges against a defendant for the same criminal episode increases the potential sentence.¹³⁴ This in turn increases the defendant's logical desire to plead guilty and avoid the full possible sentence, especially if the charge-stacking triggered a mandatory minimum sentence.¹³⁵ Finally, **only the prosecution has the power to lessen a defendant's sentence to below a statutory mandatory minimum.**¹³⁶ If the prosecution determines that a defendant has "substantially assisted" them in their prosecution of other offenders, at their own discretion, the prosecution can submit an order on the defendant's behalf to lessen the sentence below the mandatory minimum.¹³⁷ **The legislature provided the judge no such safety valve.**¹³⁸

AT: SRA Solves Discretion

SRA doesn't provide discretion- mandatory minimum laws require violating the SRA

Riley 10 (Kieran Riley, JD Boston University School of Law, "TRIAL BY LEGISLATURE: WHY STATUTORY MANDATORY MINIMUM SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE" *Boston University Public Interest Law Journal* 19, pp. 285-310, p. 305-306, <https://www.bu.edu/pilj/files/2015/09/19-2RileyNote.pdf>)wtk

Each of the 171 or more federal criminal statutes that establish mandatory minimum terms in prison as punishment forbid the sentencing judge from imposing any lesser sentence, even if the judge finds important mitigating factors during the hearing.¹⁸⁵ In the absence of a mandatory minimum sentence, a judge can consider the defendant's criminal record, or lack thereof, and lessen the sentence accordingly. But in cases involving statutory mandatory minimums, a judge cannot lessen the punishment below the minimum sentence. The judge simply cannot give weight to any factor that would result in a sentence less than the mandatory minimum. This **alarming** lack of discretion conflicts with language in the SRA and other federal statutes.¹⁸⁶ The SRA specifies that the sentencing judge "shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" this Act.¹⁸⁷ If, upon consideration of the presentence report and all other factors at sentencing, the judge finds that the statutory mandatory minimum is excessive, he still must impose that sentence in violation of the SRA's mandate. The SRA also commands that sentencing judges, "in determining the particular sentence to be imposed, shall consider" the seven factors listed in section 3553(a).¹⁸⁸ If, after consideration, the judge determines that "the nature and circumstances of the offense and the history and characteristics of the defendant"¹⁸⁹ call for a rather lenient punishment, and that the need "to protect the public from further crimes of the defendant"¹⁹⁰ is extraordinarily low, the judge still cannot impose a sentence lower than the mandatory minimum. This effectively renders the judge's consideration of the factors moot, putting it in direct conflict with the SRA. Ironically, it is historically the duty of the judiciary to resolve a conflict between two statutes.¹⁹¹

*****!—Democracy**

I/L—Judicial Independence k2 Democracy

Judicial independence is the cornerstone of democracy and the rule of law – public confidence in the apolitical nature of courts is key

Sigurdson, 18 – editor of the Sigurdson Post; The Sigurdson Post was developed for the legal profession, business, political decision makers, and the general public to engage and inform and provide a framework for reflection (Eric, “A Toxic Brew: The Politicization of the Rule of Law and Judicial Independence” 9/30, <http://www.sigurdsonpost.com/2018/09/30/a-toxic-brew-the-politicization-of-the-rule-of-law-and-judicial-independence/>)

Judicial independence is a bedrock principle of the rule of law. Why? Because an independent judiciary is the key to upholding the rule of law in a free society, maintaining public confidence in the justice system, and is critical to promoting a peaceful and inclusive society. Few principles are more important than the rule of law and judicial independence. The separation of powers between the executive, legislature, and judiciary (the three branches of government) protects the position of the courts as an impartial and independent guardian of the rule of law on behalf of society. This is particularly important in today’s troubled world in which the judiciary and the rule of law are under increasing pressure.[1] Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. – Justice Gonthier, Supreme Court of Canada, 2001[2] The days of respectful discussion and consensus building appear to be of a bygone age. Throughout the world, the rule of law and judicial independence have come under threat. While Western democracies at one time appeared safe, they are certainly no longer immune.[3] Today’s deepening social and economic inequality, the rise and intensification of big-money politics, and the growth in cultural and political polarization have contributed to a fragmentation that has complicated forming stable co-operative governments or implementing effective policies.[4] As politics and governments have become more partisan and polarized across the world, the independence of the judiciary has become an increasingly significant flashpoint, particularly for those individual political leaders and their governments looking to pursue their own narrow interests – in some cases without regard to the meaningful constraints imposed by the principles of democracy and the rule of law. Even in established democratic countries, “judicial independence can be eroded little by little, by small, seemingly innocuous changes”.[5] There are clear reasons to be concerned about the risks associated with the health of our governments and Western democratic institutions, in particular with respect to judicial independence and the rule of law. The rule of law is a process of governing by laws that are applied fairly and uniformly to all persons. Because the same rules are applied in the same manner to everyone, the rule of law protects the civil, political, economic, and social rights of all citizens, not just the rights of the most vociferous, the most organized, the most popular, or the most powerful. – Chief Justice Marsha K. Ternus [6] Overview Courts in Western democracies are intended to be insulated and independent from partisan and special interest politics that may consume the executive and legislative branches of government. The purpose is to ensure that impartiality and the rule of law will not be eroded by the political pressures in existence at any particular point in time. By removing the ultimate interpretation of the law and constitutional provisions from elected officials, the principle of judicial independence reduces the likelihood that the determination of legal issues and basic legal protections will fall victim to the partisan passions of the moment. Insulating judges and a nation’s judicial system from political, special interest and ‘big money’ influence advances the same objective.[7] As such, in a well-functioning democracy – and society – individual judges and the judiciary as a whole must be impartial and independent. This is important so the public and those who appear before the courts can have confidence that their legal issues will be decided fairly and in accordance with the law by ‘apolitical’ judges free of any improper influence. The rule of law and judicial independence guarantee that everyone, irrespective of their background, is treated equally before those laws. The work of the judiciary ensures that the actions taken by the executive and legislative branches of government and powerful individuals and entities comport with the country’s laws and its Constitution.

Crushes democracy

Economist 16 (How a Trump presidency could undermine the rule of law, 6-1-16, <http://www.economist.com/blogs/democracyinamerica/2016/06/don-and-judge>)

The principle of judicial independence means that presidents and presidential candidates respect the rule of law and the judgments of judges. It means, for example, that Barack Obama and his team of lawyers defend the legality of his immigration orders protecting 5m people from deportation on the merits rather than by engaging in a name-calling campaign to discredit and delegitimise the federal judge in

Brownsville, Texas who unilaterally stopped the programme before it could be implemented. But Mr **Trump's** furious **tirade** against Judge Gonzalo Curiel **defies all norms of presidential decorum and decency, and the sentiment fuelling it threatens to undermine the delicate balance of power between the executive and judicial branches.** Mr Trump railed against Mr Curiel at a rally last week at the convention centre in San Diego, a 15-minute walk from the courtroom where the judge sits. "I have a judge who is a hater of Donald Trump, a hater. He's a hater. His name is Gonzalo Curiel." Buoyed by the booing crowd, Mr Trump continued: "He is not doing the right thing. And I figure, what the hell? Why not talk about it for two minutes?" The two minutes slid into 12: "We're in front of a very hostile judge" who "was appointed by Barack Obama", Mr Trump complained. "Frankly, he should recuse himself because he's given us ruling after ruling after ruling, negative, negative, negative." And then Mr Trump casually tossed out a note about Mr Curiel's identity: "What happens is the judge, who happens to be, we believe, Mexican, which is great. I think that's fine". Generously granting that it's "great" and "fine" for Mr Curiel to have Mexican roots, but implying precisely the opposite, Mr Trump neglected to note that the federal judge is in fact an American citizen who was born in Indiana in 1953. But the dog-whistle was audible to everybody: the judge's Hispanic heritage, Mr Trump charged, disqualifies him to oversee his case. The precipitating cause of Mr Trump's outburst was Mr Curiel's agreement to unseal around 1,000 pages of internal documents, many of which paint a damaging portrait of the tactics used by Trump University employees trying to drum up business. A sales handbook describes in painstaking detail the "roller coaster of emotions" potential students will experience when deciding whether to pay thousands of dollars for Mr Trump's investment insights. The key is "managing the emotions of the client" and mastering "the psychology of the sale", the handbook instructs. It starts with trust-building and ends with queries about the credit limits on the prospective student's credit cards. Rather than express regret over evidence that Trump University workers were under orders to exploit potential clients by encouraging them to take on debt in order to afford the Trump Gold Elite package costing \$35,000, Mr Trump reacted by projecting shame on Mr Curiel: "I think Judge Curiel should be ashamed of himself," he said. "I'm telling you, this court system...ought to look into Judge Curiel. Because what Judge Curiel is doing is a total disgrace, Okay? But we'll come back in November. Wouldn't that be wild if I'm president and I come back to do a civil case?" Wild indeed. **If Mr Trump wins** the White House, **he will have a bully pulpit at his disposal from which he could unravel basic principles of American democracy.**

Judicial independence is key to democracy

FBA 20 (Federal Bar Association, "Statement on the Rule of Law and an Independent Judiciary" 2/19/2020 <https://www.fedbar.org/government-relations/fba-statements-letters-and-testimony/statement-on-the-rule-of-law-and-an-independent-judiciary/>)wtk

Respect for the rule of law and the **preservation of an independent judiciary are among the most important principles upon which our Republic was founded. These time-honored principles have guided our constitutional democracy for more than two centuries.** In fulfilling the Federal Bar Association's mission and honoring our members' commitment to upholding federal law, the Association has a responsibility to defend and protect the rule of law and the independence of our judiciary when these fundamental tenets are at risk. **The stability of our constitutional democracy rests on public confidence in all institutions charged with enforcing our laws,** especially the U.S. Department of Justice. The just enforcement of law involves the well-grounded application of facts to the law and not political affiliations, personal interests, or retribution. Furthermore, the preservation of public confidence in the rule of law is associated with the longstanding recognition of the Attorney General of the United States as the nation's chief law enforcement officer and the legal representative of the nation as a whole, not any government official, agency, party or person. Departure from this principle erodes public respect for the fairness of our legal system and equal justice under law. **Attacks on our judiciary pose the same danger. Judicial independence, free of external pressure or political intimidation, lies at the foundation of our constitutional democracy. An independent judiciary must be free of undue influence from the executive and legislative branches and must remain committed to the preservation of the rule of law and the protection of individual rights and liberties.** When criticism of judges' rulings crosses the line into personal attacks or intimidation, public respect for our system of justice is undermined, creating risk to our constitutional bedrock and the preservation of liberty. The Federal Bar Association urges all Americans and elected leaders to remain mindful of these cherished principles.

I/L Booster—Legitimacy k2 Independence

Legitimacy's the vital internal link to maintaining judicial independence and checking the executive

Gibler and Randazzo 17 (Douglas M. and Kirk A., Gibler is a professor of political science in the Institute for Social Science at the University of Alabama and Randazzo is a professor of political science at the University of South Carolina, "Can the courts protect democracy? Yes, but they need these three supports", The Washington Post, https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/17/can-the-courts-protect-democracy-yes-but-they-need-these-three-supports/?utm_term=.89ee84f6c24f, 17 February 2017) JY

President Trump's executive order suspending travel for those who hail from seven primarily Muslim countries quickly landed in the federal courts. Many decried this action as unconstitutional, and several federal judges (both Democratic and Republican appointees) ordered an immediate halt to its implementation. And on Feb. 9, the U.S. Court of Appeals for the 9th Circuit handed down a sweeping judicial ruling that halted enforcement of the ban — and the president tweeted his impatience with its skeptical questioning of his authority. Here we briefly review the evidence, and investigate whether the judiciary can remain independent despite the highly polarized political environment in the United States. One reason is that a majority of any nation's population may not always respect democratic principles. Judges are installed to protect democracy and fundamental rights, rebuking the other two branches of government if they go beyond their authority, even with a majority mandate. Consider one of the reasons that democracies backslide into authoritarianism. After a country is rocked by economic and political shocks, citizens often seek strong leaders who promise to rescue them — and who use their populist popularity to increase their power. Threats from other countries (or in this climate, terrorism) may be one reason these populists ask a powerful leader to do what it takes to protect them. Economic threats (such as rapid, trade-induced change) can have the same result. The problem, of course, is that strong leaders are generally forced to move slowly in democracies that favor deliberation, consensus and power diffused among many stakeholders. Those leaders may try to eliminate checks on their authority so they can take action with popular support — even if loosening those checks may put at risk freedom, liberty, civil rights and so on. The framers of the U.S. Constitution feared the vagaries of popular opinion. Many democratic theorists point to these inclinations as a reason that judicial independence from the elected branches of government is so important — arguing that courts are mostly immune from short-term shifts of popular opinion, and that the judiciary can block the executive if it tries to grab too much power. But is that theory correct? Yes. That's what we found when we examined the evidence in detail, examining 163 countries (including the United States) from 1960 to 2000. We examined these nations after they faced the two main sources of threats to democratic stability: First, slow growth and economic change, and second, threats from rival countries or other bodies. Nations that had an independent judiciary were more likely to remain democracies even when times were troubled. Democracy did not predict the existence of an independent judiciary — the two are distinct concepts — but independent judiciaries did help prevent democracies from backsliding into authoritarianism. When countries had had independent judiciaries for at least two years (any less and they didn't prevent authoritarianism), they rarely succumbed to creeping authoritarianism. In fact, independent courts were extremely important in stabilizing democracy. Often they were the only factor that made the difference between democracy and authoritarianism. The courts were more likely to prevent executive overreach and consolidation of power than other governmental institutions, most especially the legislature. One of the reasons for the effectiveness of courts is that judges are able to justify decisions against the executive in terms related to the constitution or the rule of law. The use of legal explanations (rather than political arguments seen in legislatures) increases the likelihood of compliance with a court decision. Courts' ability to stay independent rests on three factors. First, public belief that courts are legitimate; second, political elites' respect for their authority; and finally, healthy political competition within the democracy. First, judges understand that their authority rests on the public trust. That's why, in the United States, the Supreme Court rarely ventures too far from public opinion in its rulings. Courts' political power comes directly from public support.

I/L—US Key/AT Int'l Alt cause

Fixing democracy at home outweighs international threats

Berman 19 – professor of political science at Barnard College, Columbia University, and the author of “Democracy and Dictatorship in Europe: From the Ancien Régime to the Present Day.” (Sheri, “The main threat to liberal democracy comes from within, not from authoritarians,” *Washington Post*, Proquest)//
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At the end of the 20th century, the collapse of communism led to celebrations of the triumph of liberal democracy. Today those celebrations are gone, replaced by fears, as Robert Kagan recently argued in *The Post*, that strongmen are striking back. But just as the earlier optimism masked important underlying realities, so, too, does today's pessimism warp the understanding of what is going on. Globally, the condition of democracy remains strong. Democracy does face threats, but the “gravest one” comes not, as Kagan asserts, from without — from “resurgent authoritarianism” — but from within, from the failures of Western elites and governments. Let's start with arguments about “resurgent authoritarianism.” Empirically, the evidence for this is thin. The number of democracies today remains close to its all-time high: There were 11 in 1900, 20 in 1920, nine in 1940, 32 in 1970, 77 in 2000 and 116 in 2018. Moreover, the undertow following the democratic wave that began in the late 20th century has been weak: It left many more democracies in its wake than previous waves of democratization in 1848, 1918 or 1945. Today's authoritarian regimes are also less authoritarian than their predecessors, according to a new study by Anna Lührmann and Staffan I. Lindberg in the journal *Democratization*. During much of the 20th century, closed, repressive dictatorships were the most common form of authoritarian regime. Today, the dominant form is “electoral autocracies” that allow (flawed) elections, and some space for civil society, courts and so on. (Viktor Orban's Hungary and Recep Tayyip Erdogan's Turkey fall into this category.) Assessments of democracy's current condition also require historical perspective. In Europe, for example, the struggle for democracy began in 1789 with the French Revolution. During the next 150 years, many transitions to democracy occurred in France and other European countries; most failed. It was only after 1945 that liberal democracy became the norm in Western Europe and only during the late 20th century in Southern Europe. In the United States, an entire section of the country — the South — remained illiberal and undemocratic up through the Civil War. It took another hundred years after that before political and legal rights were accessible to all citizens, including African Americans. The path to liberal democracy has always been long and difficult. That countries with almost no previous experience with liberalism or democracy, such as Russia, Hungary and Poland, have had trouble constructing well-functioning democracies today should sadden but not surprise us. What should surprise us are the problems facing liberal democracy in the West, where it has long been taken for granted. Yet these problems are not caused primarily by “resurgent authoritarianism.” Kagan argued that authoritarianism represents a grave threat because such regimes “are more powerful today than they have been” in the past; “revolutions in communications technologies” have enabled them to better control their societies and destabilize democracies; and they have a “powerful anti-liberal” ideology to offer. It is hard to see by what criteria contemporary authoritarian states are more powerful than their predecessors: Is Putin's Russia really stronger or a greater threat than the Soviet Union? And it is unclear that Putin or other contemporary authoritarians are actively trying to roll democracy back, as Kagan asserted. Instead, they seem primarily interested in securing “friendly” regimes, particularly in their regions, regardless of political persuasion — as the United States was during much of the Cold War and seems to be again today under President Trump. Similarly, the idea that new communications technologies provide authoritarian regimes with unprecedented control over their own societies lacks historical perspective: Does Xi Jinping's manipulation of Internet access give him more control over China than Mao was able to achieve with the Red Guards? And as Facebook-inspired uprisings across the globe have made clear, communications technologies can destabilize democracies and dictatorships. As for authoritarian regimes' “powerful anti-liberal” ideology, while it is true, as Kagan noted, that 19th-century authoritarians peddled an anti-liberal ideology that called for a return to traditional societies where “natural hierarchies and divine authorities ... determined every aspect of people's existence,” and 20th-century fascists and communists promoted potent worldviews as well, today's authoritarians have nothing remotely similar to offer. Xi, Putin, Orban and their ilk do not justify their hold on power with promises to create a better world. Their primary justification for power is pragmatic: They promise better performance than the alternative. And that alternative is liberal democracy. And herein lies the real cause of democracy's contemporary problems. Liberal democracy is precious and precarious, yet decades of relative stability tempted too many to neglect it. During the late 20th century, anti-liberalism began gaining adherents, as Kagan noted, within parts of the Western left and, even more perniciously and pervasively, the right, weakening democracy and providing troublemakers such as Putin with divisions and allies they could exploit for their own ends. Yet those most culpable in the destabilization of democracy are probably politicians and other elites who seem to have forgotten what's necessary to make it work. In the United States over the past decades, politics has become corrupted by gerrymandering, voting restrictions and the influence of big business and the wealthy. Education, health care and other public services have deteriorated. Society has become increasingly riven by economic, racial and geographical divisions. And the U.S. economy has developed to disproportionately benefit the already advantaged. Such trends have weakened U.S. democracy from within. During the post-World War II decades, successful

Western democracies acted as beacons to citizens suffering under authoritarianism across the globe. Today the light from those beacons has dimmed, and contemporary authoritarians have skillfully exploited democracies' weaknesses to justify their own rule and taken advantage of the fading ability and willingness of the United States in particular to champion democracy worldwide. Yet despite this, the global condition of democracy remains strong. If we want to secure and even strengthen it, the best strategy the best strategy would be to **revitalize it from within** rather than **focusing on threats from without**.

!—Democracy—Laundry List

Democratic backsliding leads to nuclear war and threat-multiplication

Kendall-Taylor '19 (Andrea; is a Senior Fellow and Director of the Transatlantic Security Program at the Center for a New American Security (CNAS); February 26th; “Autocracy’s Advance and Democracy’s Decline: National Security Implications of the Rise of Authoritarianism Around the World”; <https://www.cnas.org/publications/congressional-testimony/testimony-before-the-house-permanent-select-committee-on-intelligence-1>; accessed 7/21/19; MSCOTT)

The growing prevalence of personalized autocracies is cause for concern because they tend to produce the worst outcomes of any type of political regime: they tend to produce the most risky and aggressive foreign policies; the most likely to invest in nuclear weapons;⁷ the most likely to fight wars against democracies;⁸ and the most likely to initiate interstate conflicts.⁹ As the adventurism of Iraq’s Saddam Hussein, Uganda’s Idi Amin, and North Korea’s Kim Jong-un suggests, a lack of accountability often translates into an ability to take risks that other dictatorial systems simply cannot afford.

Russia underscores the link between rising personalism and aggression. Although Putin’s actions in Crimea and Syria were designed to advance a number of key Russian goals, it is also likely that Putin’s lack of domestic constraints increased the level of risk he was willing to accept in pursuit of those goals. Putin’s tight control over the media ensures that the public receives only the official narrative of foreign events. Limited access to outside information makes it difficult for Russians to access unbiased accounts of the goings-on in the rest of the world and gauge Putin’s success in the foreign policy arena. Putin’s elimination of competing voices within his regime further ensures that he faces minimal accountability for his foreign policy actions.

Politics in China show many of these same trends. Xi’s increasingly aggressive posture in the South China Sea has occurred alongside the rising personalization of the political system. Xi has amassed substantial personal power since coming to office in 2012 and continues to roll back the norms of the post-Mao collective leadership system. If Xi further consolidates control and limits accountability—particularly over military and foreign policy bodies—research suggests that he, too, could feel free to further escalate his aggressive rhetoric and actions in the South China Sea.

Not only do personalist dictatorships pursue aggressive foreign policies—they are also often difficult and unpredictable partners. Research underscores that, thanks to limited constraints on decisionmaking, personalist leaders generally have the latitude to change their minds on a whim, producing volatile and erratic policies.¹⁰ Moreover, personalist leaders—think Putin, Bolivian President Evo Morales, and Venezuelan President Nicolás Maduro—are among those autocrats who are most suspicious of U.S. intentions and who see the creation of an external enemy as an effective means of boosting public support. Anti-U.S. rhetoric, therefore, is most pronounced in personalist settings.

Democracy solves a laundry-list of threats --- on the brink --- US key

Abrams 16 – Former assistant secretary of state for human rights and humanitarian affairs (Elliott, lead author on a foreign policy essay written along with 145 other influential ambassadors, former members of Congress, NED and UNCHR staff, etc., “U.S. Must Put Democracy at the Center of its Foreign Policy,” *Foreign Policy*, <https://foreignpolicy.com/2016/03/16/the-u-s-must-put-democracy-at-the-center-of-its-foreign-policy/>)

The United States is founded on the principles of life, liberty, and the pursuit of happiness, and for decades, support for democracy and human rights around the world has been a central tenet of American foreign policy. While the United States must maintain relations with many autocratic governments abroad, there are excellent reasons why most of our closest allies are democracies. Free nations are more economically successful, more stable, and more reliable partners for the United States. Democratic societies are less likely to launch aggression and war against their neighbors or their own people. They are also less likely to experience state failure and become breeding grounds for instability and terrorism, as we have seen, for example, in Syria. This means that the advance of democracy serves U.S. interests and contributes to order and peace around the globe. During the past four decades, the number of countries that are free and democratic has more than doubled. From Latin America and Central Europe to East Asia and sub-Saharan Africa, people have opted for accountable government. This remarkable progress is rooted in the universal longing for liberty and dignity — but it is also due to America's strong support for human rights and democracy, under administrations of both parties. This support has been not only a means of expressing the values upon which our nation was founded, but also a pragmatic choice to promote the governing system that advances security, provides stable markets, and protects human rights. We write to urge you to embrace this cause and to make it a central part of your foreign policy platform. In recent years, authoritarian regimes such as Russia and China have become more repressive; they see the advance of democracy not only within their borders but in neighboring states as a threat to their monopoly on political power. A regime's treatment of its own people often indicates how it will behave toward its neighbors and beyond. Thus, we should not be surprised that so many of the political, economic and security challenges we face emanate from places like Moscow, Beijing, Pyongyang, Tehran, and Damascus. Repressive regimes are inherently unstable and must rely on suppressing democratic movements and civil society to stay in power. They also are the source and exporter of massive corruption, a pervasive transnational danger to stable democratic governance throughout the world. The result is that democracy is under attack. According to Freedom House, freedom around the world has declined every year for the past decade. That heightens the imperative for the United States to work with fellow democracies to reinvigorate support for democratic reformers everywhere. Supporting freedom around the world does not mean imposing American values or staging military interventions. In non-democratic countries, it means peacefully and creatively aiding local activists who seek democratic reform and look to the United States for moral, political, diplomatic, and sometimes material support. These activists often risk prison, torture, and death struggling for a more democratic society, and their resilience and courage amid such threats demand our support. Helping them upholds the principles upon which our country was founded. Supporting democracy involves partnerships between the U.S. government and non-governmental organizations that are struggling to bring freedom to their countries. Often, it means partnering as well with emerging democracies to strengthen their representative and judicial institutions. This requires resources that Congress must continue to provide, and foreign assistance must be linked to positive performance with regard to human rights and the advancement of fundamental freedoms. It also requires diplomatic backing at the highest levels of the Executive Branch, throughout the different agencies of government, and from the Congress as well. It means meeting with democratic activists from various parts of the world and speaking out on their behalf. Demonstrating solidarity with and support for these brave individuals' efforts to build a better future for their country is the right thing to do. In aiding their struggles for freedom and justice, we build a more secure world for the United States. There is no cookie-cutter approach to supporting democracy and human rights, but there are fundamental, universal features we should emphasize: representative institutions, rule of law, accountability, free elections, anti-

corruption, free media (including the Internet), vibrant civil society, independent trade unions, property rights, open markets, women's and minority rights, and freedoms of expression, assembly, association, and religion. Many Americans question why the United States should have to shoulder the burdens of supporting freedom and democracy throughout the world. But a growing number of democracies in Europe and Asia, as well as international organizations, are expending significant resources to lend this kind of assistance. We should continue to build on our partnerships with like-minded organizations and countries, including relatively new democracies that are eager to help others striving for freedom. Some argue that we can pursue either our democratic ideals or our national security, but not both. This is a false choice. We recognize that we have other interests in the economic, energy, and security realms with other countries and that democracy and human rights cannot be the only items on the foreign policy agenda. But all too often, these issues get shortchanged or dropped entirely in order to smooth bilateral relationships in the short run. The instability that has characterized the Middle East for decades is the direct result of generations of authoritarian repression, the lack of accountable government, and the repression of civil society, not the demands that we witnessed during the Arab Spring of 2011 and since for dignity and respect for basic human rights. In the longer run, we pay the price in instability and conflict when corrupt, autocratic regimes collapse. Our request is that you elevate democracy and human rights to a prominent place on your foreign policy agenda. These are challenging times for freedom in many respects, as countries struggle to make democracy work and powerful autocracies brutalize their own citizens while undermining their neighbors. But these autocracies are also vulnerable. Around the world, ordinary people continue to show their preference for participatory democracy and accountable government. Thus, there is real potential to renew global democratic progress. For that to happen, the United States must exercise leadership, in league with our democratic allies, to support homegrown efforts to make societies freer and governments more democratic. We ask you to commit to providing that leadership and to embracing the cause of democracy and human rights if elected president of the United States.

!—Democracy—Terror

Democracy solves terrorism---the data overwhelmingly goes our way.

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The scourge of terrorism is real, yet summary data tell us little about the distribution of attacks or the rates of increase in terrorist incidents across various regime types. In reality, the disparity in the internal distribution [End Page 115] of terrorism incidents across regime types is already immense and seems to be getting wider.

A number of insights can be gleaned from the aggregate trends. Contrary to the traditional view, we observe a **robust and growing “double democracy advantage”** among liberal democracies and polyarchies over the 2002–16 period, and especially since 2007. Not only are higher-quality democracies less prone to terrorist attacks than all other regime types, but the rate of increase in the number of attacks among such democracies is substantially lower in comparison to the rest.

The pattern is maintained even where we exclude any country that is farther than two standard deviations from the subcategory mean, namely the United Kingdom among liberal democracies, and Israel among the polyarchies. This is all the more striking given the already relatively low levels of terrorist incidents experienced by liberal democracies and polyarchies at the start of the measurement period. It lends support to the minority view in the literature that sees political openness and the protection of civil liberties and the rule of law as assets that facilitate the minimization of terrorism through the airing and redress of grievances; the wide scope granted to peaceful political expression; and the resulting lower legitimacy accorded to violent fringe groups.

**TABLE—RATES OF INCREASE IN TERRORIST ATTACKS
ACROSS REGIME TYPES BETWEEN 2002 AND 2016**

	Liberal Democracy	Polyarchy	Electoral Democracy	Minimalist Democracy	Multiparty Autocracy	Closed Autocracy
2002	125	103	224	222	489	11
2016	338	118	1043	2215	8750	793
Growth	170%	15%	366%	898%	1689%	7109%

Source: Global Terrorism Database, www.start.umd.edu/gtd.

Terrorism causes nuclear war---newest studies.

Hayes '18 [Peter; January 18th; *Non-State Terrorism and Inadvertent Nuclear War*; <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>; accessed 11/16/18//MSCOTT]

Conclusion

We now move to our conclusion. Nuclear-armed states can place themselves on the edge of nuclear war by a combination of threatening force deployments and threat rhetoric. Statements by US and North Korea's leaders and supporting amplification by state and private media to present just such a lethal combination. Many observers have observed that the risk of war and nuclear war, in Korea and globally, have increased in the last few years—although no-one can say with authority by how much and exactly for what reasons. However, **states are restrained** in their actual decisions to escalate to conflict and/or nuclear war by conventional deterrence, vital national interests, and other institutional and political restraints, both domestic and international. It is not easy, in the real world, or even in fiction, to start nuclear wars.[19] Rhetorical threats are standard fare in realist and constructivist accounts of inter-state nuclear deterrence, compellence, and reassurance, and are not cause for alarm per se. States will manage the risk in each of the threat relationships with other nuclear armed states to stay back from the brink, let alone go over it, as they have in the past. This argument was powerful and to many, persuasive during the Cold War although it does not deny the hair-raising risks taken by nuclear armed states during this period. Today, the multi-polarity of nine nuclear weapons states interacting in a four-tiered nuclear threat system means that the practice of sustaining nuclear threat and preparing for nuclear war is no longer merely complicated, but is now enormously complex in ways that may exceed the capacity of some and perhaps all states to manage, even without the emergence of a fifth tier of non-state actors to add further unpredictability to how this system works in practice. The possibility that non-state actors may attack without advance warning as to the time, place, and angle of attack presents another **layer of uncertainty** to this complexity as to how inter-state nuclear war may break out. That is, **non-state actors with nuclear weapons** or threat goals and capacities do not seek the same goals, **will not use the same control systems**, and will use radically different organizational procedures and systems to deliver on their threats compared with nuclear armed states. If used tactically for immediate terrorist effect, a non-state nuclear terrorist could violently attack nuclear facilities, exploiting any number of vulnerabilities in fuel cycle facility security, or use actual nuclear materials and even warheads against military or civilian targets. If a persistent, strategically oriented **nuclear terrorist** succeed in gaining credible nuclear threat capacities, it might take hostage one or more states or cities. If such an event coincides with already high levels of tension and even military collisions between the non-nuclear forces of nuclear armed states, then a non-state nuclear terrorist attack could impel a nuclear armed state to escalate its threat or even military actions against other states, in the belief that this targeted state may have sponsored the non-state attack, or was simply the source of the attack, whatever the declared identity of the attacking non-state entity. This outcome could trigger these states to go onto one or more of the pathways to inadvertent nuclear war, especially if the terrorist attack was on a high value and high risk nuclear facility or involved the seizure and/or use of fissile material. Some experts dismiss this possibility as so remote as to be not worth worrying about. Yet the history of nuclear terrorism globally and in the Northeast Asian region suggests otherwise. Using the sand castle metaphor, once built on the high tide line, sand castles may withstand the wind but eventually succumb to the tide once it reaches the castle—at least once, usually twice a day. Also, theories of organizational and technological failure point to the coincidence of multiple, relatively insignificant driving events that interact before accumulate in ways that lead the “metasystem” to fail, even if each individual component of a system works perfectly. Thus, the potential catalytic effect of a nuclear terrorist incident is not that it would of itself lead to a sudden inter-state nuclear war; but that at a time of crisis when alert levels are already high, when control systems on nuclear forces have already shifted from primary emphasis on negative to positive control, when decision making is already stressed, when the potential for miscalculation is already high due to shows of force indicating that first-use is high, when rhetorical threats promising annihilation on the one

hand, or collapse of morale and weakness on the other invite counter-vailing threats by nuclear adversaries or their allies to gain the upper hand in the “contest of resolve,” and when organizational cybernetics may be in play such that purposeful actions are implemented differently than intended, then a terrorist nuclear attack may shift a coincident combination of some or all of these factors to a threshold level where they collectively **lead to a first-use decision** by one or more nuclear-armed states. If the terrorist attack is timed or happens to coincide with high levels of inter-state tension involving nuclear-armed states, then some or all of these tendencies will likely be in play anyway—precisely the concern of those who posit pathways to inadvertent nuclear war as outlined in section 2 above.

!—Democracy—EU

Democratic backsliding fractures the EU

Diamond 19 – PhD in Sociology, professor of Sociology and Political Science at Stanford University (Larry, “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition)

We are at a precarious moment—the most dangerous I have seen in my forty-year career as a scholar of democracy. Several major democracies are either hanging from a populist thread—as in Poland and the Philippines—or showing large and growing signs of strain. Immigrant bashing, ethnic chauvinism, and anti-Muslim bigotry are threatening the civic fabric of many democracies we had previously considered stable, including countries in the liberal heart of Western Europe and now even the United States. If democracy could be effectively extinguished in an EU member state like Hungary, then who is immune? If an illiberal demagogue deeply contemptuous of the media, the courts, the opposition, and the truth could win the American presidency, then what ground is safe? The problems span the globe. We should not underestimate the danger of religious intolerance, now on the rise in Indonesia and India. Like Erdogan, Narendra Modi, India’s Hindu-chauvinist prime minister, is a charismatic, ambitious populist and social conservative who extols religious virtues. Like Erdogan, Modi has amassed enough power to sideline one restraining institution after another. India’s countervailing power centers—the higher courts, the civil service, the media, and independent organizations—are strong. But will Indian democracy withstand a prolonged period of one-party dominance and religious intolerance? History teaches us—all of us—to take nothing for granted. In Africa, democratic institutions are increasingly under assault. South Africa’s wantonly corrupt president, Jacob Zuma, and his kleptocratic cabal have mercifully lost power in South Africa, but the country’s deeper problems of corruption and extreme, racially fraught poverty and inequality remain. Aside from Ghana, democracy has been either decaying or failing to take root in most other larger African states, such as Kenya, Tanzania, and Nigeria. As we have seen, despite the pervasive poverty that supposedly leads people to choose bread over freedom, most Africans still passionately want democratic and accountable government. But they need help. Instead, the current world realities of Chinese swagger, European distraction, and American retreat are enabling African autocrats to have their way. In the Middle East, the lone Arab democracy still standing after the 2011 revolutions is Tunisia. Its breakthrough was extraordinary but fragile, and it is now struggling amid its own ill winds: a reeling economy, powerful Gulf autocrats who would like to see democracy wither, and political survivors from the old dictatorship reluctant to give up the corrupt privileges and authoritarian practices of the past. In Egypt, after the fall of the longtime Mubarak dictatorship, the military has now crushed all opposition and dissent. The oil-rich Gulf states now believe that they have forced the genie of the Arab Spring back into the bottle of state repression. Meanwhile, the Middle East’s one long-standing democracy, Israel, has been drifting increasingly toward an illiberal populism that consigns its own Arab citizens to second-class citizenship— and the Palestinians of the West Bank to none at all. 4 And this could be just the beginning of the drop. Suppose that the drift in U.S. global leadership persists and even intensifies. Suppose that illiberal populism gains an even stronger footing in the United States and Western Europe. Suppose that autocratic leaders conclude that we just don’t care anymore—that there is scant price to be paid for abandoning democracy. Among the world’s fifty most populous countries, slightly less than half are now democracies, but that could well plunge to just a third or less, even as the possibilities for democratic renewal dry up in swing states that might have moved or returned to democracy under more favorable international conditions. Here’s how

that story might unfold. A third reverse wave of global democratic failures would see much of Central and Eastern Europe joining Hungary in silent defection from democracy. With the European Union's eastern flank swinging truculently away from liberal values and its western core absorbed with anti-immigrant passions and meltdowns of national self-confidence, the EU could break apart.

World war 3

Wright 12 – fellow with the Managing Global Order at the Brookings Institution (Thomas, “What If Europe Fails,” *Washington Quarterly*, 35.3)

The European Union is engaged in a ferocious political, diplomatic, and economic struggle to preserve the future of the single currency, the Euro, and the viability of what has become known simply as “the project,” namely the process of integration that has been the bedrock of Western European politics for over half a century. It is distinctly possible that its members' efforts may fail, either in the short or long term, and give way to an era of disintegration. Some have sounded the alarm: German Chancellor Angela Merkel famously remarked, “If the Euro fails, Europe fails.”¹ Former president Nicolas Sarkozy of France predicted, “If the euro explodes, Europe would explode. It's the guarantee of peace in a continent where there were terrible wars.”² Polish Foreign Minister Radek Sikorski warned the Euro's collapse could cause an “apocalyptic” crisis.³ Harvard economist Dani Rodrik cautioned “the nightmare scenario would ... be a 1930's-style victory for political extremism.” After all, “fascism, Nazism, and communism were children of a backlash against globalization.”⁴ The erosion of democracy in Hungary and the rise in support for populist parties in Greece, the Netherlands, Finland, and France appears to some to be the beginning of the end. Yet, verbal warnings from nervous leaders and economists aside, there has been remarkably little analysis of what the end of European integration might mean for Europe and the rest of the world. This article does not predict that failure will occur it only seeks to explain the geopolitical implications if it does. The severity and trajectory of the crisis since 2008 suggest that failure is a high-impact event with a non-trivial probability. It may not occur, but it certainly merits serious analysis. Failure is widely seen as an imminent danger. Would the failure of the Euro really mean the beginning of the end of democracy in Europe? Could the global economy survive without a vibrant European economy? What would European architecture look like after the end of European integration? What are the implications for the United States, China, and the Middle East? Since the international order has been primarily a Western construction, with Europe as a key pillar, would the disintegration of the European Union or the Eurozone have lasting and deleterious effects on world politics in the coming decade? Thinking through and prioritizing the consequences of a failed Europe yield five of the utmost importance. First, the most immediate casualty of the failure of the European project would be the global economy. A disorderly collapse (as opposed to an orderly failure, which will be explained shortly) would probably trigger a new depression and could lead to the unraveling of economic integration as countries introduce protectionist measures to limit the contagion effects of a collapse. Bare survival would drag down Europe's economy and would generate increasing and dangerous levels of volatility in the international economic order. Second, the geopolitical consequences of an economic crisis depend not just on the severity of the crisis but also the geopolitical climate in which it occurs. Europe's geopolitical climate is as healthy as can be reasonably expected. This would prevent a simple repeat of the 1930s in Europe, which has been one of the more alarming predictions from some observers, although certain new and fragile democracies in Europe might come under pressure. Third, failure would cement Germany's rise as the leading country in Europe and as an indispensable hub in the European Union and Eurozone, if they continue to exist, but anti-Germanism would become a more potent force in

politics on the European periphery. Fourth, economic downturn as a result of disintegration would undermine political authority in those parts of the world where the legitimacy of governments is shallow, and it would exacerbate international tensions where the geopolitical climate is relatively malign. The places most at risk are the Middle East and China. Fifth, disintegration would weaken Europe on the world stage—it would severely damage the transatlantic alliance, both by sapping its resources and by diverting Europe's attention to its internal crisis—and would, finally, undermine the multilateral order. Taking these five implications in their totality, one thing is clear. Failure will badly damage Europe and the international order, but some types of failure—most notably a disorderly collapse—are worse than others. Currently, the pain is concentrated on the so-called European periphery (Greece, Portugal, Spain, Italy, and Ireland). Disorderly collapse would affect all European countries, as well as North America and East Asia. If a solution to the Eurocrisis is perceived as beyond reach, leaders of the major powers will shift their priorities to managing failure in order to contain its effects. This will be strenuously resisted on the periphery, which is already experiencing extremely high levels of pain and does not want to accept the permanence of the status quo. Consequently, their electorates will become more risk-acceptant and will pressure Germany and other core member states to accommodate them through financial transfers and assistance in exchange for not deliberately triggering a break-up. This bitter split will divide and largely define a failing Europe. Absent movement toward a solution, EU politics is about to take an ugly turn.

AT Trump Thumps Democracy

The government is more than Trump – democracy promotion and US leadership are still possible as long as institutions remain viable

Carothers 17 (Thomas, “Democracy Promotion Under Trump: What Has Been Lost? What Remains?”, Carnegie Endowment for National Peace, <http://carnegieendowment.org/2017/09/06/democracy-promotion-under-trump-what-has-been-lost-what-remains-pub-73021>)

Eight months into his presidency, Donald Trump is still only starting to elaborate his foreign policy. Some crucial areas, such as Russia policy, remain largely undeveloped. With regard to U.S. support for democracy abroad, however, his intentions and actions are clear: he seeks to shift the United States away from the broad commitment to actively supporting democracy’s global advance that former president Ronald Reagan established in the early 1980s and that all U.S. presidents since, Republican and Democratic alike, have pursued in at least some substantial ways. Compounding this shift is the damage the new president has inflicted on U.S. democracy as a model for others. Yet despite all this, important elements of U.S. democracy support—pro-democratic diplomacy in countries under stress, democracy assistance, and engagement with democracy-related multilateral institutions—remain at least partially intact. And Congress maintains strong bipartisan backing for democracy and rights support. U.S. democracy policy is under severe strain, but writing off the United States as a key supporter of global democracy, as some observers in the United States and abroad are already doing, is premature. As a presidential candidate, Trump repeatedly signaled a lack of interest in or concern about violations of democratic norms and rights in other countries, a strong disinclination to prioritize democracy support in U.S. foreign policy, and an admiration for repressive strongmen, from Russia’s Vladimir Putin to Iraq’s Saddam Hussein. Since taking office, he has turned those words into action. He has uncritically embraced multiple nondemocratic leaders, including Egyptian President Abdel Fattah el-Sisi, Turkish President Recep Tayyip Erdoğan, and Philippine President Rodrigo Duterte. Trump chose one of the least democratic countries in the world, Saudi Arabia, for his first international trip as president, and basked in the attention lavished on him by Saudi Arabia’s repressive leaders. Visiting Poland in July 2017 at a key moment of worrisome democratic backsliding in that country, he avoided speaking to the issue and instead joined the Polish government in attacking the free press.¹ Of course, U.S. presidents often cultivate cooperative relations with selected nondemocratic leaders for the sake of various security and economic interests. But Trump has moved with unprecedented alacrity, even enthusiasm, to embrace autocrats, many of whom were previously given at least a partial cold shoulder by the United States. Through such actions, Trump has reassured and emboldened autocrats across the former Soviet Union, Central and Eastern Europe, the Middle East, sub-Saharan Africa, and Asia. Hungary’s autocratic prime minister, Viktor Orbán, for example, hailed Trump’s election as the end of “liberal non-democracy.”² Following Trump’s inauguration, he declared that, “We have received permission from, if you like, the highest position in the world so we can now also put ourselves in first place,” and ratcheted up his crackdown on independent civil society.³ Since Trump met with Bahraini King Hamad bin Isa Al Khalifa in May 2017 and reassured him that “there won’t be strain with this administration,” Bahrain has intensified its smothering of the peaceful Shia opposition.⁴ It is impossible to document the full scope of what might be called the “autocratic relief syndrome” engendered by Trump’s ascendancy. But it clearly represents a remarkably wide and significant phenomenon, one that fortifies the broader sense in global politics that democracy’s advance has not just stagnated, but slipped into reverse. Trump’s lack of interest in international democracy support is not merely a narrow blind spot. It is an integral part of his larger discomfort with the long-standing U.S. commitment to an international liberal order. It fits with his questioning of an international system of free trade, core alliance relationships, and major multilateral institutions, such as the United Nations, and his broader belief that the very idea of a positive-sum approach to international order is basically a sucker’s game. While Trump is the leading edge of the new administration’s turn away from democracy and human rights support, he is not alone. His secretary of state, Rex Tillerson, and his national security adviser, H. R. McMaster, do speak about not just pursuing U.S. interests but also U.S. values abroad. Yet in speeches, writings, and other ways, both have signaled their inclination to downgrade U.S. attention to democracy and human rights concerns for the sake of burnishing relationships with useful autocrats. U.S. Ambassador to the United Nations Nikki Haley has spoken forthrightly against human rights abuses abroad, even with respect to U.S. allies such as Saudi Arabia, yet her speeches are continually outweighed by the actions and words of President Trump and his top advisers in Washington. TARNISHED EXAMPLE President Trump has inflicted a body blow to U.S. democracy promotion not just with his foreign policy actions, but also with the damage he is doing to U.S. democracy itself. The single most important element of U.S. democracy promotion has always been the positive U.S. example of what democracy is and can achieve. Of course, the example has taken

multiple hits in the past few decades, such as the disputed presidential election in 2000 and the growing gridlock in the U.S. Congress during the early 2000s. But these and other problems pale next to the current situation of a U.S. president who broadcasts a toxic mix of antidemocratic instincts and actions—ranging from attacking independent media and judges, to asserting without evidence that profound fraud occurred in last year’s presidential election and calling for the prosecution of his main electoral rival. In all of this, Trump is speaking from the very same script that antidemocratic strongmen have been using in recent years, causing his words and actions to resound especially loudly in autocracies. For example, Cambodia’s authoritarian prime minister, Hun Sen, recently denounced a CNN report critical of sex trafficking in Cambodia, noting that “it is fitting that CNN was blasted by President Donald Trump. I would like to say that President Trump is right: U.S. media is very tricky.”⁵ Trump’s chaotic incompetence also badly wounds the U.S. example. The spectacle of a U.S. president manifestly unprepared for the job and uninterested in understanding and responding in a serious way to the country’s many challenges terribly tarnishes America’s global image. Today an American who tries to persuade an official from a nondemocratic country that his or her country should adopt democracy in order to ensure effective leadership and governance is likely to be met with raised eyebrows and a simple question: “Really?” Trump’s lack of respect for the truth does special damage to U.S. democracy and rights support. As documented by the Washington Post, during the first six months of his presidency, Trump made more than 800 false or misleading statements.⁶ For decades, besieged democracy and rights activists around the world have treasured the impact of U.S. officials speaking uncomfortable truths to foreign power holders about their violations of democratic norms. Having a chronic liar as American president greatly undercuts this power. In search of a silver lining, some U.S. democracy promoters have quietly bruited the idea that foreigners watching the current U.S. political scene will see not just an undemocratic president, but also strong independent institutions and a mobilized civil society checking such a leader, and thus learn about the resiliency of U.S. democracy as well as its flaws. This may prove somewhat true. The decisions by some judges to reject the Trump administration’s hastily issued executive order in early 2017 limiting immigration from various Muslim-majority countries, for example, were widely noted internationally. Yet thus far at least, the negative elements of the present political situation dominate international perceptions. And even with these shows of resilience, the fact that a democracy like America could elect such a leader and plunge into a sustained period of political turmoil will not be forgotten for many years around the world. Trump not only sets a damaging example of U.S. democracy at work, he has openly expressed disdain for the United States as a democratic model. In 2015, when questioned about his affection for Vladimir Putin, and Putin’s record of killing critical journalists, Trump responded: “Well, I think that our country does plenty of killing, too.”⁷ In 2016, candidate Trump mocked the idea of the United States as democratic exemplar, declaring that “when the world sees how bad the United States is and we start talking about civil liberties, I don’t think we are a very good messenger.”⁸ SOFTENING THE BLOW Some voices in the Washington policy community try to soften this harsh picture through several lines of argument: **But they do care: One such line of argument is that while Trump and his top foreign policy advisers have been going easy on some autocrats, they have been pressing other dictators on their democratic shortcomings.** Trump framed his recent modification of Obama’s policy line toward Cuba as a response to Cuba’s antidemocratic intransigence. The administration has imposed new economic sanctions on the Venezuelan government as punishment for its antidemocratic policies. Secretary Tillerson publicly chastised the Iranian government in May 2017 for its democratic failings. According to this argument, Trump has not walked away from support for democracy; like previous presidents, he is just inconsistent. One problem with this argument is that Trump and his team have so far only raised democracy concerns with very few countries. Rather than supporting democracy being the norm and embracing autocrats the exception, the balance has been reversed. Furthermore, what little attention Trump and his team have devoted to democracy abroad has been directed most pointedly to countries the United States considers hostile in a broader geostrategic sense. Democracy concerns do not appear to be asserted out of some serious attachment to principle, but rather as a club to beat up on disfavored governments. Trump’s philosophy on democracy thus appears to skeptical foreign observers as profoundly cynical—for my antidemocratic friends, anything; for my enemies, democracy. This is tough-minded realism: A second line of mitigating argument holds that Trump’s approach on democracy and human rights should be understood not as a deviation beyond the normal bipartisan boundaries of U.S. policy but instead as a tough-minded embrace of realism. There are indeed realist elements in the outlook of Trump and his team. Their tendency to treat foreign policy interests and values as intrinsically separate categories, and thus to argue that values are secondary while interests are paramount, is a standard tenet of realism. So too are their doubts about the capacity of the United States to have much effect on the political direction of other societies, and their tendency to view democracy support as all about lecturing friends or, even worse, trying to impose democracy upon them. But Trump’s line has elements unrecognizable in conventional realism. Realism certainly acknowledges the need to cooperate with autocratic regimes when it serves the economic or security interests of the United States. It does not, however, call for gushing over dictators and embracing them as political soulmates. Furthermore, whereas realism looks to hard-nosed bargains in which concessions are made to problematic foreign leaders for the sake of clear gains on economic or security grounds, Trump embraces dictators for no apparent quid pro quo, as part of no serious calculation of interest or pursuit of gains. What, for example, has the United States gotten from the government of Egypt that it was not getting previously in terms of security cooperation after Trump fawned over President Sisi? Also alien to traditional realist dogma is Trump’s disparagement of U.S. democracy. Realists may not believe in investing much diplomatic capital to advance democracy abroad, but they would certainly not favor tossing away America’s traditional global political prestige for no apparent return. Where is the sober-minded realist cost-benefit calculation in that? More generally, a realist foreign policy that strikes calculated bargains in service of U.S. national interests requires a high degree of internal coherence, message discipline, and nuanced policy elaboration, characteristics largely absent from Trump’s foreign policy to date. It’s still too early to tell: **A third mitigating argument is that Trump’s line on democracy abroad should not provoke serious concerns either because it is still too early to tell what his foreign policy will be in practice or because his seasoned advisers will**

make the important decisions and rein in his off-the-ranch instincts. It is true that many elements of his foreign policy still need to be elaborated, and that considerable divergences will occur between statements he has made and actions he will take. Yet on democracy he has already done much, and has done so decisively. His embrace of autocrats and disparagement of U.S. democracy, both in words and deeds, have been heard worldwide, creating perceptions that cannot be modified easily. It may still be early days for some areas of foreign policy, but with respect to support for democracy and human rights, Trump's administration is already well along a road to nowhere. With regard to his seasoned advisers, they will certainly restrain some of Trump's instincts and intentions. They have done so, for example, on policy toward Afghanistan. Their influence (as well as congressional pressure) shows in the positive recent decision by the administration to withhold some military and economic aid to Egypt in response to Egypt's continued intransigence on its antidemocratic governance. But sometimes they will not trim the president's sails, such as when Trump went against the views of Secretary of Defense James Mattis and Secretary Tillerson in deciding to withdraw from the Paris climate accord. Moreover, the bully pulpit component of democracy policy—the president's public profile and statements (including his tweets)—is crucial. No amount of quiet diplomacy by experienced advisers can patch up the damage inflicted by a president who waxes lyrical about dictators, disparages democracy promotion, and demonstrates an obvious disdain for basic democratic norms and institutions at home.

WHAT REMAINS Although the president's role is crucial, **democracy policy is a complex, multilayered endeavor, with multiple important elements.** Diplomatic efforts well below the level of the president and his top advisers often contribute significantly to democracy support. Democracy assistance can do much good. Engagement with multilateral institutions and initiatives is a valuable multiplier. Congressional support and pressure can help preserve and advance work in these three areas and more broadly. The **damage done so far under Trump in these various areas has not yet been extensive,** although much uncertainty exists about how they will fare as the Trump presidency unfolds.

AT democracy resilient / no backsliding

Their argument is an optimistic fallacy--democracy seems resilient until it's not

Norris 17 - Paul McGuire Lecturer in Comparative Politics at Harvard University, the Laureate Professor of Government and International Relations at the University of Sydney, and the founding Director of the Electoral Integrity Project (Pippa, "Is Western Democracy Backsliding? Diagnosing the Risks Faculty Research Working Paper Series," RWP17-012)

If we return to Juan Linz and Alfred Stepan's original formulation for insights, however, the consolidation of democracies can be understood as a mature stage when regimes prove resilient even under periods of severe crisis and electoral turbulence. Of course, like steel bars that appear strong until shattered by liquid nitrogen, regimes may appear resilient until they are not. But are the United States and other Western democracies actually in danger of backsliding so that they come to resemble hybrid regimes like Turkey, Thailand, the Philippines, and Venezuela, characterized by weak checks and balances on executive powers, flawed or even suspended elections, fragmented opposition forces, state restrictions on media freedoms, intellectuals, and civil society organizations, curbs on the independence of the judiciary and disregard for rule of law, the abuse of human rights by the security forces, and tolerance of authoritarian values? Consolidation is theorized to rest on the pillars of widespread public agreement with democratic values, constitutional arrangements reflecting democratic norms and principles, and the absence of major groups and parties threatening to undermine the regime. Of these pillars, populist-authoritarian forces threatening to dismantle core values in liberal democracy pose the gravest risk, especially in America, given the vast powers of the U.S. presidency and its hegemonic role in the world. The mainstream news media, the courts, and a reenergized civil society are actively pushing back to resist the threats to democracy arising from the Trump administration. In Congress and State Houses, however, the Democrats are decimated, and the Republican party and conservative activists seem willing to be seduced by dreams of power. It remains to be seen whether the red cap 'Make America Great Again' forces of Trump, or the pink-hat resistance, will succeed.

***!—SOP

!—SOP Checks Trump

Maintaining effective SOP checks trump

Michaels 16 – Jon, professor of law at UCLA, “The Founders anticipated Trump. We can handle this.” LA Times, 11/11/16, <http://www.latimes.com/opinion/op-ed/la-oe-michaels-checks-balances-trump-20161111-story.html>

What I told them is what I believe. **Our Framers anticipated the rise of Trump.** James Madison, Alexander Hamilton and the rest expected the threat of tyranny. Like nervous parents, they wanted us to be well protected, so they designed a system of checks and balances. For much of our history, those extra protections have seemed, at best, quaint and, at worst, restricting — like bulky padding our dads and moms made us wear before playing street hockey. Before turning to Tuesday’s results, let’s pause there for a second — and congratulate ourselves. We’ve exceeded all expectations. Over the course of 230 years, we can count the number of presidential knaves on one hand. We’ve had plenty of mediocrity but remarkably little venality. Of course, we can’t take all the credit: The very existence of those safeguards may have dissuaded would-be tyrants, keeping them in line or altogether discouraging them from seeking office. The padding, so to speak, was useful, even if it wasn’t tested. Now we find ourselves at a moment when that hockey game may get very rough, very fast. President-elect Trump ran against Washington, against the normally civil hockey game. He also ran, hard, against many of our players, notably women and people of color. Today we ought to thank the Framers for all that padding — for the separation of powers. First, remember the judiciary. Those were the words I said to my daughter when she, reluctantly, went to bed Tuesday night. I told her that Aladdin, Dorothy and Cinderella didn’t have judges. There was no habeas corpus in Oz. If there had been, no one would have had to resort to magic. But we do, and the judges can prevent a good deal of abuse, certainly dispelling any fears of Trump unilaterally jailing anyone, let alone Hillary Clinton. Second, remember Congress. Many progressives have spent the past eight years railing against an obstructionist Congress. Those same progressives are, no doubt, now looking to Democratic Minority Leader Chuck Schumer, hoping he’s learned a few tricks from Republican Majority Leader Mitch McConnell. Congress has a legitimate role to play as a strong, defiant counterweight. Again, think of bulky hockey pads. Congress holds the president back from making amazing moves, but they also protect us against injury. That’s the trade-off we make in the political arena — low scoring games and few injuries. Third, remember the civil service. As President Obama deftly demonstrated, entrepreneurial presidents can work around an obstructionist Congress, directing administrative agencies to carry out responsibilities ordinarily entrusted to the legislature. But even here we are well protected: We have a system of administrative separation of powers that ensures the new president and his cadre of political appointees will have to work closely with hundreds of thousands of professional, politically insulated career government officials. Unlike agency heads, these career officials do not serve at the pleasure of the president. Instead, they are legally and professionally acculturated to resist, challenge or reshape policies they find unreasonable, inconsistent with existing law or downright unconstitutional. Trump and his team know this. That’s precisely why they’ve already announced they’re seeking to undo the civil service tenure laws that empower this pivotal, if often invisible, counterweight. Congress and the courts should take note of that threat, and take it seriously.

Checks and balances trump trump

Scarry 17 – Eddie, “Media cheer the 'checks and balances' blocking the Trump agenda,” Washington Examiner, 3/28/17, <http://www.washingtonexaminer.com/media-cheer-the-checks-and-balances-blocking-the-trump-agenda/article/2618642>

The news media has found a renewed appreciation for the government's separation of powers, and has cheered the various ways President Trump's agenda has been thwarted either in Congress, or in the courts. The White House first hit a roadblock when federal courts stayed an executive order intending to limit immigration from several countries. Trump was handed another defeat when Democrats and the Republican Freedom Caucus denied him and House Speaker Paul Ryan the votes to pass an unpopular healthcare bill to replace Obamacare. “We might thank Mr. Ryan for one thing,” the New York Times editorial board said Monday night. “His dreadful [healthcare] legislation drove voters of both parties to flood town halls and the Capitol, demanding that Congress reject the bill. So at a time when many were beginning to question the vitality of American democracy, Mr. Ryan's failure showed Americans that our system works.” The Wall Street Journal ran a similar editorial Monday mocking political commentators and news editors who warned that Trump represented an existential threat to democratic norms, such as when the Washington Post adopted the new slogan, “Democracy dies in darkness” (though the paper said

the slogan was not a response to Trump). "The real story of the Trump Presidency so far is that the **normal checks and balances of the American system are working almost to a fault.**" the Journal wrote. On the healthcare bill being pulled from a House vote, Bloomberg View columnist Noah Feldman wrote Monday "Constitutional checks and balances are doing their job, making sure Donald Trump doesn't rule on his own." "Trump's a Dictator?" read a headline in Politico. "He **can't even repeal Obamacare. We just got hard proof that America's checks and balances are still working.**" During his election campaign, Trump frequently pledged to institute new policies on immigration, healthcare and other issues "quickly" and "strongly." But while Republicans enjoy control over the White House and both houses of Congress, Democrats retain a sizable minority that can still quash legislation and any unilateral action by Trump via executive order is subject to judicial review. Even if legislation passes the House, Democrats can block it as long as less than eight of them support advancing it in the Senate. The competing factions have served as a reality check that enacting policy change is often slow and not installed so "quickly."

*****!—Hegemony**

I/L—Court Legitimacy k2 Heg

Legitimacy key to hegemony

Knowles 09, (Robert Knowles, professor at New York University Public Law, American Hegemony and the Foreign Affairs Constitution, 41 Ariz. St. L.J. 87 2009)

This Article offers a new model for assessing appropriate judicial deference in foreign affairs that takes account of American-led order. By maintaining consistent interpretation of U.S. and international law over time and providing virtual representation for other nations and non-citizens, U.S. courts bestow legitimacy on the acts of the political branches, provide public goods for the world, and increase America's soft power - all of which assist in maintaining the stability and legitimacy of the American-led hegemonic order. This "hegemonic" model substantially eliminates the problematic deference gap between foreign and domestic cases and enables courts to appropriately balance foreign affairs needs against other separation-of-powers goals by "domesticating" foreign affairs deference. The hegemonic model also has explanatory and predictive value. In four recent cases addressing habeas claims by alleged enemy combatants, the Supreme Court rejected special deference. 13 It refused to defer to the executive branch [*92] interpretations of foreign affairs statutes and international law, and even asserted military exigencies. The hegemonic model justifies this recent rejection of special deference and explains why it could augur increased judicial involvement in foreign affairs. The interpretive scope here is limited. The hegemonic model is functional but concerns overall governmental effectiveness in foreign affairs, not the appropriate allocation of power with respect to any particular policy. Nor do I analyze the appropriate allocation of foreign affairs powers between the President and Congress, although the hegemonic model has many implications for this relationship as well. Finally, I do not address formalist - e.g., originalist - arguments for or against special deference. The hegemonic model provides insights that should be considered in conjunction with the teachings of text, structure, and history. 14

!—Unipolarity Good

Unipolarity is good—it's the most stable system of power configuration

Cropsey, 11-15-2018 - Seth Cropsey, senior Fellow at Hudson Institute and director of Hudson's Center for American Seapower. He began his career in government at the Defense Department as Assistant to Secretary of Defense Caspar Weinberger and subsequently served as Deputy Undersecretary of the Navy where he was responsible for Navy's opposition to defense reorganization, development of the maritime strategy, and naval special operations; "Seeking Stability In The Structure of Power," Hoover Institution, <https://www.hoover.org/research/seeking-stability-structure-power>

The global strategic landscape is moving away from the primacy that America achieved over the last century. New terrain includes the possibility of great power competition, a return to the bipolarity that policy-makers in the immediate post-Cold War said must never happen again. Current sentiment in the U.S. illustrates that there are worse possibilities than bipolarity. The social science bent in the humanities enabled polarity's drift into the study of international relations. It is used to describe a specific phenomenon—the distribution of power between political units in an international system. Polarity's antecedent is the "balance of power," a central concept in Western international relations theory that, as David Hume noted, has appeared from Thucydides onwards. Nor is the balance of power restricted to the Western tradition. The great Chinese literary work, The Romance of the Three Kingdoms, recounts the struggle for power during and after the Han dynasty's collapse. The balance of power concept holds that a rising political actor's neighbors will naturally view it as a threat. Careful diplomacy and structural impediments, including political ineptitude, ideology, and enduring enmity between potential allies can mitigate the balance of power's effects, while outright military superiority can eliminate the balance altogether and replace it with hegemony. But absent global governance or universal empire, the logic of the balance of power will continue to govern the international system. Polarity theory, however, transcends the abstract notions of the balance of power. It identifies the number of actors in an international system as the most important variable in determining its character and stability. Multipolar systems involve several relatively equal great powers, which form alliances to further their own ambitions, and check those of their rivals. Bipolar systems are characterized by two dominant "superpowers," whose strength forces all other actors to choose between each titan. Unipolar systems, the rarest historically, are defined by a single superpower, with nearly matchless military superiority. The line between these polar systems, particularly bipolar and multipolar ones, is fuzzy. For example, while Athens and Sparta dominated 5th century B.C. Greek politics, both had to respect the concerns of lesser powers. Sparta's domestic structure compelled attention to allied concerns, particularly those of Corinth, for fear of defection or the creation of a third contestant. The Cold War's conclusion initiated an unprecedented period of unipolar power. Balancing typically followed such watershed moments in international politics, either immediate, as occurred between 1945 and 1952, or delayed by unjustifiable hope, as with the interwar period. In the sole alternative case—Napoleon's defeat in 1815 and the subsequent Concert system—creative diplomacy and broad homogeneity in relative power still relied upon the balance of power's logic. Initially, however, predictions of resistance to the United States' dominant international position did not materialize. Similarities between the Anglosphere and European continent diminished suspicion, while a politically tumultuous Russia and economically-driven China lacked the power to contest American actions regardless of objections. Additionally, America's unique character suited its unipolar role. Americans have eschewed imperial expansion and territorial conquest. While smaller states had to band together against the hegemon, or risk destruction, they would instead be able to cooperate with the hegemon and with each other, secure in the United States' benign intentions. Just as the balance of power defines international political life, deception permeates all forms of politics. Particularly for actors with aggressive strategic goals, obfuscating capabilities and intentions is a critical political instrument. But as economic, and by extension military, power have dispersed, strategic obfuscation has become more difficult. The current international system exhibits multipolar and bipolar characteristics.

!—LIO, LL

International order solves climate change, bioweapons, and cyberwarfare.

Deudney and Ikenberry, 18 - *Daniel Deudney, Associate Professor of Political Science at Johns Hopkins University **G. John Ikenberry is Albert G. Milbank Professor of Politics and International Affairs at Princeton University; "Liberal World: The Resilient Order," Foreign Affairs, July/August 2018, <https://www.foreignaffairs.com/articles/world/2018-06-14/liberal-world>

This dynamic of constant change and ever-increasing interdependence is **only accelerating.** Human progress has caused **grave harm** to the planet and its atmosphere, **yet climate change will** also require **unprecedented levels of international cooperation.** With the rise of **bioweapons and cyberwarfare,** the capabilities to wreak mass destruction are **getting cheaper** and ever **more accessible,** making the international regulation of these technologies a vital national security imperative for all countries. At the same time, **global capitalism has drawn more people and countries into cross-border webs of exchange,** thus **making virtually everyone dependent on the competent management of international finance and trade.** In the age of global interdependence, **even a realist must be an internationalist.**

!—No Alternative/Multipolarity Bad

Multipolarity fails---there's no alternative to U.S. leadership

Lyon, 19 - senior fellow at ASPI; Rod Lyon, "Can 'revisionists' rule the world?," *Strategist*, 3-14-2019, <https://www.aspistrategist.org.au/can-revisionists-rule-the-world/>

That takes us to the separate but larger question: could Russia and China cooperate to shape a new global order in Asia, Europe and the Middle East? That's only a portion of the globe, but an important portion.

Well, Russia's a European-centred state with a revanchist agenda focused on reversing its post-Cold War losses. That's a big ask, though. The Soviet Union's gone and it isn't coming back. China, by comparison, is a rising power—and one that believes it's entitled to a Sino-centric order in Asia, as a sort of latter-day compensation for the century of humiliation. It has both economic and growing military heft. Still, **it remains an incomplete power, demonstrated most clearly by its relentless, state-organised theft of** technology and intellectual **property, and its large internal challenges.**

It's not obvious that Russia and China could build and sustain a new global order. Yes, they're both permanent members of the UN Security Council. But **neither attracts genuine 'followers'** in the international community. They agree on what they don't want—US hegemony—rather than on what they do.

They're not driven by any shared ideology or common vision of what the world should look like under their leadership. Some suggest that they want to reverse the central tenet of the liberal order and make the world safe for authoritarianism, but that's a negative, self-centred vision of the future rather than a positive ideational one.

Nationalism is a rising force in both countries, but that's as likely to repel as attract.

Geopolitically, will the rising power cooperate with the declining one—except to secure its own backyard? Conversely, will Moscow see Beijing as its true strategic partner—as the Belt and Road Initiative extends Chinese influence across Russia's soft Eurasian underbelly?

Where does that leave us? Frankly, a world order that turns upon close cooperation between Russia and China seems unlikely. Each is better placed to exert regional influence than global clout. And both are better placed to play the easy role of spoilers than the difficult role of architects. A world disordered by the joint efforts of Russia and China to diminish US power and influence—accelerated by some of the US's own actions—seems the near-term reality we'll be living through.

*****!—Afghanistan Impact**

IL – yes model

Yes model

Ginsburg 6 – RBG, Judicial Independence: The Situation of the U.S. Federal Judiciary, Nebraska Law Review, 85.1

Essential to the rule of law in any land is an independent judiciary, judges not under the thumb of other branches of Government, and therefore equipped to administer the law impartially. The U.S. Federal Judiciary has been a **model for the world** in that regard. Fortunately so, for we can promote the rule of law, administered fairly and fearlessly elsewhere-in Afghanistan, Colombia, Iraq, Kosovo, Ukraine, for example-only **by vigilantly practicing at home what we preach abroad**. As recent experience confirms, however, judicial independence is vulnerable to assault; it can be shattered if the society law exists to serve does not take care to assure its preservation.

IL – institutions key

Strong institutional democracy key to stop conflict and collapse

Santos 16 – Lean Alfred Santos, Lean Alfred Santos is a Devex development reporter focusing on the development community in Asia-Pacific, including major players such as the Asian Development Bank and the Asian Infrastructure Investment Bank. Prior to joining Devex, he covered Philippine and international business and economic news, sports and politics. Lean is based in Manila, Devex, "Building democracy and development in conflict situations," <https://www.devex.com/news/building-democracy-and-development-in-conflict-situations-88762>

Inclusion and empowerment are vital for both democracy and development to take hold in conflict and post-conflict situations, according to Nicholas Haysom, special representative of United Nations Secretary-General Ban Ki-moon for Sudan and South Sudan.

"I think the temptation in some of these situations is to suppress different people's identities," said Haysom, who was previously the secretary-general's representative in Afghanistan. "They'll say there's only one identity, [and] you can understand that because of the imperative of nation building." "But that cannot be the basis of building a firm and inclusive society. It has to be one that recognizes people's differences but based on their shared values and shared interests and destiny," he said. Below are the highlights of our conversation with UNSG Special Representative for Sudan and South Sudan Nicholas Haysom on the sidelines of the Annual Democracy Forum in Ulaanbaatar, Mongolia organized by International IDEA, which have been edited for length and clarity. Can you tell us about your experiences working in Afghanistan and more recently Sudan and South Sudan, and how recent and current conflicts have affected development? Afghanistan faces quite extreme challenges, [including a] tough economic contraction at the moment with the withdrawal of international presence and its effect in the economy, which has been very significant. The country also faces a very difficult political transition after a contested election, and all of that is compounded by security challenges from a countrywide insurrection or insurgency led by the Taliban. It faces the challenge really of trying to find a route to economic development, while at the same time a recipe for stability and peace. I moved very directly from Afghanistan to South Sudan, and almost immediately, the government of national unity in South Sudan effectively collapsed and we saw the outbreak of violence between the two components of that government. The very dangerous element in that collapse is that it has taken place along ethnic lines, and so you have the potential eruption of a civil war which divides the people, in a road which will lead to quite extreme violence and civil rights abuses. At the same time, the country has a difficult relationship with Sudan itself, its northern neighbor from which it recently seceded, leaving quite a number of problems behind including trade and border issues. Because both countries have internal conflicts, there is also the suspicion and the reality of support for the insurgency in each other's countries, either because of the historical linkages in one case or the capacity to weaken the other country to create competitive positions. What are the challenges for democracy and development to take root in these countries? How does the issue of security affect democracy and development? Afghanistan, like many other countries, faces the challenge of overcoming a security threat while at the same time building its own internal cohesion. That requires building its democratic culture. [The same in] South Sudan. Both countries have a long history of conflict, and so they have to build their institutions against the backdrop of divided and weak institutions in the country.

IL – yes dialogue

US Afghan judicial dialogue exists

USAID 16 USAID from the American People, Democracy and Governance, December 22nd 2016, <https://www.usaid.gov/afghanistan/democracy-governance>

RULE OF LAW With the Afghan government, USAID is building the capacity of judges and court officials, and strengthening the judicial branch. By July 2016, USAID had trained more than 650 judges and 650 court administrators on management, leadership, and court administration. USAID has also worked directly with elders and religious leaders to link the formal and traditional justice systems, increase access to justice, and bolster stability through conflict resolution. ANTI-CORRUPTION USAID in conjunction with the Afghan Government, has developed Provincial Anti-Corruption Working Groups in Herat and Balk, and will create them in Kandahar, Helmand, Nimroz, Samangan, Logar, and others in order to tackle the problem of corruption through the cooperation of multiple stakeholders. USAID supports the lead anti-corruption body in Afghanistan to conduct vulnerability to corruption assessments, make recommendations for reform and monitor the implementation of recommendations.

The project recently completed an assessment with the Ministry of Public Health and in the next generation of programming, USAID will support the implementation of these reforms. Our latest project works to identify vulnerabilities to corruption in service delivery systems to streamline the processes required for Afghan citizens to access common services such as driver licenses and vehicle registration.

IL – JI key to peace

Judicial independence is key to peace

Bahrami 15 Abdul Ahad Bahrami, 8-12-2015, "The Challenges of the Afghan Judicial System ," Daily Outlook Afghanistan, the Leading Independent Newspaper, http://outlookafghanistan.net/topics.php?post_id=12815

Despite major efforts to bring reforms to Afghanistan's judicial system, the justice system has not been able to overcome key structural challenges. In absence of an efficient judicial system, a large part of the Afghan population goes to local religious and customary justice authorities or in many cases to the Taliban for resolving their disputes. This has been a major challenge for the government of Afghanistan and the international community struggling to reform the judicial system as part of the long-term state-building process. Many believe it further fuels the insurgency and result to more corruption. Despite the international community spending millions of dollars on reforming

Afghanistan's justice system, there is no real hope for seeing substantial progress in salvaging Afghanistan's judicial system. Structural problems The most challenging task for reforming the Afghan judicial system is addressing the existing structural challenges. In 2002, the United Nations Office on Drugs and Crime launched a criminal justice reform program for the first time to improve the Afghan judiciary. In a proposal to improve the judicial system in Afghanistan, the United Nations Office on Drugs and Crime describes the deficiencies of the Afghan judicial system. "Despite significant improvements achieved so far, the Afghan justice system still suffers from serious systemic problems. Due to more than thirty years of conflict and civil war, the country's judicial system has been widely destroyed."

The UN program was an immediate response to reform the Afghan judicial system. It helped addressing key insufficiencies such as lack of laws, skilled personnel and other key requirements. To address key structural challenges of Afghanistan's justice system, there is need for a genuine political will to take concrete measures for reforming the judicial system. Reestablishing the rule of law, ending long-established culture of impunity in the country and creating a culture of professional justice are essential preconditions for peace and stability in

Afghanistan. Given the recent Afghan history, traditions, culture and social norms, intensive reforms are required to reach these goals. Major challenges of the Afghan judicial system are lack of high quality legal education, qualified staff, poor communication and coordination between Afghan state institutions and widespread corruption. These challenges create a disabling condition for a sound and viable justice system that could only be resolved by working on legal and judicial facilities and the people dealing with the facilities. However, to some extent, the situation has improved regarding structural issues such as establishing systems, developing laws and enhancing the professional capacity of the judicial system's personnel. The conflict in Afghanistan has had negative impacts not only on physical justice system, but also on the culture of rule of law. This applies in particular but not exclusive can be seen in the Afghan provinces. In this regard, a long-term approach and persistent efforts are required to improve rule of law and order in the society in the areas concerned with the judicial system.

! – terminal

Instability in Afghanistan implodes regional stability, causing conflict spirals

Colonel Stuart **Kenny 16**, graduated from the Royal Military College, Duntroon in 1991. His early postings included 1 Field Regiment, 4 Field Regiment, 53 Independent Training Battery at the School of Artillery, and an instructor at the Land Warfare Centre. In July 2007, he assumed command of 1 Field Regiment. Later postings included Land Warfare Development Centre; Defence Advisor to the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade; and Director Global Operations in Joint Operations Command, “Instability in Afghanistan: Why Afghanistan matters and what Australia can do to address the causes of instability”,

Afghanistan’s geostrategic importance Afghanistan’s neighbourhood has become a region influenced by multipolar competition between regional and great powers, including India and Pakistan, two **nuclear-armed regional states** that are strategic competitors. At the same time, there are indications of growing competition between China and India over their respective interests in Afghanistan. There is evidence of an emerging ‘New Great Game’ between China and India in the region, which is aimed at increasing their respective influence as aspirational regional powers, and increasing their access to trade and energy resources.¹⁹ China has significant economic interests in both Afghanistan and Pakistan, already investing over US\$5 billion in Afghanistan for access to the Aynak copper mine and several oil fields.²⁰ China’s security and economic interests in Pakistan are significant.²¹ China’s key economic interest in Pakistan is the so-called China-Pakistan Economic Corridor, which travels through the western part of Pakistan, adjacent to areas in which the terrorist group Tehreek-e-Taliban Pakistan is active. An unstable Afghanistan would therefore adversely impact this corridor, giving Beijing reason to support a stable security situation in Afghanistan. China’s shared border with Afghanistan and concerns regarding the spill-over of Islamic extremism from the restive Afghan-Pakistan frontier into China’s Muslim-majority state of Xinjiang also add to Beijing’s interest in the future of Afghanistan. Iran also shares a border with Afghanistan and is a key stakeholder in its future.²² The two nations share a long history extending back to the influence of the Persian Empire, which resulted in shared linguistic ties and a significant Shia Muslim minority via the Persian-speaking Hazaras. Until the 1857 Treaty of Paris, Afghanistan’s western city of Herat was part of Iran. During the rule of the Taliban, Iran provided arms and training to the Hazaras and Tajiks in an attempt to halt the spread of the Taliban to North and North Western Afghanistan. Tehran is concerned that increased instability in Afghanistan has the potential to adversely impact its security and economy.²³ The success of the Taliban is seen to have direct implications on Iran’s Baloch rebellion and its potential to cause an influx of refugees into Iran. Economically, Iran views Afghanistan as a possible link between India and Iran. Iran has partnered with India in developing a significant transport corridor from Afghanistan to its port of Chabahar, thus weakening Afghanistan’s reliance on Pakistan for external access and, as a result, providing economic benefits to Tehran. Iran, like the US, does not want to see the Taliban controlling Afghanistan.²⁴ However, Tehran’s Afghanistan policy is sometimes at odds with that of Washington, particularly in its traditional area of influence in the west and south of Afghanistan. Iran is also in competition with Pakistan for influence in Afghanistan. While Islamabad wants a pro-Pakistan, Pashtun-dominated government, Tehran wants a government which will not challenge its interests and which will ‘preserve its influence in western Afghanistan’.²⁵ The interests and competition of these regional powers **in Afghanistan place it in an important geostrategic position to influence the stability and security of the greater South and Central Asia regions.** As Australia has an increasing interest in the Indian Ocean, via its Indo-Pacific strategic setting, the effects of Afghanistan on South Asia should be the focus of Australia’s national interest. Therefore, the remainder of this section of the paper will focus on the importance of Afghanistan on the current and future situation in South Asia

and its importance to Australia. 3 Why Afghanistan matters to South Asia stability The direct influence of Afghanistan's stability on the security of Pakistan is a critical strategic concern to the international community.²⁶ Pakistani stability is important for four main reasons. It is located at the crossroads of South and Central Asia and **can influence the global energy supply** artery in the Indian Ocean through its ports at Gwadar and Karachi. It has a large and youthful population of over 170 million people who could pose a humanitarian crisis in the event of state failure. It is also nuclear armed and has a history of actively pursuing its national security interests through the use of proxy groups.²⁷ Therefore, any failure of or destabilisation within the Pakistan state has the potential to have a knock-on effect on South Asian stability, with ramifications further afield. Success by the Taliban and its affiliates in Afghanistan may embolden anti-state forces in Pakistan, particularly Tehreek-e-Taliban Pakistan, which may in turn threaten the stability of or, in the most extreme case, **lead to the failure of Pakistan's government**.²⁸ The longstanding rivalry between Pakistan and India, and their respective influence in Afghanistan, also has the potential to impact on regional stability in South Asia.²⁹ The corrosive impact of this rivalry has been acknowledged by President Ghani, who recently claimed that ongoing violence and **instability in Afghanistan is a result of a 'proxy war between India and Pakistan'**.³⁰ Afghanistan is simply another theatre in which Indo-Pakistan regional rivalry is played out. Maximising its own influence in Afghanistan is seen by New Delhi as a component of its desire to 'maintain dominance over Pakistan in South Asia'.³¹ Pakistan in turn views Afghanistan as a critical element in its defence against an expansive India.³² To increase its influence in Afghanistan, New Delhi signed a Strategic Partnership agreement with Kabul in October 2011.³³ This partnership is focused on Indian assistance to the reconstruction of Afghanistan in the areas of education, politics, economic issues and trade. The agreement also addresses security issues, although it is not a security alliance. India has not committed to deploying any security forces into Afghanistan; however, it has agreed to provide security force training for the ANSF in India. The partnership has also offered significant economic opportunities to both nations.³⁴ For example, an Indian mining company has received concessions to develop a large block in the Afghan iron ore deposit at Hajigak. India has also granted Afghanistan preferred trading status for its food exports, so that India is one of the few trading partners with which Afghanistan has a positive trade balance. India is the fourth largest donor to Afghanistan, having given over US\$2 billion to Afghanistan through aid and development projects to develop its economic capacity with roads, power, education and agriculture.³⁵ India sees a secure and stable Afghanistan as a key component of the region, which will be vital to India's access to the energy resources and markets in Central Asia.³⁶ The Strategic Partnership has provided India with an opportunity to develop a greater role in regional affairs, thereby enhancing its status as a rising regional power.

Even a limited Indo-Pak nuclear war causes massive cascading environmental effects

Roblin 19 (Sébastien Roblin holds a master's degree in conflict resolution from Georgetown University and served as a university instructor for the Peace Corps in China. "Why a So-Called "Limited" Nuclear War Between India and Pakistan Would Devastate the Planet" 3/9/19 <https://nationalinterest.org/blog/buzz/why-so-called-limited-nuclear-war-between-india-and-pakistan-would-devastate-planet-46532>) wtk

Between February 26 and 27 in 2019, Indian and Pakistani warplanes launched strikes on each other's territory and engaged in aerial combat for the first time since 1971. Pakistan ominously hinted it was convening its National Command Authority, the institution which can authorize a nuclear strike. The two states, which have retained an adversarial relationship since their founding in 1947, between them deploy nuclear warheads that can be delivered by land, air and sea. However, those weapons are inferior in number and yield to the thousands of nuclear weapons possessed by Russia and the United States, which include megaton-class weapons that can wipe out a metropolis in a single blast. Some commenters have callously suggested that means a "limited regional nuclear war" would remain an Indian and Pakistani problem. People find it difficult to assess the risk of rare but catastrophic events; after all, a full-scale nuclear war has never occurred before, though it has

come close to happening. Such assessments are not only shockingly callous but shortsighted. In fact, several studies have modeled the global impact of a “limited” ten-day nuclear war in which India and Pakistan each exchange fifty 15-kiloton nuclear bombs equivalent in yield to the Little Boy uranium bomb dropped on Hiroshima. Their findings concluded that **spillover would in no way be “limited,”** directly impacting people across the globe that would struggle to locate Kashmir on a map. And **those results are merely a conservative baseline,** as India and Pakistan are estimated to possess over 260 warheads. Some likely have yields exceeding 15-kilotons, which is relatively small compared to modern strategic warheads. Casualties Recurring terrorist attacks by Pakistan-sponsored militant groups over the status of India’s Muslim-majority Jammu and Kashmir state have repeatedly led to threats of a conventional military retaliation by New Delhi. Pakistan, in turn, maintains it may use nuclear weapons as a first-strike weapon to counter-balance India’s superior conventional forces. Triggers could involve the destruction of a large part of Pakistan’s military or penetration by Indian forces deep into Pakistani territory. Islamabad also claims it might authorize a strike in event of a damaging Indian blockade or political destabilization instigated by India. India’s official policy is that it will never be first to strike with nuclear weapons—but that once any nukes are used against it, New Dehli will unleash an all-out retaliation. The Little Boy bomb alone killed around 100,000 Japanese—between 30 to 40 percent of Hiroshima’s population—and destroyed 69 percent of the buildings in the city. But Pakistan and India host some of the most populous and densely populated cities on the planet, with population densities of Calcutta, Karachi and Mumbai at or exceeding 65,000 people per square mile. Thus, **even low-yield bombs could cause tremendous casualties.** A 2014 study estimates that the immediate effects of the bombs—the fireball, over-pressure wave, radiation burns etc.—would kill twenty million people. An earlier study estimated a hundred 15-kiloton nuclear detonations could kill twenty-six million in India and eighteen million in Pakistan—and concluded that escalating to using 100-kiloton warheads, which have greater blast radius and overpressure waves that can shatter hardened structures, would multiply death tolls four-fold. Moreover, these projected body counts omit the secondary effects of nuclear blasts. Many survivors of the initial explosion would suffer slow, lingering deaths due to radiation exposure. The collapse of healthcare, transport, sanitation, water and economic infrastructure would also claim many more lives. A nuclear blast could also trigger a deadly firestorm. For instance, a firestorm caused by the U.S. napalm bombing of Tokyo in March 1945 killed more people than the Fat Man bomb killed in Nagasaki. Refugee Outflows The civil war in Syria caused over 5.6 million refugees to flee abroad out of a population of 22 million prior to the conflict. Despite relative stability and prosperity of the European nations to which refugees fled, this outflow triggered political backlashes that have rocked virtually every major Western government. Now consider likely population movements in event of a nuclear war between India-Pakistan, which together total over 1.5 billion people. Nuclear bombings—or their even their mere potential—would likely cause many city-dwellers to flee to the countryside to lower their odds of being caught in a nuclear strike. Wealthier citizens, numbering in tens of millions, would use their resources to flee abroad. Should bombs beginning dropping, poorer citizens many begin pouring over land borders such as those with Afghanistan and Iran for Pakistan, and Nepal and Bangladesh for India. These poor states would struggle to supports tens of millions of refugees. China also borders India and Pakistan—but historically Beijing has not welcomed refugees. Some citizens may undertake risky voyages at sea on overloaded boats, setting their sights on South East Asia and the Arabian Peninsula. Thousands would surely drown. Many regional governments would turn them back, as they have refugees of conflicts in Vietnam, Cambodia and Myanmar in the past. Fallout Radioactive fallout would also be disseminated across the globe. The fallout from the Chernobyl explosion, for example, wounds its way westward from Ukraine into Western Europe, exposing 650,000 persons and contaminating 77,000 square miles. The long-term health effects of the exposure could last decades. India and Pakistan’s neighbors would be especially exposed, and most lack healthcare and infrastructure to deal with such a crisis. Nuclear Winter Studies in 2008 and 2014 found that of one hundred bombs that were fifteen-kilotons were used, it would blast five million tons of fine, sooty particles into the stratosphere, where they would spread across the globe, warping global weather patterns for the next twenty-five years. The particles would block out light from the sun, causing surface temperatures to decrease an average of 2.7 degrees Fahrenheit across the globe, or 4.5 degrees in North American and Europe. Growing seasons would be shortened by ten to forty days, and certain crops such as Canadian wheat would simply become unviable. Global agricultural yields would fall, leading to rising prices and famine. The particles may also deplete between 30 to 50 percent of the

ozone layer, allowing more of the sun's radiation to penetrate the atmosphere, causing increased sunburns and rates of cancer and killing off sensitive plant-life and marine plankton, with the spillover effect of decimating fishing yields.

Sino-India conflict escalates

Sameer **Lalwan 17**, Deputy Director for Stimson's South Asia program. From 2014-15, Lalwani was a Stanton Nuclear Security Postdoctoral Fellow at the RAND Corporation. He completed his Ph.D. in political science at MIT and remains a Research Affiliate at MIT's Center for International Studies. His research interests include grand strategy, counterinsurgency, civil-military relations, ethnic conflict, nuclear security, and the national security politics of South Asia and the Middle East "Signs of a Thaw in India, China Border Dispute," Cipher Brief, <https://www.thecipherbrief.com/signs-thaw-india-china-border-dispute/>

Finally, India may seek to boost international perceptions of its toughness after a series of diplomatic setbacks at the hands of Beijing. These include India's failed bid for permanent membership in the Nuclear Suppliers' Group, unsuccessful efforts to designate Jaish-e-Mohammed chief Masood Azhar a global terrorist (whom India holds responsible for major terrorist attacks), and unheeded objections to construction of a China-Pakistan economic corridor through disputed territory in Kashmir. That the recent alleged PLA incursion coincided with Indian Prime Minister Narendra Modi's visit to the United States could be construed as another attempt to embarrass India. **Both sides allege the current brinkmanship is driven by the other's domestic politics and pugnacious nationalist audiences.** Chinese analysts believe **Modi pursued a hardline China policy** to appease his hawkish base amidst lagging economic growth. Indian analysts contend Chinese President Xi Jinping is deliberately courting a crisis to consolidate power just ahead of the 19th Congress of the Chinese Communist Party this fall. TCB: What has been the track record for attempting to resolve this dispute and what does that say about the urgency of the new situation? Lalwani: The track record for mitigating border tensions between China and India is normally quite good. Most low-level flare-ups subside in a matter of weeks. The last major stand-off in 1986 lasted for 10 months and involved a dispute over the Sumdorong Chu valley in what is now the Indian state of Arunachal Pradesh. This crisis was ultimately resolved through higher level talks. However, a couple aspects of the current standoff set it apart from previous crises. Bhutan's silence regarding Indian troops in its territory has further complicated the dispute. India argues its troop deployments constitute assistance to their friend Bhutan in the face of PLA aggression. Beijing however, contends that during a diplomatic visit, Bhutan failed to confirm its request for Indian military assistance suggesting discomfort in Thimphu with India's actions. An explicit statement from Bhutan or formal invitation to Indian troops would clarify matters, but Bhutan likely needs to proceed cautiously when dealing with its two major-power neighbors. Additionally, media commentary on both sides—some state sanctioned—has adopted a much more strident and belligerent tone than in the past, increasing the potential costs to leaders backing down. TCB: Where does this lead? Lalwani: In recent statements, China has claimed it will not engage in dialogue with India until India unconditionally withdraws from Dolam. Apart from reputational concerns, **such a demand will be difficult for India to follow** given that the resumption of the road-building project would represent a fait accompli with dire security implications. While China faces less severe security concerns in this region and is arguably less vulnerable to domestic pressures than a noisy democracy like India, **China, is also unlikely to back down unprompted.** This leaves three scenarios that could unfold in the coming weeks and months. The first possibility is escalation. **Since neither side wants to capitulate first, the situation could escalate through miscalculation or misperception.** India may have outmaneuvered China for the time being through what border dispute expert Professor Dan Altman terms "advancing without attacking," pushing the ball into China's court. Aggressive signals of resolve, like live fire drills by a Chinese front-line combat brigade, could then be misperceived as actual mobilization for war. Since India has the geographical and logistical advantage in Dolam, Beijing may press its advantage in another sector of the India-China border, or even another domain like cyberwarfare.

! – terminal – spills over

Afghan instability spills-over

STNTCFA 17, HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE, COMMITTEE ON FOREIGN AFFAIRS, Washington, DC. “AFGHANISTAN’S TERRORIST RESURGENCE: AL-QAEDA, ISIS, AND BEYOND”, <https://docs.house.gov/meetings/FA/FA18/20170427/105889/HHRG-115-FA18-Transcript-20170427.pdf>

My comments are going to focus on three questions. First, **what are U.S. national security interests in Afghanistan** today? That is one. Two, what is the terrorist and insurgent landscape? And then three, what, at least briefly, steps can the U.S. do to help mitigate the threat from Afghanistan and more broadly in the region? So, let me turn to U.S. interests. I mean, I think there is no question that the U.S. has a range of interests overseas. I mentioned earlier **Russia, China, North Korea, and Iran**, but I do think the U.S. has several interests that remain in Afghanistan. One is that there are a number of extremist groups, Islamic extremist groups, that continue to operate on both sides of the Afghan-Pakistan border. Bill mentioned them earlier. They range from al-Qaeda, the Taliban, Haqqani Network to the Islamic State, but also a range of other ones that have operations in Central Asia. Second, I think **an expanding war**, if the U.S. were to leave, would also increase regional instability particularly **with countries like India, Pakistan, Iran, Russia, and even China**. A particular concern to me would be what it does to the Pakistan-India competition. Those are both nuclear armed states and have gone to war and are essentially fighting a proxy war in Afghanistan right now. Let me then move to the landscape, because I think this is important to remember. It is part of U.S. interests. The Taliban does continue to operate. It is the largest group that operates in Afghanistan. It does have its sanctuary, its command and control nodes, in Pakistan not in Afghanistan. Its three major regional surahs are also on the Pakistan side of the border. And I would just emphasize again the chairman’s remarks about the increase in Russian contacts and, at least, limited support to the Taliban. It is not a positive step in developments in the region.

! – terminal – indo-pak

Indo-pak war is the most likely scenario for escalation—Indian actions will be the deciding factor between escalation and restraint

Waqar 19 (Annie, PhD, Visiting Lecturer, Department of Politics and International Relations, University of Westminster, “Nuclear war between India and Pakistan? An expert assesses the risk” 3/6/19 <https://theconversation.com/nuclear-war-between-india-and-pakistan-an-expert-assesses-the-risk-112892>) wtk

Of the numerous areas of global tension, arguably the most perilous is that between India and Pakistan. And recent events in Kashmir have made the situation **even more dangerous**. The reason is straightforward: India and Pakistan are in a long-running and incendiary dispute, they are both nuclear powers, and crossing a confrontational threshold could ignite a nuclear war between them. Indeed, arms control investigators have long identified the subcontinent as one of the world’s likeliest nuclear flashpoints. India and Pakistan share a long and complicated history, and they have been in conflict over the disputed territory of Kashmir since 1947. The Himalayan region is one of the most militarised regions on Earth – former US president Bill Clinton has called Kashmir “the most dangerous place in the world”. Under the partition plan provided by the Indian Independence Act of 1947, Kashmir with its Muslim majority was free to accede to either India or Pakistan. But the local ruler, Hari Singh, decided against giving the population a choice, leaving the region in a geopolitical limbo and with a disputed border. A two-year war erupted between India and Pakistan in 1947 and another broke out in 1965. In 1999, the Kargil crisis, when the two countries again came to blows, may have been the closest the world has come to nuclear war since the end of World War II. Diplomatic interventions have previously helped to defuse the military tensions, but an enduring peace has remained elusive. Both sides have dug in along the disputed border and military skirmishes are commonplace. The nuclear question It has long been argued in international security circles that having nuclear weapons deters countries from using them in warfare. Indeed, in the post-World War II era, no state has used them – despite there still being around 15,000 nuclear weapons in the world. But horizontal nuclear proliferation has made the world a dangerous place; the more countries that have them, the more likely they are to be used at some stage. And while the presence of nuclear weapons may forestall a nuclear exchange, they don’t discourage nuclear states from using conventional military power against one another. And, as conventional conflicts can quickly escalate, the possibility of a nuclear exchange remains a real, if remote, possibility. So what are the chances of India and Pakistan (which both have between 130 and 150 warheads) engaging in a nuclear war? The most recent escalation is just another example of the ongoing tensions between these nuclear neighbours. It was triggered by a Kashmiri militant suicide bombing of an Indian paramilitary convoy in mid February. In that attack, more than 40 people were killed, mostly Indian military personnel – and Jaish-e-Mohammed, an Islamist terrorist group situated in Pakistan, claimed responsibility for the attack. Indian prime minister Narendra Modi, currently caught up in election fever, warned of a “crushing response”, and launched air strikes on targets in the Pakistan-controlled Khyber Pakhtunkhwa province. It was not long before both sides were exchanging artillery fire across the line of control and the conflict quickly escalated. Meanwhile, in a national televised speech, Pakistan’s prime minister, Imran Khan, stated that any further escalation between the nations would be beyond the leaders’ control, warning: With the weapons you have and the weapons we have, can we afford miscalculation? Shouldn’t we think that if this escalates, what will it lead to? The ball is now in India’s court. Modi has the choice of escalating the conflict by deploying more jets into Pakistani territory, which could lead to a flurry of “tit-for-tat” retaliations. So what could be next? Since 1974, when India stunned the world with its unexpected atomic trial of the “Smiling Buddha” weapon, South Asia has been viewed as a global nuclear problem. Nevertheless, to date, India, like China, has maintained a “No First Use” doctrine. This advocates that India will only use its nuclear weapons in response to a nuclear attack. The policy was proclaimed in 1999, a year after Pakistan effectively exploded five of its own nuclear weapons. But Pakistan has so far refused to issue any clear doctrine governing its own use of nuclear weapons. The stakes are high The combined arsenals of Pakistan and India are small compared to those of the US, Russia or China. Nevertheless, they are more powerful than those dropped on Japan in 1945 and could unleash staggering destruction if deployed on civilian targets. Indeed, even a constrained exchange of warheads between the two nations would, in a split second, be among the most calamitous ever, notwithstanding the risk of the radioactive aftermath and the long-term impact on the environment. India’s nuclear-powered ballistic missile submarine, INS Arihant, became operational in 2018, giving the country a “nuclear triad” – the ability to launch nuclear strikes by land, air and sea. Its other ground-based ballistic missile, the Agni III, has a range of approximately 3,000km. While Pakistan has a slightly larger nuclear arsenal – estimated to be 140-150 warheads in 2017 – it is less capable of delivering them to targets. Although Pakistan is developing new ballistic missiles, its current ballistic missile range is 2,000km and the country has no nuclear-armed submarines. Either way, it

currently would take less than four minutes for a nuclear missile launched from Pakistan to reach India, and vice versa. The worst case scenario is that, either through mishap or error, what began with a terrorist attack grows into a nuclear exchange aimed at one another's civilian populations. Technological advances might also exacerbate the already incendiary situation. India's arsenal now includes the BrahMos, a cruise missile developed jointly with Russia, which can be fired from land, sea or air and used as a counterforce weapon. Counterforce doctrine, in nuclear strategy, means the targeting of an opponent's military infrastructure with a nuclear strike. Discontent in the Kashmir valley could also intensify and lead to further crises. No Indian government has thus far shown the political will to solve the Kashmir crisis, to demilitarise it, or to apply the diplomatic deftness needed to negotiate a solution with Pakistan. Nor has Modi been able to control and prevent hardline Hindus from forming vigilante squads in the region and threatening and killing those they think are defiling their religious convictions. And so, on a day-to-day basis, ordinary people continue to suffer. In the past, during episodes of global tension, the US has taken the lead in crisis management. But it seems unlikely that Islamabad or New Delhi would now turn to the Trump administration for assistance in deescalating the conflict. Indeed, leaders from both countries must also consider the reaction of Asia's third nuclear power, China, which has always been the primary focus of India's nuclear program.

Indo-Pak conflict escalates

Barno 15 (distinguished practitioner & scholar in residence at the School of International Service at American University. Both are nonresident senior fellows at the Brent Scowcroft Center at the Atlantic Council. Retired Army Lt., & PhD, David Barno & Nora Bensahel, A nuclear war between India and Pakistan is a very real possibility, 11/5, <http://qz.com/541502/a-nuclear-war-between-india-and-pakistan-is-a-very-real-possibility/>)

A "pink flamingo" is a term recently coined by Frank Hoffman to describe predictable but ignored events that can yield disastrous results. Hoffman argues that these situations are fully visible, but almost entirely ignored by policymakers. Pink flamingos stand in stark contrast to "black swans"—the unpredictable, even unforeseeable shocks whose outcomes may be entirely unknown. The tense nuclear stand-off between India and Pakistan may be the most dangerous pink flamingo in today's world. The Indian subcontinent—home to both India and Pakistan—remains among the most dangerous corners of the world, and continues to pose a deep threat to global stability and the current world order. Their 1,800-mile border is the only place in the world where two hostile, nuclear-armed states face off every day. And the risk of nuclear conflict has only continued to rise in the past few years, to the point that it is now a very real possibility. India and Pakistan have fought three wars since they gained independence in 1947, including one that ended in 1971 with Pakistan losing approximately half its territory (present-day Bangladesh). Today, the disputed Line of Control that divides the disputed Kashmir region remains a particularly tense flashpoint. Both the Kargil crisis of 1999 and the 2001 attack on the Indian Parliament by Pakistan-supported militants brought both nations once again to the brink of war. Yet, unlike earlier major wars, these two crises occurred after both India and Pakistan became nuclear-armed states. Quick and forceful diplomatic intervention played a pivotal role in preventing a larger conflict from erupting during each crisis. These stakes are even higher, and more dangerous, today. Since 2004, India has been developing a new military doctrine called Cold Start, a limited war option designed largely to deter Islamabad from sponsoring irregular attacks against New Delhi. It involves rapid conventional retaliation after any such attack, launching a number of quick armoured assaults into Pakistan and rapidly securing limited objectives that hypothetically remain below Pakistan's nuclear threshold. In accordance with this doctrine, the Indian military is meant to mobilise half a million troops in less than 72 hours. The problem is, unlike its neighbours India and China, Pakistan has not renounced the first use of nuclear weapons. Instead, Pakistani leaders have stated that they may have to use nuclear weapons first in order to defend against a conventional attack from India. Therefore, both to counter Cold Start and help to offset India's

growing conventional superiority, Pakistan has accelerated its nuclear weapons programme—and begun to field short-range, low yield tactical nuclear weapons. Some observers now judge this nuclear programme to be the fastest growing in the world. Pakistan will reportedly have enough fissile material by 2020 to build more than 200 nuclear warheads—more than the UK plans to have by that time. It is not simply the pace of the build-up that should cause concern. Pakistan's arsenal of short-range tactical nuclear weapons is a game changer in other ways. Pakistan clearly intends to use these weapons—on its own soil if necessary—to counter Cold Start's plan for sudden Indian armoured thrusts into Pakistan. The introduction of these weapons **has altered the long-standing geometry** between the two nuclear powers **and increases the risk of escalation to a nuclear exchange in a crisis**. Beyond the risks of runaway nuclear escalation, Pakistan's growing tactical nuclear weapons programme also brings a wide array of other destabilising characteristics to this already unstable mix: the necessity to position these short-range weapons close to the border with India, making them more vulnerable to interdiction; the need to move and disperse these weapons during a crisis, thereby signalling a nuclear threat; and the prospects of local commanders being given decentralised control of the weapons—a “use it or lose it” danger if facing an Indian armoured offensive. Furthermore, large numbers of small nuclear weapons scattered at different locations increase the risk that some will fall into the hands of violent extremists. A terrorist group gaining control of a nuclear weapon remains one of the most frightening potential spin-offs of the current arms race. Perhaps the most dangerous scenario that could lead to catastrophe is a replay of the 2008 Mumbai terrorist attacks. In November 2008, 10 terrorists launched attacks that left 166 people dead before the last of attackers were finally killed by Indian security forces almost 60 hours after the attacks began. By that time, there was strong evidence that the attackers were Pakistani and belonged to a Pakistan-supported militant group. Indian public outrage and humiliation were overwhelming. Only through the combination of diplomatic pressure from the US and immense restraint exerted by then-Indian prime minister Manmohan Singh was an Indian retaliatory strike averted. The chances of such Indian government restraint in a similarly deadly future scenario are unlikely. **Experts** such as Stephen Cohen of the Brookings Institution and former US ambassador to India Robert Blackwill **agree** that if there were another Mumbai, Indian prime minister Narendra **Modi would not step back** from using military force in response, unlike his predecessors. Indian public opinion would demand retaliation, especially after the unpopular degree of restraint exercised by the Singh government after the Mumbai attacks. But there remains no meaningful senior-level dialogue between the two states—last August's planned meeting between the two national security advisers was cancelled after disagreements about Kashmiri separatists.

Indo-Pak war causes extinction

Hiro 16 (Dilip, author of 32 books, the latest being *After Empire: The Birth of A Multipolar World* (Nation Books). His upcoming book on jihadists in South Asia will be published by Yale University Press later in the year, “The Most Dangerous Place on Earth: A Nuclear Armageddon in the Making in South Asia,” truthout, April 4, 2016, <http://www.truth-out.org/news/item/35489-the-most-dangerous-place-on-earth-a-nuclear-armageddon-in-the-making-in-south-asia>)

Undoubtedly, for nearly two decades, the most dangerous place on Earth has been the Indian-Pakistani border in Kashmir. It's possible that a small spark from artillery and rocket exchanges across that border might -- given the known military doctrines of the two nuclear-armed neighbors -- lead inexorably to an all-out nuclear conflagration. In that case the result would be catastrophic. Besides causing the deaths of millions of Indians and Pakistanis, such a war might bring on “nuclear winter” on a planetary scale,

leading to levels of suffering and death that would be **beyond our comprehension**. Alarming, the nuclear competition between India and Pakistan has now entered a spine-chilling phase. That danger stems from Islamabad's decision to deploy **low-yield tactical nuclear arms** at its forward operating military bases along its entire frontier with India to deter possible aggression by tank-led invading forces. Most ominously, the decision to fire such a nuclear-armed missile with a range of 35 to 60 miles is to rest with local commanders. This is a perilous departure from the **universal practice** of investing such authority in the highest official of the nation. Such a situation **has no parallel** in the Washington-Moscow nuclear arms race of the Cold War era. When it comes to Pakistan's strategic nuclear weapons, their parts are stored in different locations to be assembled only upon an order from the country's leader. By contrast, tactical nukes are pre-assembled at a nuclear facility and shipped to a forward base for instant use. In addition to the perils inherent in this policy, such weapons would be vulnerable to misuse by a rogue base commander or theft by one of the many militant groups in the country. In the nuclear standoff between the two neighbors, the stakes are constantly rising as Aizaz Chaudhry, the highest bureaucrat in Pakistan's foreign ministry, recently made clear. The deployment of tactical nukes, he explained, was meant to act as a form of "deterrence," given India's "Cold Start" military doctrine -- a reputed contingency plan aimed at punishing Pakistan in a major way for any unacceptable provocations like a mass-casualty terrorist strike against India. New Delhi refuses to acknowledge the existence of Cold Start. Its denials are hollow. As early as 2004, it was discussing this doctrine, which involved the formation of eight division-size Integrated Battle Groups (IBGs). These were to consist of infantry, artillery, armor, and air support, and each would be able to operate independently on the battlefield. In the case of major terrorist attacks by any Pakistan-based group, these IBGs would evidently respond by rapidly penetrating Pakistani territory at unexpected points along the border and advancing no more than 30 miles inland, disrupting military command and control networks while endeavoring to stay away from locations likely to trigger nuclear retaliation. In other words, India has long been planning to respond to major terror attacks with a swift and devastating conventional military action that would inflict only limited damage and so -- in a best-case scenario -- deny Pakistan justification for a nuclear response. Islamabad, in turn, has been planning ways to deter the Indians from implementing a Cold-Start-style blitzkrieg on their territory. After much internal debate, its top officials opted for tactical nukes. In 2011, the Pakistanis tested one successfully. Since then, according to Rajesh Rajagopalan, the New Delhi-based co-author of *Nuclear South Asia: Keywords and Concepts*, Pakistan seems to have been assembling four to five of these annually. All of this has been happening in the context of populations that view each other unfavorably. A typical survey in this period by the Pew Research Center found that 72% of Pakistanis had an unfavorable view of India, with 57% considering it as a serious threat, while on the other side 59% of Indians saw Pakistan in an unfavorable light. This is the background against which Indian leaders have said that a tactical nuclear attack on their forces, even on Pakistani territory, would be treated as a full-scale nuclear attack on India, and that they reserved the right to respond accordingly. Since India does not have tactical nukes, it could only retaliate with far more devastating strategic nuclear arms, possibly targeting Pakistani cities. According to a 2002 estimate by the US Defense Intelligence Agency (DIA), a worst-case scenario in an Indo-Pakistani nuclear war could result in eight to 12 million fatalities initially, followed by many millions later from radiation poisoning. More recent studies have shown that up to a billion people worldwide might be put in danger of famine and starvation by the smoke and soot thrown into the troposphere in a major nuclear exchange in South Asia. The resulting "nuclear winter" and ensuing crop loss would functionally add up to a slowly developing global nuclear holocaust.

Goes nuclear Zahoor '11

(Musharaf, is researcher at Department of Nuclear Politics, National Defence University, Islamabad, "Water crisis can trigger nuclear war in South Asia," [http://www.siasat.pk/forum/showthread.php?77008-Water-Crisis-can-Trigger-Nuclear-War-in-South-Asia, AM](http://www.siasat.pk/forum/showthread.php?77008-Water-Crisis-can-Trigger-Nuclear-War-in-South-Asia,AM))

South Asia is among one of those regions where water needs are growing disproportionately to its availability. The high increase in population besides large-scale cultivation has turned South Asia into a water scarce region. The two nuclear neighbors Pakistan and India share the waters of Indus Basin. All the major rivers stem from the Himalyan region and pass through Kashmir down to the plains of Punjab and Sindh empty into Arabic ocean. It is pertinent that the strategic importance of Kashmir, a source of all major rivers, for Pakistan and symbolic importance of Kashmir for India are maximum list positions. Both the countries have fought two major wars in 1948, 1965 and a limited war in Kargil specifically on the Kashmir dispute. Among other issues, the newly born states fell into water sharing dispute right after their partition. Initially under an agreed formula, Pakistan paid for the river waters to India, which is an upper riparian state. After a decade long negotiations, both the states signed Indus Water Treaty in 1960. Under the treaty, India was given an exclusive right of three eastern rivers Sutlej, Bias and Ravi while Pakistan was given the right of three Western Rivers, Indus, Chenab and Jhelum. The tributaries of these rivers are also considered their part under the treaty. It was assumed that the treaty had permanently resolved the water issue, which proved a nightmare in the latter course. India by exploiting the provisions of IWT started wanton construction of dams on Pakistani rivers thus scaling down the water availability to Pakistan (a lower riparian state). The treaty only allows run of the river hydropower projects and does not permit to construct such water reservoirs on Pakistani rivers, which may affect the water flow to the low lying areas. According to the statistics of Hydel power Development Corporation of Indian Occupied Kashmir, India has a plan to construct 310 small, medium and large dams in the territory. India has already started work on 62 dams in the first phase. The cumulative dead and live storage of these dams will be so great that India can easily manipulate the water of Pakistani rivers. India has set up a department called the Chenab Valley Power Projects to construct power plants on the Chenab River in occupied Kashmir. India is also constructing three major hydro-power projects on Indus River which include Nimoo Bazgo power project, Dumkhar project and Chutak project. On the other hand, it has started Kishan Ganga hydropower project by diverting the waters of Neelum River, a tributary of the Jhelum, in sheer violation of the IWT. The gratuitous construction of dams by India has created serious water shortages in Pakistan. The construction of Kishan Ganga dam will turn the Neelum valley, which is located in Azad Kashmir into a barren land. The water shortage will not only affect the cultivation but it has serious social, political and economic ramifications for Pakistan. The farmer associations have already started protests in Southern Punjab and Sindh against the non-availability of water. These protests are so far limited and under control. The reports of international organizations suggest that the water availability in Pakistan will reduce further in the coming years. If the situation remains unchanged, the violent mobs of villagers across the country will be a major law and order challenge for the government. The water shortage has also created mistrust among the federative units, which is evident from the fact that the President and the Prime Minister had to intervene for convincing Sindh and Punjab provinces on water sharing formula. The Indus River System Authority (IRSA) is responsible for distribution of water among the provinces but in the current situation it has also lost its credibility. The provinces often accuse each other of water theft. In the given circumstances, Pakistan desperately wants to talk on water issue with India. The meetings between Indus Water Commissioners of Pakistan and India have so far yielded no tangible results. The recent meeting in Lahore has also ended without concrete results. India is continuously using delaying tactics to under pressure Pakistan. The Indus Water Commissioners are supposed to resolve the issues bilaterally through talks. The success of their meetings can be measured from the fact that Pakistan has to knock at international court of arbitration for the settlement of Kishan Ganga hydropower project. The recently held foreign minister level talks between both the countries ended inconclusively in Islamabad, which only resulted in heightening the mistrust and suspicions. The water stress in Pakistan is increasing day by day. The construction of dams will not only cause damage to the agriculture sector but India can manipulate the river water to create inundations in Pakistan. The rivers in Pakistan are also vital for defense during wartime. The control over the water will provide an edge to India during war with Pakistan. The failure of diplomacy, manipulation of IWT provisions by India and growing water scarcity in Pakistan and its social, political and economic repercussions for the country can lead both the countries toward a war. The existent A-symmetry between the conventional forces of both the countries will compel the weaker side to use nuclear weapons to prevent the opponent from taking any advantage of the situation. Pakistan's nuclear programme is aimed at to create minimum credible deterrence. India has a declared

nuclear doctrine which intends to retaliate massively in case of first strike by its' enemy. In 2003, India expanded the operational parameters for its nuclear doctrine. Under the new parameters, it will not only use nuclear weapons against a nuclear strike but will also use nuclear weapons against a nuclear strike on Indian forces anywhere. Pakistan has a draft nuclear doctrine, which consists on the statements of high ups. Describing the nuclear thresh-hold in January 2002, General Khalid Kidwai, the head of Pakistan's Strategic Plans Division, in an interview to Landau Network, said that Pakistan will use nuclear weapons in case India occupies large parts of its territory, economic strangling by India, political disruption and if India destroys Pakistan's forces. The analysis of the ambitious nuclear doctrines of both the countries clearly points out that any military confrontation in the region can result in a nuclear catastrophe. The rivers flowing from Kashmir are Pakistan's lifeline, which are essential for the livelihood of 170 million people of the country and the cohesion of federative units. The failure of dialogue will leave no option but to achieve the ends through military means.

Plea Bargains Adv

UQ—Trials Declining

Trials are steadily decreasing—most federal cases are decided before the trial

Smith and MacQueen 17 (Jeffrey Q. Smith, Senior Counsel at Phillips Nizer, J.D. from NYU School of Law, and Grant R.

MacQueen, Associate Counsel at Morgan Lewis, JD from Georgetown University Law Center, “Going, going, but not quite gone: Trials continue to decline in federal and state courts. Does it matter?” *Judicature* 101(4) Winter 2017, <https://judicialstudies.duke.edu/wp-content/uploads/2018/01/JUDICATURE101.4-vanishing.pdf>)wtk

Another federal court trial metric examines civil and criminal case termination based on the stage at which resolution occurs. For example, in 1990, a total of 213,429 civil cases were terminated, and 9,236 cases (4.3 percent) were ended “during or after trial” (4,783 by jury and 4,480 nonjury).⁴⁶ In 2016, by contrast, 271,302 civil cases were terminated, but only 2,781 cases (1 percent) ended “during or after trial” (1,965 jury and 816 nonjury).⁴⁷ Measured this way, the absolute decrease in trials was 70 percent. Similar reductions occurred in criminal cases.⁴⁸ Still another measure of trial activity is the total number of juries picked to serve in civil and criminal cases in the federal district courts. That number has declined, markedly and quite steadily, as shown in Appendix 2 (at left). In 1996, a total of 10,338 juries were selected, but in 2016 the total was just 3,887. Thus, during a 20-year period, the number of juries picked in federal courts decreased by 63 percent.⁴⁹ Given this decrease in trials, it is hardly surprising that the number of trials per district court judge also diminished significantly over time. In 1962, there were, on average, 21 merits trials in civil cases (10 jury/11 bench) per district court judgeship each year.⁵⁰ By 1985, the number of merits trials per district court judgeship increased to 24 (12 jury/12 bench).⁵¹ But, thereafter, the number of merits trials per district court judgeship began to decline rapidly such that, by 2006, there were half as many merits trials per judgeship as in 1962.⁵² By 2015, the average number of merits trials per district court judgeship per year was just 4 (3 jury and 1 nonjury).⁵³ This is not to suggest that district court judges were working less over the years. To the contrary, as discussed infra, available evidence indicates that the average hours worked by a district court judge increased substantially during this time period. The statistics plainly show the judicial time was not spent trying cases. As trials per judge diminished, so did the amount of time judges spent on the bench.⁵⁴ In 1980, the mean total hours on the bench per active district court judgeship was 790. In 2013, the mean total hours on the bench per district court judgeship was 430, less than two hours per day, a reduction of 46 percent.⁵⁵ There were some district courts averaging fewer than 200 courtroom hours per judgeship per year, less than one hour per day.⁵⁶ The mean time on the bench has continued to decrease, even as the overall workload in the district courts has continued to increase.⁵⁷ Once again, what has changed is the nature of the work performed by the courts, as more cases are decided by motion and as judges spend more time managing existing caseloads.⁵⁸

Solvency—Plea bargain/right to trial

Mandatory minimums lead to broad prosecutorial discretion over sentencing which undermines the 6th amendment right to trial

Parr 17 (Katie Parr is a law clerk at Cause of Action Institute, "Plea Bargaining and Its Effect on The Sixth Amendment" 12/18/17 <https://causeofaction.org/plea-bargaining-effect-sixth-amendment/>)wtk

Over 200 years ago, the United States Constitution became the supreme law of the land with the later accompaniment of the Bill of Rights. Included in the Bill of Rights is the Sixth Amendment, which states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...; and to have the Assistance of Counsel for his defence [sic]."[2] A criminal defendant's right to a jury trial exists to prevent the oppression from the government.[3] Further, "providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." [4] As mentioned in an earlier post, we have started to see a rise in the use of mandatory minimums. Because of this, there has been a shift from using the trial process, to using a plea bargain. [5] In fact, today only 3% of federal cases are resolved by way of the Sixth Amendment. [6] According to Jenia I. Turner, PLEA BARGAINING, "plea bargains increasingly require defendants to waive important procedural rights that are designed to ensure fair and accurate outcomes." [7] The right to remain silent, confront witnesses, have a public trial or jury trial are all inherently waived by a guilty plea. [8] Thus roughly 97% of federal cases are resolved without these procedural protections. In many jurisdictions, judges are prohibited from participating in or commenting on the plea negotiations. [9] **Most sentencing power now lies with the prosecutors**, who have minimal boundaries. In fact, there is only one restriction placed on prosecutors: they cannot use illegal threats to secure a plea. [10] For example: "If a prosecutor says, 'I'll shoot you if you don't plead guilty, the plea is invalid.'" [11] Alternatively, if a prosecutor threatens to charge a defendant with a crime punishable by death at trial, and this threat causes the defendant to accept a plea agreement, this method is lawful. [12] Further, with the presence of probable cause, prosecutors can threaten to bring charges against the defendant's family [13] Today, individuals who elect to use their Sixth Amendment right, essentially face harsher sentences than those who accept a plea bargain. [14] With mandatory minimums and other sentencing enhancements, prosecutors can often dictate the sentence that will be imposed. [15] According to Bill Cervone, the State Attorney in Gainesville, FL and Chief Prosecutor in Florida's Eighth Judicial Circuit, "legally, you cannot impose a longer sentence on someone because they exercised their right to trial...factually, there are always ways to do it." [16] Unfortunately, as the system currently exists, there are minimal safeguards for those who pick going to trial over accepting a plea bargain. Furthermore, when defendants do accept a plea bargain, judges have limited ability to ensure that their decisions are made knowingly, voluntarily, and intelligently. As discussed in earlier posts, the Sentencing Reform and Corrections Act ("SRCA"), if signed into law, would reduce penalties for non-violent repeat offenders and restore judicial discretion in cases of low-level offenders below the mandatory minimum. These changes are important because, as the use of mandatory minimums decreases, there could be an associated decrease in the use of plea bargaining. While SRCA only addresses a portion of the much-needed criminal justice reform, passing it would be a great first step.

Mandatory minimums are leveraged to force plea bargains which leads to prosecutorial corruption

Hofer, Paul. [Senior Policy Analyst, Sentencing Resource Counsel Project of the Federal Public and Community Defenders. The views expressed here are those of the author and do not necessarily reflect views of the Federal Public and Community Defenders or their committees and projects] "After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform." University of Toledo Law Review, vol. 47, no. 3, Spring **2016**, p. 649-694. HeinOnline (accessed 06/27) <CJC>

B. Regulation of Prosecutorial Power

As the SRA was being developed, Congress recognized a potential problem with sentencing reform that threatened to frustrate the entire endeavor. The Guidelines gave prosecutors tools to more precisely control sentences than they could in the indeterminate sentencing era. Prosecutors had the most control over information used to establish guideline ranges. They also had control over most mechanisms available for leniency, such as sentence reductions for cooperating against others. Mandatory minimum statutes gave prosecutors even more power to set an absolute floor, which judges could not sentence below, regardless of any other considerations. 40 Without attention to charging and plea bargaining, "sentencing reform could actually increase disparities in the federal sentencing process." 41 Several provisions of the SRA were meant to address this concern. Most significantly, Congress directed the Commission to issue policy statements regarding the appropriate use of "the authority granted [by Fed. R. Crim. P. 11] to accept or reject a plea agreement."⁴² It was believed that judges would help regulate plea bargaining to advance the goals of the SRA and protect their own sentencing prerogatives. "The legislative history illustrates that both the House and Senate viewed this provision as crucial to the success of the sentencing reform effort."⁴³ The Commission also responded to concerns about prosecutorial discretion and sentencing disparity that could result from it in a number of novel ways. In addition to policy statements governing acceptance of plea agreements,⁴⁴ the Commission developed the multiple count and "relevant conduct" rules to help ensure that sentences for most types of crimes would reflect defendants' "real offense conduct," regardless of charging and plea bargaining decisions.⁴⁵ The Commission was aware that prosecutors wanted sentencing incentives to induce defendants to plead guilty and cooperate with the government in the prosecution of other persons, for example, by acting as confidential informants or government witnesses. The Commission's data on past sentencing practices showed that defendants who pled not guilty and were convicted at trial received sentences that averaged about 30% to 40% longer than similar defendants who pled guilty.⁴⁶ This suggested that some incentive for pleading guilty would be helpful to the government and defendants. At the same time, constitutional and policy concerns clouded any explicit discount for waiving the right to trial.⁴⁷ When almost everyone pleads guilty, an explicit sentencing discount for doing so becomes in practice its inverse—a penalty for exercising constitutional rights. Scholars have raised ethical questions about a "trial penalty" that in effect punishes offenders for going to trial, not for their crimes or in pursuit of any statutory purpose of sentencing.⁴⁸ The Commission ultimately decided to provide a fixed and explicit incentive for defendants to plead guilty but also to address the constitutional and policy concerns in several ways. First, it limited the reduction to two offense levels, equivalent to an average of about 25%.⁴⁹ Second, the reduction's appearance as a reward for pleading guilty was obscured by placing it in the hands of judges and describing it as a mitigating factor that reflected the defendant's "acceptance of responsibility" for the offense.⁵⁰ The reduction was not to apply automatically, and it was not precluded if a defendant went to trial.⁵¹ Thirty years later, this concern over penalizing defendants for asserting their constitutional rights, or failing to cooperate with prosecutors in other ways, can seem quaint. The concerns began to fade even before the Guidelines were implemented. As part of the ADAA—the bill that added harsh mandatory minimums for drug offenses—Congress amended the SRA at the urging of the Department of Justice. Judges would be permitted to sentence below a mandatory minimum, but only upon motion of the government "to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."⁵² The "substantial assistance" motion could be used to induce defendants to testify against accomplices, work as confidential informants, and assist law enforcement in a variety of other ways.⁵³ Congress also directed the Commission to amend the Guidelines to permit sentencing below the guideline range for the same reason.⁵⁴ The Commission promulgated U.S. Sentencing Guidelines policy statement § 5K1.1 and made the reduction contingent on a motion by the government.⁵⁵ After successfully urging Congress and the Commission to give them control over sentence reductions for cooperation, some prosecutors made an additional request that proved too much even for the Commission. Rather than merely reduce sentences for those who did cooperate, the Commission was urged to require or invite judges to punish defendants who refused to cooperate.⁵⁶ The unseemly prospect of punishing defendants not for their crimes but for their failure to accede to prosecutors' demands led the Commission to reject this proposal and to add policy statement § 5K1.2: "A defendant's refusal to assist authorities in the investigation of other persons may not be considered as an aggravating sentencing factor."⁵⁷ Nonetheless, the government's desire to use sentencing to reward or punish defendants for reasons unrelated to the seriousness of their crimes was now explicit. Prosecutors would soon learn that they had tools, especially mandatory minimums, to circumvent the Commission's policy and punish uncooperative defendants. A climate of crime politics, congressional micromanagement, and prosecutorial power was emerging that would betray the promise of the SRA. A reform intended to ensure that sentences were sufficient, but not greater than necessary, to advance the purposes of sentencing would soon devolve into an unbalanced system that shifted power and discretion away from judges, the defense, and even the Sentencing Commission, and toward the interests of prosecutors.

Solvency—Charge Bargaining

Mandatory Minimums cause charge bargaining—that coerces plea bargaining

Jones et al 18 (Rick Jones, President of the National Association of Criminal Defense Lawyers, Gerald B. Lefcourt, President of the Foundation for Criminal Justice, Barry J. Pollack, Immediate Past President NACDL, Norman L. Reimer, Executive Director of the NACDL, and Kyle O'Dowd, Associate Executive Director for Policy of NACDL, "THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It" 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>)wtk

Charge Bargaining Sentences are highly influenced by the specific crimes that are charged – a decision that is entirely within the discretion of the prosecution. ⁶⁸ Because any number of criminal statutes might apply to a defendant's conduct, there is usually a wide array of charges from which the prosecutor can choose. Thus, prosecutors may threaten to charge under the statute carrying the highest maximum penalty in order to obtain bargaining leverage. ⁶⁹ They may also intimidate defendants by threatening charges that carry mandatory minimum penalties. ⁷⁰ There is no legal basis for a defendant to challenge the sufficiency of a grand jury indictment in federal court, and a grand jury may indict on mere hearsay without ever hearing evidence favorable to the accused. So prosecutors retain the upper hand to threaten more serious charges, even if they are supported by evidence that would be inadmissible at trial, can be defeated by countervailing evidence, or are wholly unsupported by the law. ⁷¹ Because so few defendants are willing to risk going to trial, prosecutors' charging decisions are largely free from judicial scrutiny. Charge bargaining strategies enable the prosecutor to exert considerable pressure over defendants to plead guilty. ⁷² Professor Lucian Dervan recently highlighted a case that starkly illustrates the power prosecutors have over sentences because of their unbridled discretion to select charges. Lea Fastow was the wife of Enron's former chief financial officer, Andrew Fastow. Initially, prosecutors charged her with six felony conspiracy and tax fraud counts, which, under the Sentencing Guidelines, carried a potential sentence of 8 to 10 years in prison. ⁷³ Under a plea agreement, the prosecution agreed to seek a sentence of only five months. When the presiding judge rejected the plea agreement given that probation officers had recommended a sentence of 10-16 months, Ms. Fastow changed her plea to not guilty. ⁷⁴ To maintain her cooperation and the cooperation of her husband (who was also facing prosecution on separate charges), prosecutors then withdrew the original charges and reached an agreement with Ms. Fastow for her to plead guilty. The revised plea agreement involved a misdemeanor tax charge carrying a potential sentence of 10-16 months under the Guidelines. Both sides requested a sentence of ten months, and the court imposed a sentence of 12 months. At the second plea hearing, the court commented: "The Department of Justice's behavior might be seen as a blatant manipulation of the federal justice system and is of great concern to this court."⁷⁵ Such manipulation is indeed troubling. But it is all too common. The consequences for those who insist on their right to trial are even more severe because, many prosecutors believe that, once they have made a threat, they cannot hesitate to follow through — no matter how outrageous the threat is. Otherwise, their threats will not be taken seriously in the future and they will undermine their bargaining leverage.

AT: Alt Causes

The plan is sufficient to solve even if there are some alt causes

Price 19 (Mary Price, JD from Georgetown University Law Center, general council for Families Against Mandatory Minimums, “Weaponizing Justice: Mandatory Minimums, the Trial Penalty, and the Purposes of Punishment” *Federal Sentencing Reporter* 31(4-5), April/June 2019)wtk

Among the many reforms to the system that would end the trial penalty or reduce the government’s ability to extort pleas and punish defendants to go to trial include **abolishing mandatory minimums**. Doing so will help minimize incentives to bully, remove the most powerful tool prosecutors use to punish, and may very well have an effect on lowering sentences for non-Guideline offenses— in a kind of reverse gravitational pull. **This one action alone could do a great deal to level the playing field and help ensure that a guilty plea has not been extorted.**

AT: Right to Trial resilient

Mandatory minimums undermine the right to trial—not even major landmark constitutional protections can undo mitigate the damage done

Hafetz 19 (Frederick P. Hafetz, Partner at Hafetz & Necheles LLP, former federal prosecutor and long-time defense attorney, “The “Virtual Extinction” of Criminal Trials: A Lawyer’s View from the Well of the Court” *Federal Sentencing Reporter* 31(4-5), April/June 2019, pp. 248-255)wtk

Empowering the prosecutor to determine the sentence under the new sentencing regime meant that the prosecutor’s power to coerce a guilty plea was vastly increased. Prosecutors could offer to charge a crime with more lenient guidelines if the defendant agreed to plead guilty. And, in mandatory minimum cases, they could offer to charge a non-mandatory minimum crime if the defendant pleaded guilty. As a result, “never before in our history have such an extraordinary number of people felt compelled to plead guilty,” concludes Michelle Alexander in her influential book *The New Jim Crow*.¹⁷ “Extraordinary” was the “damage to the criminal justice system” caused by the transfer of sentencing power to the federal prosecutor, wrote David Patton in 2013, on the fiftieth anniversary of the landmark 1963 Supreme Court decision in the Gideon case, which guaranteed the right to counsel for indigent defendants in criminal cases.¹⁸ During Patton’s seven years as the attorney heading the Manhattan Federal Defenders, his office represented thousands of indigent defendants. He starkly posed the question of whether indigent defendants would be better off prior to Gideon, when they did not have the guarantee of counsel, or today under guidelines and mandatory minimum sentencing. Sadly, he concluded that defendants were better off prior to Gideon.¹⁹ The reason: prosecutors now had the power to coerce guilty pleas by threatening severe guideline or mandatory minimum sentences if the defendant did not plead guilty and went to trial.²⁰

*****Rule of Law**

I/L—Rule of Law

Trial penalties undermine our most fundamental liberties and erode the rule of law

Reimer and Sabelli 19 (NORMAN L. REIMER, Executive Director, National Association of Criminal Defense Lawyers, and MARTIN ANTONIO SABELLI, Second Vice President, National Association of Criminal Defense Lawyers, “The Tyranny of the Trial Penalty: The Consensus that Coercive Plea Practices Must End” *Federal Sentencing Reporter* 31(4-5), April/June 2019. <http://everyones-business.org/cache/NACDL-Coercive-Plea-Practices-Must-End.pdf>)wtk

Every day, in virtually every criminal court throughout the nation, people plead guilty solely as a consequence of a prosecutor’s threat that they will receive an exponentially greater post-trial sentence compared to the pre-trial offer. The process is simple and the logic inexorable: the prosecutor conveys a settlement offer to the defense attorney—very often at the outset of the case before the defense has investigated or received discovery—threatening a post-trial sentence much greater than the pre-trial offer. The defense attorney—often before having had an opportunity to establish a relationship with the client—conveys that offer to her client who must choose between the opportunity and right to defend and the risk of adding years to the sentence if not decades after trial. That differential is known as the trial penalty, and this scene unfolds routinely in courtrooms across the country as if the Framers had intended this legalized coercion to be the fulcrum of the criminal justice system. The Framers did not so intend. The Framers, surprisingly for a modern reader, considered jury trials to be every bit as important as the right to cast votes for our representatives. In fact, John Adams declared that “[r]epresentative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.”¹ President Adams’ colorful language reflects the strength of his view—a view shared by his contemporaries and the Framers—that the right to trial by jury protects the liberties of all individuals, not just the accused. The Framers imagined a process in which the accused, assisted by counsel, evaluated the charges, received the evidence, and elected to exercise or not exercise the right to compel the government to prove guilt beyond a reasonable doubt. Nevertheless—the Constitution be damned—judges, defenders, and prosecutors today fulfill their functions acquiescent to the cynical logic of the trial penalty. Judges still decide questions of evidence and constitutional norms, and nominally possess the authority to decide criminal justice sentences. In reality, however, the trial penalty has effectively transferred the historic and constitutional sentencing authority of judges to prosecutors who—owing to mandatory minimum sentencing—essentially decide the order of magnitude of criminal justice sentences by deciding which statute or enhancement to charge, while a judge’s role is at the margins of these sentences. This conversion of judicial authority to prosecutorial power has, in fact, fundamentally altered the inherent nature of the adversarial system. Prosecutors—playing out their role in this brave new world—harness this overwhelming power at every stage of a criminal prosecution to incentivize the accused to capitulate and forego fundamental rights. Society pays a price when, inevitably, guilty pleas operate to foreclose litigation that would have exposed unlawful government actions or practices and police misconduct. The trial penalty affects all accused persons, rich or poor and of all backgrounds. The trial penalty, however, falls most harshly upon the most vulnerable, especially racial and ethnic minorities and the poor, thanks to the effects of systemic racism (including implicit biases) and other bargaining inequalities. This differential impact results from the operation of implicit bias as well as well-known disparate policing practices and the woeful underfunding of the public defense function. Whereas those with substantial economic resources have the means to avoid some of the most abusive aspects of the trial penalty, such as the use of bail as ransom, minorities and the poor are easy pickings for an assemblyline system of justice that has seen the criminal courts of this nation turned into guilty-plea conveyor belts. In many places, where lawyers are scarce and defenders shoulder crushing caseloads, accused persons can languish for weeks or months without access to counsel. But that does not stop the system from extracting guilty pleas from unrepresented accused persons, notwithstanding the enormous and life-altering collateral consequences of a criminal adjudication.

Trial penalties cause a society-wide decline in the rule of law

Viano 12 (Emilio C. Viano, Professor in the Department of Justice, Law and Society @ American University, PhD from NYU, “Plea Bargaining in the United States: a Perversion Of Justice” 2012 *Dans Revue internationale de droit pénal* 2012/1-2 (Vol. 83), pages 109 à 145 <https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm>)wtk

As Schulhofer [68] has written, 40 [T]he decision of an innocent defendant to plead guilty in return for a low sentence inflicts costs on society, even if the defendant prefers this result, because it undermines the

accuracy of the guilt-determining process and public confidence in the meaning of criminal conviction. There is ample literature stressing the crucial importance of the confidence of the public in the criminal justice system and of the perception by the citizenry that the system and its operations are legitimate. [69] Without such confidence, respect and legitimacy the justice system cannot perform successfully; the rule of law is undermined; and many citizens will not cooperate and support the criminal justice system. The system can ensure compliance with the law only if it is considered fair, impartial and legitimate. Procedural fairness is extremely important to the public in its dealings with the justice apparatus. As Tomas Tyler writes, [70] 43 [P]eople are more interested in how fairly their case is handled than they are in whether they win. . . . [N]umerous studies conducted over the last several decades have consistently found this to be true. [71] Tyler [72] 45 First, people want to have an opportunity to state their case to legal authorities. They want to have a forum in which they can tell their story; they want to have a "voice" in the decision-making process. Second, people react to signs that the authorities with whom they are dealing are neutral. Neutrality involves making decisions based upon consistently applied legal principles and the facts of the case rather than personal opinions and biases. Transparency and openness foster the belief that decision-making procedures are neutral. Third, people are sensitive to whether they are treated with dignity and politeness and to whether their rights as citizens and as people are respected. Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing.

Mandatory minimums coerce people into plea bargains—that undermines rule of law, erodes the right to a fair trial, and causes mass incarceration

Jones et al 18 (Rick Jones, President of the National Association of Criminal Defense Lawyers, Gerald B. Lefcourt, President of the Foundation for Criminal Justice, Barry J. Pollack, Immediate Past President NACDL, Norman L. Reimer, Executive Director of the NACDL, and Kyle O'Dowd, Associate Executive Director for Policy of NACDL, "THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It" 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>)wtk

The trial penalty – the substantial difference between the sentence offered prior to trial versus the sentence a defendant receives after a trial – undermines the integrity of the criminal justice system. 2. Trials protect the presumption of innocence and encourage the government to charge cases based only on sufficient, legally-obtained evidence to satisfy the reasonable doubt standard. 3. The decline in the frequency of trials impacts the quality of prosecutorial decision-making, defense advocacy, and judicial supervision. 4. The decline in the frequency of trials tends to encourage longer sentences thereby contributing to mass incarceration, including mass incarceration of people of color and the poor. 5. The decline in the frequency of trials erodes the oversight function of the jury thereby muting the voice of lay people in the criminal justice system and also undercuts the role of appellate courts in supervising the work of trial courts. 6. The trial penalty creates a coercive effect which profoundly undermines the integrity of the plea bargaining process. 7. A reduction for accepting responsibility through a guilty plea is appropriate. The same or similar reduction should be available after trial if an individual convicted at trial sincerely accepts responsibility after trial regardless of whether the accused testified at trial or not. 8. No one should be punished for exercising her or his rights, including seeking pre-trial release and discovery, investigating a case, and filing and litigation of pre-trial statutory and constitutional motions. 9. Mandatory minimum sentences undermine the integrity of plea bargaining (by creating a coercive effect) and the integrity of the sentencing process (by imposing categorical minimums rather than case-by-case evaluation). At the very least, safety valve provisions should be enacted to permit a judge to sentence below mandatory minimum sentences if justice dictates.

Plea bargains erode citizen checks on abuses of the law

Jones et al 18 (Rick Jones, President of the National Association of Criminal Defense Lawyers, Gerald B. Lefcourt, President of the Foundation for Criminal Justice, Barry J. Pollack, Immediate Past President NACDL, Norman L. Reimer, Executive Director of the NACDL, and Kyle O'Dowd, Associate Executive Director for Policy of NACDL, "THE TRIAL PENALTY: The Sixth Amendment Right to Trial on the Verge of Extinction

and How to Save It” 7/10/18, NACDL, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>wtk

Even before the time of this country’s founding, juries had traditionally served as a check on the various branches of government, ³⁶ allowing citizens to interpret how and when the law should be applied and “plac[ing] the real direction of society in the hands of the governed.”³⁷ As one scholar has explained, the criminal jury enjoyed the privilege to “decid[e] not to enforce a law where they believe[d] it would be unjust or misguided to do so, allow[ing] average citizens, through deliberations, to limit the scope of the criminal sanction.”³⁸ Today, the critical role that juries historically played has all but disappeared as plea bargaining has become the overwhelming norm for resolving criminal cases.

!—Rule of Law—Soft power

Rule of law is key to soft power and international modeling

Sidhu 9 – Dawinder S. Sidhu, Professor of Constitutional and Criminal Law at University of New Mexico, Certificate in Mediation, 2015, Northwestern University, B.A. 2000, University of Pennsylvania M.A. 2003, Johns Hopkins University, J.D. 2004, The George Washington University, (“Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, American University - National Security Law Brief December 28, 2009 <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb>)

Though soft power generally is thought to include a nation’s values, social norms, and culture, academic studies have not fully demonstrated that a nation’s legal dimensions—specifically its legal institutions and adherence to the rule of law—are also a form of soft power.²⁸ This part will attempt to make this showing, citing to aspects of the American constitutional design that may be attractive to people of other communities, including Muslims.²⁹ The legal principles established by the Framers and enshrined in the Constitution are a source of attraction only if we have meaningfully adhered to them in practice. Part II will posit that the Supreme Court’s robust evaluation of cases in the wartime context suggests that the nation has been faithful to the rule of law even in times of national stress. As support, this part will provide examples of cases involving challenges to the American response to wars both before and after 9/11, the discussion of which will exhibit American respect for the rule of law. While the substantive results of some of these cases may be particularly pleasing to Muslims, for instance the extension of habeas protections to detainees in Guantánamo,³⁰ this part will make clear that it is the legal process—not substantive victories for one side or against the government—which is the true source of American legal soft power. If it is the case that the law may be an element of soft power conceptually and that the use of the legal process has reflected this principle in practice, the conclusion argues that it would benefit American national security for others in the world to be made aware of the American constitutional framework and the judiciary’s activities related to the war. Such information would make it more likely that other nations and peoples, especially moderate Muslims, will be attracted to American interests. This Article thus reaches a conclusion that may seem counterintuitive—that the judicial branch, in the performance of its constitutional duty of judicial review, furthers American national security and foreign policy objectives even when it may happen to strike down executive or legislative arguments for expanded war powers to prosecute the current war on terror and even though the executive and legislature constitute the foreign policy branches of the federal government. In other words, a “loss” for the executive or legislature, may be considered, in truth, a reaffirmation of our constitutional system and therefore a victory for the entire nation in the neglected but necessary post-9/11 war of ideas.³¹ As such, it is the central contention of this Article that the judicial branch is a repository of American soft power and thus a useful tool in the post-9/11 conflict.

Leveraging effective US soft power is key to prevent a laundry list of existential scenarios, including terrorism, disease, proliferation, alliances and genocide

Lagon, 11 (Mark P. Lagon, International Relations and Security Chair at Georgetown University's Master of Science in Foreign Service Program and adjunct senior fellow at the Council on Foreign Relations. He is the former US Ambassador-at-Large to Combat Trafficking in Persons at the US Department of State, Sept/Oct 2011, "The Value of Values: Soft Power Under Obama", World Affairs Journal, <http://www.worldaffairsjournal.org/article/value-values-soft-power-under-obama#ER>, DA: 7-7-2015)

Despite large economic challenges, two protracted military expeditions, and the rise of China, India, Brazil, and other new players on the international scene, the United States still has an unrivaled ability to confront terrorism, nuclear proliferation, financial instability, pandemic disease, mass atrocity, or tyranny. Although far from omnipotent, the United States is still, as former Secretary of State Madeleine Albright called it, “the indispensable nation.” Soft power is crucial to sustaining and best leveraging this role as catalyst. That President Obama should have excluded it from his vision of America’s foreign policy assets—particularly in the key cases of Iran, Russia, and Egypt—suggests that he feels the country has so declined, not only in real power but in the power of example, that it lacks the moral

authority to project soft power. In the 1970s, many also considered the US in decline as it grappled with counterinsurgency in faraway lands, a crisis due to economic stagnation, and reliance on foreign oil. Like Obama, Henry Kissinger tried to manage decline in what he saw as a multipolar world, dressing up prescriptions for policy as descriptions of immutable reality. In the 1980s, however, soft power played a crucial part in a turnaround for US foreign policy. Applying it, President Reagan sought to transcend a nuclear balance of terror with defensive technologies, pushed allies in the Cold War (e.g., El Salvador, Chile, Taiwan, South Korea, and the Philippines) to liberalize for their own good, backed labor movements opposed to Communists in Poland and Central America, and called for the Berlin Wall to be torn down—over Foggy Bottom objections. This symbolism not only boosted the perception and the reality of US influence, but also hastened the demise of the USSR and the Warsaw Pact. For Barack Obama, this was the path not taken. Even the Arab Spring has not cured his acute allergy to soft power. His May 20, 2011, speech on the Middle East and Northern Africa came four months after the Jasmine Revolution emerged. His emphasis on 1967 borders as the basis for Israeli-Palestinian peace managed to eclipse even his broad words (vice deeds) on democracy in the Middle East. Further, those words failed to explain his deeds in continuing to support some Arab autocracies (e.g., Bahrain's, backed by Saudi forces) even as he gives tardy rhetorical support for popular forces casting aside other ones. To use soft power without hard power is to be Sweden. To use hard power without soft power is to be China. Even France, with its long commitment to realpolitik, has overtaken the United States as proponent and implementer of humanitarian intervention in Libya and Ivory Coast. When the American president has no problem with France combining hard and soft power better than the United States, something is seriously amiss.

*****Terror**

!—Conventional Attacks

Even if they can't get nukes Al Qaeda is planning a conventional attack on the United States

Clark and Lister 19 – Colin P. Clarke is a senior research fellow at the Soufan Center and an assistant teaching professor in the Institute for Politics & Strategy at Carnegie Mellon University. Charles Lister is a senior fellow at the Middle East Institute and a senior consultant to The Shaikh Group's Track II Syria Dialogue Initiative. ("Al Qaeda Is Ready to Attack You Again" Foreign Policy September 4, 2019 <https://foreignpolicy.com/2019/09/04/al-qaeda-is-ready-to-attack-you-again/>)

Eighteen years have passed since the terrorist attacks of 9/11, and al Qaeda is worse for the wear. The terrorist organization looks remarkably different today than the group that killed thousands of U.S. citizens on American soil.

Intensive counterterrorism pressure in Afghanistan and Pakistan has left behind an aging and increasingly disconnected central leadership. The emergence of the Islamic State as a peer competitor, meanwhile, has left al Qaeda with a brand that, at times, has struggled to compete for global jihadist primacy. With the group's leader Ayman al-Zawahiri in bad health and isolated, most likely somewhere in Pakistan, and Hamza bin Laden, who may have been next in line, recently reported killed, al Qaeda's most dedicated members seem to understand that its best chance to remain relevant is through its ongoing presence in Syria. To capitalize on the opportunities that the Syrian civil war has presented to al Qaeda, the group began moving significant assets from Afghanistan and Pakistan to the Levant in September 2014. This shift in the center of the group's gravity constitutes a major change and one with implications still not fully understood by counterterrorism officials worldwide. After two turbulent decades following its most spectacular mission, al Qaeda has settled down and is again intensely focused on attacking the West. Following the death of the group's founder Osama bin Laden in 2011 and the onset of the so-called Arab Spring uprisings, al Qaeda began to embrace a changed strategy. Terrorism scholars widely observed that al Qaeda began pursuing more limited strategic goals with a focus on localism and incrementalism. This strategic shift was widely dubbed "controlled pragmatism" and "strategic patience." Al Qaeda seemed to be "quietly and patiently rebuilding" itself while deliberately letting the Islamic State bear the brunt of the West's

counterterrorism campaign. This pragmatic localism strategy had been most evident in how the group operated in Syria. It was there that a group known as the Nusra Front most effectively implemented an approach to jihad that had shown some previous success in Yemen and Mali, but which had still ultimately failed. By channeling its energies locally, forbidding the penal code, building alliances across the Islamist and non-Islamist spectrum, and outcompeting less extreme rivals in providing efficient and noncorrupt governance, the Nusra Front built a level of popular credibility that no other al Qaeda affiliate had come close to. In short, the Nusra Front remained acutely aware of how its brand was perceived by locals and acted accordingly. That it also proved to be the most potent military actor on the battlefield was merely an added bonus. However, the method behind the Nusra Front's success had a significant side effect: It distanced its Syrian wing from al Qaeda's central leadership in South Asia. A localist approach necessitated a level of flexibility and rapid decision-making that proved impossible to coordinate with the likes of Zawahiri, who at worst was entirely incommunicado, or who at best took months to respond to communications. By 2016, it had also become clear that to sustain the Nusra Front's success and to translate credibility into popularity, popularity into support, and support into loyalty, it needed to deal with its single biggest obstacle to progress: its association with an al Qaeda brand that brought only suspicion, paranoia, and distrust. Through two successive rebrands in July 2016 and January 2017, the Nusra Front became Jabhat Fateh al-Sham and then Hayat Tahrir al-Sham. The first rebrand was accomplished peacefully and the second through military attacks on Islamist groups deemed to be potential threats. Whether initially intended or not, by the time Hayat Tahrir al-Sham was announced to the world, it was no longer considered a loyal member of the al Qaeda family. Thanks to its sudden attacks on rivals, it was also deeply unpopular—for the first time in its existence. Infuriated by what they saw as the dilution of the Nusra Front's identity and the purity of its cause, as well as the illegitimate process that lay behind its evolution, al Qaeda loyalists defected in substantial numbers. Led by veterans with decades of experience at al Qaeda's highest levels, these al Qaeda loyalists have established new groups, chief among them Tanzim Huras al-Din, whose name means "Guardians of Religion Organization." Guided by new instructions from Zawahiri and others, they have pivoted back to the elite vanguard model more traditionally espoused in bin Laden's days, with affiliates discouraged from controlling or governing territory, avoiding linkages with impure groups or foreign governments, and pursuing an explicitly military strategy, with one eye each on the "near" enemies in the region, and also the "far" ones in the West. Since its formation in late 2017, Tanzim Huras al-Din has been led by Samir Hijazi, also known as Abu Hammam al-Shami, a leading al Qaeda military specialist who spent time in Jordan, Afghanistan, Pakistan, Iraq, and Lebanon before his arrival in Syria in 2012. Hijazi remains close to the notorious al Qaeda leader Saif al-Adel and previously worked closely with Abu Musab al-Zarqawi, coordinating foreign fighter training in Iraq. However, two sources tell us Hijazi has recently been replaced as Tanzim Huras al-Din leader by another leading al Qaeda figure, Khalid al-Aruri, also known as Abu al-Qassam al-Urduni, who the same sources also say was recently appointed by Zawahiri to be one of al Qaeda's three global deputies, alongside Adel and Abdullah Ahmed Abdullah, also known as Abu Mohammed al-Masri, who are both in Iran. Aruri is one of at least two members of Tanzim Huras al-Din who hold seats in al Qaeda's approximately 12-strong global shura council, the vast majority of which still remain in South Asia. That underlines how Syria has now become the prime node of al Qaeda investment, replacing the previously favored front in Yemen. There has been no shortage of al Qaeda veterans in Tanzim Huras al-Din—among them Sami al-Oraydi, Bilal

Khuraisat, Faraj Ahmad Nanaa, and, until his reported death on Aug. 22, Abu Khallad al-Muhandis, Sayf al-Adel's father-in-law. As al Qaeda continues to undergo change as a global organization, one of the most pressing questions for policymakers and government officials is to what extent the group is still focused on attacking the West. Does the absence of spectacular attacks attributed to al Qaeda during this phase represent a lack of capability or merely a shift in priorities? In an Al Jazeera interview from May 2015, then-Nusra Front leader Abu Mohammed al-Jolani explained that Zawahiri had instructed him not to use Syria as a sanctuary from which to attack the West. That instruction, which had arrived in a secret letter earlier that year, came in response to the U.S. government's campaign of strikes against the so-called Khorasan Group—a small cadre of al Qaeda operatives operating in northern Syria with the explicit intention to attack the West—that had begun in September 2014. In simple terms, this was a logical pivot back to the Nusra Front's strategy of locally focused incrementalism and a decision to avoid Western scrutiny amid an escalating international campaign against al Qaeda's rival, the Islamic State. Perhaps to avoid any confusion over whether the United States and the West remained in the crosshairs of al Qaeda's international efforts, the group released a series of messages over the next several years. In a message from April 2017, Zawahiri reiterated the importance of al Qaeda's global struggle. The next month, messages from both Hamza bin Laden and al Qaeda in the Arabian Peninsula emir Qasim al-Raymi urged al Qaeda's followers to launch attacks in the West. Unsurprisingly, in May 2017, then-U.S. Director of National Intelligence Dan Coats concluded in congressional testimony that "Europe will remain vulnerable to terrorist attacks, and elements of both ISIS and al Qaeda are likely to continue to direct and enable plots against targets in Europe." Ansar al-Furqan, a group of al Qaeda veterans and loyalists briefly formed in Syria in October 2017, allegedly adhered to "newly stated objectives in Syria: guerilla warfare with an eye on targeting the West." Yet another speech from Zawahiri, this one titled "America Is the First Enemy of Muslims" and released in March 2018, incited al Qaeda's followers to strike the United States. None of this should be surprising, as al Qaeda's overarching narrative has always been that the West is at war with Islam. A recent United Nations assessment of al Qaeda's links to groups in Syria observed the following: "HTS [Hayat Tahrir al-Sham] and HAD [Tanzim Huras al-Din] are assessed to share a history and an ideology but to differ on policy. HTS centred its agenda on [Syria], with no interest in conducting attacks abroad. HAD, by contrast, was said to have a more international outlook. The leader of Al-Qaida, Aiman al-Zawahiri, was the defining authority for HAD, but not for HTS." That latter distinction aligns with Zawahiri's own descriptions of Syria, dating back to January 2018, when for the first time he acknowledged that Hayat Tahrir al-Sham was distinct from "al Qaeda in the Levant." With Hayat Tahrir al-Sham attracting the bulk of Russian and Syrian military attention today, the likes of Tanzim Huras al-Din are free to pursue their own al Qaeda agenda—contributing to some front lines shared with Hayat Tahrir al-Sham, but mostly committing to independent action further north, in Latakia, Syria. According to four separate sources, Tanzim Huras al-Din figures have repeatedly discussed the value of striking the West from Syria during broader Islamist gatherings in recent months. Though that doesn't amount to evidence of plotting, the fact that the issue is being raised in public settings attended by many who oppose such actions is a stark warning of what may well be taking place behind closed doors. With the Islamic State weak and Russia effectively locking the United States out of northwest Syria's airspace, this could be the moment for al Qaeda—with its new corps of local loyalists and leadership—to reassert itself on the global stage. Intriguingly, after a two year lull, the United States has conducted two targeted strikes against al-Qaeda-linked targets in northwestern Syria in recent months – on June 30 and August 31 – despite being prohibited from accessing its airspace by Russia. In acknowledging both strikes, U.S. Central Command described the targets as "al-Qaida in Syria leadership" and specifically, "operatives responsible for plotting external attacks threatening U.S. citizens, our partners, and innocent civilians." After years of ISIS fixation, this is an encouraging sign, but the U.S. remains constrained by limited intelligence, surveillance, and reconnaissance (ISR) assets in theatre. Since severing all support to vetted opposition groups (whose tens of thousands of members represented a colossal source of constant human intelligence) in late-2017 and losing free access to northwestern airspace, the U.S. intelligence and military apparatus are now monitoring al-Qaeda with both hands tied behind their backs. Meanwhile, Russia is coordinating a scorched earth campaign in the same region, whose target is not al-Qaeda, but al-Qaeda's civilian opponents and its less extreme political Islamist rivals. That is a recipe for a counter-terrorism disaster, over which the United States maintains minimal sight, let alone control. Though extraordinarily complex, this chaotic operating environment presents innumerable opportunities to a small, tight-knit, experienced and dedicated core of al-Qaeda loyalists hell bent on renewing their fight against us.

That escalates – domestic attacks put nuclear arsenal on high alert—causes miscalc with Russia and China

Ayson 10, (Published 6-21-2010, Robert Ayson is Professor of Strategic Studies at Victoria University of Wellington, New Zealand, where he works closely with the Centre for Strategic Studies. He gained his PhD as a Commonwealth Scholar at King's College London. "After a Terrorist Nuclear Attack: Envisaging Catalytic Effects", Taylor & Francis, <https://www.tandfonline.com/doi/full/10.1080/1057610X.2010.483756?scroll=top&needAccess=true>) //BW

Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and **nuclear** aided) **confrontation with Russia and/or China**. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the **temptations to preempt** such actions might **grow**, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abettors of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the "Chechen insurgents' ... long-standing interest in all things nuclear."⁴² American pressure on that part of the world would almost certainly raise alarms in Moscow that ...might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

Yes escalation

Terrorism destabilizes the Middle East and escalates.

Khan and Zhaoying 20 (Akbar Khan is a Ph.D. candidate in International Relations in the Zhou Enlai School of Government at Nankai University China, Tianjin; Han Zhaoying is Professor of International Relations in the Zhou Enlai School of Government at Nankai University China, Tianjin; “Conflict escalation in the Middle East revisited: thinking through interstate rivalries and states sponsored terrorism”; Israel Affairs; January 29th, 2020; <https://www.tandfonline.com/doi/abs/10.1080/13537121.2020.1720115>; ERB)

States develop relationships with terrorist groups and sponsor them against their rivals for a variety of reasons: to create security problems; to destabilise areas of strategic importance; to achieve strategic objectives; and to spread specific ideologies.¹ This policy has also sought to create panic among the civilians, to disrupt countries’ smooth economic development, and to compensate for one’s military weakness. Thus, an attempt to destabilise the target state via non-state actors, coupled with denial of such activity, may provoke the target state to take punitive measures against the terrorist group and/or the sponsoring state to prevent further destabilisation and uncertainty, increasing the probability of militarised disputes leading to escalation.

Past studies have not substantially addressed the consequences of statesponsored terrorism. Some studies questioned the causes and motivation for state sponsorship² while others argued that if states provide sanctuaries to the non-state actors, then the probability of interstates conflict increases.³ This growing sub-field of International Relations (IR) needs greater attention, not least because part of the Middle East’s volatility and instability can be attributed to state-sponsored terrorism within the wider framework of states’ predilection to engage in armed conflict to resolve contentious issues.⁴

Studies have generally adopted a state-centric approach to study the escalation of conflict and isolated the escalation of the conflict by other means from state-centric violence. This bias may be attributed to the fact that rivalry theories mostly concentrate on interstate relationships, their causes, and consequences while terrorism is associated with non-state actors.⁵ Also, scholars tend to separate terrorism from other forms of violence, such as civil war.⁶ These arguments suggest that the actions and activities of non-state actors may not significantly convince or compel states to initiate cross border attacks against the host state or terrorist group.

In contrast, this article will show that state sponsorship of **terrorism is primarily responsible to provoke states to conflict escalation and terrorism** is not a separate form of violence, but an outcome of interstate rivalries. By way of substantiating this claim the article will examine why certain states sponsor and operate non-state terrorist groups and whether and to what extent this sponsorship escalates interstate conflict. And it will do by discussing the Hezbollah and Houthi militias, which, beyond destabilising their own home countries of Lebanon and Yemen, have violently engaged two influential Middle Eastern actors – Israel and Saudi Arabia.

The article proceeds as follows: we describe state-sponsored terrorism in the context of interstate rivalries. We then discuss the delegation of authority to non-state actors, aiming to avoid costly wars. Third, we illustrate how state-sponsored terrorism escalates the conflict. Fourth, we discuss a pair of cases from the Middle East to justify the argument. The final section concludes the article.

Interstate rivalry and state sponsorship of terrorism

Studies have demonstrated that interstate rivalry and state-sponsored terrorism are closely connected.⁷ And the intensity of this connection increases when states are entangled in longstanding rivalries with lasting grievances and frequent armed confrontations. The conflicting historical relations, coupled with positional manoeuvring, provide an excuse for states to harbour terrorist groups and calibrate the use of violence against rivals in pursuit of their strategic goals. For their part, target states take countermeasures to deal with the sponsoring state and/or terrorist groups. As a result, interstate rivalries have played an increasingly essential role in terrorist campaigns in recent decades.⁸

States are rational actors having their preferences and interests, which they want to pursue. They formulate strategies to handle their adversaries by assessing the costs and benefits of various actions and outcomes. At the same time, they try to ascertain the preferences of their rivals. However, it is highly likely that states in an uncertain environment may not be able to determine

the actual preferences of their rivals, which may give more space to distrust and make rivalry even more intense. At this stage, rival states seek to adopt some cheap techniques to counter each other, such as supporting terrorist movements. Similarly, once states are embroiled in enduring rivalries, they operate at different levels by adopting different strategies and state sponsorship of terrorism is one of those strategies that state and policy makers employ against their peer-competitors to drive several complementary strategic objectives.

The presence of status quo and anti-status quo regimes creates problems because status quo states try to retain their position while frustrated states try to challenge and change it. The tug of war between them gives more space to distrust, their rivalry gets momentum, and becomes increasingly intense.⁹ At this critical moment, rival states try to hurt each other, and the probability of sponsorship of terrorism increases. For example, before the Iranian revolution, Iran was a status quo state while Iraq was a dissatisfied state. They also had several thorny issues, including territorial disputes (e.g. Shatt al-Arab), and their failure to resolve them by peaceful means provoked them to provide sanctuaries and support non-state actors against each other. Iran supported the Patriotic Union of Kurdistan (PUK) and Kurdistan Democratic Party (KDP) against Iraq and Iraq extended support to the Mujahedeen-e-Khalq (MeK).¹⁰ In conjunction with other escalating steps, notably the Iranian revolution and the advent of an expansionist Islamist regime, the sponsorship of subversive and terror groups undermined bilateral relations and paved the way to one of the longest and bloodiest wars in Middle East history.

States support terrorist groups to manage their strategic objectives. They employ this as a strategy to avoid direct costly wars, which are not only too costly but also highly uncertain.¹¹ If belligerent rivals are engaged in aggressive wars, it may potentially affect the economies and wars would drag them back to square one. Therefore, minor states in general and Middle Eastern states in particular, prefer to engage their adversaries indirectly by sponsoring non-state actors rather than fighting disastrous war. Rivalries, such as those between Tehran and Riyadh underlie the sponsoring and operation of several non-state actors, including the Houthis, Hezbollah, Nusra Front, etc. as tools to impose costs on each other than fighting direct interstate wars.

Studies also suggest that states sponsor non-state actors to trade-off their military weakness.¹² Similarly, scholars agree that if states consistently failed to demonstrate their power because of their military inferiority they chose to assist terrorist groups in a bid to fill the gap.¹³ For example, Iran's military weakness after the revolution pushed it to sponsor several Palestinian groups and Hezbollah against Israel. This is because Iran may not sustain a direct military conflict with Israel because Israel has a strong armed force and has a record of winning aggressive wars in the region.

Additionally, if states are ruled by autocrats/dictators then sponsorship of terror groups is highly likely as a means of enhancing the regime's prestige and sustaining its survival. Supporting non-state actors also help dictators divert resources to suppress domestic political rivals and forcing domestic rivals to 'rally around a flag'.¹⁴ These can readily be seen in the Middle East because almost all states are ruled by dictatorial/autocratic regimes and are deeply involved in interstate rivalries. Iran's regional rivalries played an important role in pushing it to sponsor non-state actors across the region, including Hamas, Islamic jihad, Houthis, Hezbollah, Shiite militias in Iraq, etc. as a means to bolstering its regional prestige and cast it in the role of championing the cause of Islam against both 'infidels' and Muslim 'heretics'.

States in the context of rivalry provide clandestine support to terrorist movements, providing them a platform and advantage of plausible deniability, which is potentially advantageous when rivalries seek to weaken and create chaos in the target states, for example, Iran denied its support to Houthis, Pakistan condemned the attacks in India by non-state actors,¹⁵ while India repudiated its assistance to terrorist groups operating inside Pakistan – Baluchistan Liberation Army (BLA). These examples suggest that denial is one of the key motivators that provokes states to support terrorist movements. States also provide passive sponsorship to the terrorist groups, which spreads extremism horizontally and passive state support for terrorist movements make the organisations more capable. For example, Saudi Arab has provided passive sponsorship to al-Qaeda in the past¹⁶ and more recently to the Nusra Front and several other terrorist groups against a backdrop of its rivalry with regional states. Thus, the covert and overt support to terrorist groups seems to be the grievances associated with the rivalries over regional strategic-disputes, which enable states to hunt their tactical objectives. In sum, state-sponsored terrorism is a by-product of conflictual relationships between states generally hostile towards each other.

From costly to cheap wars: delegation of conflict by other means A number of empirical and theoretical studies have shown that rebel organisations get substantial external support,¹⁷ which provides a level playing field for them to counter the interests of the target states. Therefore, it is important to investigate the aftershocks and the consequences of the sponsorship. However, a

unanimity exists among scholars that sponsorship is mainly driven with a desire to reduce the costs of direct military confrontation. Also, to create panic among the civilians in the target state.

History shows that the costs of war have always overshadowed its anticipated gains. Take, for example, the Iran-Iraq war (1980–88) that led to the death of some million people, the wounding of countless others, and the displacement of millions on both sides of the border, not to mention the massive economic and infrastructural devastation. While Iraq's prewar economy enjoyed an unprecedented boom with oil revenues rising from \$1 billion in 1972 to \$26 billion in 1980, by the end of the war Iraq had incurred a \$80 billion foreign debt.¹⁸

Also, starting an aggressive conflict may ignite international denunciation and sanctions, forcing leaders to face the consequences of their actions. Moreover, the allies of either side may intervene in the war, which can cause even more devastation. Rival states also divert a large portion of their budget to build strong military forces and spend money on espionage and intelligence to get information on strategic assets. All these measures are highly expensive and affect the overall economy and even the human development index of the belligerent states. For example, Saddam's aggression against Kuwait in the summer of 1990 led to Iraq's bankruptcy and also provoked a widespread US-led international response.¹⁹

To avoid costly wars, rival states delegate conflict to their proxies to act on their behalf. They harbour and drive groups, which could work for them at a reduced cost and cause damage to the target state. However, states also allocate resources to support non-state groups. In so doing, states need to increase their military budgets or allocate specific funds, purchase weapons, and provide them to the non-state actors, but this amount of money is far less as compared to their total military expenditures or capital spending during wartime. The above noted economic cost of the Iran-Iraq war explains appeal of terror-sponsorship as a foreign policy tool.

States provide sanctuaries and logistical support to terrorist groups, which for their part carry out attacks across the border or from inside, which make the environment terrifying.²⁰ At this point, **a small-scale war between the target and terrorism-host state or with a terrorist group would be guaranteed if the host state consistently supports non-state groups, which inflict substantial human and economic losses**. For example, Iran's massive support enabled Hezbollah to carry out constant attacks on Israeli forces in southern Lebanon, creating severe panic within Israel and security challenges to the Israeli security forces. The consistent sponsorship of Arab states of the PLO, Hamas, and Islamic Jihad enabled them to carry out attacks against the potential interests of Israel. Also, the PLO insurgencies in Jordan almost led to the downfall of the Hashemite dynasty, leading to the Black September 1970 mass massacres (on both sides) and to a brief Syrian-Jordanian military confrontation.²¹ The disputed Kashmir between India and Pakistan pushed them to support and counter-support non-state actors, which have frequently escalated the conflicted relations between the two nuclear-armed states.²²

States often intervene in external conflicts directly and by providing clandestine support to rebels.²³ Such external intervention often take place in ongoing conflicts in which domestic grievances and discriminatory government policies compel marginalised sections of society to take-up arms against their government and to ask for external support. Rival states take advantage of such domestic conflicts to justify their intervention.²⁴ It is also driven by a desire to weaken the position of the third country, which is also involved in the ongoing conflict or to promote their version of ideology to strengthen its own position vis-à-vis rival states. This involvement may be in a variety of ways, from diplomatic support to arms supply to actual fighting against government forces. Over time, states have increasingly delegated authority to non-state groups/organisations in the fight against their rivalries, which have played an indispensable role in conflict escalation in the Middle East.

State-sponsored terrorism and conflict escalation

Since state sponsorship of terrorism is a strategic choice whereby states covertly or overtly assist non-state groups in creating uncertainty within the target states, it is important to examine the ways in which state-sponsored terrorism escalates the interstates or intrastate conflict.

To begin with, state-sponsored **terrorist groups create extreme uncertainty, cause security challenges to armed and paramilitary forces, and undermines governments' ability to protect their citizens, operate in areas, which are highly valuable in terms of economic development, and undermine negotiated settlements**. Also, if rival state proliferates self-structured ideology at a constant speed while achieving its

strategic objectives, then state-sponsored terrorism may contribute to bargaining failure at macrolevel and compel the target state to take retaliatory actions.²⁵ **In such an environment, the conflict escalation is more likely.**

States build their economies, military, infrastructure, and technology by extracting endogenous territorial resources, and also by other means such as trade and investments. Rival states seek to disrupt the continuous flow of economic development of their adversaries by adopting several techniques, and state-sponsored terrorism is one of them. **If the rival state considers that a particular area is rich in natural resources, rich for the tourism industry, and strategically important, then the rival state may push non-state groups to operate and they create uncertainty and destabilisation in a particular region by conducting several terrorist attacks.** Which may hamper economic activities and capacity of the government to extract the resources. Subsequently, the uncertainty, coupled with the destabilisation, may create problems to the target state, and the government may become weak both economically and militarily. Moreover, state-sponsored terrorist groups create extreme fear among the population by targeting prominent figures and ordinary people. These losses could be rapid and potentially affect the morale of the target state and leave the government open to multiple challenges from the rival state. For example, Iran supported non-state actors – PUK and KDP – against Iraq in highly important regions so as to create chaos and hamper economic activities, while Iraq backed MeK against Tehran. Similarly, Iran's support to Hezbollah and Hamas against Israel and Houthis against Saudi interests has remained robust.

Target states are generally worried that constant terrorist activities might weaken their hold on regions of strategic importance, affect investment, tourism industry, cost military and civilian losses, etc., which might result in a power shift. As a result, **they invest heavily in building military and security forces** in a bid to ensure their security and avoid any destabilisation. Thus, for example, Riyadh's military expenditure grew from 5.6% of the GDP in 2010, to 13.5% in 2015. Similarly, Israel's military spending increased from 7.6% of the GDP in 2005 to 7.8% of the GDP in 2007 after its 2006 war with Hezbollah, dropping back to 6% on the eve of its clash with Hamas in the summer of 2014.²⁶

State-sponsored terrorism's ability to escalate interstate violence seems to be insignificant, but it does work if non-state actors undermine the stability, - 27 create long-term security concerns, and generate challenges to leaders in power. States cannot tolerate the constant violation of their sovereignty by the groups and bleed the people deliberately. Each of these **actions of nonstate groups threatens the military balance of power between states, and target state may initiate to project its power by attacking across the border against terrorist groups or strike the sponsoring state directly** to alleviate its security concerns.²⁸ Additionally, the denial of sponsorship frustrates the target state, which exacerbates the situation even further. At this juncture, **the target state becomes increasingly worried about the power distribution and security issues.** To avoid destabilisation for a long time, **target states may initiate pre-emptive attacks to fulfill their commitment to defend their sovereign territories.** Hence, state sponsorship is one of the escalating factors, which trigger violence at different levels.

The cases of state-sponsored terrorism in the Middle East potentially illustrate this dynamic because states in the context of rivalry have been providing support to non-state actors in one form or another. The escalation of conflicts (e.g. Yemen, Syria, Iraq, etc.) clearly demonstrate that, non-state actors play a major role in escalating conflicts.

Yes retaliation

It is reverse causal – US retaliation causes terrorists to escalate attacks.

Gaibulloev and Sandler 19 (Khusrav Gaibulloev, PhD in Economics, Co-Editor of Defense and Peace Economics; Todd Sandler is a professor of economics at the University of Wyoming. He has received a NATO postdoctoral fellowship in science and a National Defense Education Association fellowship; “Six things we’ve learned about terrorism since 9/11”; The Washington Post; September 11th, 2019; <https://www.washingtonpost.com/politics/2019/09/11/six-things-weve-learned-about-terrorism-since/>; ERB)

Many counterterrorism strategies are ineffective.

Our overview shows that many counterterrorism approaches don’t work very well. Retaliatory attacks — such as the U.S. raid on Libya in 1986 in retaliation for Libya’s alleged bombing of a Berlin discotheque where many U.S. service members were injured — don’t seem to reduce future attacks by the terrorists or their sponsoring group. Terrorists actually increased their attacks immediately following the raids, advancing the schedule of already planned attacks in protest, and then attacking less for a period as they replenished spent resources.

Yes nuclear terror

Al-Qaeda has a clear motive for nuclear terrorism

Bunn et al. 19 (Matthew Bunn is an American nuclear and energy policy analyst, currently a professor at the Harvard Kennedy School at Harvard University. He is the Co-principal Investigator for the Belfer Center's Project on Managing the Atom; Nickolas Roth is director of the Stimson Center's Nuclear Security Program and an Associate of the Project on Managing the Atom at the Harvard Kennedy School's Belfer Center for Science and International Affairs. Roth was a senior research associate at the Project on Managing the Atom; William Tobey was Deputy Administrator for Defense Nuclear Nonproliferation at the National Nuclear Security Administration and is a Senior Fellow of Belfer Center for Science and International Affairs; "Revitalizing Nuclear Security in an Era of Uncertainty"; Harvard Kennedy School Belfer Center for Science and International Affairs; January 2019; <https://www.belfercenter.org/NuclearSecurity2019>; ERB)

The motive for nuclear terrorism is also well established. Forty years ago, terrorists may have wanted "a lot of people watching, not a lot of people dead," reasoning that their political objectives would be defeated by revulsion to mass casualties.³⁹ Today, however, while it remains true that most terrorist groups have no interest in the nuclear level of violence, a few do. The most dangerous types of terrorist organizations appear to be apocalyptic groups seeking to bring about the end of the world (such as the Japanese terror cult Aum Shinrikyo) and groups with immense political ambitions, in some cases including the defeat of superpowers, for which very powerful weapons might be needed (such as al Qaeda, some Chechen terrorists, and the Islamic State). From the 9/11 attackers to Chechen rebels, who killed hundreds of children and their parents at a school in Beslan, Russia, to the Islamic State, which regularly televised its atrocities, it is clear that some terrorist groups seek to inflict as many casualties as possible, as cruelly as possible. Ours is an age of unlimited terrorist ambition.

Aum Shinrikyo released sarin nerve gas in Matsumoto and in the Tokyo subway in 1995 and attempted to acquire both nuclear and biological weapons.⁴⁰ Al Qaeda, whose leader declared acquisition of nuclear and chemical weapons to be a "religious duty," had a focused nuclear weapons effort that reported directly to Ayman al-Zawahiri (now the group's leader), included repeated attempts to get nuclear material and recruit nuclear expertise, and progressed as far as carrying out crude but sensible tests of conventional explosives for the nuclear program in the Afghan desert.⁴¹ Chechen terrorists planted a stolen radiological source in a Moscow park as a warning, repeatedly threatened to sabotage nuclear reactors—and, as noted earlier, reportedly carried out reconnaissance at both nuclear weapon storage sites and on nuclear weapon transport trains.⁴² So far, there is no public evidence of a focused Islamic State effort to acquire nuclear weapons, despite hints such as Islamic State operatives' video monitoring of the private home of a top official of Belgium's leading nuclear research center.⁴³

Al-Qaeda wants to nuke the US

Bunn and Wier 05 (Matthew Bunn is an American nuclear and energy policy analyst, currently a professor at the Harvard Kennedy School at Harvard University. He is the Co-principal Investigator for the Belfer Center's Project on Managing the Atom; Anthony Wier is a Former Research Associate for the Belfer Center's Project on Managing the Atom; "The Seven Myths of Nuclear Terrorism"; Harvard Kennedy School Belfer Center for Science and International Affairs; April 2005; https://scholar.harvard.edu/files/matthew_bunn/files/bunnwier_the_seven_myths_of_nuclear_terrorism_2005.pdf; ERB)

This conclusion is correct for the vast majority of the world's terrorist groups. But Al Qaeda and the global jihadist network it has spawned are different. They **are focused on a global struggle, for which the immense power of nuclear weapons might be seen as necessary, not a local battle for which such weapons are unneeded.** They have gone to considerable lengths to justify to their supporters and audiences the use of mass violence, including the mass killing of innocent civilians. And they have explicitly set inflicting the maximum possible damage on the United States and its allies as one of their organizational goals.

Al Qaeda's followers believe that they, in effect, brought down the Soviet Union—that the mujahideen's success in forcing the Soviet Union from Afghanistan was a key factor leading to the Soviet collapse. And they appear to believe that the United States, too, is a "paper tiger" that can be driven to collapse—that the 9-11 attacks inflicted grievous damage on US economic power, and that still larger blows are needed to bring the United States down. As bin Laden put it in a message to his followers in December 2001, "America is in retreat by the grace of God Almighty and economic attrition is continuing up to today. But it needs further blows. The young men need to seek out the nodes of the American economy and strike the enemy's nodes." The notion that major blows could cause the collapse of the United States is, in essence, Al Qaeda's idea of how it will achieve victory. **A nuclear blast incinerating an American city would be exactly the kind of blow Al Qaeda wants.**

From long before the 2003 fatwa, bin Laden and the global jihadist network have made their desire for nuclear weapons for use against the United States and its allies explicit, by both word and deed. Bin Laden has called the acquisition of weapons of mass destruction (WMD) a "religious duty." Intercepted Al Qaeda communications reportedly have referred to inflicting a "Hiroshima" on the United States. Al Qaeda operatives have made repeated attempts to buy stolen nuclear material from which to make a nuclear bomb. They have tried to recruit nuclear weapon scientists to help them. The extensive downloaded materials on nuclear weapons (and crude bomb design drawings) found in Al Qaeda camps in Afghanistan make clear the group's continuing desire for a nuclear capability.

*****Failed States**

!—Failed States—Great Power War

Great power war

Grygiel 9 – PhD @Princeton, associate professor at the Catholic University of America and fellow at The Institute for Human Ecology(Jakob, “Vacuum Wars: The Coming Competition Over Failed States,” American Interest, Jul/Aug)

Mention “failed states” in an academic seminar or a policy meeting and you will hear a laundry list of tragic problems: poverty, disease, famine, refugees flowing across borders and more. If it is a really gloomy day, you will hear that failed states are associated with terrorism, ethnic cleansing and genocide.

This is the conventional wisdom that has developed over the past two decades, and rightly so given the scale of the human tragedies in Bosnia, Somalia and Rwanda, just to mention the most egregious cases of the 1990s. This prevailing view of failed states, however, though true, is also incomplete. Failed states are not only a source of domestic calamities; they are also potentially a source of

great power competition that in the past has often led to confrontation, crisis and war. The failure of a state creates a vacuum that, especially in strategically important regions, draws in competitive great-power intervention. This more traditional view of state failure is less prevalent these days, for only recently has the prospect of great power

competition over failed “vacuum” states returned. But, clearly, recent events in Georgia—as well as possible future scenarios in Iraq, Afghanistan and Pakistan, as well as southeastern Europe, Asia and parts of Africa—suggest that it might be a good time to adjust, really to expand, the way we think about “failed states” and the kinds of problems they can cause. The difference between the prevailing and the traditional view on state failure is not merely one of accent or nuance; it has important policy implications. Intense great power conflict over the spoils of a failed state will demand a fundamentally different set of strategies and skills

from the United States. Whereas the response to the humanitarian disasters following state failure tends to consist of peacekeeping and state-building missions, large-scale military operations and swift unilateral action are the most likely strategies great powers will adopt when competing over a power vacuum. On the political level, multilateral cooperation,

often within the setting of international institutions, is feasible as well as desirable in case of humanitarian disasters. But it is considerably more difficult, perhaps impossible, when a failed state becomes an arena of great

power competition. The prevailing view of failed states is an obvious product of the past two decades—a period in which an entirely new generation of scholars and policymakers has entered their respective professions. A combination of events—the end of the Cold War, the collapse of the Soviet Union and the prostration of states such as Somalia, Rwanda, Haiti and Bosnia, and most importantly the terrorist attacks of September 11—created two interlocked impressions concerning the sources of state failure that are today largely accepted uncritically. The first of these is that weak states have unraveled because of the great powers’ disinterest in them, which has allowed serious domestic problems, ranging from poverty to ethnic and social strife, to degenerate into chaos and systemic governance failure.¹ The basic idea here is that the Cold War had a stabilizing effect in several strategic regions where either the United States or the Soviet Union supported recently fashioned states with little domestic legitimacy and cohesion for fear that, if they did not, the rival superpower might gain advantage. Some fortunate Third World neutrals even managed a kind of foreign aid arbitrage, attracting help from both sides. When support from the superpowers ended, many of these states, such as Somalia and Yugoslavia, were torn apart by internal factionalism. The state lacked the money to bribe compliance or to generate a larger economic pie, degenerating rapidly into corruption and violence. The key conclusion: The most egregious and tragic examples of failed states in the 1990s occurred because of great power neglect rather than meddling. The related second impression that post-Cold War events have created is that the main threat posed by failed states starts from within them and subsequently spills over to others. Failed states export threats ranging from crime to drugs to refugees to, most dramatically, global terrorism.² The lawlessness and violence of such states often spills across borders in the form of waves of refugees, the creation of asylums for criminals and more besides. As the number and severity of failed state cases rose, Western powers reacted much of the time by hoping that the problems arising from the failure of states, even those geographically close to the United States or Europe like Haiti and Bosnia, would remain essentially limited so that internal chaos could simply be waited out. Interventions such as in Somalia, Bosnia or Haiti were driven by a Western public shocked by vivid images of suffering and slaughter rather than by a sense that these collapsed states directly threatened U.S. national security. The 9/11 terrorist attacks against the United States changed the perception that failed states could be safely ignored. The Hobbesian world of a failed state could be distant, but it was also a breeding ground for terrorist networks that could train their foot soldiers, establish logistical bases and plan attacks against distant countries. Failed states suddenly were not only humanitarian disasters but security threats. As Francis Fukuyama observed in 2004, “radical Islamist terrorism combined with the availability of weapons of mass destruction added a major security dimension to the burden of problems created by weak governance.”³ However, 9/11 did not alter the conviction that the main threat posed by failed states stems from endogenous problems and not from a great power competition to fill the vacuum created by their demise. At least in the immediate aftermath of the terrorist attacks, there was a naive feeling that the Islamist threat festering in failed or weak states such as Afghanistan was a menace to the international

community writ large, and certainly to great powers like Russia and China, as well as the United States. It was therefore assumed that the great powers would cooperate to combat terrorism and not compete with each other for control over failing or failed states. As Stephen David pointed out in these pages, “Instead of living in a world of international anarchy and domestic order, we have international order and domestic anarchy.”⁴ The solution stemming from such a view of failed states falls under the broad category of “nation-building.” If the main challenge of failed states is internally generated and caused by a collapse of domestic order, then the solution must be to rebuild state institutions and restore authority and order, preferably under some sort of multilateral arrangement that would enhance the legitimacy of what is necessarily an intrusive endeavor. Great powers are expected to cooperate, not compete, to fix failed states. U.S. foreign policy continues to reflect this prevailing view. Then-Director of the Policy Planning staff, Stephen Krasner, and Carlos Pascual, then-Coordinator for Reconstruction and Stabilization at the State Department, wrote in 2005 that, “when chaos prevails, terrorism, narcotics trade, weapons proliferation, and other forms of organized crime can flourish.” Moreover, “modern conflicts are far more likely to be internal, civil matters than to be clashes between opposing countries.”⁵ The prevailing view of failed states is, to repeat, not wrong, just incomplete—for it ignores the competitive nature of great power interactions. The traditional understanding of power vacuums is still very relevant. Sudan, Central Asia, Indonesia, parts of Latin America and many other areas are characterized by weak and often collapsing states that are increasingly arenas for great power competition. The interest of these great powers is not to rebuild the state or to engage in “nation-building” for humanitarian purposes but to establish a foothold in the region, to obtain favorable economic deals, especially in the energy sector, and to weaken the presence of other great powers. Let’s look at just three possible future scenarios. In the first, imagine that parts of Indonesia become increasingly difficult to govern and are wracked by riots. Chinese minorities are attacked, while pirates prowl sealanes in ever greater numbers. Beijing, pressured by domestic opinion to help the Chinese diaspora, as well as by fears that its seaborne commerce will be interrupted, intervenes in the region. China’s action is then perceived as a threat by Japan, which projects its own power into the region. The United States, India and others then intervene to protect their interests, as well. In the second scenario, imagine that Uzbekistan collapses after years of chronic mismanagement and continued Islamist agitation. Uzbekistan’s natural resources and its strategic value as a route to the Caspian or Middle East are suddenly up for grabs, and Russia and China begin to compete for control over it, possibly followed by other states like Iran and Turkey. In a third scenario, imagine that the repressive government of Sudan loses the ability to maintain control over the state, and that chaos spreads from Darfur outward to Chad and other neighbors. Powers distant and nearby decide to extend their control over the threatened oil fields. China, though still at least a decade away from having serious power projection capabilities, already has men on the ground in Sudan protecting some of the fields and uses them to control the country’s natural resources. These scenarios are not at all outlandish, as recent events have shown. Kosovo, which formally declared independence on February 17, 2008, continues to strain relationships between the United States and Europe, on the one hand, and Serbia and Russia, on the other. The resulting tension may degenerate into violence as Serbian nationalists and perhaps even the Serbian army intervene in Kosovo. It is conceivable then that Russia would support Belgrade, leading to a serious confrontation with the European Union and the United States. A similar conflict, pitting Russia against NATO or the United States alone, or some other alliance of European states, could develop in several post-Soviet regions, from Georgia to the Baltics. Last summer’s war in Georgia, for instance, showed incipient signs of a great power confrontation between Russia and the United States over the fate of a weak state, further destabilized by a rash local leadership and aggressive meddling by Moscow. The future of Ukraine may follow a parallel pattern: Russian citizens (or, to be precise, ethnic Russians who are given passports by Moscow) may claim to be harassed by Ukrainian authorities, who are weak and divided. A refugee problem could then arise, giving Moscow a ready justification to intervene militarily. The question would then be whether NATO, or the United States, or some alliance of Poland and other states would feel the need and have the ability to prevent Ukraine from falling under Russian control. Another example could arise in Iraq. If the United States fails to stabilize the situation and withdraws, or even merely scales down its military presence too quickly, one outcome could be the collapse of the central government in Baghdad. The resulting vacuum would be filled by militias and other groups, who would engage in violent conflict for oil, political control and sectarian revenge. This tragic situation would be compounded if Iran and Saudi Arabia, the two regional powers with the most direct interests in the outcome, entered the fray more directly than they have so far. In sum, there are many more plausible scenarios in which a failed state could become a playground of both regional and great power rivalry, which is why we urgently need to dust off the traditional view of failed states and consider its main features as well as its array of consequences. The traditional view starts from a widely shared assumption that, as nature abhors vacuums, so does the international system. As Richard Nixon once said to Mao Zedong, “In international relations there are no good choices. One thing is sure—we can leave no vacuums, because they can be filled.”⁶ The power vacuums created by failed states attract the interests of great powers because they are an easy way to expand their spheres of influence while weakening their opponents or forestalling their intervention. A state that decides not to fill a power vacuum is effectively inviting other states to do so, thereby potentially decreasing its own relative power. This simple, inescapable logic is based on the view that international relations are essentially a zero-sum game: My gain is your loss. A failed state creates a dramatic opportunity to gain something, whether natural resources, territory or a strategically pivotal location. The power that controls it first necessarily increases its own standing relative to other states. As Walter Lippmann wrote in 1915, the anarchy of the world is due to the backwardness of weak states; . . . the modern nations have lived in armed peace and collapsed into hideous warfare because in Asia, Africa, the Balkans, Central and South America there are rich territories in which weakness invites exploitation, in which inefficiency and corruption invite imperial expansion, in which the prizes are so great that the competition for them is to the knife.⁷ The threat posed by failed states, therefore, need not emanate mainly from within. After all, by definition a failed state is no longer an actor capable of conducting a foreign policy. It is a politically inert geographic area whose fate is dependent on the actions of others. The main menace to international security stems from competition between these “others.” As Arnold Wolfers put it in

1951, because of the competitive nature of international relations, "expansion would be sure to take place wherever a power vacuum existed."⁸The challenge is that the incentive to extend control over a vacuum or a failed state is similar for many states. In fact, even if one state has a stronger desire to control a power vacuum because of its geographic proximity, natural resources or strategic location, this very interest spurs other states to seek command over the same territory simply because doing so weakens that state. The ability to deprive a state of something that will give it a substantial advantage is itself a source of power. Hence a failed state suddenly becomes a strategic prize, because it either adds to one's own power or subtracts from another's. The prevailing and traditional views of failed states reflect two separate realities. Therefore, we should not restrict ourselves to one view or the other when studying our options. The difference is not just academic; it has very practical consequences. First and foremost, if we take the traditional view, failed states may pose an even greater danger to international security than policymakers and academics currently predict. Humanitarian disasters are certainly tragedies that deserve serious attention; yet they do not pose the worst threats to U.S. security or world stability. That honor still belongs to the possibility of a great power confrontation. While the past decade or so has allowed us to ignore great power rivalries as the main feature of international relations, there is no guarantee that this happy circumstance will continue long into the future. Second, there is no one-size-fits-all policy option for a given failed state. Humanitarian disasters carry a set of policy prescriptions that are liable to be counterproductive in an arena of great power conflict. It is almost a truism that failed states require multilateral cooperation, given their global impact. But the traditional view of failed states leads us not to seek multilateral settings but to act preemptively and often unilaterally. Indeed, it is often safer to seek to extend one's control over failed states quickly in order to limit the possibility of intervention by other great powers. Third, the role of armed forces engaged in failed states needs to be re-evaluated in light of the traditional view. If failed states require only "nation-building", the military forces of the intervening powers will have to develop skills that are more like those of a police force: comfortable with a limited use of force, adept at distinguishing peaceful civilians from criminals, able to enforce law and order, good at managing interactions within the societies and many other tasks as well. However, the traditional view suggests that one must be prepared to apply the full spectrum of military force in case of a direct confrontation with another great power. Sending a weakly armed peacekeeping force into a situation in which such a confrontation is possible could easily prove disastrous. Thus the United States should not focus only or overly much on preparing for low-intensity conflicts and counterinsurgency operations to the detriment of preparing for a major war involving another state. Rather, it should maintain and improve its ability to deny other powers access to regions at stake and increase its readiness for a direct confrontation. Finally, on the political level, nation-building under the aegis of the United Nations or even NATO may not be the solution to failed states. If they are problems not just of foreign aid and law enforcement, but also of great power conflict and bilateral diplomacy, we should expect a reversion to an atavistic set of state actions that were supposed to have been made obsolete by the triumph of liberal internationalism. As to the outcomes of vacuum wars, finally, history suggests four basic possibilities: non-intervention by all powers; partition; unilateral preventive intervention; and war. If a failed state was too distant and ultimately strategically irrelevant, great powers simply ignored it, sensing that an intervention would not increase their own power. In many ways the irrelevance of a failed state leads to the most stable situation, one in which the prevailing view is most applicable. But there are ever fewer areas of the world that fall into this category. Interconnectedness combined with the growing power-projection capability of powers such as China creates incentives to intervene in even the most remote areas. The possible scenarios of Indonesia or Sudan are good examples of this. So we are left with the other three options. Great powers have employed partition or division into spheres of influence to avoid a massive confrontation. The partitions of Poland at the end of the 18th century are a classic example. The next option is unilateral preventive intervention. Basically, this involves a rapid intervention by one power to establish its dominance over the area in question, preventing the other interested parties from projecting their power there. In brief, one power arrives first at the carcass of the failed or failing state and preempts conflict by making it too costly for others. The last option, which is not mutually exclusive of the others, is war. The inability to reach an agreement to divide or unilaterally control a failed state can lead to a violent clash. The exact features of such a war may range from battles between mass armies to attempts at subversion and insurgency. But the underlying characteristic is the direct involvement of two or more powers.

*****Impacts that are in the Judicial Discretion advantage but you could also read on this page if you wanted to swap out advantages**

I/L- Citizen checks- SOP

Plea bargains undermine key checks and balances that uphold the separation of power

Reddy and Richardson 19 (VIKRANT P. REDDY, Senior Fellow for Criminal Justice, Charles Koch Institute and R. JORDAN

RICHARDSON, Senior Policy Counsel, Americans for Prosperity, "Why the Founders Cherished the Jury" *Federal Sentencing Reporter* 31(4-5) April/June 2019)wtk

Second, plea agreements, whether operating as a valve to offload the enormous influx of cases flooding the dockets or intended as a hammer to pressure defendants to cooperate with prosecutors, have the grim effect of bypassing the very check upon the power of government that the Founders so revered. The cherished right of trial by jury, attained by the "wisdom of our sages and the blood of our heroes,"⁴⁹ has become a mere afterthought in the modern criminal justice system. Despite the clear evidence of the Founders' intent to establish the jury to counteract the power of the state,⁵⁰ modern plea agreements undermine its function.⁵¹ As the Founders envisioned, **juries were essential to the tripartite system of checks and balances.**⁵² They were designed "to guard against a spirit of oppression and tyranny on the part of rulers," and were "from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties."⁵³ The United States Supreme Court crystalized this point in *Duncan v. Louisiana*, declaring: "[J]ury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence."⁵⁴ The Founders insistence on trial by jury was not just a preference for ritualistic formalities. It was a prescriptive demand to protect liberty.⁵⁵ It shifted the authority for final decisions from government bureaucrats into the hands of citizens, so that "before an individual can lose her liberty in a criminal case, the people themselves must agree."⁵⁶ The legislature could propose laws criminalizing behavior, the executive could enforce those laws with appropriate resources, and the judiciary could oversee the process to ensure legality. But the institution of the jury was the final check to hold all three branches accountable.⁵⁷

I/L—Judicial legitimacy

Plea bargains collapse judicial legitimacy

Reddy and Richardson 19 (VIKRANT P. REDDY, Senior Fellow for Criminal Justice, Charles Koch Institute and R. JORDAN

RICHARDSON, Senior Policy Counsel, Americans for Prosperity, “Why the Founders Cherished the Jury” *Federal Sentencing Reporter* 31(4-5) April/June 2019)wtk

The disparity is even greater in the federal courtrooms, where 97 percent of criminal convictions are obtained through plea negotiations, rather than presenting evidence before a jury. As the late William Stuntz explained, “plea bargaining is ... not some adjunct to the criminal justice system; it is the criminal justice system.”⁴³ Instead of the courtroom being a testing-ground for vigorous defense, it has transformed into an assembly line of guilty pleas.⁴⁴ This phenomenon is troubling for two reasons. First, it undermines trust in the objectivity of the courts by effectively outsourcing the sentencing function into the hands of the very government actor responsible for bringing charges against the accused in the first place.⁴⁵ As Judge Stephanos Bibas explained, “prosecutors can overcharge to gain leverage for harsh sentences, and judges have little power to check prosecutorial harshness.”⁴⁶ A reliance on plea bargaining means, as Oren Gazal-Ayal contends, “prosecutors can extract a guilty plea in almost any case, regardless of the real culpability of the defendant ... [because even] innocent defendants are willing to accept minor punishment in return for avoiding the risk of a much harsher trial result.”⁴⁷ This gives prosecutors enormous power to decide not only whom to prosecute, but what their punishment should be.⁴⁸

[Read and/or cross-apply impacts from the judicial legitimacy advantage parts of the file]

I/L—Democracy

The trial penalty undermines democracy—sentencing is key but the squo won't solve

Hafetz 19 (Frederick P. Hafetz, Partner at Hafetz & Necheles LLP, former federal prosecutor and long-time defense attorney, “The “Virtual Extinction” of Criminal Trials: A Lawyer’s View from the Well of the Court” *Federal Sentencing Reporter* 31(4-5), April/June 2019, pp. 248-255)wtk

What about the guilty? It is one thing for society to care about innocent persons coerced to plead guilty. But should we care that the sentencing power given to federal prosecutors, as well as many state prosecutors, not only coerces an innocent person to plead guilty but also coerces persons who are in fact guilty to forego challenging the government at trial? To put the question another way: even if an individual is guilty, is it important to our criminal justice system that he be able to challenge the government to overcome the presumption of his innocence by proving his guilt beyond a reasonable doubt? The answer to this question is a reflection of what kind of nation we are. Fundamental principles are violated no less by coercing the guilty as well as the innocent to surrender their right to have the government prove their guilt beyond a reasonable doubt. Our criminal justice system is based upon the bedrock principle that the guilty as well as the innocent are presumed innocent, and that it is the government’s obligation to prove guilt to the satisfaction of a jury of one’s peers. There is no principled reason why the mere assertion of that basic right should result in a significantly enhanced punishment for the underlying criminal conduct. The radical transformation of the criminal justice system by the severe sentencing statutes of the last few decades threatens the extinction of the adversary system. With its loss, we lose nothing less than the right to challenge the government when it seeks to deprive a person of liberty. This check on the government is vital to our democracy. Although there has been an effort in Congress by some conservatives and liberals to reform the federal sentencing system, the prospects are bleak. “I think that the reform movement should forget about getting anything meaningful [about sentencing reform] done in Congress for the next four years,” former Judge Gleeson recently told a legal forum.⁶¹

Jury trials are essential for democracy—trial penalties destroy it

Fremont 18 (Celeste Fremont, former visiting professor of Journalism at UC Irvine, and a senior fellow at USC’s Annenberg Institute for Justice and Journalist, award-winning freelance journalist specializing in gangs, law enforcement, criminal justice and education policy, “Has Plea Bargaining Pushed The Sixth Amendment Right To Trial To The Brink Of Extinction? A New Report Says Yes” 7/15/18 <https://witnessla.com/plea-bargaining-has-pushed-the-sixth-amendment-right-to-trial-to-the-edge-of-extinction-says-a-new-report/>)wtk

The report argues that the vanishing of jury trials also deprives the justice system of, among other things, an important community-controlled check on prosecutorial excess. The primary job of a jury is to determine whether or not the prosecution has met its high burden of proof beyond a reasonable doubt before a someone’s freedom is abridged. The jury also may convict a defendant of a lesser included offense, when the jurors deem the lesser offense, or offenses, are fairer and more just than those that the prosecution has asked for. In other words, explain the report’s authors, a jury is the primary bulwark against prosecutorial overreach. A jury of normal citizens provides a reminder, they write, that the “government is not omnipotent, but instead remains subject to the will of the people.” When the U.S. criminal justice system “churns some 11 million people through its courtroom doors every year,” according to the report, the system of trial by jury “actively engages the public in this critical process of democracy.” As trials become increasingly rare in the American criminal justice system, that **essential brand of democratic engagement disappears as well.**

Rule of law is key to democracy

FBA 20 (Federal Bar Association, “Statement on the Rule of Law and an Independent Judiciary” 2/19/2020 <https://www.fedbar.org/government-relations/fba-statements-letters-and-testimony/statement-on-the-rule-of-law-and-an-independent-judiciary/>)wtk

Respect for the rule of law and the preservation of an independent judiciary are among the most important principles upon which our Republic was founded. These time-honored principles have guided our constitutional democracy for more than two centuries. In fulfilling the Federal Bar Association's mission and honoring our members' commitment to upholding federal law, the Association has a responsibility to defend and protect the rule of law and the independence of our judiciary when these fundamental tenets are at risk. The stability of our constitutional democracy rests on public confidence in all institutions charged with enforcing our laws, especially the U.S. Department of Justice. The just enforcement of law involves the well-grounded application of facts to the law and not political affiliations, personal interests, or retribution. Furthermore, the preservation of public confidence in the rule of law is associated with the longstanding recognition of the Attorney General of the United States as the nation's chief law enforcement officer and the legal representative of the nation as a whole, not any government official, agency, party or person. Departure from this principle erodes public respect for the fairness of our legal system and equal justice under law.

Inequality

****Note**

For the plea bargain internal link, look to the plea bargains advantage for solvency evidence

Solvency—Mass incarceration

Mandatory minimums contribute to mass incarceration and promote sentencing disparities

Hofer, Paul. [Senior Policy Analyst, Sentencing Resource Counsel Project of the Federal Public and Community Defenders. The views expressed here are those of the author and do not necessarily reflect views of the Federal Public and Community Defenders or their committees and projects] "After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform." University of Toledo Law Review, vol. 47, no. 3, Spring **2016**, p. 649-694. HeinOnline, (accessed 06/27) <CJC>

I. INTRODUCTION Federal sentencing is a tragic mess. Thirty years of conflicting legislative experiments began with high hopes but resulted in mass incarceration. Ten years of Supreme Court tinkering increased some forms of judicial discretion, but left in place mandatory minimum statutes and advisory guidelines that rarely give good advice. Guideline recommendations for many common crimes were set by Congress instead of by the United States Sentencing Commission, either indirectly through mandatory minimums or directly through specific statutory directives to the Commission. Significant sentencing discretion remains with prosecutors, who use it for reasons outside the recognized purposes of punishment. In 1984, Congress enacted the Sentencing Reform Act (SRA), which created the Sentencing Commission and directed it to promulgate sentencing guidelines.¹ The SRA contained procedures for guideline development that might have produced fair and effective guidelines, but these were frequently overridden by Congress itself or were not fully implemented by the Commission.² The same year it enacted the SRA, Congress began passing mandatory minimums, which overrode the Guidelines, distorted their development, and ultimately betrayed sentencing reform.³ Two years later, Congress enacted the Anti-Drug Abuse Act of 1986 (the ADAA), which established many of the mandatory minimum penalties based on drug type and quantity that remain operative today.⁴ As a result of these Acts and others, the Guidelines for most crimes require prison terms much longer than judges had previously imposed. The average prison time served by federal defendants more than doubled after the Guidelines became effective.⁶ The rate of probation plummeted to less than half the rate in 1987.⁸ The federal prison population grew 400%.⁸ Today, the Federal Bureau of Prisons is the largest prison system in America, and the United States has the highest incarceration rate in the world.⁹

Solvency — Wrongful convictions

Forced adherence under mandatory minimums increases the likelihood of wrongful convictions because it incentivizes defendants to lie

Cox 15, Robynn J.A. Cox, Economic Policy Institute, 1-16-2015 (Robynn Cox is an assistant professor in the Economics Department at Spelman College and a RCMAR Scholar at the USC Leonard D. Schaeffer Center for Health Policy and Economics. Her research investigates the economic and social consequences of mass incarceration, and its effect on racial inequality. "Where Do We Go from Here? Mass Incarceration and the Struggle for Civil Rights", <https://www.epi.org/publication/where-do-we-go-from-here-mass-incarceration-and-the-struggle-for-civil-rights//BUBU>)

A recent report investigating the determinants of wrongful convictions found a lying non-eyewitness to significantly increase the likelihood of a wrongful conviction (Gould et al. 2013). This last point is also important because the mandatory minimum legislation for federal drug crimes allows for the defendant to avoid what could be a lengthy sentence if he or she provides **“substantial assistance”** in the prosecution of other individuals (Blumenson and Nilsen 1998). Thus, not only has the drug war imprisoned nonviolent offenders at alarming rates, but it is also reasonable to conclude that it has brought about an increase in wrongful convictions and imprisonment.

Solvency — Racial Targeting

Mandatory minimums are racial targeting—stats prove

Mystal 19 (Elie, justice correspondent for *The Nation*, “The Manafort Sentence Is a Lesson in White Privilege” 3/8/19 <https://www.thenation.com/article/archive/manafort-sentence-mandatory-minimums-racism/>)wtk

The US Sentencing Commission found that black men received 19.1 percent more prison time than similarly situated white felons. That report adjusted for criminal history, violence, and plea bargains. Mandatory minimums and sentencing guidelines are not a solution to that problem. All those do is ratchet up the prison time for African Americans, while judges can still sentence white convicts at the low end of the guidelines. And that’s if prosecutors even seek the highest possible charges against white suspects, which we know they don’t. A Michigan Law School study found that prosecutors were 75 percent more likely to seek a charge that included a mandatory minimum sentence for black suspects than white ones suspected of the same crime.

Mandatory minimums are racially targeted—that causes mass incarceration

Montz 15 (Rob, Vox, “How mandatory minimums helped drive mass incarceration” 9/3/15 <https://www.vox.com/2015/9/3/9254545/mandatory-minimums-mass-incarceration>)wtk

Mandatory minimums were supposed to help crack down on drug crime in the '80s. But they've had huge unintended consequences: These statutes dictate specific prison terms for certain crimes deemed uniquely harmful to society. By design, they bar judges from using discretion during sentencing. Minimums have been around since America’s founding, but the most consequential ones were erected in the 1980s in response to the ravages of the inner-city drug trade. The idea was to establish uniformly stringent punishments to both deter drug offenses and lock away kingpins. And a central feature of this framework was the now-infamous minimum sentencing disparity between crack and powder cocaine violations. In the US, crack consumption is tied to income, and income is tied to race. So this arbitrary sentencing disparity has forced courts to punish black Americans much more harshly than white Americans for basically the exact same crime. As a result, tens of thousands of young men, most of whom are black, have been snatched up by law enforcement on low-level drug offenses and thrown into prison for mandatory terms that make a mockery of any sense of proportionality. This situation is so absurd that it's sparked the formation of a reform coalition composed of the most unlikely of allies, including the Koch brothers, the NAACP, Newt Gingrich, the American Civil Liberties Union, Sen. Rand Paul, and the Obama White House. Fortunately, policymakers have started injecting some common sense into the minimums regime. A landmark 2005 Supreme Court decision afforded federal judges some leeway to stray from dictated terms. A major federal criminal justice package passed in 2010 eliminated minimums for simple crack possession and dramatically ratcheted back the crack-powder sentencing disparity from 100-to-1 to 18-to-1. And President Obama recently wielded the executive commutation power to pardon 46 people serving excessive mandatory terms for nonviolent drug offenses. But the US still has a long way to go to make sentencing fair.

AT: Alt Causes

Mandatory minimums are the root cause of sentencing disparities – they're responsible for prosecutorial abuse, false testimony, congressional politicization, and are a precursor to further reform

Hofer, Paul. [Senior Policy Analyst, Sentencing Resource Counsel Project of the Federal Public and Community Defenders. The views expressed here are those of the author and do not necessarily reflect views of the Federal Public and Community Defenders or their committees and projects] "After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform." University of Toledo Law Review, vol. 47, no. 3, Spring **2016**, p. 649-694. HeinOnline (accessed 06/27) <CJC>

VI. MANDATORY MINIMUMS RuIN SENTENCING REFORM As the Sentencing Commission noted in 1991, mandatory minimum statutes and sentencing guidelines are "policies in conflict." 268 The problems the mandatory minimums create are even more obvious now that the Guidelines are advisory. Federal sentencing will never achieve the promise of the SRA, or the renewed promise of Booker, as long as mandatory minimums remain on the books. A. Mandatory Minimums Have a Corrosive Effect on the Entire Criminal Justice Process In addition to their contribution to sentencing disparities, mandatory minimums are the biggest factor creating an unfair and unbalanced system.² They vest prosecutors with enormous power to coerce defendants into foregoing important constitutional rights. These rights are not only crucial to ensure fair procedures but also central to the truth-seeking function of the criminal justice system. Because they deprive judges of any ability to check prosecutorial decisions, mandatory minimum penalty statutes are the most susceptible to abuse. Prosecutors file, or threaten to file, charges with harsh mandatory minimum sentences not because they result in appropriate sentences, but for the purpose of extracting guilty pleas, cooperation, appeal waivers, and various other concessions. Indeed, the Department has sought more and harsher mandatory sentencing laws, "not because the enhancements are inherently just or required for adequate deterrence, but precisely because higher sentences provide increased plea bargaining leverage." 270 Federal trial and acquittal rates are at historic lows because sentencing power in the hands of prosecutors make it too costly to go to trial, even for those with an excellent defense. When the difference between the sentence after trial and the sentence after plea is as high as it is in the federal system, and prosecutors have a monopoly on granting the discount, the system produces less reliable results.² 71 [P]lea bargaining pressures even innocent defendants to plead guilty to avoid the risk of high statutory sentences. And those who do take their case to trial and lose receive longer sentences than even Congress or the prosecutor might think appropriate, because the longer sentences exist on the books largely for bargaining 272 purposes. Mandatory minimums also threaten the truth-seeking function of the criminal justice system by creating powerful incentives for informants and cooperators to provide exaggerated and false information-information that in most cases will never be tested because the risk of challenging it is too great. The Innocence Project has found that in "more than 15% of cases of wrongful conviction overturned by DNA testing, an informant or jailhouse snitch testified against the defendant. Often, statements from people with incentives to testify ... are the central evidence in convicting an innocent person."² 73 The risk of false and embellished testimony is heightened in cases involving mandatory minimums because the penalties are so severe. Although prosecutors often claim, and may well believe, that mandatory minimums are essential to their ability to obtain cooperation from defendants, there is no sound evidence that this is so. Assessing the effects of mandatory minimums on cooperation by examining statistics is very difficult because the effects can pull in opposite directions and affect different offenders in different ways. We do know from Commission statistics that cooperation is routinely obtained in cases involving types of offenses that do not carry mandatory minimums. B. Mandatory Minimums Are Incompatible with Advisory Guidelines Mandatory minimum statutes cannot be reconciled with sentencing guidelines, whether advisory or mandatory. The problems begin with the way mandatory penalties are enacted. The principle of "just deserts" requires that the severity of the sentence should be proportionate to "the nature and seriousness of the harm ... and the offender's degree of culpability in committing the crime, in particular, his degree of intent (mens rea), motives, role in the offense, and mental illness or other diminished capacity."² 74 For judges to be able to impose the full range of sentences needed to comply with this principle, the statutory maximum must be sufficiently severe for the most serious offense that might arise under the broad terms of a statute. Conversely, the minimum punishment must be sufficiently low for the least harmful offense that might arise under a statute, committed by the least

culpable and least dangerous offender. Mandatory minimum statutory penalties, however, are not set with the least serious offenses in mind. The penalties are attached to only one or two facts, such as drug type and quantity, while the details of the offenses that will be subject to the penalties are left to the imagination. The generic crime categories to which the penalties are attached-whether "child pornography" or "drug trafficking"-evoke stereotypes and misconceptions and extreme examples rather than the most mitigated cases. The result is that the penalties are applicable to many far less serious offenses than what legislators had in mind when setting them. Mandatory minimums are often used in a partisan competition to prove who is the "toughest" on a particular type of offense or offender.²⁷⁵ Thus, most mandatory minimums are set with the most serious offenses in mind-precisely the opposite of what would be required to establish a rational punishment scheme designed to sentence proportionately. Apart from overall severity, integrating mandatory minimums with guidelines is impossible due to the simplistic way the statutes characterize different crimes. By requiring a minimum punishment for any crime involving just one fact, the statutes give disproportionate weight to that fact while ignoring others equally or more important. In theory, guidelines can take into account many considerations and weigh each according to its importance compared to the others. In addition, particularly when they are advisory, guidelines recognize that no set of rules can anticipate every relevant fact or how the real circumstances may combine to affect the appropriate sentence. Mandatory minimums, in contrast, assume that every single defendant whose crime involves that one fact deserves at least the minimum punishment. For all of these reasons, any hope that existing mandatory minimums might "work together" with a guidelines system is unfounded.²⁷⁶ C. The Guidelines Still Give Bad Advice The guideline range remains the "starting point and the initial benchmark" for all sentencing proceedings.²⁷⁷ Yet for most defendants sentenced in federal court, the applicable guideline range does not reflect the expertise the authors of the SRA expected it would. Booker empowered judges to critically evaluate the Guidelines' recommendations, but many sentencing judges continue to be anchored to the Guidelines' distorted starting point, and reluctant to engage in the critical policy analyses needed to evaluate the guidelines' fairness and effectiveness. Appellate courts have not encouraged, let alone required, this analysis. Ten years after Booker, the opportunity to use increased judicial discretion to rationalize sentencing may be slipping away. But Booker alone was never enough. As long as the Commission and the Guidelines remain bound to statutory directives and mandatory minimums, the federal system can never function as intended. At this writing, limited reform of mandatory minimums is stalled before Congress, but even it is relatively little, and far too late. What is needed is total repeal of mandatory minimum statutory penalties and specific statutory directives that have shackled the Commission from the time of the SRA.²⁷⁸ Sentencing reform is still a good idea. Let's hope the federal system tries it sometime soon.

Mandatory minimums are the primary cause of racial disparity – not judge discretion

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2. Prosecutor-Created Disparity As discussed in Part II, Congress was concerned about disparity caused by prosecutors as well as by judges. Precisely measuring and quantifying the amount of disparity created by prosecutorial discretion is difficult because there are no data comparable to the rich information available on judicial sentencing decisions. The evidence available in the pre-Booker era suggested that "disparate treatment of similar offenders is common at presentencing stages."²⁵⁰ The mechanisms intended to prevent disparity from a transfer of discretion from judges to prosecutors did not work. Judges rarely reject plea agreements partly because they felt reluctant, and in some cases not institutionally empowered, to infringe on prosecutors' decisions regarding which charges to bring and which guideline facts to press.²⁵¹ Moreover, given the harsh penalties contained in mandatory minimum statutes and mandatory guidelines, and the tight restrictions on judges' ability to depart from the Guidelines, plea bargains were often the only means to achieve reasonable sentences.²⁵² Research on disparity following Booker has been notable for a new emphasis on disparity arising

at pre-sentencing stages.²⁵³ It suggests that concerns about the disparate effects of charging and plea bargaining remain relevant today. Indeed, the switch to advisory guidelines may have increased the role of charging and mandatory minimums in creating racial disparity.²⁵⁴ As judges have increased sentencing below the guideline range, mandatory minimums that trump the guideline range or limit the ability to reduce sentences disproportionately affect the group most subject to mandatory minimums African-American defendants.³ Racial Disparity Discrimination-different treatment of races, genders, or ethnicities, unrelated to the purposes of sentencing-is a particularly egregious type of unwarranted disparity. Potential racial disparity, especially in the decision making of judges, has been the most studied aspect of federal sentencing, both prior to Booker and after.²⁵⁶ As long as average sentences among groups differ, policy makers will rightly question how much of the gap is warranted, and how much represents discrimination or some other type of unwarranted racial disparity. A comprehensive review of studies of racial disparity in judicial decision making published in 1993 found that, prior to the Guidelines when judges had complete discretion, sentencing differences by race or ethnicity were uniformly small or insignificant.^{2 5 7} The Commission's Fifteen Year Review examined research during the guidelines era and found methodological differences and contradictory findings: "Different studies yield different answers as to whether discrimination influences sentences at all and, if so, how much. These studies also disagree on which racial and ethnic groups are discriminated against and exactly where in the criminal justice process this discrimination occurs."²⁵⁸ After noting that its own results fluctuated from year to year, the Commission concluded that "there is reason to doubt that these racial and ethnic effects reflect deep-seated prejudices or stereotypes among judges."²⁵⁹ Because they are technical, statistical models can go wrong and can easily be misunderstood. In the post-Booker era, research on racial disparity has attempted to answer even more difficult questions. In addition to whether judicial decisions create racial disparity at a given time, some researchers have attempted to determine whether the Booker decision itself increased or decreased such disparity.^{26 1} The result has been more contradictory findings, greater confusion, and some methodological innovations.^{2 6 2} All this attention on judicial decision making is somewhat surprising, given that it has been apparent for quite some time that judicial decision making is far from the most serious source of unwarranted racial disparity. The most shocking fact of the guidelines era has been that, rather than reducing gross racial disparities, the gap between the average sentences of African-American and other defendants dramatically widened after implementation of the sentencing guidelines. As shown in Figure 4, average sentences varied relatively little among racial and ethnic groups in the pre-guideline era. But average sentences for African-Americans soared above the others once the Guidelines and mandatory minimums were in place. The types of offenses and offenders prosecuted in federal court change over time, which contributes to changes in the gaps among various groups. But the dramatic widening at the very time the Guidelines were implemented makes clear that the most important factor was a change in sentencing policies. Sentences simply got more severe, and especially for crimes that are disproportionately committed by African-Americans. Rules that properly track the purposes of sentencing may contribute to racial and ethnic differences, but these are not considered sources of unwarranted disparity. But rules with a severe adverse impact on certain groups that overpunish relative to the seriousness of the crime or the dangerousness of the defendant are properly considered discriminatory. Most notorious of these policies, of course, was the 100-to-1 ratio between powder and crack cocaine, now reduced to 18-to-1.²⁶⁴ But there are other unsound rules that contribute to the gap, such as the career offender guideline, and certain statutes and guidelines for firearms offenses. ^{2 6 5} This type of disparity has been called "structural," "institutionalized," or "embedded" bias.²⁶⁶ It remains the greatest source of unwarranted racial disparity in federal sentencing today. It is noteworthy that the gap between black and white defendants has begun to narrow in the last six years. Some of this narrowing reflects the decrease in crack cocaine statutory and guideline penalties, as well as increases in penalties for some offenses committed disproportionately by whites. But some of the decrease is attributable to judges rejecting guidelines recommendations that are. unsound and excessive. ^{2 6 7} In this way, Booker contributed to a decrease in the most significant source of racial disparity. Unfortunately, there are reasons to doubt that the gap, and excessive sentences for all groups, will disappear entirely because they result from a mechanism which Booker, the Commission, and judges can do nothing about-mandatory minimum penalty statutes.

!—Mass Incarceration—Econ

Mass incarceration crushes the economy – lack of labor participation, unemployment, economic immobility, and budget spent for prison

Hernandez 2/24, Eunice Hernandez is a researcher and writer in North Texas Daily, 2020/02/24 "The negative effects on the economy caused by mass incarceration," North Texas Daily, <https://www.ntdaily.com/the-negative-effects-on-the-economy-caused-by-mass-incarceration//BUBU>

For those unaware, the United States has the highest incarceration rate in the world. Incarceration rates have risen across all 50 states throughout the years. The amount spent to keep an individual incarcerated varies from state to state. For example, New York spends an average of \$60,076 and Kentucky spends an average of \$14,603 per inmate, according to a study done by Skidmore College. The amount of money that is being spent hinders the labor force participation which is key to sustaining economic growth. Currently labor force participation is low due to most individuals who are being incarcerated are between the ages of 19 and 39, according to a report by Julia Bowling, a writer for the Brennan Center For Justice. Individuals in this age range are key in being able to contribute to the growth of the economy and incarcerating them lowers the quality of our workforce. The more individuals that are being incarcerated the higher the unemployment rate is. Consequently, the U.S. economy loses in between \$57 billion and \$65 billion in output annually, according to a report by The Center for Economy and Policy. For ex-prisoners, it is very difficult to re-enter the workforce. This leads to higher state and federal government assistance payouts, loss of income tax revenue and drains the amount of monetary investment that can go into essential welfare programs. When a parent is incarcerated one must think of the effects this has on the youth population as well. Having a parent in prison not only doubles the chance of a child experiencing social and academic problems but it also increases their chances of being incarcerated. The U.S. economy loses an estimated \$2 million every time a juvenile makes a career out of being a criminal. This leads to a decrease in economic mobility. If a juvenile decides to take this path it could increase recidivism rates. It is estimated that criminal recidivism reduces the annual GDP by \$65 billion. When discussing incarceration, one must not only discuss the costs that come associated with the inmate but also the costs for victims, criminal justice system costs and the type of crime that was committed. When a crime is committed, one must take into account how the victim will be affected. In most cases victims will face an economic loss and expect some sort of restitution. Also, depending on the crime committed toward the victim, medical care costs and reparations must be accounted for. The state and federal governments are also required to fund the trial process which includes being able to hire prosecutors and fund the incarceration of the offender. The type of crime that is committed also plays an important role when discussing how much money is lost by the state. For example, when someone commits a murder, it costs the state approximately \$750,000 in reparations for the victim alone. By the time all other costs are included like the trial of the defendant, incarceration and others, the state has spent roughly \$9 million, according to the report by Skidmore College. If the United States wants to be able to increase their labor force participation and sustain their economy they should also consider treating the opioid crisis as a public health issue instead of treating it as a criminal activity issue.

!—Plea Bargains—Racist

Mandatory minimums incentivize federal prosecutors to charge for conspiracy in order to extort a plea—that disproportionately targets people of color

Jones and Cornelissen 19 (Rick Jones, Lecturer in law at Columbia Law School and Executive Director of the Neighborhood Defender Service, and Cornelius Cornelissen, JD from University of Chicago Law School, Judicial Law Clerk for the US District Courts, Policy Fellow for the Neighborhood Defender Service, “Coerced Consent: Plea Bargaining, the Trial Penalty, and American Racism” *Federal Sentencing Reporter* 31(4-5) April/June 2019, pp. 265-271)wtk

1. Conspiracy Laws. In the federal context, conspiracy laws carry the same mandatory sentence as the underlying drug crime. Because an agreement between one or more people opens each conspirator to the maximum penalties (for example, sentences based upon the collective quantity of drugs possessed by the group), these laws tend to overpenalize the least or lesser culpable defendants.²¹ Rather than serving as a tool against so-called “kingpins” or leaders, 23 percent of those convicted of federal drug crimes are low-level couriers, 21 percent are wholesalers, and 17 percent are street-level dealers. The imbalanced application of policing inevitably means that these rates come down harshest on Black and Brown people. When the entire motivation for the War on Drugs was subjugation and racial animus, the imbalanced application of conspiracy laws becomes clear. John Ehrlichman, President Nixon’s domestic policy chief, described the entire effort: You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black[s], but by getting the public to associate the hippies with marijuana and blacks with heroin[, and] then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.²² 2. Mandatory Minimums. The minimums effectively moved sentencing authority from judges to prosecutors. This power, along with vesting charging decisions with prosecutors, creates an apparatus where prosecutors can decide what punishment an individual faces. The plea rates convey just how significant this framework became. Between 1980 and 2010, the percentage of federal drug cases settled by plea grew from 68.9 percent to 96.9 percent,²³ corresponding with a War on Drugs that has had a disproportionate effect on people of color.²⁴

Mandatory minimums give prosecutorial discretion that skews sentencing times and is disproportionately targeted

Luna 10 [Erik Luna, law professor at Arizona State University, 5/27/2010, Mandatory Minimum Sentencing Provisions Under Federal Law, <https://www.cato.org/publications/congressional-testimony/mandatory-minimum-sentencing-provisions-under-federal-law>, NZ]

1. THE CASE AGAINST FEDERAL MANDATORY MINIMUMS

The basic critique of mandatory minimum sentencing schemes is well known and becoming more widely accepted. To begin with, mandatory minimums do not serve the traditionally accepted goals of punishment. All theories of retribution (and some conceptions of rule utilitarianism) require that punishment be proportionate to the gravity of the offense, and any decent retributive theory demands an upper sentencing limit.² The notion of proportionality between crime and punishment expresses a common principle of justice, a limitation on government power that has been recognized throughout history and across cultures,³ and a precept “deeply rooted and frequently repeated in common-law jurisprudence.”⁴ Mandatory minimums eliminate judicial discretion to impose a prison term lower than the statutory floor, making case-specific information about the offense and offender irrelevant, at least to the extent that these facts might call for a below-minimum sentence. For this reason, mandatory minimums are indifferent to proportionality concerns and can pierce retributive boundaries through obligatory punishment. Mandatory minimums may not fulfill consequentialist goals either, by failing to provide effective, efficient deterrence or meaningful incapacitation. Clarity and certainty of punishment are not synonymous with deterrence, which requires that a defendant not only know the rule, but also believe that the costs outweigh the benefits from violating the law and then apply this understanding to decision-making at the time of the crime. Most offenders neither perceive this balance of costs and benefits nor follow the rational actor model.⁵ In turn, incapacitation is

only effective if: (1) the person imprisoned would otherwise commit crime, and (2) he is not replaced by others. Mandatory minimums prove problematic on both criteria. Offenders typically age out of the criminal lifestyle, with long obligatory sentences requiring the continued incarceration of individuals who would not be engaged in crime. Moreover, certain offenses subject to mandatory minimums can draw upon a large supply of potential participants; with drug organizations, for instance, an arrested dealer or courier is quickly replaced by another. It is not surprising, then, that most researchers reject crime-control arguments for mandatory sentencing laws.⁶ Mandatory minimums generate arbitrary outcomes as well.⁷ They can have a “cliff effect” by drawing seemingly trivial lines that carry huge consequences. One of the more notorious examples is provided by the compulsory 5-year sentence for the possession of 5.0 grams of cocaine base. Crack cocaine offenders face a steep cliff under this law, where someone caught with 4.9 grams receives a relatively short sentence — but add a fraction of a gram and a half-decade in federal prison necessarily follows, with the defendant falling off the “cliff.” Mandatory minimums can also have a “tariff effect,” where some basic fact triggers the same minimum sentence regardless of whether the defendant was, for instance, a low-level drug courier or instead a narcotics kingpin. Perversely, the tariff may be levied on the least culpable members in a criminal episode, given that those in leadership positions often have valuable information that is unavailable to low-level offenders (i.e., the type of material that can be used as a bargaining chip with prosecutors).⁸ This raises the more general question as to the propriety of extracting information and guilty pleas through the threat of mandatory minimums. Such practices impose a “trial tax” on defendants who exercise their constitutional rights to trial by jury, proof beyond a reasonable doubt, and other trial-related guarantees — the tax being the mandatory minimum sentence that otherwise would not have been imposed.⁹ Sometimes maximum leverage is obtained through a process known as “charge stacking” (or “count stacking”), whereby the government divides up a single criminal episode into multiple crimes, each carrying its own mandatory sentence that can then be stacked, one on top of the other, to produce heavier punishment.¹⁰ This may be particularly troubling when law enforcement procures further crimes through its own actions, such as arranging a number of controlled drug buys in order to achieve a lengthy sentence.¹¹ In multi-defendant cases, there is also an issue of fairness when disparate punishment is the result of a “race to the prosecutor’s office,” with the defendant who pleads first — sometimes the one who has the savviest or most experienced defense counsel — avoiding a long mandatory sentence. Moreover, the mechanical nature of mandatory minimums can entangle all criminal justice actors in an oxymoronic process where facts are bargainable, from the amount of drugs to the existence of a gun. The participants will figuratively “swallow the gun” to avoid a factual record that would require a mandatory sentence.¹² To be sure, these machinations appear reasonable in difficult cases by evading excessive sentences demanded under the federal regime. But the end result is a legal subterfuge that can only undercut the legitimacy of the criminal justice system and its actors. The moral authority of law depends not merely on just outcomes but also justifiable procedures in reaching such results. “Our government is the potent, the omnipresent teacher,” Justice Louis Brandeis once warned, and “if the government becomes a lawbreaker, it breeds contempt for law.”¹³ It almost goes without saying that a legitimate, properly functioning criminal justice system would not tolerate such deception and instead would demand that the case facts be true, not from some kind of God’s eye perspective, but as best as humans can discern. This is not something that results from an outcome-based bargaining process and simply maintains a sufficient degree of truthiness, to use Stephen Colbert’s phrase. “Facts are like flint,” one federal judge noted several years ago, and “whether a defendant pleads or goes to trial, the facts should theoretically remain the same.”¹⁴ All of the above problems tend to generate different punishments among similarly situated offenders — a sadly ironic consequence, given that determinate sentencing in general and mandatory minimums in particular were intended to eliminate the perceived disparities under the previous federal sentencing system.¹⁵ The concept of equality — that all people are equal before the law and that any legal distinction requires justification — is embedded in liberal thought and considered fundamental to a just society.¹⁶ Equality in the Aristotelian sense requires decision-makers to treat like cases alike, and just as importantly, to treat dissimilar cases differently.¹⁷ It would thus be a violation of equality for disparate sentences to be given to relevantly similar offenders and for comparable sentences to be doled out to relevantly dissimilar offenders.¹⁸ Inconsistent application of mandatory minimums has exacerbated disparities in both ways — expanding the sentencing differentials between analogous cases and requiring the same base sentences in patently dissimilar cases.¹⁹ Particularly disturbing is the appearance, if not reality, of disparities along racial or ethnic lines.²⁰ The source of this problem is clear: Mandatory minimums effectively transfer sentencing authority from trial judges to federal prosecutors, who may pre-set punishment through creative investigative and charging practices, producing troubling punishment differentials among offenders with similar culpability. Undoubtedly, federal law enforcement is well-intentioned in many cases. But it would be naïve to assume that good faith will prevent the misuse of mandatory minimums. Serious and violent offenders may have served as the inspiration for mandatory minimums, but the statutes themselves are not tailored to these criminals alone and instead act as grants of power to federal prosecutors to apply the laws as they see fit,²¹ even to minor participants in non-violent offenses. Expressing a view held by many jurists, Justice Anthony

Kennedy described as “misguided” the “transfer of sentencing discretion from a judge to an Assistant U. S. Attorney, often not much older than the defendant.” Often these attorneys try in good faith to be fair in the exercise of discretion. The policy, nonetheless, gives the decision to an assistant prosecutor not trained in the exercise of discretion and takes discretion from the trial judge. The trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open, and reasoned way. Most of the sentencing discretion should be with the judge, not the prosecutors.²² Prosecutors and judges occupy distinct but overlapping roles in the criminal justice system. The prosecutor is empowered with the discretion to instigate charges against a defendant, amass evidence of crime, and seek convictions as an adversary in the trial process. The U.S. Attorney is more than an ordinary party, however, given the power he wields and the principal he represents.²³ Moreover, prosecutors are influenced by ordinary human motivations that may at times cause a loss of perspective — career advancement, path dependence, immodesty, occasional vindictiveness, and so on²⁴ — leading to the misapplication of mandatory minimums. Under the current sentencing regime, no external check prevents the imposition of an unjust mandatory term. In turn, the judiciary functions as an impartial decision-maker in individual cases. A sentencing judge is the one neutral actor in the courtroom who benefits from neither harsh punishment nor lenient treatment; he has no vested interest in the outcome of a case other than that justice be done. Trial court judges are also in the best position to make the highly contextual, fact-laden decisions about the proper punishments in particular cases. They are familiar with the environment in which offenses occur; they have been involved in every part of the court process; they have seen the evidence firsthand; and they have been in a position to evaluate the credibility of each witness and each argument. Moreover, as Justice Kennedy mentioned, trial judges have the benefit of experience in reasoned, transparent discretion, making them the precise entity that should decide the complicated, fact-specific issues of federal sentencing.²⁵ Judges are denied this power when mandatory sentences inevitably follow from prosecutorial choices in charging. But the shift in authority is more than misguided — it implicates the separation of powers doctrine. Liberal society has long been concerned with arbitrary, oppressive action stemming from the accumulation of too much power in too few hands. The Framers’ solution was to create a system of checks and balances, distributing power across government institutions in a manner that precludes any entity from exercising excessive authority and sets each body as a restraint on the others.²⁶ Along these lines, the U.S. Constitution employs a pair of structural devices, the first being the separation of powers among co-equal branches — the legislative, executive, and judicial²⁷ — each having “mutual relations” in a series of checks and balances.²⁸ As a matter of history and experience, an autonomous court system under the guidance of impartial jurists is considered the most indispensable aspect of American constitutional democracy.²⁹ An independent judiciary was meant to protect individuals from the prejudices and heedlessness of political actors and the public.³⁰ The courts were historically entrusted with certain fundamental legal decisions, including dispositive criminal justice issues that demanded evenhanded judgment, such as the imposition of punishment on another human being.³¹ “It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”³² There is “wisdom, even the necessity, of sentencing procedures that take into account individual circumstances,”³³ drawing upon the judge’s familiarity with each case and “face-to-face contact with the defendants, their families, and their victims.”³⁴ By taking away this authority and giving it to the executive branch, mandatory minimums have undermined a fundamental check on law enforcement. Federal mandatory minimums also affect the Constitution’s second structural device intended to prevent the problems associated with concentrated authority — the division of power between national and state governments. Grounded in the text and context of the Constitution,³⁵ federalism limits the powers of national government and prevents federal interference with the core internal affairs of the individual states.³⁶ Among the areas that the Framers sought to reserve to the states was “the ordinary administration of criminal and civil justice.”³⁷ The Constitution mentioned only a handful of crimes in its text, all of which were consistent with the design and limits of federalism.³⁸ In fact, it was unthinkable to the Framers that the federal government would adopt a full-scale penal code, let alone displace or substantially interfere with the state criminal justice systems.³⁹ As Chief Justice John Marshall would later opine, Congress “has no general right to punish murder committed within any of the States,” and “it is clear that Congress cannot punish felonies generally.”⁴⁰ In more recent times, the Supreme Court has reiterated these limitations on federal involvement in local criminal justice matters, given that the “[s]tates possess primary authority for defining and enforcing the criminal law.”⁴¹ Constitutional concerns are thus raised whenever Congress effects “a significant change in the sensitive relation between federal and state criminal jurisdiction.”⁴² Unfortunately, Congress has assumed such power over criminal matters, occasionally with a nod to an enumerated power, usually the regulation of interstate commerce. This does not mean, however, that politicians, courts, and commentators have been or should be oblivious to considerations of federalism.⁴³ In the present context, mandatory minimums represent a federal encroachment on state prerogatives and the implementation of policies that may conflict with local choice. For instance, most drug and weapons crimes amenable to federal mandatory minimums are actually prosecuted in state courts pursuant to state laws carrying far lower sentences.⁴⁴ Yet it is hardly disputed that the possibility of severe punishment influences the choice of whether to bring a case in federal or state court. This raises the specter of abusive forum shopping where a federal prosecution is pursued not because the case raises a special national interest, but because it jacks up the potential punishment. Federal mandatory minimums also impinge on another core benefit of federalism, namely, pluralistic decision-making and local choice.⁴⁵ In a diverse society like ours, citizens in different jurisdictions are likely to have distinct views on the substance and process of criminal justice. State and local decision-makers tend to be more attuned to such preferences, given their closeness to constituents and the greater opportunity of citizens to be involved in state and local government. Unencumbered by national dictates, states may even become laboratories of experimentation in criminal justice. In the oft-repeated words of Justice Brandeis, “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”⁴⁶ Should individuals find unbearable the local or state approach to crime and punishment, federalism allows them to vote with their feet, so to speak, by moving to

another county or state. Federal mandatory minimums can overwhelm such decision-making on issues of criminal justice, effectively and powerfully nullifying state and local judgments. For example, the federal government may effectively override a state's decision that certain drug-related conduct should not be a crime in the first place or should be subject to far more lenient punishment.⁴⁷

Prosecutorial discretion is racially biased—studies prove

Ingraham 17 (Christopher, writer for the Washington Post, formerly Brookings Institution and Pew Research Center, "Black men sentenced to more time for committing the exact same crime as a white person, study finds" 11/16/17 <https://www.washingtonpost.com/news/work/wp/2017/11/16/black-men-sentenced-to-more-time-for-committing-the-exact-same-crime-as-a-white-person-study-finds/>)wtk

A 2014 University of Michigan Law School study, for instance, found that all other factors being equal, black offenders were 75 percent more likely to face a charge carrying a mandatory minimum sentence than a white offender who committed the same crime. "It's possible that if a prosecutor now recognizes that a judge is not constrained by the [pre-Booker] guidelines," Mauer said, "he or she may charge a case as a mandatory sentence to ensure that a certain amount of prison time is imposed, with no possible override by the judge." The United States currently houses the world's largest prison population, with an incarceration rate of roughly 666 inmates per 100,000 people. Among whites, the rate is 450 inmates per 100,000 people. The incarceration rate for blacks is over five times higher, at 2,306 inmates per 100,000 people.

Add-on—Human Rights

2AC HR Add-on-- Stem

Mandatory Minimums are a human rights violation and fail to account for specifics – in order for a punishment to be humane and effective, it must fit the crime.

Gill '09 (Molly M. Gill, director of Special and Legal Projects for Families Against Mandatory Minimums, "Let's Abolish Mandatory Minimums: The Punishment Must Fit The Crime," American Bar Association, April 1, 2009, [https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/spring2009/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/spring2009/lets_abolish_mandatory_minimums_the_punishment_must_fit_the_crime/)

[lets_abolish_mandatory_minimums_the_punishment_must_fit_the_crime/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/spring2009/lets_abolish_mandatory_minimums_the_punishment_must_fit_the_crime/))

The use of mandatory minimum sentences is an ongoing human rights violation in America. These one-size-fits-all sentencing statutes that were intended to deter crime and punish big-time criminals often backfire, giving drug addicts and small-time offenders enormous sentences. Mandatory sentences usually apply to drug and gun offenses. Examples include a five-year sentence for possessing five grams of crack cocaine or a ten-year sentence for firing a gun in connection with a drug trafficking offense. But the "three strikes" laws are the most notorious cases in point. When Leandro Andrade stole \$153 worth of videotapes, he received a mandatory life sentence without the possibility of parole for fifty years because the crime was his third felony conviction. The judge could not adjust the sentence to reflect the minor nature of the crime or Andrade's unique circumstances. (He was an Army veteran, a father of three, a drug addict, and his previous convictions were for nonviolent property crimes.) The Supreme Court later rejected Andrade's claims that his sentence violated the Constitution's prohibition on cruel and unusual punishment in *Lockyer v. Andrade*, 538 U.S. 63 (2003). Yet, as *Andrade* shows, lengthy mandatory minimum sentences violate two basic human rights principles. First, they result in cruel, inhumane, and degrading punishments. Lengthy mandatory minimum sentences are cruel, inhumane, and degrading because they obliterate individualized justice, the bedrock of any fair sentencing system. Instead of considering all the circumstances of the crime and the individual offender, the court must impose a lengthy predetermined sentence created by a legislature that knows nothing about the particulars of the offense or the defendant. Offenders go to sentencing hearings justifiably expecting to be treated like individuals. Mandatory minimums replace the individual in the sentencing equation with one or two factors (drug type and weight, or whether the crime is a third strike) that are poor substitutes for blameworthiness. They fail to account for the nature of the crime or the offender's mental state, criminal history, or role in the offense, essential factors in determining how much punishment is deserved. The inevitable result is cruel, inhumane, degrading, and undeserved over punishment. Second, mandatory minimums produce sentences that are disproportionate to the crime. There are indeed times when the mandatory sentence best fits the crime. If an offender has two prior armed robberies, a fifty-years-to-life sentence may be perfectly appropriate for a third strike involving premeditated murder. But what if, as in *Andrade*, it isn't? Mandatory minimums make getting a proportionate sentence a matter of luck, not a matter of justice. Mandatory minimums are tied to charges, so the same sentence applies every time a conviction is won, even if the actual crimes are unique. Judges must ignore important circumstances of the crime (Was a victim harmed? Was a gun used?) and look only to the charged crime of which the defendant is convicted. Because prosecutors decide what that charge will be, they also decide what the minimum sentence will be. Disproportionate mandatory sentences have become the rule rather than the exception, especially in large drug conspiracies. This is particularly problematic because mandatory drug sentences are triggered by the weight and type of the drug involved, and drug weights are poor indicators of culpability. In the federal system, just 50 grams of crack cocaine—about the weight of a candy bar, hardly a kingpin quantity—will trigger a ten-year mandatory prison sentence, even for a first-time, nonviolent offender. In drug conspiracies, so-called "relevant conduct" rules make all coconspirators equally liable for all the drugs involved, making it impossible for judges to distinguish between major dealers and street-level sellers, or between kingpins and their girlfriends. Better-informed, big-time players can also agree to plead guilty and trade their knowledge for a sentence below the mandatory minimum, whereas their less knowledgeable underlings cannot. Paradoxically, the small fish frequently get the harshest sentences. While the Supreme Court has not budged from its position in *Lockyer v. Andrade* upholding a mandatory minimum sentence of fifty years to life for stealing a few videotapes, increasing numbers of jurists, advocates, and policymakers are realizing that justice is only served when the punishment fits the crime.

Broader reform on the question of human rights spillover globally and solves Uighur crisis and violation in Russia, Syria, and Ukraine

Neier 19, Aryeh Neier, 1-30-2019, "To Presidential Candidates Drafting Platforms: Restore U.S. Human Rights Leadership," Just Security, <https://www.justsecurity.org/62420/presidential-candidates-drafting-platforms-restore-u-s-human-rights-leadership//BUBU>

Countering Abuses by China and Russia Finally, an American human rights policy should include specific measures to counter abuses by China and Russia. Under Xi Jinping, who has abolished term limits on his rule, China is reverting to its **totalitarian past**. The imprisonment of hundreds of human rights lawyers and the detention and forcible re-education of about a million members of the Uighur minority in remote western China are examples of what is happening under Xi's rule. As for Russia, under the leadership of Vladimir Putin, it not only violates the rights of its own citizens but also is responsible for severe abuses outside Russia's borders, as in Ukraine and Syria. It will not be easy to devise a policy that has an impact on human rights abuses committed by Xi and Putin. Yet, a good beginning would be for the next U.S. president to use her or his unrivaled capacity to command world attention to speak out about these abuses. What results might we expect to achieve by restoring America's commitment to promoting human rights internationally? The honest answer is that our expectations should be modest. Dramatic consequences in the short-term are unlikely. Governments that commit gross abuse of human rights often ignore denunciations until it is evident that they will pay a price if they do not modify their practices. Over time, other governments will make common cause with the United States in such efforts, and international institutions designed to promote rights for all of us would be substantially strengthened. What's more, if the United States were again known not only for its military and economic power but also for the power that comes with a commitment to human rights for all, it would win our country many friends and incalculably bolster our global credibility and influence. Though many governments today are led by xenophobic nationalists (and the concept of an open society is under assault in too many places, even here in the United States), in much of the world there is also a higher level of popular support for human rights norms such as freedom of expression, racial and gender equality, judicial fairness and independence, and individual dignity than ever before. If the next president of the United States commits to placing compliance with – and promotion of – these norms at the forefront of American foreign policy, it will serve the United States – and the **rest of the world**.

Insert Terminals

1AR HR Add-on—Solvency

Violence manifested through prison industrial complex and systemic practices violate international conventions

Sentencing Project 18, 4-19-2018, for reference: the Sentencing Project submitted a report to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, "Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System," <https://www.sentencingproject.org/publications/un-report-on-racial-disparities//BUBU>

The United States criminal justice system is the largest in the world. At yearend 2015, over 6.7 million individuals¹ were under some form of correctional control in the United States, including 2.2 million incarcerated in federal, state, or local prisons and jails.² The U.S. is a world leader in its rate of incarceration, dwarfing the rate of nearly every other nation.³ Such broad statistics mask the racial disparity that pervades the U.S. criminal justice system, and for African Americans in particular. African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences. African-American adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely.⁴ As of 2001, one of every three black boys born in that year could expect to go to prison in his lifetime, as could one of every six Latinos—compared to one of every seventeen white boys.⁵ Racial and ethnic disparities among women are less substantial than among men but remain prevalent.⁶ The source of such disparities is deeper and more systemic than explicit racial discrimination. The United States in effect operates two distinct criminal justice systems: one for wealthy people and another for poor people and people of color. The wealthy can access a vigorous adversary system replete with constitutional protections for defendants. Yet the experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to a number of factors, each of which contributes to the overrepresentation of such individuals in the system. As former Georgetown Law Professor David Cole states in his book No Equal Justice, These double standards are not, of course, explicit; on the face of it, the criminal law is color-blind and class-blind. But in a sense, this only makes the problem worse. The rhetoric of the criminal justice system sends the message that our society carefully protects everyone's constitutional rights, but in practice the rules assure that law enforcement prerogatives will generally prevail over the rights of minorities and the poor. By affording criminal suspects substantial constitutional rights in theory, the Supreme Court validates the results of the criminal justice system as fair. That formal fairness obscures the systemic concerns that ought to be raised by the fact that the prison population is overwhelmingly poor and disproportionately black.⁷ By creating and perpetuating policies that allow such racial disparities to exist in its criminal justice system, the United States is in violation of its obligations under Article 2 and Article 26 of the International Covenant on Civil and Political Rights to ensure that all its residents—regardless of race—are treated equally under the law. The Sentencing Project notes that the United Nations Special Rapporteur is working to consult with U.S. civil society organizations on contemporary forms of racism, racial discrimination, and related intolerance. We welcome this opportunity to provide the UN Special Rapporteur with an accurate assessment of racial disparity in the U.S. criminal justice system. Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration. Staff of The Sentencing Project have testified before the U.S. Congress and state legislative bodies and have submitted amicus curiae briefs to the Supreme Court of the United States on various issues related to incarceration and criminal justice policy. The organization's research findings are regularly relied upon by policymakers and covered by major news outlets. This report chronicles the racial disparity that permeates every stage of the United States criminal justice system, from arrest to trial to sentencing to post prison experiences. In particular, the report highlights research findings that address rates of racial disparity and their underlying causes throughout the criminal justice system. The report concludes by offering recommendations on ways that federal, state, and local officials in the United States can work to eliminate racial disparity in the criminal justice system and uphold its obligations under the Covenant.

Mandatory minimum is a serious human rights concern globally that undermines US human rights credibility globally

AHRC 01, 4/1/2001, "Social Justice Report 2001: Chapter 4: Laws mandating minimum terms of imprisonment ('mandatory sentencing') and Indigenous people," Australian Human Rights Commissions, <https://humanrights.gov.au/our-work/social-justice-report-2001-chapter-4-laws-mandating-minimum-terms-imprisonment-mandatory//BUBU>

The Human Rights and Equal Opportunity Commission has raised significant concerns about the human rights implications of mandatory minimum terms of imprisonment on a number of occasions since these provisions were introduced. [62] Similarly, three of the six United Nations human rights treaty committees also expressed concern about the human rights implications of mandatory detention laws during 2000. The following concerns relate to the imposition of mandatory minimum terms of detention for juveniles. They apply equally to the NT and WA laws. Best interests of the child as a primary consideration (article 3.1, Convention on the Rights of the Child (CROC)) The best interests of the child should be a primary consideration in all actions concerning children, including actions by courts of law, administrative authorities and legislative bodies. Mandatory detention laws were explicitly intended to achieve deterrence and retribution rather than rehabilitation, and there is no evidence that the best interests of children have ever been a concern, let alone a primary consideration, in their development and enforcement in either WA or the NT. Children require special measures of protection (article 24, International Covenant on Civil and Political Rights (ICCPR)) Every child has the right to receive from his/her family, society and State the protection required by his or her status as a child. This also entails the adoption of special measures to protect children. Under the WA system no concessions were given to child offenders over adult offenders. Although the Children's Court found a 'loophole' in the legislation in the case of children, this was not the intention of the laws and provides only a limited capacity to provide for children's special needs. Further, in WA, children must serve a longer proportion of their sentence than adults before being eligible for parole. Detention of children as a measure of last resort (article 37(b), CROC) The arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. Clearly, laws which impose a mandatory minimum term of detention do not so allow. Although in the NT second time juvenile offenders could be diverted to an approved program, this diversion was limited to a small number of program options and could only be imposed once. The introduction of the police diversion scheme was a welcome improvement, but the courts were still prevented from considering alternatives to detention in cases before them. In WA, the use of CROs by the courts is an extremely limited alternative to a mandatory minimum term of detention. A variety of dispositions must be available for child offenders (article 40.4, CROC) There must be a variety of dispositions available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence. Mandatory minimum terms of imprisonment preclude consideration of a range of appropriate dispositions. The laws do not allow the circumstances of the offence or the offender to be taken into account in sentencing so as to ensure an appropriate sentence for the individual case. Rehabilitation and reintegration of a child offender should be the essential aim. A child offender should be treated in a manner which takes into account his or her age (article 40.1, CROC) Rehabilitation should be an aim of all actions taken in the case of juvenile offenders. However, the objectives of both the NT and WA laws have not been rehabilitative as much as deterrent and retributive. For children from remote Indigenous communities, detention has not assisted them in reintegrating into their community effectively. Other alternatives tailored to the child's rehabilitative needs cannot be imposed. The use of CROs in WA has not ensured that this rehabilitative and reintegrative purpose is consistently applied (as the examples of instances refusing CROs above indicate). Mandatory detention laws in the NT have not allowed courts to take into account whether the child is 11 or 17 years old – the mandatory minimum term has applied regardless. In WA the judiciary has been able to take into account a juvenile offender's age when considering their sentence but is limited to ordering a CRO. The following concerns relate to the imposition of mandatory minimum terms of detention for juveniles and adults. They apply equally to the NT and WA laws. Sentence must be reviewable by a higher tribunal (article 40.2 (b), CROC; article 14.5, ICCPR) The conviction and the sentence must be capable of review by a higher tribunal. The NT and WA laws remove sentencing discretion and prevent an appeal court from reconsidering the penalty prescribed as a compulsory minimum. The United Nations Special Rapporteur on the Independence of the Judiciary has also expressed concern that mandatory minimum imprisonment laws restrict the right of appeal: This right of appeal, which is again part of the requirement of a fair trial under international standards, becomes nugatory when the trial court imposes a prescribed minimum sentence. There is nothing in the sentence then for the Appellate Court to review. Hence, legislation prescribing mandatory minimum sentences may be perceived as restricting the requirements of a fair trial process and may not be supported under international standards. [63] Detention must not be arbitrary (article 37(b), CROC; article 9.1, ICCPR) No one should be subjected to arbitrary arrest or detention. According to the UN Human Rights Committee, sentencing may still be arbitrary notwithstanding that it is authorised by law. [64] Arbitrary has been interpreted more broadly to include such elements as inappropriateness, injustice and lack of predictability. Further, custody could be considered arbitrary if it is not necessary in all the circumstances of the case, which indicates that detention must be a proportionate means to achieve a legitimate aim. Mandatory sentencing clearly breaches article 9(1) when it is imposed for trivial as well as more serious offences. [65] Mandatory minimum sentences for property crimes inevitably impact at the lower end of the scale (as courts are more likely to impose sentences above the mandatory minimum in the case of more serious offences). The punishment of imprisonment in many cases simply does not fit the crime. Inconsistencies in determining what constitutes a strike under the WA legislation, with the consequent imposition of 12 months detention or imprisonment for some but not others, also constitute arbitrariness (see further case studies below). On 28 July 2000, the United Nations Human Rights Committee expressed concern that: Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of indigenous persons in the criminal justice system, raises serious issues of compliance with various articles of the Covenant... [67] Laws and policies must be non-discriminatory and ensure

equality before the law (article 2, article 26, ICCPR; article 2.1(a), (c) and 5(a) International Convention on the Elimination of All Forms of Racial Discrimination (CERD)) The ICCPR prohibits direct and indirect discrimination in the enjoyment of rights contained in the ICCPR, which includes freedom from arbitrary arrest and the right to review of sentence. Race discrimination, both direct and indirect, is also prohibited under CERD. The Commission has argued that mandatory sentencing laws in the NT and WA are indirectly discriminatory on the basis of the pattern of sentencing which has a disproportionate impact on Indigenous people. It has also argued that, in the NT at least, the selected offences are committed overwhelmingly by Indigenous people. [68] On 24 March 2000, the United Nations Committee on the Elimination of Racial Discrimination expressed its concern: about the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration. The Committee seriously questions the compatibility of these laws with the State party's obligations under the Convention and recommends to the State party to review all laws and practices in this field. [69] Physical and mental condition must be taken fully into account (Principle 5, Declaration on the Rights of Disabled Persons; Principle 6, Declaration on the Rights of Mentally Retarded Persons) If judicial proceedings are instituted against persons with a disability, the legal procedure applied should take their physical and mental condition fully into account. Some people with mental illnesses, personality disorders and intellectual disabilities have poor impulse control. When angry or frustrated they tend to lash out and damage property. This may lead to charges of criminal damage. Under the mandatory sentencing provisions in the NT such charges attracted an automatic term of imprisonment unless brought within the exceptional circumstances provision. Mandatory sentencing laws diminish the courts' ability to take into account circumstances where a person's disability is relevant to the sentence they should receive. In one case in June 2000 a 24 year old intellectually disabled man was jailed for 90 days in the NT. The magistrate stated: This Court's hands are tied, of course, by mandatory sentencing. It's clear that this defendant suffers from an intellectual disability, and I can quite confidently say that, but for mandatory sentencing, I think I would not have imposed a sentence which would have resulted in this man being imprisoned for so long. It may well be that I may have even suspended it fully. [70] Although under section 78A(6B) of the Sentencing Act 1995 (NT) there was a provision for the court not to order imprisonment for first time adult offenders in exceptional circumstances, the conditions required to meet the exceptional circumstances provision were narrow and did not take into account mental disability. In fact, because they required that the offending behaviour be an aberration of usual behaviour, they implicitly excluded persons whose behaviour might be influenced by a persistent disorder. There were other ways to avoid imposing a mandatory sentence of imprisonment in the NT, but these were limited and generally not of benefit for those with behavioural disorders or intellectual disabilities. [71] As set out above, there are no exceptional circumstances provisions which would enable a court to take a disability into account under the WA provisions.

2AC Terminal—Uyghurs

Violence in Xinjiang is unethical---it's ongoing despite the virus, and thousands are killed, discriminated, and exploited

Wani 4/10, Ayjaz Wani, 04/10/20, "China didn't spare the Uyghurs even in times of pandemic, pushed them to Covid frontlines," ThePrint, <https://theprint.in/opinion/china-didnt-spare-the-uyghurs-even-in-times-of-pandemic-pushed-them-to-covid-frontlines/399255//BUBU>

According to reports, China has sent thousands of Uyghurs to its manufacturing powerhouses at Hunan, Jiangsu, Jiangxi and Zhejiang to keep its factories running post the evacuation of the regular workers following the imposition of the ironclad lockdown in the wake of the onset of the outbreak in Wuhan. Reports have also exposed how the Communist government in China has used more than one and half million Uyghurs currently detained in 're-education camps' or mass detention centres to be used a "kill-on-demand" emergency measure to harvest their organs to cater to the increased demand within the Mainland following the spread of the virus. Xinjiang borders with eight countries, having area of 1,664,900 square kilometres, covering one-sixth of China's total land area. The province constitutes 1.5 percent of the Chinese population and is home to thirteen recognised ethnic groups; the Uyghur Muslims dominating the region. Xinjiang has had a contested history from ancient past and was finally incorporated with the Chinese empire in 1978. Since 1949, the government had migrated millions of ethnic Chinese Hans from inner parts of the country to Xinjiang for political and economic reasons. The migration of the Hans led to demographic changes of the province as the percentage of Hans in the population reached 42 percent from 6 percent in 1949. The increased pressure on Uyghur culture, abject discrimination, severe economic exploitation, social discrimination and forceful destruction of religious ethos and traditional social structures increased the centrifugal tendencies in Xinjiang, leading to anti-China agitations by the Uyghur Muslims from time to time. The Communist government responded with increased human rights abuses after 1996, when Beijing started the Strike Hard Campaign, which led to a global uproar against China. Decades of abject discrimination and abuse culminated into the 2009 ethnic violence, the bloodiest recorded in contemporary Chinese history since the Tiananmen Square protests of 1989. According to Chinese official sources, 140 people died and more than 1,700 were injured. The authorities locked clamped internet shutdown for ten months and detained hundreds of Uyghurs resisting Chinese policies. [Omitted BRI chapter] **COVID-19 and Uyghurs** According to the Australian Strategic Policy Institute (ASPI), a nonpartisan think tank, between 2017 and 2019, more than 80,000 Uyghurs were sent to work in other provinces of China directly from the detention camps. These Uyghurs and other Muslims are compelled to work for the production of 83 well-known brands. When the pandemic was at its peak in China, on 22 and 23 February, more than 400 Uyghur youth were transferred to the provinces of Jiangxi, Zhejiang and Hunan, which were heavily at risk with respect to coronavirus. On 26 February, additional 135 workers were sent for summer work and another 242 workers from Kashgar were sent to Changsha. At different parts of Khotan, 30,000 workers were asked to resume to their duties on 25 February despite the outbreak. Dolkun Isa, head the Munich-based World Uyghur Congress (WUC) in an interview to Radio Free Asia (RFA), said, "There is no guarantee that these Uyghurs will come home alive. China must stop forcing Uyghurs to go to the mainland and work as cheap labour under the threat of the coronavirus." Within the detention camps, while the provincial government restored normal activities from 12 March giving Xinjiang a coronavirus clean-chit, the People's Daily leaked official Chinese documents listing official warnings about the danger of outbreak in detention camps. The provincial government has since stepped up on organ harvesting. Bitter Winter, a publication which tracks China's human rights record, wrote: "Around the world, waiting times for a single lung from a suitable donor could be years. China has shown this week that it need only few days, for two perfectly matched lungs to be rustled up." The sudden reduction in waiting time for organ transplantation raises suspicion as also hints towards a large-scale unethical practices employed by the country. For example, China has one of the lowest organ donor rates in the world, with a voluntary donor rate of just one for every two million citizens. According to the Journal of Biomedical Research; Of the 1.5 million Chinese citizens in need of an organ transplant donor each year, fewer than 10,000 receive a successful match and organ, or just 1 in 150. With the Muslim world turning a blind eye, the West must act

2AC Terminal—Ukraine

Russia's invasion of Crimea heightens tensions with Ukraine

Wintour 19, Patrick Wintour, 9-11-2019, "Russia complicit in human rights abuses in Crimea, court told," Guardian, <https://www.theguardian.com/world/2019/sep/11/russia-human-rights-abuses-in-crimea-vladimir-putin-court//BUBU>

The Russian state directed and ran the military coup in Crimea and its subsequent annexation in 2014, Ukraine has told the European court of human rights. The case in Strasbourg is one of a series brought by the Ukrainian government designed to expose alleged Russian state complicity in human rights abuses. It has the potential to embarrass Vladimir Putin and lead to Ukrainian demands for reparations from Russia. Russia rejects allegations it was responsible for the annexation and sought on Wednesday to strike out the case in an attempt to stop it proceeding to its next stage – gathering of direct evidence. Ben Emmerson QC, representing the Ukrainian government, told the court Ukraine lost control of Crimea on the day of the coup not as a result of unilateral action by armed separatists but “as the result of a military invasion by the armed forces of the Russian Federation, aided and abetted by pro-Russian political and paramilitary proxies in Crimea”. Russia warned Europe’s human rights tribunal it risks opening a “Pandora’s Box” of politically motivated cases if it accepts Ukraine’s claims that Moscow-led forces committed atrocities in the Crimea. The case comes at a politically sensitive time, as the new Ukrainian president, Volodymyr Zelenskiy, explores the possibility of fresh talks with Putin over the future of both the occupied Donbass region and Crimea. An unprecedented prisoner swap at the weekend opened the door to a new climate but the pursuit of the ECHR case shows how determined Ukraine remains to force Russia out of its country, including Crimea. Emmerson insisted Russia was legally answerable for human rights violations – not as the territorial sovereign – but as an occupying power. He said claims that Crimea transferred its sovereignty to Russia was based on a “transparent legal fiction” and a bogus referendum in which the option of the status quo was not offered. To accept “Russia’s claim to sovereignty over Crimea would undermine a critical cornerstone of international law – the prohibition on the use of force by one nation on the sovereign territory of another without its consent, without a resolution of the United Nations security council, and in the absence of any possible claim to self-defence.” Citing evidence compiled by the UN’s high commissioner for human rights, Emmerson said: “Once the occupation was fully established, a sustained campaign of political repression then began.” Painting what he describes as a dystopian picture of Russia’s authoritarian grip on power, he said: “Russian citizenship was imposed on all residents of Crimea. Non-Russian media outlets, including Ukrainian and Tartar television channels, were closed down. Peaceful protests against the Russian occupation were banned. Vast swathes of private property were unlawfully appropriated without compensation.” In just one day, Russia had occupied Crimea militarily and assumed effective overall control of the territory. It had successfully installed a subordinate local administration that was entirely dependent upon Moscow for its military, economic and political survival. He said particular intimidation was occurring at the military commissariat in Simferopol, a camp guarded by Russian soldiers. He also condemned the Russian tolerance of, and blanket amnesty given by Russia to Crimean paramilitary forces. “The chilling message is that resistance to the occupation is not only futile but also extremely dangerous – because the rule of law will be applied selectively. Those who support the Russian regime are free to commit criminal acts against those who oppose it, safe in the knowledge that their crimes will almost certainly go unpunished.” Crimea, he said, “has become an accountability wasteland for those seeking accountability for those opposing the Russian state occupation. That is no accident. It is evidence of a tacit policy.” Separate cases are being taken to the ECHR by the Ukrainian government over the Russian occupation of the Donbass region in eastern Ukraine and the shooting down in 2014 of the Malaysia Airlines flight MH17 over Ukraine that killed all 283 passengers onboard.

Brink is now---conflict escalates global nuclear war---even if neither side wanted to engage

Mearsheimer 15 - professor of political science at the University of Chicago (John J. Mearsheimer is an American political scientist and international relations scholar, "Don't Arm Ukraine," New York Times, <https://www.nytimes.com/2015/02/09/opinion/dont-arm-ukraine.html>)/BUBU

The Ukraine crisis is almost a year old and Russia is winning. The separatists in eastern Ukraine are gaining ground and Russia's president, Vladimir V. Putin, shows no signs of backing down in the face of Western economic sanctions. Unsurprisingly, a growing chorus of voices in the United States is calling for arming Ukraine. A recent report from three leading American think tanks endorses sending Kiev advanced weaponry, and the White House's nominee for secretary of defense, Ashton B. Carter, said last week to the Senate armed services committee, "I very much incline in that direction." They are wrong. Going down that road would be a huge mistake for the United States, NATO and Ukraine itself. Sending weapons to Ukraine will not rescue its army and will instead lead to an escalation in the fighting. Such a step is especially dangerous because Russia has thousands of nuclear weapons and is seeking to defend a vital strategic interest. There is no question that Ukraine's military is badly outgunned by the separatists, who have Russian troops and weapons on their side. Because the balance of power decisively favors Moscow, Washington would have to send large amounts of equipment for Ukraine's army to have a fighting chance. But the conflict will not end there. Russia would counter-escalate, taking away any temporary benefit Kiev might get from American arms. The authors of the think tank study concede this, noting that "even with enormous support from the West, the Ukrainian Army will not be able to defeat a determined attack by the Russian military." In short, the United States cannot win an arms race with Russia over Ukraine and thereby ensure Russia's defeat on the battlefield. Proponents of arming Ukraine have a second line of argument. The key to success, they maintain, is not to defeat Russia militarily, but to raise the costs of fighting to the point where Mr. Putin will cave. The pain will supposedly compel Moscow to withdraw its troops from Ukraine and allow it to join the European Union and NATO and become an ally of the West. This coercive strategy is also unlikely to work, no matter how much punishment the West inflicts. What advocates of arming Ukraine fail to understand is that Russian leaders believe their country's core strategic interests are at stake in Ukraine; they are unlikely to give ground, even if it means absorbing huge costs. Great powers react harshly when distant rivals project military power into their neighborhood, much less attempt to make a country on their border an ally. This is why the United States has the Monroe Doctrine, and today no American leader would ever tolerate Canada or Mexico joining a military alliance headed by another great power. Russia is no exception in this regard. Thus Mr. Putin has not budged in the face of sanctions and is unlikely to make meaningful concessions if the costs of the fighting in Ukraine increase. Upping the ante in Ukraine also risks unwanted escalation. Not only would the fighting in eastern Ukraine be sure to intensify, but it could also spread to other areas. The consequences for Ukraine, which already faces profound economic and social problems, would be disastrous. The possibility that Mr. Putin might end up making nuclear threats may seem remote, but if the goal of arming Ukraine is to drive up the costs of Russian interference and eventually put Moscow in an acute situation, it cannot be ruled out. If Western pressure succeeded and Mr. Putin felt desperate, he would have a powerful incentive to try to rescue the situation by rattling the nuclear saber. Our understanding of the mechanisms of escalation in crises and war is limited at best, although we know the risks are considerable. Pushing a nuclear-armed Russia into a corner would be playing with fire. Advocates of arming Ukraine recognize the escalation problem, which is why they stress giving Kiev "defensive," not "offensive," weapons. Unfortunately, there is no useful distinction between these categories: All weapons can be used for attacking and defending. The West can be sure, though, that Moscow will not see those American weapons as "defensive," given that Washington is determined to reverse the status quo in eastern Ukraine. The only way to solve the Ukraine crisis is diplomatically, not militarily. Germany's chancellor, Angela Merkel, seems to recognize that fact, as she has said Germany will not ship arms to Kiev. Her problem, however, is that she does not know how to bring the crisis to an end.

1AR Terminal—Ukraine—Yes escalation

Neither side has de-escalation measures and both leaders are prone to conflict which makes it easier to escalate

Wood 17 - David Wood is a senior military correspondent for The Huffington Post. His second book, *What Have We Done: the Moral Injury of Our Longest Wars*, based on his Pulitzer Prize-winning reporting on veterans of Iraq and Afghanistan, was published by Little, Brown in November 2016. David, "THIS IS HOW THE NEXT WORLD WAR STARTS," <https://highline.huffingtonpost.com/articles/en/trump-russia-putin-military-crisis/>***Recut by BUBU

Putin's favored tactic, intelligence officials say, is known as "escalation dominance." The idea is to push the other side until you win, a senior officer based in Europe explained—to "escalate to the point where the adversary stops, won't go farther. It's a very destabilizing strategy." Stavridis cast it in the terms of an old Russian proverb: "Probe with a bayonet; when you hit steel withdraw, when you hit mush, proceed." Right now, he added, "the Russians keep pushing out and hitting mush." This mindset is basically the opposite of how both American and Soviet leaders approached each other during the Cold War, even during periods of exceptional stress such as the 1962 Cuban missile crisis. Having endured the devastation of World War II, they understood the horror that lurked on the far side of a crisis. "When things started to get too close, they would back off," said Miller, the retired Pentagon official. The term of art for this constant recalibration of risk is "crisis management"—the "most demanding form of diplomacy," writes Sir Lawrence Freedman, an emeritus professor of war studies at King's College London. Leaders had to make delicate judgments about when to push their opponent and when to create face-saving off-ramps. Perhaps most critically, they had to possess the confidence to de-escalate when necessary. Skilled crisis management, Freedman writes, requires "an ability to match deeds with words, to convey threats without appearing reckless, and to offer concessions without appearing soft, often while under intense media scrutiny and facing severe time pressures." A recent textbook example came in January 2016, when Iran seized those 10 U.S. Navy sailors, claiming that they had been spying in Iranian waters in the eastern Persian Gulf. President Barack Obama's secretary of state, John Kerry, immediately opened communications with his counterpart in Tehran, using channels established for negotiating the nuclear deal with Iran. By the next morning, the sailors had been released. The U.S. acknowledged the sailors had strayed into Iranian waters but did not apologize, asserting that the transgression had been an innocent error. Iran, meanwhile, acknowledged that the sailors had not been spying. (The peaceful resolution was not applauded by Breitbart News, headed at the time by Stephen Bannon, who is now Trump's chief White House strategist. Obama, a Breitbart writer sneered, has been "castrated on the world stage by Iran.") Neither Putin nor Trump, it's safe to say, are crisis managers by nature. Both are notoriously thin-skinned, operate on instinct, and have a tendency to shun expert advice. (These days, Putin is said to surround himself not with seasoned diplomats but cronies from his old spy days.) Both are unafraid of brazenly lying, fueling an atmosphere of extreme distrust on both sides. Stavridis, who has studied both Putin and Trump and who met with Trump in December, concluded that the two leaders "are not risk-averse. They are risk-affectionate." Aron, the Russia expert, said, "I think there is a much more cavalier attitude by Putin toward war in general and the threat of nuclear weapons. He continued, "He is not a madman, but he is much more inclined to use the threat of nuclear weapons in conventional military and political confrontation with the West." Perhaps the most significant difference between the two is that Putin is far more calculating than Trump. In direct negotiations, he is said to rely on videotaped analysis of the facial expressions of foreign leaders that signal when the person is bluffing, confused or lying. At times, Trump has been surprisingly quick to lash out at a perceived slight from Putin, although these moments have been overshadowed by his effusive praise for the Russian leader. On December 22, Putin promised to strengthen Russia's strategic nuclear forces in his traditional year-end speech to his officer corps. Hours later, Trump vowed, via Twitter, to "greatly strengthen and expand" the U.S. nuclear weapons arsenal. On Morning Joe the following day, host Mika Brzezinski said that Trump had told her on a phone call, "Let it be an arms race. We will outmatch them at every pass and outlast them all." And in late March, the Wall Street Journal reported that Trump was becoming increasingly frustrated with Russia, throwing up his hands in exasperation when informed that Russia may have violated an arms treaty. Some in national security circles see Trump's impulsiveness as a cause for concern but not for panic. "He can always overreact," said Anthony Cordesman, senior strategic analyst at the Center for Strategic and International Studies and a veteran of many national security posts throughout the U.S. government. "[But] there are a lot of people [around the president] to prevent an overreaction with serious consequences." Let's say that Trump acted upon his impulse to tell a fighter pilot to shoot a jet that barrel-rolled an American plane. Such a response would still have to be carried out by the Pentagon, Cordesman said—a process with lots of room for senior officers to say, "Look, boss, this is a great idea but can we talk about the repercussions?" And yet that process is no longer as robust as it once was. Many senior policymaking positions at the Pentagon and State Department remain unfilled. A small cabal in the White House, including Bannon, Jared Kushner and a few others, has asserted a role in foreign policy decisions outside the normal NSC process. It's not yet clear how much influence is wielded by Trump's widely respected national security adviser, Lieutenant General H.R. McMaster. When lines of authority and influence are so murky, it increases the risk that a minor incident could boil up into an unintended clash, said retired Marine Corps General John Allen, who has served in senior military and diplomatic posts. To complicate matters further, the relentless pace of information in the social media age has destroyed the one precious factor that helped former leaders safely navigate perilous situations: time. It's hard to believe now, but during the 1962 Cuban missile crisis, for instance, President Kennedy and his advisers deliberated for a full 10 weeks before announcing a naval quarantine of the island. In 1969, a U.S. spy plane was shot down by North Korean jets over the Sea of Japan, killing all 31 Americans on board. It took 26 hours for the Pentagon and State Department to recommend courses of action to President Richard Nixon, according to a

declassified secret assessment. (Nixon eventually decided not to respond.) Today, thanks to real-time video and data streaming, the men in the Kremlin and White House can know—or think they know—as much as the guy in the cockpit of a plane or on the bridge of a warship. The president no longer needs to rely on reports from military leaders that have been filtered through their expertise and deeper knowledge of the situation on the ground. Instead, he can watch a crisis unfold on a screen and react in real time. Once news of an incident hits the internet, the pressure to respond becomes even harder to withstand. “The ability to recover from early missteps is greatly reduced.” Marine Corps General Joseph Dunford, the chairman of the Joint Chiefs of Staff, has written. “The speed of war has changed, and the nature of these changes makes the global security environment even more unpredictable, dangerous, and unforgiving.” And so in the end, no matter how cool and unflappable the instincts of military men and women like Kevin Webster, what will smother the inevitable spark is steady, thoughtful leadership from within the White House and the Kremlin. A recognition that first reports may be wrong; a willingness to absorb new and perhaps unwelcome information; a thick skin to ward off insults and accusations, an acknowledgment of the limited value of threats and bluffs; and a willingness to recognize the core interests of the other side and a willingness to accept a face-saving solution. These qualities are not notably on display in either capital.

Add-on—DOJ Budget

2AC DOJ Budget Add-on

DOJ budget cuts are eliminating advanced cyber defenses

Rund 20, Jacob Rund, 2-11-2020, "DOJ Funding Would Shrink Under Trump's Fiscal 2021 Budget Ask," Bloomberg Law, <https://news.bloomberglaw.com/corporate-governance/doj-funding-would-shrink-under-trumps-fiscal-2021-budget-ask//BUBU>

The Trump administration is looking to slash Justice Department funding by targeting “wasteful spending,” including prison construction and payments to states for incarcerating undocumented immigrants with criminal histories. The department would receive \$730 million less than current funding under the administration’s fiscal 2021 budget proposal unveiled Monday. The \$31.7 billion request reflects a 2.3% drop from DOJ’s \$32.4 billion in funding for the current fiscal year, according to the White House. Funneling resources toward efforts to stem violent crime, protect national security, enforce immigration laws, and combat the opioid crisis are among the top priorities laid out in the proposed budget. The department seeks several categorical funding increases, including an additional \$6 million to hire 10 new attorneys and support staff to boost the number of drug cases generated by the U.S. Attorney’s Office. It’s also seeking \$361 million for “opioid-related state and local assistance,” which includes money for treatment and recovery support. Congress, in the fiscal 2020 appropriations package it approved in December, gave DOJ about \$1.6 billion more than its budget for fiscal 2019. Among the biggest proposed cuts for fiscal 2021 are more than \$500 million set aside for building an “unnecessary” and costly federal prison, as well as \$244 million to eliminate the State Criminal Alien Assistance Program. It’s not the first time the Trump White House has suggested axing this aid package, which helps state and local law enforcement pay for jailing undocumented persons with past felony convictions. The program “is poorly targeted and an ineffective tool to support immigration enforcement,” according to the request. At the same time, the administration wants to increase funding for the department’s Executive Office for Immigration Review by almost \$210 million. That money would be used to help support 100 teams of federal immigration judges and to expand the office’s electronic case management systems. Security and Enforcement Several of the department’s programs and functions handling federal law enforcement and national security issues are slated for a year-to-year funding increase under the budget request. The FBI would see a \$280.9 million bump, bringing its total fiscal budget to \$9.75 billion. The bureau is asking for \$37 million in cyber-related resources to help develop “advanced technical capabilities to thwart enemies” and bolster the so-called cyber action teams it deploys following computer hacks. Its personnel budget would also jump by \$210 million.

The aff frees up significant DOJ resources

Gertner and Bains 17, Nancy Gertner was a federal district judge in Boston from 1994 to 2011, has taught sentencing law for 19 years, and is a professor at Harvard Law School and Chiraag Bains is former senior counsel to the head of the at the Civil Rights Division of the Department of Justice, where he was involved in pattern-or-practice cases and was also a prosecutor, 5-15-2017, "Mandatory minimum sentences are cruel and ineffective. Sessions wants them back," Washington Post, <https://www.washingtonpost.com/posteverything/wp/2017/05/15/mandatory-minimum-sentences-are-cruel-and-ineffective-sessions-wants-them-back//BUBU>

Sessions is bent on reversing this progress. It would be one thing if Holder’s reform efforts had failed – but they did not. The federal prison population fell for the first time after 40 years of exponential growth. It is down 14 percent over the past 3½ years. While we need a wider conversation about how we sentence all offenders, including violent offenders, state and federal, this was a start. The 2013 policy sent a message about the need to be smart, not just tough, on crime, and the role of prosecutors in that effort. Sessions’s assault on the past few years of progress might also make sense if mandatory minimums for minor drug offenses were necessary to combat crime – but they are not. A 2014 study by the U.S. Sentencing Commission found that defendants released early (based on sentencing changes not related to mandatory minimums) were not more likely to reoffend than prisoners who served their whole sentences. That is, for drug charges, shorter sentences don’t compromise public safety. Indeed, research shows it is the certainty of punishment –

not the severity — that deters crime. **Sessions’s fixation on mandatory minimums might also be more palatable if they were cost-effective — but they are not.** Federal prison costs have ballooned to \$7 billion, **more than a quarter of DOJ’s budget,** driven by a population that is nearly half drug offenders. And yet as detailed by the conservative American Legislative Exchange Council last year, most experts believe that **expending public resources to incarcerate these offenders is profoundly inefficient.**

A large Cyber-attack cause retaliation---none of their impact defense assumes **Trump Mosbergen 17**, Dominique Mosbergen---Senior Reporter at HuffPo, “Pentagon Reportedly Weighing Using Nukes In Response To ‘Large Scale Cyber Attacks’,” Published: 1/17/18, https://www.huffingtonpost.com/entry/cyberattack-nuclear-weapons-pentagon_us_5a5f0c70e4b0ee2ff32bb228//BUBU

The Pentagon is reportedly pushing a new retaliation tactic should the U.S. ever be hit by a devastating cyberattack. **America could nuke the culprit.** The New York Times reported Tuesday that a pre-decisional draft of the Defense Department’s 2018 **Nuclear Posture Review,** which details U.S. nuclear strategy, **includes “large cyberattacks” as an example of a non-nuclear strike on** American **lives and infrastructure that could be countered with nuclear weapons.** “Three current and former senior government officials said **large cyberattacks against the U**nited States and its interests **would be included in the kinds of foreign aggression that could justify a nuclear response.**” the Times wrote of the new strategy. The officials stressed, however, that **“other, more conventional options for retaliation” could also be used in response to a cyberattack.** The Nuclear Posture Review, or NPR, was commissioned last year by President Donald Trump and is currently being reviewed by the White House. It will need the president’s approval before it’s made final. HuffPost first published an unclassified copy of the draft last week. The final document is expected to be released in the coming weeks. As the Times notes, the draft does not explicitly state that a cyberattack could be grounds for a nuclear reprisal. Echoing the NPR of Barack Obama’s administration, the new strategy is expected to say that **nuclear weapons could be used in “extreme circumstances to defend the vital interests of the United States or its allies and partners.”** Unlike the Obama-era strategy, however, the new draft indicates that **those “extreme circumstances ... could include significant non-nuclear strategic attacks.”** Officials told the Times that those non-nuclear attacks could include cyber ones that cause widespread destruction. **Subscribe to the Politics email. How will Trump’s administration impact you? address@email.com SUBSCRIBE** **Though the U.S. has yet to experience a truly catastrophic cyberattack, such a strike could have devastating impacts — including the destruction of a country’s infrastructure.** The massive “WannaCry” cyberattack last year, which was blamed on North Korea, **impacted more than 230,000 computers in 150 countries across the globe. Banks and universities were shut down because of the attack. In the U.K., hospitals were forced to shutter wards and emergency rooms.** China, Russia and Iran have also recently been blamed for carrying out cyberattacks with widespread consequences. The 2018 **NPR also calls for the development of more so-called low-yield nuclear weapons —** even though the U.S. already possesses over 1,000 nuclear warheads considered low-yield. Experts say it’s clear that the Trump administration is seeking to amp up America’s nuclear capabilities, but it’s unclear what outcome the government is hoping to achieve with more nukes. **“Making the case that we need more low-yield options is making the case that this president needs more nuclear capabilities at his disposal,”** Alexandra Bell, a former senior adviser at the State Department and current senior policy director at the Center for Arms Control and Non-Proliferation, told HuffPost’s Ashley Feinberg last week. “Regardless of the fact that we have 4,000 nuclear weapons in our active stockpile, which is more than enough to destroy the world many times over. So I don’t think it makes a convincing case that we somehow lack capabilities. And, in fact, I don’t think you can make the case that this president needs any more capabilities,” Bell added. Trump recently made waves for his boasts about America’s nuclear arsenal. Responding to North Korean leader Kim Jong Un’s claim of a nuclear button, Trump tweeted about having a “much bigger” and “more powerful” one.

That goes nuclear within few hours---no checks

Tilford 12 Robert, Graduate US Army Airborne School, Ft. Benning, Georgia, "Cyber attackers could shut down the electric grid for the entire east coast" 2012, <http://www.examiner.com/article/cyber-attackers-could-easily-shut-down-the-electric-grid-for-the-entire-east-coast//BUBU>

To make matters worse **a cyber attack** that **can take out a civilian power grid,** for example could **also** cripple **the** U.S. **military.** The senator notes that is that **the same** power **grids** that **supply** cities and towns, stores and gas stations, cell towers and heart monitors also power

"every military base in our country." "Although bases would be prepared to weather a short power outage with backup diesel generators, **within hours**, not days, fuel **supplies** would **run out**", he said. Which means military Command and Control centers **could go dark**. Radar systems that detect air threats to our country **would shut down completely**. "Communication between commanders and their troops would also go silent. And **many weapons systems would be left without** either fuel or electric **power**", said Senator Grassley. "So in a few short hours or days, the mightiest military in the world would be left scrambling to maintain base functions", he said. We contacted the **Pentagon and officials confirmed the threat** of a cyber attack is something very real. Top national security officials— **including the Chairman of the Joint Chiefs**, the Director of the National Security Agency, the Secretary of Defense, **and the CIA Director**— have said, "preventing a cyber attack and improving the nation's electric grids is among the most urgent priorities of our country" (source: Congressional Record). So **how serious is the Pentagon** taking all this? **Enough to start**, or end **a war over it**, for sure (see video: Pentagon declares war on cyber attacks http://www.youtube.com/watch?v=_kVQrp_D0kY%26feature=relmfu). **A cyber attack today** against the US **could very well be seen as an "Act of War"** and could be **met with** a **"full scale"** US military response. That could include the use of **"nuclear weapons"**, if authorized by the President.

1AR Solvency-- budget

Mandatory minimums are costing the DoJ an exorbitant amount of money which is not being repaid by increased public safety – and they’ve been rising since the ‘80s.

PEW 15 (PEW, any qualifications, “Federal Drug Sentencing Laws Bring High Cost, Low Return,” PEW Public Safety Performance, Public Safety, August 27, 2015, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>) **More than 95,000 federal prisoners are serving time for drug-related offenses—up from fewer than 5,000 in 1980.¹ Changes in drug crime patterns and law enforcement practices played a role in this growth, but federal sentencing laws enacted during the 1980s and 1990s also have required more drug offenders to go to prison— and stay there much longer—than three decades ago.² (See Figure 1.) These policies have contributed to ballooning costs: **The federal prison system now consumes more than \$6.7 billion a year, or roughly 1 in 4 dollars spent by the U.S. Justice Department.³****

Despite substantial expenditures on longer prison terms for drug offenders, **taxpayers have not realized a strong public safety return.** The self-reported use of illegal drugs has increased over the long term as drug prices have fallen and purity has risen.⁴ Federal sentencing laws that were designed with serious traffickers in mind have resulted in lengthy imprisonment of offenders who played relatively minor roles.⁵ These laws also have failed to reduce recidivism. Nearly a third of the drug offenders who leave federal prison and are placed on community supervision commit new crimes or violate the conditions of their release—a rate that has not changed substantially in decades.⁶ More imprisonment, higher costs Congress increased criminal penalties for drug offenders during the 1980s—and, to a lesser extent, in the 1990s—in response to mounting public concern about drug-related crime.⁷ In a 1995 report that examined the history of federal drug laws, the U.S. Sentencing Commission found that “drug abuse in general, and crack cocaine in particular, had become in public opinion and in members’ minds a problem of overwhelming dimensions.”⁸ The nation’s violent crime rate surged 41 percent from 1983 to 1991, when it peaked at 758 violent offenses per 100,000 residents.⁹ **Congress increased drug penalties in several ways. Lawmakers enacted dozens of mandatory minimum sentencing laws that required drug offenders to serve longer periods of confinement. They also established compulsory sentence enhancements for certain drug offenders, including a doubling of penalties for repeat offenders and mandatory life imprisonment without the possibility of parole for those convicted of a third serious offense.** These laws have applied broadly: As of 2010, **more than 8 in 10 drug offenders in federal prison were convicted of crimes that carried mandatory minimums.** Also during the 1980s, Congress created the Sentencing Commission, an appointed panel that established strict sentencing guidelines and generally increased penalties for drug offenses. The same law that established the commission, the Sentencing Reform Act of 1984, also eliminated parole and required all inmates to serve at least 85 percent of their sentences behind bars before becoming eligible for release. Federal data show the systemwide effects of these policies: Probation has all but disappeared as a sanction for drug offenders. In 1980, federal courts sentenced 26 percent of convicted drug offenders to probation. By 2014, the proportion had fallen to 6 percent, with judges sending nearly all drug offenders to prison.¹¹ (See Figure 2.) The length of drug sentences has increased sharply. As shown in Figure 1 above, from 1980 to 2011 (the latest year for which comparable statistics are available), the average prison sentence imposed on drug offenders increased 36 percent—from 54.6 to 74.2 months—even as it declined 3 percent for all other offenders.¹² The proportion of federal prisoners who are drug offenders has nearly doubled. The share of federal inmates serving time for drug offenses increased from 25 percent in 1980 to a high of 61 percent in 1994.¹³ This proportion has declined steadily in recent years—in part because of rising prison admissions for other crimes—but **drug offenders still represent 49 percent of all federal inmates.¹⁴** Time served by drug offenders has surged. **The average time that released drug offenders spent behind bars increased 153 percent between 1988 and 2012, from 23.2 to 58.6 months.¹⁵ This increase dwarfs the 39 and 44 percent growth in time served by property and violent offenders, respectively, during the same period.¹⁶ The increased imprisonment of drug offenders has helped drive the explosive overall growth of the federal prison system, which held nearly 800 percent more inmates in 2013 than it did in 1980.¹⁷ One study found that the increase in time served by drug offenders was the “single greatest contributor to growth in the federal prison population between 1998 and 2010.”¹⁸ Growth in the prison population has driven a parallel surge in taxpayer spending. From 1980 to 2013, federal prison spending increased 595 percent, from \$970 million to more than \$6.7 billion in inflation-adjusted dollars.¹⁹ **Taxpayers spent almost****

as much on federal prisons in 2013 as they paid to fund the entire U.S. Justice Department—including the Federal Bureau of Investigation, the Drug Enforcement Administration, and all U.S. attorneys—in 1980, after adjusting for inflation.²⁰ Increased availability and use of illegal drugs

Measurements of the availability and consumption of illegal drugs in the United States are imprecise. Users may be reluctant to share information about their illegal behavior, and national surveys may not capture responses from specific populations—such as homeless or incarcerated people—who may have high rates of drug use. Drug markets also vary considerably from city to city and state to state, and among different drugs. Despite these limitations, the best available data suggest that increased penalties for drug offenders—both at the federal and state levels—have not significantly changed long-term patterns of drug availability or use: Illegal drug prices have declined. The estimated street price of illegal drugs is a commonly cited measure of supply. Higher prices indicate scarcity while lower prices suggest wider availability. After adjusting for inflation, the estimated retail prices of cocaine, heroin, and methamphetamine all decreased from 1981 to 2012, even as the purity of the drugs increased.²¹ Illegal drug use has increased. The share of Americans age 12 and older who said in a national survey that they had used an illicit drug during the previous month increased from 6.7 percent in 1990 to 9.2 percent—or nearly 24 million people—in 2012.²² (See Figure 3.) An increase in marijuana use helped drive this trend, more than offsetting a decline in cocaine use. Just as enhanced criminal penalties have not reduced the availability or use of illegal drugs, research shows that they are unlikely to significantly disrupt the broader drug trade. One study estimated that the chance of being imprisoned for the sale of cocaine in the U.S. is less than 1 in 15,000—a prospect so remote that it is unlikely to discourage many offenders.²³ The same applies for longer sentences. The National Research Council concluded in a 2014 report that mandatory minimum sentences for drug and other offenders “have few if any deterrent effects.”²⁴ Even if street-level drug dealers are apprehended and incarcerated, such offenders are easily replaced, ensuring that drug trafficking can continue, researchers say.²⁵ To be sure, many criminologists agree that the increased imprisonment of drug offenders—both at the federal and state levels—played a role in the ongoing nationwide decrease in crime that began in the early 1990s. But research credits the increased incarceration of drug offenders with only a 1 to 3 percent decline in the combined violent and property crime rate.²⁶ **“It is unlikely that the dramatic increase in drug imprisonment was cost-effective,”** one study concluded in 2004.²⁷

It's crucial to abolish mandatory minimums in order to reduce economic costs---data proves

The Leadership conference 18, 03/28/18, "Sentencing and Mandatory Minimum," The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, PDF p.g. 2, <http://civilrightsdocs.info/pdf/criminal-justice/Sentencing-Fact-Sheet.pdf//BUBU>

Mandatory minimum reform is crucial to slowing the overwhelming growth of our prison population and reducing its staggering economic costs. Cutting 10-year mandatory minimums alone would affect 7,300 defendants every year.¹³ • Between 1980 and 2013, **spending on the federal prison system increased from \$970 million to more than \$6.7 billion**¹⁴, and it costs approximately \$ 31,977 per year to incarcerate an individual.¹⁵

There are almost 100,000 federal inmates serving minimum sentences

US Courts 17 (US Courts, “Mandatory Minimum Sentences Decline, Sentencing Commission Says” July 25, 2017, <https://www.uscourts.gov/news/2017/07/25/mandatory-minimum-sentences-decline-sentencing-commission-says#:~:text=There%20were%2092%2C870%20federal%20inmates,the%20same%20date%20in%202010.>)

There were 92,870 federal inmates convicted of an offense carrying a mandatory minimum penalty, as of September 30, 2016, compared with 108,022 inmates on the same date in 2010. Still, mandatory minimum inmates accounted for 55.7 percent of all inmates in Bureau of Prisons custody in 2016, a

slight decline from 2010, when they made up 58.6 percent of the total, the commission reported in its 2017 Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System, published this month.

Each prisoner costs about 35 thousand per year

Prisons Bureau 18 (US Bureau of Prisons, “Annual Determination of Average Cost of Incarceration,” April 30, 2018, <https://www.federalregister.gov/documents/2018/04/30/2018-09062/annual-determination-of-average-cost-of-incarceration>)

The fee to cover the average cost of incarceration for Federal inmates was \$34,704.12 (\$94.82 per day) in FY 2016 and \$36,299.25 (\$99.45 per day) in FY 2017.

That means the DOJ is spending almost 3.4 billion annually to house federal prisoners serving minimum sentences –that’s just the cost of incarceration – doesn’t include additional taxes for government employees, prison facilities, etc.

Mandatory minimums hurt the DOJ budget

Hardison 19 [Elizabeth Hardison, 10/22/2019, Statehouse Reporter that covers the state Senate, as well as education and criminal justice issues, for the Capital-Star “How a debate over mandatory sentences for gun crimes could sink savings gleaned from a criminal justice reform bill”, <https://www.penncapital-star.com/criminal-justice/how-a-debate-over-mandatory-sentences-for-gun-crimes-could-sink-savings-gleaned-from-a-criminal-justice-reform-bill/>]

When the state House Judiciary Committee approved a set of bills last month imposing mandatory minimum sentences for certain firearm offenses, criminal justice reform advocates decried it as a step backwards in a years-long effort to reduce prison spending and change the way the state approaches law and order issues. The bills face an uncertain fate in the state Senate, where Judiciary Committee Chairwoman Lisa Baker, R-Luzerne, has been hesitant to endorse the controversial sentencing practices. But the Republican-controlled House committee is reportedly preparing alternative plans to get the mandatory minimum proposals to Democratic Gov. Tom Wolf’s desk. An official in the Department of Corrections told the Capital-Star that some of the new sentencing proposals may be amended into Justice Reinvestment Initiative 2, a reform package currently before the House Judiciary Committee that aims to cut corrections costs and reinvest the savings in community-based public safety policies. The maneuver would represent a compromise of sorts between tough-on-crime lawmakers and reformers who want to cut costs in the criminal justice system by reforming sentencing practices and diverting non-violent offenders from prison. But experts say harsher sentencing laws stand to increase prison populations and offset any cost savings from the reinvestment bills, which are a chief priority for the Wolf administration. “They’re completely different policies,” Bret Bucklen, research director for the Pennsylvania Department of Corrections, said. “For all purposes, this kills [the reinvestment package].” House Judiciary Committee Chairman Rob Kauffman, R- Franklin, said he was “not at liberty” to discuss the status of the criminal justice reform bills, which are the topic of ongoing negotiations among lawmakers and stakeholders. “There are many legislative concepts that have gone through the process that are being discussed,” Kauffman said when asked about a reform package that includes mandatory minimum sentences. “Could that be one of them? It could possibly be one of them.” But Bucklen told the Capital-Star on Monday that his office is working to quantify the impact of a Justice Reinvestment package that includes “multiple mandatory minimum” statutes, including a potential mandatory

sentence for certain drug offenses. Corrections officials haven't seen the proposed amendment yet. But based on discussions with House committee members, Bucklen said, they expect the new sentences will be added to a bill sponsored by Sen. Tom Killion, R-Delaware, that would change state sentencing guidelines to make it easier for people with addiction to enter a diversionary treatment program. Killion's bill is expected to generate \$45 million in savings over five years, according to an analysis by the Senate Appropriations Committee. It got unanimous approval from the Senate on June 5, along with two other bills that would distribute the savings to county probation offices and victim service agencies. But Bucklen said the savings and the proposed reinvestments would be "totally wiped out" by new mandatory minimum sentences, which drive up corrections costs by increasing the length of prison sentences. All of the JRI bills are currently awaiting a vote in the House Judiciary Committee. Killion told the Capital-Star Monday that he hadn't heard of any proposed amendments. A handful of states currently have some form of mandatory minimum sentencing for gun offenses, including for illegal possession of firearms by felons, according to the gun reporting website The Trace. Proponents say such policies make sentencing more consistent. But critics from both sides of the political aisle can point to a bevy of evidence showing they drive up spending while doing little to deter crime. A 2013 study by the Centers for Disease Control and Prevention, for instance, found that mandatory minimum sentencing for gun crimes did not affect crime rates. There's also ample evidence that mandatory minimums for drug-related offenses are "less cost-effective than other means" of reducing drug use, according to the nonpartisan RAND Corporation. Bucklen said that Pennsylvania can look to its own recent history for proof of those trends. Since the state Supreme Court invalidated Pennsylvania's mandatory minimum sentences for drug offenses in 2015, the state has saved more than \$20 million in corrections costs while also seeing its crime rates drop, Bucklen said.

1AR—Budget K2 FBI Cyber

Funding is the key internal link for FBI cyber operations

Hindocha 20 (Anisha Hindocha is the National Security Fellow at Third Way. She holds a JD with a focus on national security and foreign relations law from George Washington University. “2020 Reader’s Guide to Understanding the US Cyber Enforcement Architecture and Budget” 3/26/20 <https://www.thirdway.org/report/2020-readers-guide-to-understanding-the-us-cyber-enforcement-architecture-and-budget>)wtk

Leading experts have argued that more resources are needed from the federal government to strengthen the agencies and departments that have a role in US cyber enforcement efforts. Former FBI General Counsel Jim Baker recently stated on law enforcement action against cybercrime, “It’s fair to say enforcement of cybercrime is proportionally low. The missing element is **funding** at all levels of law enforcement. Society would have to decide to devote a lot more resources to the problem to have another outcome.”⁸ At the same event, former Special Assistant to the President and Senior Director for Cybersecurity on the National Security Council, Ari Schwartz, said, “Law enforcement is facing more and more cybersecurity challenges at all levels and needs more resources to do it.”⁹ It is not just former government officials that believe the resources allocated by the federal government are not enough. Testifying at a budget hearing in 2019, FBI Director Chris Wray said, “Make no mistake, it [the FBI’s cyber mission] is a significant challenge, and it exceeds the bandwidth that we have at the moment.”¹⁰ In a recent report for the think tank the Center for Strategic and International Studies (CSIS), William Carter and Jennifer Daskal echoed this finding that “Limited resources and disparities in how resources are distributed leave many offices without the tools and resources they need to effectively access and analyze critical information.”¹¹ Without the adequate resourcing current and former government officials and researchers have found necessary, it will continue to be difficult for law enforcement to bring malicious cyber actors, who are taking a toll on the nation’s economy and endangering America’s national security, to justice.

1AR—DOJ/FBI Key

FBI is key—more resources are the key internal link

Hindocha 20 (Anisha Hindocha is the National Security Fellow at Third Way. She holds a JD with a focus on national security and foreign relations law from George Washington University. “2020 Reader’s Guide to Understanding the US Cyber Enforcement Architecture and Budget” 3/26/20 <https://www.thirdway.org/report/2020-readers-guide-to-understanding-the-us-cyber-enforcement-architecture-and-budget>)wtk

The federal government’s current level of resourcing to these entities is clearly not adequate to meet the need and Congress must evaluate whether increases for certain accounts may be necessary to make a bigger dent. Congress has not invested in bringing cybercriminals to justice the same way they have with other foreign threats like terrorism. After 9/11, the FBI took steps to change its priorities to better investigate and address potential terrorist threats including increasing funding for counterterrorism, developing a human capital plan, realigning staff resources to priority areas, and boosting training programs.¹³ While funding for counterterrorism priorities is critical, the cybercrime wave facing the United States has not been met with a substantial realignment of resources to combat it. In 2017, there were only 1,912 positions within the FBI’s cyber program compared to 13,527 counterterrorism positions.¹⁴ Now, the FBI classifies the budget request details for the Cyber Program making it even more difficult to make these head-to-head comparisons. Even though most cyberattacks do not cause the kind of visible, physical, and human impact that terrorist attacks do, the pervasiveness of these attacks, the range of impacts, and the scope of vulnerability is much broader. And without empowering law enforcement and our nation’s diplomats to increasingly pursue cybercriminals, the massive and dangerous enforcement gap that exists will continue while these criminals act with impunity.¹⁵

DOJ is key—they lead investigations, prosecutions, and international cooperation

Hindocha 20 (Anisha Hindocha is the National Security Fellow at Third Way. She holds a JD with a focus on national security and foreign relations law from George Washington University. “2020 Reader’s Guide to Understanding the US Cyber Enforcement Architecture and Budget” 3/26/20 <https://www.thirdway.org/report/2020-readers-guide-to-understanding-the-us-cyber-enforcement-architecture-and-budget>)wtk

Department of Justice The Department of Justice is the main law enforcement agency of the United States. It leads the government’s efforts to prosecute cybercrime through its Criminal Division, National Security Division, and Office of the United States Attorneys, and to investigate cybercrime through its law enforcement agencies including the FBI. It also facilitates cooperation between foreign law enforcement jurisdictions in transnational cybercrime cases through its International Criminal Police Organization (INTERPOL) Washington office.

1AR Cyber—Yes Impact

Cyber attacks cause nuclear retaliation

Klare 19 [Michael T. Klare, professor emeritus of peace and world security studies at Hampshire College, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation,” Arms Control Association, November 2019, armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.¹² The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.¹³

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”¹⁴

These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by third parties, such as proxy states or terrorist organizations, to provoke a global nuclear crisis by causing early-warning systems to generate false readings (“spoofing”) of missile launches. Yet, they do provide a clear indication of the severity of the threat. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the dangers of unintended or accidental escalation can only grow more severe.

***** AT DA *****

AT: Court Capital

AT: Plan Unpopular with Judges

Federal judges like the plan

Cullen 18 (James, Research and Program Associate at the Brennan Center for Justice at NYU School of Law, "Sentencing Laws and How They Contribute to Mass Incarceration" 10/5/18 <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>)wtk

Interestingly, federal judges have come to dislike mandatory minimums, especially in drug cases. Mandatory minimums often apply to nonviolent drug offenders, forcing judges to harshly punish those who pose the least physical danger to communities. While the goal of mandatory minimums may have been fairness, they've instead caused an imbalance in the courtroom that has helped drive mass incarceration.

AT: Court Clog

Link Turn

Mandatory minimums create court clog by increasing pressure and complicating cases —plea deals take longer because prosecutors won't settle for trial

Bellin, Jeffrey. "A New and Terrible Way Mandatory Minimum Sentences Have Been Demonstrated to Warp Justice." Slate Magazine, Slate, 8 Feb. **2018**, slate.com/news-and-politics/2018/02/a-new-way-mandatory-minimum-sentences-have-been-demonstrated-to-severely-warp-justice.html. Jeffrey Bellin is a professor at William & Mary Law School. <CJC>

A federal appeals court recently freed a man who had been incarcerated nearly seven years awaiting trial. Although the court labeled Joseph Tigano III's pretrial incarceration "egregiously oppressive," it suggested there was no one factor to blame. "Years of subtle neglects," the court wrote, "resulted in a flagrant violation of Tigano's Sixth Amendment right to a speedy trial." Tigano's case was no Agatha Christie mystery. Tigano's case fits a familiar narrative of clogged courts and bureaucratic indifference. But there is one important complication coverage has overlooked. While the appeals court and subsequent media portrayals suggest that prompt trials are the solution to cases like Tigano's, the real fix is long-delayed, bipartisan sentencing reform. That is because the problem in Tigano's case was not neglect, but a 20-year mandatory-minimum sentence that loomed over every decision in the case. Tigano's case was no Agatha Christie mystery. Federal agents found 1,400 marijuana plants growing in Tigano's residence. What's more, three separate agents testified that Tigano confessed that he grew the marijuana. That's a tough case to fight. He was going to lose at trial, it seemed, and he was going to lose big. While many states are lining up to cash in on marijuana legalization, federal law still dictates that a person who grows "1,000 or more [marijuana] plants ... shall be sentenced to a term of imprisonment which may not be less than 10 years." That's a 10-year mandatory prison term for growing marijuana—doubled for anyone, like Tigano, with a prior felony drug conviction. That is why the attorneys and lower court judges in Tigano's case overlooked the speedy trial rule. They were not neglecting Tigano. They were, instead, repeatedly delaying his case—to the point of ordering three needless mental competency examinations—in the hope that Tigano would agree to a plea deal. With 20 years on the horizon, everyone, including Tigano's own attorneys, could put up with an otherwise unconscionable delay that would ultimately be deducted from his eventual sentence. Tigano, however, insisted on his constitutional right to a trial. After seven years, he finally got it. There were no surprises. The jury convicted and the judge sentenced him to 20 years in federal prison. Of course, no one expected the final twist. On appeal, the lengthy pretrial delay set Tigano free. That's not going to work for future defendants caught in Tigano's predicament. Most will take plea deals to avoid mandatory sentences, even if they are innocent. Others will insist on a speedy trial and get it, along with the accompanying crushing prison term. But there is one thing that can consistently fix this form of injustice: eliminating mandatory minimums. The appeals court's opinion says that "no single, extraordinary factor caused the cumulative seven years of pretrial delay." That's wrong. The 20-year mandatory sentence for growing marijuana ignited all the chaos in Tigano's case. That's the dirty secret about mandatory minimums: They don't just lead to unjust sentences; they distort proceedings in countless cases where they are never imposed. Most alarmingly, harsh mandatory sentences pressure even innocent people to plead guilty to avoid long prison sentences. And for the bold few who still go to trial, like Tigano, these laws prevent judges from imposing fair sentences. Tigano's case is an embarrassment to the criminal justice system for a whole host of reasons. But it could have a positive impact if it helps push Congress to enact long-awaited sentencing reform. Among the principles that a bipartisan group of senators agree on is reducing the number of mandatory minimum sentences. The Tigano case illustrates why this principle should appeal to the entire Congress. Mandatory minimums don't just ensure harsh, often disproportionate sentences. They also cause massive distortions in the criminal justice system, leaving it a pale shadow of this nation's ideals.

AT: Crime DA

No Link

Mandatory minimums do not make us safer – Rhode Island proves.

Eisen '15 (Lauren-Brooke Eisen, director of the Brennan Center's Justice Program, Pulitzer Center on Crisis Reporting journalism grantee, and author of *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration*, "Mandatory Minimum Sentences – Time to End Counterproductive Policy," Brennan Center Archive, June 9, 2015, <https://www.brennancenter.org/our-work/analysis-opinion/mandatory-minimum-sentences-time-end-counterproductive-policy>)

There is compelling evidence that mandatory minimums do not make us safer. In 2009, Rhode Island repealed all mandatory minimum sentencing laws for drug offenses. After mandatory minimum sentences for nonviolent drug offenses were repealed, Rhode Island's prison population decreased but, more importantly, its violent crime rate decreased as well. There is little to no evidence that longer prison terms for many nonviolent offenders make us safer. Indeed, it can have the precise opposite effect. There is vast research indicating that prison can cause inmates to commit more crimes upon release partly because low-level offenders find themselves surrounded by more serious and violent offenders in prison and partly because they have trouble finding employment and reintegrating into society upon release. Using incarceration as a one-size fits all punishment for crime has passed the point of diminishing returns. Policy makers would be wise to focus on legislation to eradicate mandatory minimum penalties.

Massachusetts has the opportunity to serve as a model for other states to learn that long prison sentences are not equated with an increase in public safety.

No crime deterrence or rehabilitation—punishments are disproportional and most offenders don't know what they are until its too late

Price 19 (Mary Price, JD from Georgetown University Law Center, general council for Families Against Mandatory Minimums, "Weaponizing Justice: Mandatory Minimums, the Trial Penalty, and the Purposes of Punishment" *Federal Sentencing Reporter* 31(4-5), April/June 2019)wtk

Other than the staggering personal costs the trial penalty levies on defendants, what is most striking is how untethered the trial penalty is from the purposes of punishment. Trial penalties provide a prosecutor sufficient control over sentencing to win convictions and manage caseloads. Those outcomes are not among the enunciated goals of punishment. So, although mandatory minimums and lengthy guideline sentences triggered by prosecutors help them win convictions (or barring that, make good on threats), they fall far short of securing proportionate sentences that advance the purposes of punishment. Take, for example, deterrence. The research demonstrates that mandatory sentences have little or no deterrent effect.³³ The recently updated Model Penal Code points out that general deterrence is very difficult to achieve through sentencing schemes.³⁴ Defendants facing mandatory minimums are routinely stunned to learn the length of the sentence they are facing and incredulous that the judge cannot do anything about it. FAMM was founded by the sister of just such a defendant, whose family was shocked when the judge announced that his "hands are tied" as to the length of the sentence he was required to impose. FAMM's case files are filled with similar accounts. At Mr. Ray's sentencing, for example, the assistant U.S. attorney told the judge who had expressed dismay at the life sentence he was asked to impose: "Quite frankly, the defendant probably was aware of that law before he did what he did." Mr. Ray, of course, had no idea when he found drugs for his friend what he would face, nor could he even imagine such a sentence for giving the friend 60 grams of crack cocaine. Providing the prisoner with programming and support to return to the community and live a law-abiding life is another goal of sentencing. The best reentry program starts with a right-sized sentence, and rehabilitation can be endangered by the excessive sentences required by the trial penalty. And, of course, in the case of people like Mr. Ray sentenced to a life sentence, there is no prospect of restoring them to the community. Protecting the community from further crimes by the defendant is another worthy purpose of sentencing that should be served by punishment. Many view incapacitation as best reserved for defendants most likely to commit crimes in the future or for those who we fear will commit dangerous offenses. And, although life or decades-long sentences for low-level drug offenders all but ensure they will be unable to reoffend in the community, these sentences can hardly be justified as necessary for our protection.

No Link—AT: Deterrence

Mandatory minimums don't deter crime—overwhelming consensus of evidence

Luna 17 (Erik Luna is the Amelia D. Lewis Professor of Constitutional and Criminal Law in the Sandra Day O'Connor College of Law at Arizona State University. "Mandatory Minimums" Chapter in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release* Edited by Erik Luna, 2017, p.127-130 . https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf)wtk

According to their advocates, mandatory minimums both deter and incapacitate offenders. With respect to deterrence, mandatory minimum sentences are sometimes justified as sending an unmistakable message to criminals. Some offenses require certain minimum punishments, advocates claim. They argue that because of the wide diversity of views on the appropriate level of punishment for offenders, legislators—not judges—are in the best position to make sentencing determinations.⁴⁶ The certain, predictable, and harsh sentences forewarn offenders of the consequences of their behavior upon apprehension and conviction.⁴⁷ Proponents contend that mandatory minimums also incapacitate the most incorrigible criminals and thereby prevent them from committing crime.⁴⁸ **None of these claims receives robust empirical support,** however, as most researchers have rejected crime-control arguments for mandatory sentencing laws. There is little evidence that lengthy prison terms serve specific deterrence. Rather, imprisonment either has no effect on an inmate's future offending or perhaps even increases recidivism.⁴⁹ This is hardly surprising given the absence of meaningful rehabilitative programs for inmates and, worse yet, the deplorable conditions of incarceration facilities.⁵⁰ It has often been argued that prisons serve as "colleges for criminals," where offenders are psychologically damaged by incarceration, for instance, or learn new anti-social skills from their criminally involved peers, and thus come out more likely to recidivate. They may also be at risk of reoffending because of imprisonment's social and economic consequences, such as the difficulties of obtaining gainful, lawful employment after release.⁵¹ **As for general deterrence, research has largely failed to show that mandatory minimums decrease the commission of crime, and some studies suggest that such punishment schemes may even generate more serious crime.**⁵² Regardless, any deterrence-based reduction in crime is far outweighed by the increased costs of incarceration from long mandatory sentences.⁵³ Again, this is not a surprising conclusion. If we assume that criminals act rationally—pursuant to an assessment of the advantages and disadvantages of criminality—the potential cost of committing a particular offense is not, as some politicians maintain, the allowable punishment under law. Instead, it is a mere fraction of the prescribed sanction, given that potential punishment must be discounted by the probability of apprehension and conviction for the given offense.⁵⁴ And given that most felony convictions already lead to incarceration, the enactment of mandatory minimums will have only a marginal impact on the certainty of imprisonment.⁵⁵ Besides, criminals are not likely to be well-informed, rational actors in the classic economic model. To begin with, people know very little about criminal justice, including sentencing schemes and severity, and thus are unlikely to be deterred by mandatory minimums.⁵⁶ Even assuming someone knows the relevant sentence for a prospective crime, a long mandatory term may be heavily discounted in the mind of a risk-taking offender, who places greater emphasis on immediate gains (e.g., stolen goods in hand) over deferred losses (e.g., punishment extending into the distant future).⁵⁷ This may be particularly true of those from deprived socioeconomic or familial backgrounds.⁵⁸ In addition, some offenders may commit crime in pursuit of intangible, nonquantifiable ends, such as respect, glory, or attention,⁵⁹ while other offenders are driven by "impulsive, irrational, or abnormal" desires.⁶⁰ These individuals are undeterred by the existence of mandatory minimums.

Mandatory minimum won't reduce crime rates – BUT makes racial disparities worse

KCS 20, Kansas City Star, 2/10/20 "A step backwards': Mandatory minimum sentences won't stop violent crime in Missouri," <https://www.kansascity.com/opinion/editorials/article240099773.html>//
BUBU –

On its face, Missouri state Sen. Tony Luetkemeyer's tough-on-crime argument sounds logical: Violent criminals must be held accountable for their actions. **But what Luetkemeyer gets wrong in his criminal justice reform package that's making its way through the Missouri Senate is imposing mandatory minimum sentencing guidelines that would take away a judge's**

discretion in administering punishment for violent offenders. One proposal, Senate Bill 600, would deny probation for someone convicted of second-degree murder or any other dangerous felony involving a deadly weapon. Another measure, Senate Bill 601, would change the minimum prison term for armed criminal action from three years to five years for a first offense. A prisoner would not be eligible for parole for five years. **In Missouri, armed criminal action is a companion charge used in felony cases involving a dangerous weapon. Judges often run armed criminal action sentences concurrently with sentences for primary felony convictions.** The bill would mandate that the sentences run consecutively, a complete legislative overreach. **Judges must be able to administer justice on a case-by-case basis. A one-size-fits-all approach to criminal justice already has proved ineffective. There is ample evidence that tougher mandatory minimum sentences have often been ineffective at best and unfairly punitive in many cases. And studies have shown that people of color have been disproportionately affected by mandatory minimum sentencing guidelines.** Luetkemeyer, a Parkville Republican who chairs the Senate judiciary committee, argues the recidivism rate in Missouri for violent offenders is close to 65%. During a 10-year period, at least 25 people have been given probation for second-degree murder, he said. The proper place for those criminals is in prison, not on probation. **Sara Baker**, the legislative and policy director for the ACLU of Missouri, **testified against Luetkemeyer's armed criminal action bill, which passed through the Senate judiciary committee by a 6-1 vote and is expected to be heard on the Senate floor in the coming weeks. "Mandatory minimums have been used to over-sentence minority populations for years and years," Baker said. "Missouri is trying to decrease its prison population and implement criminal justice reforms, and this seems like a step backwards." She's right.** Luetkemeyer's push for tougher mandatory minimum sentences is out of step with bipartisan efforts in Congress to move away from the unjust sentencing laws that have swelled our prison populations. On this — and perhaps only this — Republicans in Congress, Democrats in Congress and the president have all agreed, as they've rethought outdated tough-on-crime laws, prioritized rehabilitation and given judges more flexibility in sentencing. **Luetkemeyer is trying to move Missouri in the wrong direction. Missouri is a dangerous state.** Three of its cities have been named among the 12 most violent cities in the country. **But lawmakers can't incarcerate their way to crime reduction.** Commonsense gun reform would be a more effective step toward reducing violent crime. **Other criminal justice reforms should be considered.** While Luetkemeyer is right that violent criminals should be held accountable, **judges must maintain some discretion in imposing prison sentences. Mandatory minimums are not the answer.**

No Link- AT: Incapacitation

No incapacitation link—most people age out of crime and mandatory minimums have diminishing returns

Luna 17 (Erik Luna is the Amelia D. Lewis Professor of Constitutional and Criminal Law in the Sandra Day O'Connor College of Law at Arizona State University. "Mandatory Minimums" Chapter in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release* Edited by Erik Luna, 2017, p.130 https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf)wtk

Mandatory minimum sentences are also unlikely to reduce crime by incapacitation,⁶¹ at least given the overbreadth of such laws and their failure to focus on those most likely to recidivate. Among other things, offenders typically age out of the criminal lifestyle, usually in their 30s,⁶² meaning that long mandatory sentences may require the continued incarceration of individuals who would not be engaged in crime. In such cases, the extra years of imprisonment will not incapacitate otherwise active criminals and thus will not result in reduced crime. Instead, **prisons become geriatric facilities**.⁶³ Although selective incapacitation—choosing offenders based on certain predictors of future criminality⁶⁴—may work in discrete circumstances, mandatory minimums

sentences work as **meat cleavers**, not scalpels, and thus generate high levels of false positives (i.e., incapacitated offenders who would not otherwise be committing crimes). Moreover, certain offenses subject to mandatory minimums can draw upon a large supply of potential participants. With drug organizations, for instance, an arrested dealer or courier may be quickly replaced by another, eliminating any crime-reduction benefit.⁶⁵ More generally, any incapacitation-based effect from mandatory minimums was likely achieved years ago, due to the diminishing marginal returns of locking more people up in an age of mass incarceration.⁶⁶ Based on the foregoing arguments and others, most scholars have rejected crime-control arguments for mandatory sentencing laws.⁶⁷ **By virtually all measures, there is no reason to believe that mandatory minimums have any meaningful impact on crime rates**.⁶⁸

No Link—AT: Retribution

Mandatory minimums don't provide retribution—they are disproportionate and don't consider case-specific details

Luna 17 (Erik Luna is the Amelia D. Lewis Professor of Constitutional and Criminal Law in the Sandra Day O'Connor College of Law at Arizona State University. "Mandatory Minimums" Chapter in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release* Edited by Erik Luna, 2017. P. 125-126 https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf)wtk

According to proponents of mandatory minimums, those who are sentenced under these laws—purportedly, high-level offenders who perpetrate violent and serious crimes—can only be assured of receiving their just deserts through long, compulsory sentences. Few retributivists would balk at a life sentence for a serial murderer, for instance, and most mandatory minimums imposed for serious crimes of violence (e.g., forcible rape) will fall within the rough boundaries of deserved punishment.³⁸ The problem is that mandatory minimum statutes can be grossly overinclusive. In enacting such statutes, lawmakers tend to imagine an exceptionally serious offense and set the mandatory minimum they consider fitting for a particularly egregious offender. But they do not take into consideration a far less serious crime or less culpable criminal who nonetheless might be sentenced under the law.³⁹ Mandatory minimums eliminate judicial discretion to impose a prison term lower than the statutory floor, making case-specific information about the offense and offender irrelevant, at least to the extent that these facts might call for a below-minimum sentence. For this reason, mandatory minimums are unaffected by proportionality concerns and can pierce retributive boundaries with excessive punishment.

Link Turn

Turn - mandatory minimums lead to an uptick in the amount of violent crime and recidivism, and many in prison programs to help prisoners are not effective

RED, 2019(The Red Program, educational organization working to stop recidivism, “The History Behind Mandatory Minimums,” 2019, https://stoprecidivism.org/the-history-behind-mandatory-minimums/?gclid=EAlalQobChMly6fj0_2f6gIVcgnnCh05QgAPEAAYASAAEgIrv_D_BwE)

We’ve talked a lot about the FIRST Step Act passed earlier this year, and how it’s affected real people and their lives behind bars. Now, though, we’re going to take a minute and dig into one of the root causes of our current issues within the criminal justice system.

Knowing how we got here is just as important to solving the problems we face as anything, as without context, our solutions would be simple shots in the dark as opposed to targeted objectives. And we desperately need targeted solutions to the problems that we face in this country. Recidivism occurs when a former convict again commits a crime after release. And, truth be told, the best way to prevent someone from receding into a life of crime is to stop them from going to prison in the first place. As you will discover in this piece, the problem with recidivism in America really begins with mandatory minimums, specifically those on crack cocaine. They changed the landscape of criminal justice in the United States for the entire generation that followed. How The System Originally Worked From the days that the US was formed into a nation, the process has been pretty specific in terms of federal courts. To this day, the President nominates judges and the Senate confirms them to the bench. The reason that our courts operate in this manner is so that there is a system of checks and balances to ensure that no one side can load the judiciary. Judges have a very strong mandate from the people. They are entrusted with making decisions that will affect the lives of others. This often includes sentencing, as well. But, as we all know in life, every situation and circumstance is unique. In order for justice to be done, we have to ensure that the facts are heard and that context is given to each and every situation. Before the 1980s, at least at the federal level, this the way crimes were handled. Judges would do what they were appointed to do — use their judgement. By making use of federal sentencing guidelines, they would consider the merits of a case and use that in accordance with the guidelines as written. That all changed with the 1984 Sentencing Reform Act. Mandatory Minimums: The New Way The 1984 Sentencing Reform Act made a monumental decision. It effectively took the power out of a judge’s hands to sentence guilty persons based on the merits of the case. Instead, new sentencing called mandatory minimums were imposed. As the name states, these are minimum sentences that were not up to interpretation. If a person was found guilty of particular crimes — like the distribution of crack cocaine — then judges were bound by law to hand down a sentence minimum. It didn’t matter if the offender had no history of criminal activity. It didn’t matter if the offender were being coerced. It simply didn’t matter. These penalties were even deemed by congress as being harsh, in order to act as a deterrent. The logic employed at the time said that a rational human would see the cost of committing crimes like dealing crack cocaine and would then choose not to engage in the behavior. Furthermore, there were issues that went beyond that. Something called “truth in sentencing” ended up extending sentences far longer than they usually would be. For instance, normally, an inmate will serve about 75% of their sentence. Most will rehabilitate and qualify for parole earlier than the actual time listed for good behavior. But the “truth in sentencing” laws mean that, even if a criminal has completely changed his ways, he’s still going to serve the remainder of the sentence behind bars. Not contributing to society, not getting a job and paying taxes, not spending time with their families and helping to build their communities — simply locked away, purely out of spite. Also, the concept of “three strikes” laws that many state legislatures have implemented are an additional way to circumvent sentencing guidelines and to simply lock a person up and throw away the key. In these systems, an offender could commit three small misdemeanors and get severe sentences, including life in prison. But what ended up happening as a result is a problem that we are still dealing with to this day, and will not soon recover from without great effort.

Unintended Consequences **The problem is that mandatory minimums effectively made most of our prisons academies for violent crime.** Take an offender who’s only 17, gets caught distributing crack cocaine for the first time, and without a record. Then, that same offender gets put int prison for ten years — the mandatory minimum sentence. By the time he gets out at 27, he has no marketable job skills, yet has received an education in criminal activity while in prison. Unfortunately, our system takes all criminals, regardless of history of violence, and places them all into the same place. The outcome means that 17 year old is all but guaranteed to commit more crimes once released. It’s all he’s known in his entire adult life. Now, there are some who point out that there are plenty of programs for bettering one’s self while behind bars, and this is true. But not everyone has access to them. Not everyone has the resources needed to get through them. And not everyone has had the good fortune of being mentored into making better life choices.

Alt Causes

Crime rates vary independently of incarceration and there are alt causes

Boza 17 (Tanya Golash-Boza and , 6-1-2017, accessed on 6-25-2020, PBS NewsHour, "Column: 5 charts show why mandatory minimum sentences don't work", Tonya Golash Boza is a sociology professor at the University of California <https://www.pbs.org/newshour/politics/5-charts-show-mandatory-minimum-sentences-dont-work>)/ICW

For most of the 20th century, the U.S. incarcerated about 100 people per 100,000 residents – below the current world average. However, starting in 1972, our incarceration rate began to increase steadily. By 2008, we reached a peak rate of 760 incarcerated persons per 100,000 residents. The increase in incarceration cannot be explained by a rise in crime, as crime rates fluctuate independently of incarceration rates. Incarceration rates soared because laws changed, making a wider variety of crimes punishable by incarceration and lengthening sentences. This sharp increase was driven in part by the implementation of mandatory minimums for drug offenses, starting in the 1980s. These laws demand strict penalties for

all offenders in federal courts, no matter the extenuating circumstances. The Obama administration took some measures to roll back these mandatory minimums. In 2013, Attorney General Eric Holder issued a memo asking prosecutors to prosecute crimes with mandatory minimum sentences only for the worst offenders. Earlier this month, however, Attorney General Jeff Sessions rescinded that memo and issued his own, which requires prosecutors to “charge and pursue the most serious” offense. The punitive sentiment behind Sessions’ memo is a throwback to our failed experiment in mass incarceration in the 1980s and 1990s. Our growing prison population. The number of prisoners in U.S. federal and state institutions has sharply increased over the past three decades. Data source: U.S. Bureau of Justice Statistics. Chart by The Conversation According to political scientist Marie Gottschalk, mass incarceration took off in three waves. First, in the mid-1970s, Congress began to lengthen sentences. This culminated in the 1984 Comprehensive Crime Control Act, which established mandatory minimum sentences and eliminated federal parole. Then, from 1985 to 1992, city, state and federal legislators began to lengthen drug sentences. This was the heyday of the war on drugs. It included the Anti-Drug Abuse Act of 1986, which imposed even more mandatory minimum sentences. Most significantly, it set a five-year mandatory minimum sentence for offenses involving 100 grams of heroin, 500 grams of cocaine or 5 grams of crack cocaine. Two years later, new legislation added a five-year mandatory minimum sentence for simple possession of crack cocaine, with no evidence of intent to sell. Before then, one year of imprisonment had been the maximum federal penalty for possession of any amount of any drug. The third wave hit in the early 1990s. This involved not only longer sentences, but “three strikes laws” that sentenced any person with two prior convictions to life without parole. “Truth in sentencing” policies also demanded that people serve their full sentences. This culminated in the Violent Crime Control and Law Enforcement Act of 1994, which included a three strikes provision at the federal level. Notably, these laws were passed during a time when crime rates had begun a precipitous decline. Today, more than half of U.S. states have a three strikes provision. By the end of the 20th century, there were an unprecedented over two million inmates in the U.S. That’s more than 10 times the number of U.S. inmates at any time prior to the 1970s, and far more than most other countries. Worldwide incarceration rates. At 698 people in prison for every 100,000 adults, the US is a world leader in incarceration. Data as of 2015. Data source: World Prison Brief. Chart by The Conversation Although the current incarceration rate is still high – about 1 in 37 adults – it is at its lowest since 1998. Imprisonment has decreased over the past decade for two reasons. First, policymakers have started to realize that punitive laws do not work. Second, states are no longer able to continue financing this massive carceral system. The Great Recession in 2007 gave elected leaders the political will to make cuts to the prison system. After three decades of prison building, many states found themselves with massive systems they were no longer able to finance, and began to release some prisoners to cut costs. This was the first time in 37 years that the number of prisoners went down. By 2011, one-fourth of states had closed or planned to close a prison. The cost of incarceration. In 2012, a total \$265.2 billion was spent on local, state and federal incarceration in the U.S. Data source: Justice Expenditure and Employment Extracts Program. Chart by The Conversation In 2010, Obama signed the Fair Sentencing Act, repealing the five-year mandatory sentence for first-time offenders and for repeat offenders with less than 28 grams of cocaine. This change reduced the 100-to-1 sentencing disparity between crack and powder cocaine down to 18-to-1. Activists had been demanding this reduction for decades, as the only difference between the two drugs is that crack is made by adding baking soda and heat to powder cocaine. Despite similar rates of crack usage in black and white communities, in 2010 – the last year of the 100-to-1 disparity – 85 percent of the 30,000 people sentenced for crack cocaine offenses were black. In 2012, after years of steadily increasing prison admission rates, the number of new admissions to federal prisons began to decline. In 2015, just 46,912 people were admitted to federal prison – the lowest number in 15 years. When mass incarceration first started ramping up in the 1970s, violent and property crime rates were high. However, even after crime rates began to decline, legislators continued passing punitive laws. In fact, some of the most draconian laws were passed in the mid-1990s, long after crime rates had gone down. Falling crime rates. The rates of violent and property victimization in the U.S. have decreased over the past several decades. Data source: Bureau of Justice Statistics. Chart by The Conversation Incarceration has had a limited impact on crime rates.

First of all, it is just one of many factors that influence crime rates. Changes in the economy, fluctuations in the drug market and community-level responses often have more pronounced effects. Second, there are diminishing returns from incarceration. Incarcerating repeat violent offenders takes them off the streets and thus reduces crime.

But incarcerating nonviolent offenders has a minimal effect on crime rates. But incarceration continued to rise even as crime fell, in part because of the public’s demand for a punitive response to crime. Although there is less crime today than there has been in the past, most people are not aware of this drop. Thus, the fear of crime persists. This often translates into punitive public policies – regardless of declining crime rates and the inefficacy of these laws at preventing crime. Public opinion on crime. Public opinion has not followed the recent decline in crime rates. This chart tracks responses to a Gallup poll that asked Americans: “Is there more crime in the US than there was a year ago, or less?” Data source: Gallup. Chart by The Conversation Since the election of Richard Nixon, politicians on the left and right have learned that fear-mongering around crime is a surefire way to get elected. Today, when crime rates are at a historic low, politicians continue to stoke the flames of fear. These strategies may win elections, but the evidence shows they will not make our communities safer.

AT: Elections

Link Turn

Voters like the “tough on crime” memo – lose voters because voters don’t like mandatory minimums

Luna 10 [Erik Luna, law professor at Arizona State University, 5/27/2010, Mandatory Minimum Sentencing Provisions Under Federal Law, <https://www.cato.org/publications/congressional-testimony/mandatory-minimum-sentencing-provisions-under-federal-law>, NZ]

2. FEDERAL MANDATORY MINIMUMS AND OVER-CRIMINALIZATION

As a conceptual matter, federal mandatory minimums can be viewed as a particularly troubling iteration of larger trends: over-criminalization and, more specifically, over-federalization. Over-criminalization refers to the constant expansion of criminal justice systems, through the creation of novel crimes, harsher punishments, broader culpability principles, and heightened enforcement, often in the absence of moral or empirical justification and without regard for statutory redundancy or jurisdictional limitations.⁴⁸ The phenomenon is hardly new. In a 1967 critique of extending the criminal sanction, Sanford Kadish warned that “until these problems of over-criminalization are systematically examined and effectively dealt with, some of the most besetting problems of criminal-law administration are bound to continue.”⁴⁹ He was right. In the ensuing decades, lawmakers have relentlessly added to American penal codes, despite equally relentless criticisms by scholars and public interest groups.⁵⁰ Although much of this expansion has occurred at the state level,⁵¹ the most virulent form of over-criminalization — and certainly the most criticized⁵² — has occurred in the federal system. Congress has slowly but surely obtained a general police power to enact virtually any offense, adopting repetitive and overlapping statutes, criminalizing behavior that is already well-covered by state law,⁵³ creating a vast web of regulatory offenses,⁵⁴ and extending federal jurisdiction to all sorts of deception⁵⁵ or wrongdoing⁵⁶ virtually anywhere in the world.⁵⁷ At last count, there were about 4,500 federal crimes on the books,⁵⁸ with the largest portion instituted over the past four decades.⁵⁹ Like the growing opposition to mandatory minimums, over-federalization has been criticized by a broad band of organizations and by politicians on both the left and the right.⁶⁰ Indeed, mandatory minimums constitute a species of over-criminalization and over-federalization.⁶¹ They are part of a punishment spree of unprecedented proportions that has helped make America the single most punitive Western nation and the world’s imprisonment leader.⁶² Since 1980, the federal prison population has increased tenfold, for instance, while the average federal sentence has doubled and the average federal drug sentence has tripled, due in no small part to mandatory minimums.⁶³ So what is the cause of over-criminalization, over-federalization, and overly broad and harsh mandatory minimums? Some thirty years after his original critique, Professor Kadish suggested a commonsensical explanation for the “creeping and foolish federal overcriminalization.” Some dramatic crimes or series of crimes are given conspicuous media coverage, producing what is perceived, and often is, widespread public anxiety. Seeking to make political hay, some legislator proposes a new law to make this or that a major felony or to raise the penalty or otherwise tighten the screws. Since other legislators know well that no one can lose voter popularity for seeming to be tough on crime, the legislation sails through in a breeze. That the chances of the legislation working to reduce crime are exceedingly low, and in some cases the chances of it doing harm are very high, scarcely seems to be a relevant issue.⁶⁴ This account is supported by other scholars, as well as the reports of legal groups and former federal officials.⁶⁵ Sensationalistic news coverage tends to increase the public salience of crime, generating fear and attendant calls for action.⁶⁶ Even in areas where concern may be unfounded, populist pressures create incentives for lawmakers to enact new crimes and harsher punishments. Such legislation is readily grasped by constituents, produces few opponents, permits the public to vent its moral outrage, and most importantly, gives politicians the “tough on crime” credentials that can fill campaign coffers and garner votes at election time.⁶⁷ As Professor Kadish mentioned, the process can be set off by a string of crimes or even a single traumatic episode that grabs news headlines and the public imagination. These events may trigger what social scientists have termed a “moral panic,” where intense outbursts of emotion impede rational deliberation, lead people to overestimate a perceived threat and to demonize a particular group, and generate a public demand for swift and stern government action.⁶⁸ Although any resulting legislation will almost certainly be touted for its instrumental benefits, the law will serve as a symbolic gesture for politicians and their constituents, expressing condemnation of the relevant act and actors.⁶⁹ Law enforcement also has an interest in the expansion of criminal

justice. Although aspirational language may describe the prosecutorial function as an impartial “minister of justice,”⁷⁰ there should be little doubt that American prosecutors see themselves as advocates in a sometimes brutally adversarial process.⁷¹ This role conception is exacerbated by prosecutorial incentive structures, where the success and career prospects of both lead and line prosecutors are typically measured by the rate of convictions and the aggregate amount of punishment.⁷² Naturally, over-criminalization serves this incentive structure. The more crimes on the books and the harsher the punishments, the more power law enforcement can exercise throughout the criminal process.⁷³ By raising the potential punishment through harsh sentencing schemes, for instance, or by charging multiple counts for a single course of conduct, defendants are given every reason to cooperate with the prosecution by providing information, entering into plea agreements, and waiving their constitutional rights. All of this enhances the power of prosecutors, who can obtain more and cheaper convictions via plea bargaining or, if that fails, deploy potent criminal provisions against their opponents at trial. As one former Justice Department official recently said, “[I]t is not surprising that the federal agency charged with preventing, solving, and punishing federal crimes is not aggressively attempting to shrink the federal code.”⁷⁴ This understanding helps explain the rise and persistence of mandatory minimums. Chief Justice William Rehnquist noted that their enactment often does not involve “any careful consideration” of the ultimate effect. Instead, “[m]andatory minimums ... are frequently the result of floor amendments to demonstrate emphatically that legislators want to ... get tough on crime.”⁷⁵ In fact, federal lawmakers have explicitly used the phrase “tough on crime” in their support of mandatory minimums,⁷⁶ with some of the most notorious mandatory minimum laws originating from symbolic politics. Consider, for instance, the enactment of 18 U.S.C. § 924(c) as part of the Gun Control Act of 1968 (which itself was part of the Omnibus Crime Control and Safe Streets Act of 1968). The legislation was a response to public fear over street crime, civil unrest, and the shooting of Martin Luther King, Jr. The day after the assassination of Robert F. Kennedy, § 924(c) was proposed as a floor amendment and passed that same day with no congressional hearings or committee reports, only a speech by the amendment’s sponsor about its catchphrase goal “to persuade the man who is tempted to commit a federal felony to leave his gun at home.”⁷⁷ Since then, Congress has amended § 924(c) several times and converted it from a one-year mandatory minimum to one of the nation’s most draconian punishment laws.⁷⁸ Another example comes from the passage of the Anti-Drug Abuse Act of 1986, the law that instituted the crack-powder cocaine sentencing differential and created the basic structure of federal mandatory minimums for drug trafficking.⁷⁹ The driving force behind these provisions was the cocaine overdose of basketball star Len Bias, which triggered a remarkable level of media attention and a moral panic about crack cocaine. Tellingly, the bill was enacted without hearings or input from the judiciary. “Much of the [standard] procedure was circumvented,” a House staff member recounted. “In essence, the careful, deliberate procedures of Congress were set aside in order to expedite passage of the bill.”⁸⁰ The legislation was a blatant attempt to appease an electorate that was distraught over the death of a gifted athlete and hysterical about an alleged epidemic of crack.⁸¹ A Washington Post editorial suggested that in the prevailing can-you-top-this atmosphere, “if someone offered an amendment to execute pushers only after flogging and hacking them, it probably would have passed.”⁸² Ironically, it was later determined that Bias died from ingesting powder cocaine, not crack.⁸³ But by then, it didn’t matter.

AT: Biden Solves the Case

Congress blocks Biden from eliminating mandatory minimums

Lopez 19 (German Lopez, Vox writer with a focus on criminal justice and public health. "Joe Biden's criminal justice reform plan, explained" 7/23/19 <https://www.vox.com/policy-and-politics/2019/7/23/20706987/joe-biden-criminal-justice-reform-plan-mass-incarceration-war-on-drugs>)wtk

One big question for Biden's plan is whether Congress would go along with any of this. There are some parts of Biden's plan he could do on his own as president — most notably, clemency. But he'd need Congress's approval for the majority of his proposals, from the \$20 billion grant program to ending mandatory minimums to tackling the root causes of crime. Given that Congress took years to pass a fairly mild form of criminal justice reform with the First Step Act, it's unclear if federal lawmakers are truly ready for more ambitious proposals.

You should be highly skeptical of their evidence – Biden is tough on crime and won't hesitate to resort back to his old ways

Lopez 19, German Lopez, 4-25-2019, "Joe Biden didn't just support the war on drugs. He wrote much of the legislation behind it." Vox, <https://www.vox.com/policy-and-politics/2019/4/25/18282870/joe-biden-criminal-justice-war-on-drugs-mass-incarceration//BUBU>

Still, his record is bad news for criminal justice reformers. A constant worry in the criminal justice reform space is what would happen if, say, the crime rate started to rise once again. If that were to happen, there could be pressure on lawmakers — and it'd at least be easier for them — to go back to "tough on crime" views, framing more aggressive policing and higher incarceration rates in a favorable way. Given that the central progressive claim is that these policies are racist and, based on the research, ineffective for fighting crime in the first place, any potential for backsliding in this area once it becomes politically convenient is very alarming. The concern, then, is what would happen if crime started to rise under President Biden: Would he fall back on old "tough on crime" instincts, calling for harsh prison sentences once again? "[E]ven if Biden has subsequently learned the error of his ways," Branko Marcetic wrote for Jacobin, "the rank cynicism and callousness involved in his two-decade-long championing of carceral policies should be more than enough to give anyone pause about his qualities as a leader, let alone a progressive one."

Empirically, Biden pushes for mandatory minimums

Stolberg and Herndon 19, Sheryl G. Stolberg and Astead W. Herndon, 6-25-2019, "'Lock the S.O.B.s Up': Joe Biden and the Era of Mass Incarceration," The New York Times, <https://www.nytimes.com/2019/06/25/us/joe-biden-crime-laws.html//BUBU>

While Mr. Biden has said in recent days that he and Mr. Eastland "didn't agree on much of anything," it is clear that on a number of important criminal justice issues, they did. As early as 1977, **Mr. Biden, with Mr. Eastland's support, pushed for mandatory minimum sentences that would limit judges' discretion in sentencing.** But perhaps even more consequential was Mr. Biden's relationship with Mr. Thurmond, his Republican counterpart on the judiciary panel, who became his co-author on a string of bills that effectively rewrote the nation's criminal justice laws with an eye toward putting more criminals behind bars.

AT: Fair Sentencing DA

Link Turn

Mandatory Minimums make the system less fair, by driving up mass incarceration for nonviolent people

Cullen, 18 (James Cullen, journalist at the brennan center, 10-5-2018, accessed on 6-27-2020, Brennan Center for Justice, "Sentencing Laws and How They Contribute to Mass Incarceration", [//ICW">https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration\)//ICW](https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration)

Mandatory minimums A lot of the debate on criminal justice reform focuses on mandatory minimums. What are they and why do people — including us — think they're unfair? Simply put, anyone convicted of a crime under a "mandatory minimum" gets at least that sentence. The goal of these laws when they were developed was to promote uniformity; it doesn't matter how strict or lenient your judge is, as the law and the law alone determines the sentence you receive. Regrettably, the adoption of mandatory minimums has not led to a fairer system. In fact, it's had the opposite effect. By tying judges' hands, mandatory minimums effectively took power away from judges and gave it to prosecutors, who could threaten to charge defendants with crimes that would "trigger" a mandatory minimum. Facing a harsh sentence from which there's no other escape, a defendant can often feel coerced into admitting their guilt — even sometimes falsely confessing. Interestingly, federal judges have come to dislike mandatory minimums, especially in drug cases. Mandatory minimums often apply to nonviolent drug offenders, forcing judges to harshly punish those who pose the least physical danger to communities. While the goal of mandatory minimums may have been fairness, they've instead caused an imbalance in the courtroom that has helped drive mass incarceration. While mandatory minimums have been in place in some states since the 1950s, their use grew after the 1984 Sentencing Reform Act, which added significant mandatory minimums for many federal crimes and abolished federal parole. States followed, and soon mandatory minimums became a standard response to drug epidemics and crime spikes. What started as a well-intentioned attempt to impose uniformity became too restrictive, creating new disparities and injustices in the process.

AT: Judicial Discretion Bad—Racist

Prosecutorial discretion outweighs and mandatory minimums are net-more racist than judicial discretion

Scott 16 (Ryan W. Scott, Associate Dean for Academic Affairs and Professor of Law and Indiana University's Maurer School of Law, "Booker's Ironies" Digital Repository of faculty scholarship at Maurer School of Law: Indiana University 2016. Can be downloaded <https://www.repository.law.indiana.edu/facpub/2597/>)wtk

Although all four studies find evidence of increased in race disparity after Booker, several of the authors caution that the problem may not be judicial discretion, but prosecutorial charging decisions, and in particular the use of mandatory minimum sentences. Noting that black offenders are more likely to face mandatory minimums than white offenders, and that the gap widened after Booker, Yang concludes that "prosecutorial charging is likely a substantial contributor to recent increases in racial disparities." 48 Fischman and Schanzenbach go further, finding that "most of the post-[Gall] increase in [race] disparity ... is due to the increased relevance of statutory minimums under a system of advisory Guidelines."⁴⁹ They suggest that "judicial discretion does not contribute to, and may in fact mitigate, racial disparities in Guidelines sentencing," and urge policymakers to focus their attention on mandatory minimums instead.¹⁵ Along the same lines, Paul Hofer has criticized the BJS study for overstating the effects of udicial discretion while underestimating the influence of mandatory minimums. In his view, Booker merely "revealed the discriminatory effects of mandatory minimums and prosecutorial discretion that had been there all along."⁵²

AT: Politics

Plan Bipartisan

Plan is bipartisan

Lau 18, Tim Lau is a staff writer with the Brennan Center's editorial team. Lau reports and produces explanatory writing on issues including voting rights, campaign finance, criminal justice reform, and civil liberties., 11-7-2018, "Sentencing Reform Should Be a Top Post-Election Priority for Congress," Brennan Center for Justice, <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-reform-should-be-top-post-election-priority-congress//BUBU>

Sentencing reform must be the starting point of any serious legislation for criminal justice reform. Ultimately, this should involve eliminating incarceration for lower-level crimes such as minor marijuana trafficking and immigration crimes. In the more immediate future, however, **Congress should consider the sentencing provisions outlined in the Sentencing Reform and Corrections Act (SCRA). If enacted, the provisions would significantly lower the mandatory minimum sentences for people with prior non-violent drug convictions.** The FIRST STEP Act is another criminal justice reform bill making its way through Congress. Advocates and lawmakers are working to amend it to include sentencing reform provisions – a promising development. The bill has earned the support of key Republicans, Democrats, and President Donald Trump. Congress should take advantage of this bipartisan support by passing the FIRST STEP Act with robust sentencing reform added in. **Several states, including Connecticut, South Carolina, and Ohio, have already enacted reforms to reduce mandatory minimum sentences. In these and other states, crime rates have fallen even as prison populations have decreased. Now is the time to pass legislation on sentencing reform** **Criminal justice reform is a rare point of bipartisan consensus in today's polarized climate.** In fact, **71 percent of Americans surveyed – including a majority of Trump voters – agree that it's important to reduce the country's prison population. And there's substantial support from key members of Congress – both Republican and Democrat – for comprehensive reform.** In fact, **Senate Majority Leader Mitch McConnell has signaled he would call a vote after the midterm election if more than 60 senators support the bill.** With that momentum, **one of Congress's first agenda items for this year's "lame-duck" session should be to pass legislation that will help reduce mass incarceration. And any successful effort will start with sentencing reform.**

A bill to reduce mandatory minimums gained support from both political parties

Santoro, 15 (Evan McMorris-Santoro, Evan McMorris-Santoro is the White House correspondent for BuzzFeed News., 2-11-2015, accessed on 7-12-2020, BuzzFeed News, "Democrats, Republicans Will Try To Reduce Mandatory-Minimum Sentences", [//ICW">https://www.buzzfeednews.com/article/evanmcsan/bipartisan-group-takes-another-go-at-ending-mandatory-minimu">//ICW](https://www.buzzfeednews.com/article/evanmcsan/bipartisan-group-takes-another-go-at-ending-mandatory-minimu)

The Smarter Sentencing Act is being reintroduced by a bipartisan coalition of conservative and liberal senators. Update: A White House official said the Obama administration "applauds" the effort. By Evan McMorris-Santoro Last updated on February 11, 2015, at 10:27 p.m. ET Posted on February 11, 2015, at 5:27 p.m. ET WASHINGTON — **The White House and prominent Democratic senators have once again joined forces with the most prominent names in the Republican Party's libertarian wing to try and sell the law-and-order GOP on a bill that would reduce the mandatory-minimum sentences** of nonviolent offenders currently serving time in federal prison. On Wednesday, **a bipartisan group of senators led by Illinois Democrat Dick Durbin and Utah Republican Mike Lee announced the reintroduction of the Smarter Sentencing Act, a bill that failed to move despite bipartisan support in the last Congress. The White House, which has been a prominent supporter of reexamining the mandatory minimum sentences** mostly created at the height of the drug war, **praised the new effort. "We applaud Sens. Lee and Durbin for their bipartisan work to move forward with criminal justice reform this year,** as the president called on Congress to do in his State of the Union address," a White House official told BuzzFeed News in an email. The official said the White House has yet to review the new Smarter Sentencing Act language, but that the administration has "every expectation" the new bill will mirror the old, which the official said the president "strongly supported" last year. The bill would allow federal prisoners currently serving mandatory minimums, which largely affect drug offenses, to have their sentences reviewed by a judge and possibly reduced, in some cases dramatically. **Libertarian Republicans and liberal Democrats have joined forces to push back against mandatory minimums. Liberals most often support the change for social justice reasons, while conservatives have had great success pushing** red state legislatures to reduce their prison populations by making the financial argument

that fewer nonviolent offenders behind bars saves taxpayer money. Democratic Sens. Durbin, Chris Coons of Delaware, Patrick Leahy of Vermont, and Cory Booker of New Jersey are joining with Republican Sens. Jeff Flake of Arizona, Rand Paul of Kentucky, Lee, and Ted Cruz of Texas in sponsoring the Smarter Sentencing Act, reflecting the unlikely political alliances that have formed over criminal justice in recent years.

The GOP Supports eliminating Mandatory Minimums

Ryan, 16 (Tim Ryan, D.C. Reporter for Courthouse News, 7-21-2016, accessed on 7-12-2020, Courthousenews, "GOP Plank Reverses Push|on Crime and Punishment", <https://www.courthousenews.com/gop-plank-reverses-pushon-crime-and-punishment/>)/ICW

While some in the GOP continue to obsess over what Donald Trump's ascent means for the future of the party, some provisions in its 2016 platform signal another shift into the mainstream of criminal justice reform. Long the party of "tough on crime" stances, the GOP adopted a platform Monday embracing the reduction of mandatory minimum sentences for non-violent crimes, a position that brings the party in line with the majority of Americans about how to punish people convicted of less serious offenses. "I think it is a change," Molly Gill, director of federal legislative affairs for Families Against Mandatory Minimums said. "I think it is a move that's reflecting where a lot of Republicans have ended up where the country has ended up, frankly which has been a major national recognition, bipartisan recognition, that these mandatory sentencing laws, particularly for drug offenders and non-violent offenders and low-level offenders have produced some unintended consequences and have cost taxpayers a fabulous amount of money without making them safer." The platform does call mandatory minimum sentencing "an important tool" for keeping dangerous criminals off the streets, but allows for reforms targeted at "nonviolent offenders and persons with drug, alcohol or mental health issues." "I think it really signals that the Republican party, and conservatives in general, can be tough where they need to be tough but they also have the ability to look at things with a very nuanced eye towards making sure that we get the best outcomes," said Derek Cohen, deputy director for Right on Crime. That is in line with new attempts to reform the Criminal Justice System, including one that has been stalled in the Senate, despite significant bipartisan backing. That bill, sponsored by Senate Judiciary Chairman Chuck Grassley, R-Iowa, would reduce penalties for non-violent drug offenders and has 16 Republican co-sponsors. Interesting to Ames Grawert, counsel with the Brennan Center for Justice at the NYU School of Law, is the shift in the way Republicans have started approaching criminal justice reform. While conservatives in the past justified the need for new approaches to crime by arguing mass incarceration is a drain on taxpayers, Grawert has noticed more Republicans looking at the issue from a moral perspective. "I think in some case it's people waking up to an economic reality that we can't afford public safety measures that just don't work anymore, but in the other it's a growing consensus on both sides of the aisle that mass incarceration is simply immoral," Grawert said. "That's really heartening." The wording in the 2016 party platform more fully embraces the move away from mandatory minimums than the 2012 party platform did.

*****AT: CP*****

AT: Agent CP

Congress Key

Congress should exercise its power to abolish mandatory minimums---it's the best mechanism

Wilkins et. al 91, "United States Sentencing Commission", August 1991, William W. Wilkins Jr., Julie E. Carnes, Helen G. Corrothers, George E. MacKinnon, A. David Mazzone, Ilene H. Nagel, Pg. 8-10, https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/1991_Mand_Min_Report.pdf//BUBU

***AT: Agent CPs - says congress is the best mechanism

Based upon a review of available data, the Sentencing Commission makes the following observations: There are over 60 criminal statutes that contain mandatory minimum penalties applicable to federal offenses in the federal criminal code today. Only four of these sixty statutes, however, frequently result in convictions; the four relate to drug and weapons offenses. (See discussion, Chapter 2.) **Despite the expectation that mandatory minimum sentences would be applied to all cases that meet the statutory criteria of eligibility, the available data suggest that this is not the case.** This lack of uniform application creates unwarranted disparity in sentencing, and compromises the potential for the guidelines sentencing system to reduce disparity. (See general discussion of data and findings at Chapter 5 and discussion related to lack of uniformity at Chapter 4.) **In 35 percent of cases in which available data strongly suggest that the defendant's behavior warrants a sentence under a mandatory minimum statute, defendants plead guilty to offenses carrying non-mandatory minimum or reduced mandatory minimum provisions.** Since the charging and plea negotiation processes are neither open to public review nor generally reviewable by the courts, the honesty and truth in sentencing intended by the guidelines system is compromised. (See Chapter 5 for findings related to the charging and plea negotiation processes and Chapter 4 for potential conflicts between the guidelines system and a non-reviewable plea process.) **The disparate application of mandatory minimum sentences in cases in which available data strongly suggest that a mandatory minimum is applicable appears to be related to the race of the defendant, where whites are more likely than non-whites to be sentenced below the applicable mandatory minimum; and to the circuit in which the defendant happens to be sentenced, where defendants sentenced in some circuits are more likely to be sentenced below the applicable mandatory minimums than defendants sentenced in other circuits.** This differential application on the basis of race and circuit reflects the very kind of disparity and discrimination the Sentencing Reform Act, **through a system of guidelines, was designed to reduce.** (See findings, Chapter 5.) Whereas the structure of the federal sentencing guidelines differentiates defendants convicted of the same offense by a variety of aggravating and mitigating factors, the consideration of which is meant to provide just punishment and proportional sentences, the structure of mandatory minimums lacks these distinguishing characteristics. **Under the guidelines, offenders classified as similar receive similar sentences; under mandatory minimums, offenders seemingly not similar nonetheless receive similar sentences. It thus appears that an unintended effect of mandatory minimums is unwarranted sentencing uniformity.** (See discussion, Chapter 4.) Deterrence, a primary goal of the Sentencing Reform Act and the Comprehensive Crime Control Act, is dependent on certainty and **appropriate severity.** While mandatory minimum sentences may increase severity, the data suggest that uneven application may **dramatically reduce certainty.** The consequence of this bifurcated pattern is likely to thwart the deterrent value of mandatory minimums. (See Chapter 4 for general discussion of issues and Chapter 5 for discussion of data and findings.) **The Sentencing Reform Act was meant to structure and curtail the pre-guidelines pattern of unfettered judicial discretion.** Congress, however, expressed a concern that judicial discretion not be transferred to federal prosecutors in a manner that would undermine the benefits expected to be gained from the guidelines system. **The guidelines structure attempts to strike an appropriate balance by implementing a modified real offense system.** Mandatory minimums, in contrast, are wholly dependent upon defendants being charged and convicted of the specified offense under the mandatory minimum statute. Since the power to determine the charge of conviction rests exclusively with the

prosecution for the 85 percent of the cases that do not proceed to trial, mandatory minimums transfer sentencing power from the court to the prosecution. To the extent that prosecutorial discretion is exercised with preference to some and not to others, and to the extent that some are convicted of conduct carrying a mandatory minimum penalty while others who engage in the same or similar conduct are not so convicted, disparity is reintroduced. (See Chapter 4 for discussion of issues and Chapter 5 for discussion of findings.) **The sentencing guidelines system is essentially a system of finely calibrated sentences.**

For example, as the quantity of drugs increases, there is a proportional increase in the sentence. In marked contrast, **the mandatory minimums are essentially a flat, tariff-like approach to sentencing.** Whereas guidelines seek a smooth continuum, **mandatory minimums result in "cliffs."** The "cliffs" that result from mandatory minimums **compromise proportionality, a fundamental premise for just punishment, and a primary goal of the Sentencing Reform Act.** (See Chapter 4.) The United States Sentencing Commission, consistent with the mandate established by Congress, promulgates guidelines and amendments to the guidelines in an iterative fashion. Amendments reflect changes in statutory maximums, new directives from Congress to the Sentencing Commission, empirical research on the implementation and effect of guidelines, emergent case law, the changing nature of crime, changing priorities in prosecution, and developments in knowledge about effective crime control. The guidelines system, as envisioned by Congress, is thus a self-correcting, and, hopefully, ever-improving system. In contrast, mandatory minimums are generally single-shot efforts at crime control intended to produce dramatic results. They lack, however, a built-in mechanism for evaluating their effectiveness and easy adjustment. (See Chapter 7.) **Congress has ultimate authority over sentencing policy.** The question is how Congress can best translate its judgment as to appropriate levels of sentence severity into sentences imposed. **Our analyses indicate that the guidelines system established by Congress, because of its ability to accommodate the vast array of relevant offense/offender characteristics, and its self-correcting potential, is superior to the mandatory minimum approach.** Congress has effectively **communicated** its policies on sentencing through the provisions contained in the Sentencing Reform Act and subsequent legislation. It has continuing oversight of the work in of the Sentencing Commission through the statutory requirement that **proposed guidelines and amendments** to guidelines be submitted to Congress for 180-day review before they become effective. The Sentencing Commission is always open to guidance from the Congress through its established oversight mechanisms. Accordingly, we conclude that **the most efficient and effective way for Congress to exercise its powers to direct sentencing policy is through the established process of sentencing guidelines, permitting the sophistication of the guidelines structure to work, rather than through mandatory minimums.** There is every reason to expect that by so doing, **Congress can achieve the purposes of mandatory minimums while not compromising other goals to which it is simultaneously committed.**

AT: Court CP

Past reforms from the Supreme Court haven't been effective at alleviating discrepancies

Berman, Douglas A. "Sentencing guidelines." Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform 4 (2017): 95-116.

C. THE SUPREME COURT'S CONSTITUTIONAL JOLT TO GUIDELINE SYSTEMS In 2004 and 2005, a somewhat unexpected turn in the U.S. Supreme Court's Sixth Amendment jurisprudence jolted state and federal guideline sentencing systems. Prior to the emergence of this new jurisprudence, the Supreme Court had repeatedly indicated that sentencing proceedings were to be treated constitutionally differently—and could be far less procedurally regulated— than a traditional criminal trial.⁴⁶ But after confronting new procedural issues as a result of new substantive sentencing laws, the Supreme Court started to express constitutional doubts about judicial fact-finding and traditionally lax sentencing procedures.⁴⁷ In 2000, the Supreme Court formally held in Apprendi v. New Jersey that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."⁴⁸ The import and impact of this constitutional principle for guideline sentencing systems became apparent via the Supreme Court's 2004 ruling in Blakely v. Washington, which invalidated judicial fact-finding to enhance sentences within a state guideline system.⁴⁹ Shortly thereafter, in United States v. Booker, the Supreme Court declared unconstitutional the federal sentencing guideline system's reliance on judicial fact-finding.⁵⁰ The Supreme Court's landmark Booker decision—which had two majority opinions emerging from two distinct coalitions of Justices—first declared that the federal sentencing guidelines, by depending on judges to find facts at sentencing for determining applicable guideline ranges, violated the Sixth Amendment's jury trial right. But the prescribed remedy for this Sixth Amendment problem was not to require jury findings but rather to recast the federal sentencing guidelines as "effectively advisory."⁵¹ So, through the dual rulings of dueling majorities, the Supreme Court in Booker declared that the federal sentencing system could no longer mandate sentences based on judicial fact-finding, but it remedied this problem by granting sentencing judges new authority to vary from guidelines ranges after engaging in the very same judicial fact-finding and guideline calculations they had conducted when the guidelines were mandatory. The development and application of the Supreme Court's modern Sixth Amendment jurisprudence to preclude judicial fact-finding in mandatory but not advisory guideline systems has stirred much controversy and debate among policymakers, practitioners, and academics.⁵² But after an initial wave of uncertainty and litigation, most state sentencing guideline systems have been able to make modest and manageable adjustments to their sentencing procedures to accommodate the Supreme Court's new constitutional rules.⁵³ In the federal sentencing system, the Booker decision's conversion of guidelines from mandates to advice has been largely perceived, especially by federal district judges, federal defense attorneys and some academics, as a positive improvement to a sentencing system long viewed as needing major reform.⁵⁴ District judges and defense attorneys have generally championed the post-Booker federal sentencing system largely because the "advisory" status of the guidelines helps alleviate sentencing rigidity and severity problems. Free from having to follow the guidelines and from having non-guideline sentences subject to searching appellate review, federal district judges now more regularly sentence below the guidelines' recommended prison terms, particularly in drug, fraud and child-pornography cases involving first-time offenders.⁵⁵ Sentencing judges have utilized their new post-Booker discretion to give greater attention to mitigating offender characteristics generally deemed off-limits by the guidelines, and many practitioners and academics have joined district judges in lauding the post-Booker system for having made a rigid and harsh federal sentencing system more balanced and proportional. But not everyone sees federal sentencing after Booker as an improved guideline system worth preserving. Some are quick to note that the post-Booker system retains many of the complexity, severity, and procedural problems that drew wide criticisms before Booker while layering on the new problem of sentencing judges now having essentially unreviewable discretion to follow or ignore guideline recommendations as they see fit.⁵⁶ The U.S. Department of Justice and the U.S. Sentencing Commission have expressed concern that Booker's jolt of judicial discretion has produced, over time, increased sentencing disparity as some sets of judges regularly follow the advisory guidelines while others regularly do not.⁵⁷ And though subject to much

empirical debate, at least some research suggests that post-Booker increases in interjudge disparity has also served to increase racial sentencing disparity.⁵⁸ Perhaps most tellingly given their unique perspectives on the virtues and vices of the Booker advisory guideline system, the current Acting Chair of the U.S. Sentencing Commission (Judge William Pryor) and a former Commission Chair (Judge William Sessions) have both suggested in print major “fixes” to the post-Booker federal sentencing system through the creation of new, significantly simplified, binding guidelines.⁵⁹

States

2AC Fed Key—Generic/Catch All

Federal minimums have more impact—they're 10-20x larger which means more incarceration, more leverage, and more infringement on judicial discretion

Smith 19 (Stephen F. Smith, Professor of Law, University of Notre Dame, "Federalization's Folly" 3/1/19, *San Diego Law Review* 56(1).
<https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2645&context=sdlr>)wtk

Harsher federal sentences are also handed down in noncapital cases. "[S]ome federal laws, most notably those dealing with drug trafficking and weapons offenses, require imposition of harsh statutory mandatory minimum sentences which can be as long as or longer than the maximum sentences permitted under some state laws."³⁴ This is by no means an exceptional situation applicable only to persons who are unusually dangerous or blameworthy. As Professor Sara Sun Beale convincingly explains, The sentences available in a federal prosecution are generally higher than those available in state court—often ten or even twenty times higher. For example, in one drug case the recommended state sentence was eighteen months, while federal law required a mandatory minimum sentence of ten years, and the applicable federal sentencing guidelines range was 151 to 188 months for one defendant and 188 to 235 months for the other. Another defendant . . . who received a diversionary state disposition to a thirty-day inpatient drug rehabilitation program, followed by expungement of his conviction upon successful completion of the program and follow-up, was subject to forty-six to fifty-seven months of imprisonment under the applicable federal guidelines.³⁵ Two main features of federal sentencing policy combine to produce these comparatively severe results. The first is mandatory minimums, which are much more prevalent—and much harsher—at the federal level than in most states.³⁶ The second is the rigid sentencing guidelines applicable in federal prosecutions. To be sure, the U.S. Sentencing Guidelines no longer have the force and effect of law after *United States v. Booker*.³⁷ Still, the punitive influence of the guidelines has remained stable in the leading areas of federal enforcement: immigration, drug, and firearm offenses.³⁸ By virtue of these distinctive features of federal sentencing, "[i]t is not unusual for codefendants whose conduct is identical to receive radically different sentences, depending upon whether they are prosecuted in state or federal court."³⁹ These differences are especially pronounced now that states are dramatically changing their sentencing policies in an effort to curb mass incarceration in favor of more effective and humane crime-fighting strategies. As Professor E. Lea Johnston has noted, Following the lead of trailblazers such as Texas, Kansas, and Missouri, states have instituted various reforms to reduce prison populations and correctional spending, including increased use and diversity of early-release measures. Specifically, recent reports show that states are expanding their use of good-time credits, enlarging parole eligibility, and authorizing the "compassionate release" of costly and low-risk ill or elderly inmates.⁴⁰ Despite recent bipartisan legislation trimming federal sentences, the move is merely a first step toward reform, as its title declares.⁴¹ Absent further, more sweeping changes to existing law, the federal government will continue to lag far behind states in the move toward more effective and humane sentencing policies.

Plea Bargains—Fed Key

Our 1AC evidence is specific to federal courts and the 6th amendment checking overbearing federal government

The federal government is key to the plea bargain advantage- federalization of criminal law makes change in federal mandatory minimums necessary

Viano 12 (Emilio C. Viano, Professor in the Department of Justice, Law and Society @ American University, PhD from NYU, "Plea Bargaining in the United States: a Perversion Of Justice" 2012 Dans Revue internationale de droit pénal 2012/1-2 (Vol. 83), pages 109 à 145 <https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm#wtk>)

Additionally, statutes imposing mandatory minimum penalties have grown in number; cover more types of conduct; exact longer periods of incarceration; and are applied much more frequently than 20 years ago. [31] It must be noted that the larger number of crimes added to the list [32] is actually through federal regulations written by administrative agencies under powers delegated by Congress. It is estimated that regulatory criminal offenses number in the "tens of thousands." [33] Moreover, there have been substantial changes in the size and composition of the federal criminal docket, which for our purposes here includes only the most serious infractions: felonies and Class A misdemeanors. [34] The total number of federal cases has basically tripled from 29,011 in 1990 to 83,946 in 2010. Likewise, the number of federal offenders convicted of an offense that by statute carries a mandatory minimum penalty has more than tripled, from 6,685 in 1990 to 19,896 in 2010. [35] In summary, at the federal level, the factors that have led to a manifold increase of cases in the federal criminal justice system are the federalization of criminal law, the increased size and the changing composition of the federal criminal docket, high percentages of convicts sentenced to prison, and longer average prison terms. Added to the changes in the mandatory minimum penalties, all of these factors explain the large number of cases that is overwhelming the courts and making plea bargains a very attractive solution for the system. [36] Another consequence is clearly the staggering increase of the prison population in the United States at the Federal and State levels. [37] In 2010, there were 2,266,832 incarcerated persons in the United States. There were 198,339 in Federal prisons (35,781 in 1985), 1,311,136 in State prisons (451,812 in 1985), and 748,136 persons in local jails (256,615 in 1985). The incarceration rate in 2010 was 721 per 100,000 U.S. residents at yearend (313 in 1985). [38]

Judicial Independence/SOP—Fed Key

****note this card is also in AT: alt cause****

Abolition solves—sentencing guidelines allow judicial discretion and independence

Riley 10 (Kieran Riley, JD Boston University School of Law, “TRIAL BY LEGISLATURE: WHY STATUTORY MANDATORY MINIMUM SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE” *Boston University Public Interest Law Journal* 19, pp. 285-310, p. 310, <https://www.bu.edu/pilj/files/2015/09/19-2RileyNote.pdf>)wtk

Congress exceeds its constitutional authority when it passes criminal statutes that mandate minimum punishments. These statutes create a system of criminal punishment in the United States where the legislature and the prosecution control the future of citizens convicted of crimes. These laws deprive the judiciary of its basic constitutional function, which is weighing facts in each case to ensure a just outcome for each criminal defendant. This violates the constitutional doctrine of separation of powers. These laws persist despite lopsided results between the crime and the punishment when applied across the board to each individual defendant. **Statutory mandatory minimums should therefore be abolished.** Congress should listen to the growing number of American citizens opposed to statutory mandatory minimum sentences and repeal these laws. If Congress does not take this action, the Supreme Court and other federal courts should embrace their authority and declare these laws unconstitutional. If statutory mandatory minimum sentences are abolished, we will be left with a federal sentencing regime in which the Sentencing Commission takes the time and effort to research the appropriate punishment for each crime. The resulting Guidelines will be advisory to sentencing judges. Sentencing judges will then have the discretion during sentencing hearings to review and weigh all pertinent facts. If sentencing judges depart from the advisory Guidelines, they will make a record of their reasons for doing so that can be reviewed by appellate judges for reasonableness. This would allow for individuality in sentencing, give credence to the research undertaken by the Sentencing Commission, decrease the problem of lopsided and unjust criminal punishments, and bring criminal sentencing law in accordance with the separation of powers doctrine and the U.S. Constitution.

Incarceration—Fed Key

Fed key—mandatory minimums are federalized

Smith 19 (Stephen F. Smith, Professor of Law, University of Notre Dame, “Federalization’s Folly” 3/1/19, *San Diego Law Review* 56(1). <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2645&context=sdlr>)wtk

Second, in addition to narrowing the reach of federal criminal law, Congress should reform the features of federal law that tend to produce arbitrary exercises of prosecutorial discretion and prison overcrowding. The primary culprits here are mandatory minimums and other unusually severe federal sentencing laws. Such laws should be repealed because— in addition to producing needlessly long sentences at great cost to taxpayers— they incentivize federal prosecutors to pursue the offenses that generate the highest sentences, as opposed to the offenses most deserving of federal attention. Also, given the enormous discretion that federal prosecutors wield with little or no transparency, Congress should require the Department of Justice (DOJ) to operate in the same law-like manner that other executive branch agencies do by promulgating and adhering to binding enforcement guidelines and an articulated national crime-fighting strategy. A carefully considered, nationally uniform approach to crime reduction will bring much-needed transparency and coordination to the enforcement of federal criminal law, and facilitate closer legislative oversight of how federal law is enforced.

If there’s overlapping jurisdiction, it goes to the federal system—harsher penalties favor the prosecution more

Smith 19 (Stephen F. Smith, Professor of Law, University of Notre Dame, “Federalization’s Folly” 3/1/19, *San Diego Law Review* 56(1). <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2645&context=sdlr>)wtk

Between these polar extremes, however, are many thousands of cases nationwide that could easily go either way. These include cases involving low-level drug offenses, small-time frauds,⁸¹ corporate wrongs,⁸² and drug sales.⁸³ It is in these cases that comparatively severe federal penalties— such as strict mandatory minimums, the enhanced sentencing rule for “crack” cocaine offenses,⁸⁴ and unusually broad forfeiture rules that have been graded as “among the nation’s worst”⁸⁵—can and often do tilt the balance in favor of federal prosecution.

Fed key—state courts are better equipped, federal incarceration disproportionately targets low-level offenders

Smith 19 (Stephen F. Smith, Professor of Law, University of Notre Dame, “Federalization’s Folly” 3/1/19, *San Diego Law Review* 56(1). <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2645&context=sdlr>)wtk

In addition to having failed to deliver on its central promise of reducing crime, federalization has imposed serious costs on the nation. The federalization of criminal law has swelled federal prisons to capacity and beyond, resulting in crowded dockets in federal courts, skyrocketing costs to taxpayers, and prisons that are more dangerous and less effective. Less obviously, federalization has resulted in massive federal resources being diverted to low-level drug offenders—not the drug kingpins Congress undoubtedly had in mind in enacting tough mandatory minimums—and other gardenvariety offenses better suited to state court enforcement. Finally, overlapping authority to prosecute drug offenses and forfeit assets seized by state and local police has allowed federal prosecutors to interfere with state-level effortsto protect against the harms associated with illegal drug use and the phenomenon known as “policing for profit.”⁵

Consult Cops CP

Cops say no

Law enforcement says no- they like mandatory minimums

Peritano 17 [John Peritano, a master's degree in U.S. History from Western Connecticut State University,,6/19/2017, "Why Are Mandatory Minimum Sentences Popular Again?", <https://people.howstuffworks.com/why-are-mandatory-minimum-sentencing-popular-again.htm>, NZ]

According to the United States Sentencing Commission, Hispanics and African-Americans bear the brunt of mandatory sentences. With only nine police officers at his disposal, Maxwell Jackson, police chief of Harrisville, Utah, says he needs all the help he can get to combat the drug trade in his tiny corner of America. Harrisville's proximity to Interstate 15, just north of Ogden, Utah, makes the town a ripe target for drug traffickers whose crimes often rise to the level of federal prosecution. About 10 years or so ago, crystal meth was the drug du jour in Harrisville. These days it's heroin and opioids. So, when U.S. Attorney General Jeff Sessions sent a memo on May 10, 2017, to federal prosecutors telling them to charge federal defendants with crimes that carry the most severe penalties, Jackson applauded. Sessions' directive reversed the policy of President Barack Obama's Justice Department whose prosecutors avoided charging certain defendants with offenses that would trigger long mandatory minimum sentences. Jackson knows the issue well. He testified before the United States Sentencing Commission in 2010 telling the bipartisan group that "minimum mandatory sentences removes [the] most extreme offenders from society for long periods of time." Plus, the chief said, mandatory minimums are an important crime-fighting tool. "The threat of minimum sentencing is huge," Jackson says. "Prosecutors use it as leverage to get people to plead to [lesser] state charges instead of the [higher] federal charges. If a defendant is looking at a 15-year mandatory sentence, he'll probably roll on someone who is a bigger fish. Ninety percent of them will roll." Netting a "bigger fish" is one of the main reasons many in law enforcement, including the National Association of Assistant United States Attorneys, welcome Session's new get-tough-on-crime directive. Yet, opponents say the assumption that a defendant will "roll" on a "bigger fish" is nothing more than a red herring. Researchers say the number of cases where a defendant's cooperation is sought in mandatory minimum cases is on par with other federal crimes. Sessions' memo, which he said returns "the enforcement of laws as passed by Congress," reignited the decades-old debate of whether mandatory minimum sentences are good for society. Politicians and law enforcement personnel from both ends of the political spectrum have long supported mandatory minimums. In their views, the rules not only punish the convicted, but keep them from committing more crimes. They also believe that mandatory minimums have a deterrent effect that stops others from committing similar crimes. However, opponents say mandatory sentences do more harm than good. Harsh sentencing has added to already overcrowded prisons and negatively impacts the families of the convicted and society writ large. Specifically, the laws unfairly and disproportionately impact minorities, while failing to reduce crime and costing taxpayers substantially. "There is no credible evidence that the enactment or implementation of [mandatory] sentences has significant deterrent effects," University of Minnesota Law School professor Michael Tonry wrote in the journal *Crime and Justice* in 2009. "But there is massive evidence ... that mandatory minimums ... produce injustices in many cases; and result in wide unwarranted disparities in the handling of similar cases. The weight of the evidence clearly shows that enactment of mandatory penalties has either no demonstrable marginal deterrent effects or short-term effects that rapidly waste away." Back in the 1980s and into the 1990s, Congress increased criminal penalties for federal drug offenders and other criminals. Lawmakers were reacting to the public outcry over an explosion in drug-related crime. By 2010, 80 percent of drug offenders in federal lockups were there because they were convicted under the minimum penalty rules. But by 2014, drug offenses had fallen to 67.8 percent of the 16,048 offenders who were convicted of crimes with a mandatory minimum penalty — that decline was due in part to the regulations put in part by the Obama administration. Even still, as of today, there are more than 95,000 inmates serving time for drug-related offenses in federal prisons. In 1980, there were only 5,000. Critics say the minimum sentencing requirements tie the hands of judges and makes it impossible for them to impose more lenient sentences, even if they think the punishment does not fit the crime. Critics also charge that prosecutors, who have wide latitude in deciding what charges to file, often stand to benefit professionally by winning convictions that carry longer sentences. But that's only a truncated version of what is wrong with mandatory sentencing. Consider these numbers: According to the United States Sentencing Commission, Hispanics and African-Americans bear the brunt of mandatory sentences. Slightly more than 40 percent of Hispanic defendants were convicted of crimes in 2014 that carried a minimum penalty. Blacks were nearly 30 percent and whites, 26.8 percent. The Obama administration echoed the concern of many lawmakers, researchers and justice advocates by saying that mandatory sentences do little to stop crime. According to statistics compiled by Obama's White House, a 10 percent increase in average sentence length corresponds to a 0 to 0.5 percent decrease in arrest rates. Moreover, the recidivism rate increases the longer people are incarcerated. More than 5 million children have a parent who has been in prison. Most are black and Hispanic. Research shows that when a parent is incarcerated, their children are at risk for mental problems, antisocial behavior and are more likely to drop out of school. The average prison sentence for

federal drug offenders rose 36 percent from 1980 to 2011. It costs the Department of Justice \$6.7 billion a year to run the federal prison system, or roughly 1 in 4 tax dollars that the department receives. Chief Jackson and others in law enforcement understand the guidelines are flawed. He'd like to see reforms implemented, that among other things, provide a "safety valve" for "miscarriages of justice." "I recognize there are circumstances where there are people in the system that shouldn't be there," the chief says. "That's not where they belong. But, minimum sentencing laws gives law enforcement leverage to [arrest someone higher in] the food chain. Most people [serving long sentences] are highly deserving of the honor."

*****AT: K*****

AT: Abolition

2AC Perm—Sentencing Reform

Perm do both- that solves and the alt fails if it doesn't include the aff

Ambrose 19 (Robert H. Ambrose, a criminal defense attorney in Minneapolis, Minnesota, Adjunct professor at Mitchell Hamline School of Law and the University of Minnesota Law School. “NOTE: DECARCERATION IN A MASS INCARCERATION STATE: THE ROAD TO PRISON ABOLITION” *Mitchell Hamline Law Review* 45(3) p. 758-759).

While the purist prison abolitionist point of view may want sentencing guidelines eliminated entirely, and we should strive for that goal, “the dangerous few” may still require some structure for sentencing.¹⁹⁴ Regardless, sentencing guidelines are unreliable and do not equally apply to everyone.¹⁹⁵ First, sentencing guidelines are terribly restrictive. Second, in Minnesota, “[a]s use of the Guidelines evolved, it became apparent that their sentencing numbers were not really based on anything.”¹⁹⁶ This defeats the purpose of guidelines, because the guidelines are supposed to be fair and justly applied. But “[w]hat is the true ‘just desert’ of someone who possesses half an ounce of cocaine? Should it be probation? Twelve months in prison? Eighty-six months—as it is now—in the post ‘War on Drugs’ era?”¹⁹⁷ One judge interviewed for this Article stated the following: [Sentencing guidelines] can take away the luck of the draw involved in your particular judge’s sentencing approach. It hurts the justice system when there are wildly different sentences for individuals with the same background and engaging in the same conduct.¹⁹⁸ On the other hand, they take away a judge’s ability to exercise the judgment necessary to recognize circumstances that make it inappropriate to send someone to prison.¹⁹⁹ Like sentencing guidelines, mandatory minimum sentences need to be eliminated. The role of mandatory minimum sentences in the mass incarceration boom is widely known.²⁰⁰ Even when a judge wants to give a sentence they believe is fair, mandatory minimums prevent the judge’s discretion. Judges are supposed to serve as an independent administer of justice. But when a judge cannot do anything but pronounce a mandatory minimum sentence, they are unable to execute their independent role. As one judge noted, “[T]oo many mandatory sentences are a product of political expediency. My perspective is that too many of our lawmakers vote for long mandatory sentences, so they are seen as tough on crime without any real thought to whether they truly are in the public’s best interest.”²⁰¹ The judge then shared a story about just how cruel sentencing guidelines and mandatory minimums can be: I had a woman before me for a drug sentence. She got involved in drugs and the criminal world through her abusive boyfriend. Thanks to him, she picked up a huge addiction and some serious legal trouble. Following the charge in my case, the woman bonded out. She turned her life around—dumped the boyfriend, got sober, got a job, got her kids back, became a mentor for young, drug-addicted women, found God, and became everything you would want her to be. Her probation officer came in on the day of her sentencing crying because it was such a waste to have to send the woman to prison for a really long time. But I had to because the callous and cruel guidelines gave me absolutely no discretion.²⁰² Giving judges absolutely no discretion to hand down a just and fair sentence is counterproductive to a prison abolitionist framework, which is a sad result of “prison-backed policing.”²⁰³ A prosecutor interviewed for this article noted the problem when those with high criminal history scores commit a low-level offense, they end up falling into a presumptive commit to prison based on their record. She does not see justice “when defendants with high criminal history scores are charged with Third Degree Burglary for stealing twenty dollars of merchandise from a store after previously being trespassed. I don’t necessarily see the justice in sending someone to prison for that kind of offense simply because the guidelines call for it.”²⁰⁴

1AR Perm—Sentencing Reform

Permutation do both: plan is step in the right direction and abolitionists agree that plan must be done

Biscontini and Sparling 08, Tracey Vasil Biscontini holds bachelor's degrees in secondary education and mass communications from King's College and a master's degree in English from the University of Scranton., Rebecca Sparling is a writer that published numerous number of books including *Gerbils*, Greenhaven Publishing LLC, 2008-12-12, "Amendment XII: Abolishing Slavery." "Page 161-162, Historical Precedent chapter," BUBU

Historical Precedent: Scholars and activists have plunged into an examination of the historical origins of racialized slavery as a coercive labor form and social system in an attempt to explain the huge increase in mass incarceration in the U.S. since the end of World War II. Drawing these links has been important in explaining the relationship between racism and criminalization after emancipation, and in connecting the rise of industrial and mechanized labor to the destructive effects of de-industrialization and globalization. The point of retracing is not to argue that prisons have been a direct outgrowth of slavery, but to interrogate the persistent connections between racism and the global economy. ^{Mass} imprisonment on the level seen in the U.S. in the 20th century occupies a phase along the spectrum of unfree labor related to, yet distinct from, chattel slavery. As many scholars of the punishment industry have shown, regardless of the labor prisoners do to service larger economy (either private or public), prisons increasingly function in the U.S. economy as answers to the devastation unleashed by the dual forces of Reaganomics and the globalization of capital. The immediate post-emancipation period is a key place to start outlining the investment of the U.S. state in this trade in humanity. Related to the above is the growth of new abolitionist movements whose goals are the elimination of mass imprisonment as a method of treatment for addiction and mental illness, as an economic ameliorative, and as a method of social control - what one scholar [Loic Wacquant] has termed "the carceral management of poverty". The connections between slavery and imprisonment have been used by abolitionists as an historical explanation and as part of a radical political strategy that questions the feasibility of "reform" as an appropriate response to prison expansion. As leader in the creation of this new abolitionist movement, Angela Davis has written, "I choose the word 'abolitionist' deliberately. The 13th amendment, when it abolished slavery, did so except for convicts. Through prison system, the vestiges of slavery have persisted. It thus makes sense to use a word that has this historical resonance." Though some 20th century abolitionist movements connect themselves expressly with the tradition of 19th century abolitionist and antislavery advocates, abolitionism as defined here is the conglomerate of many local movements that express abolitionist aims indirectly through challenging the fundamental methods of the prison-industrial-complex - mandatory minimum sentences, harsh penalties for nonviolent drug offenses and the continuous construction of prisons that goes on regardless of crime rates. Although a fully conceptualized abolitionism is starting to emerge, it may be useful to outline some of the historical antecedents to current anti-prison and antiracist movements.

The perm solves best—sentencing reform is the best pathway to abolition

Ambrose 19 (Robert H. Ambrose, a criminal defense attorney in Minneapolis, Minnesota, Adjunct professor at Mitchell Hamline School of Law and the University of Minnesota Law School. "NOTE: DECARCERATION IN A MASS INCARCERATION STATE: THE ROAD TO PRISON ABOLITION" *Mitchell Hamline Law Review* 45(3) p. 755).

Pure abolitionists do not merely aim to replace jail with probation.¹⁷⁰ The overall goal is to have a criminal justice system that focuses on crime prevention to make it less likely people will break the law in the first place. If the criminal justice system attempted to reduce the number of criminals, the demand for prison would also decrease.¹⁷¹ The system should strive to decrease the need for prison through rehabilitation and reintegration, restoring felons' civil rights more quickly, decriminalizing drug crimes, eliminating cash bail, eliminating mandatory minimum sentences, drastically changing sentencing guidelines to only apply to the most violent cases, radically changing misdemeanor and gross misdemeanor jail sentences, expanding restorative justice programs, furthering community policing efforts, continuing to green high-crime areas, and restoring broken windows. No stone should be left unturned.

