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## Contention 1 is Adventurism

#### Failure of the Supreme Court to substantively rule on detention authority causes judicial abstention on national security issues

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After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert, and have effectively sanctioned, its highly deferential stance towards the Executive in cases involving national security. In particular, the D.C. Circuit concluded that an order mandating the Uighurs’ release into the continental United States would impermissibly interfere with the political branches’ exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier. As such, the Bush administration’s strategy in employing the “war” paradigm at all costs and without any judicial intervention, while unsuccessful in the Supreme Court, has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” can be exercised with little, if any, real check; arguably leading to judicial abstention in cases involving national security. The consequences of the Kiyemba decision potentially continue today, for example, with passage of the National Defense Authorization Act of 2012,246 which President Obama signed, with reservations, into law on December 31, 2011.247 This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.248 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.249 In signing the bill, President Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them.250 Of course, that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights. In the years after 9/11, the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a “somewhat novel role” for the Court.251 Unsurprisingly, in so doing, the Court’s intervention “strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power.”252 Also unsurprisingly, the Court’s decisions in this arena “prompted strong reactions from the other two branches.”253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began.254 However, since the twentieth century, wartime has been the “normal state of affairs.”255 If perpetual war is the new “normal,” the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage about protecting individual rights, even if these assertions of judicial authority come as a surprise to the political branches of government.256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country’s early wartime cases and “envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions.”257 This model, they state, “cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings.”258 Kiyemba is very much a return to the repressive wilderness. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that the Court tends to be reluctant to decide constitutional cases if it can avoid doing so, as it did in Kiyemba. Arguably, this doctrine of judicial abstention is tied to concerns of institutional viability, in the form of public perception, and to concerns about respecting the separation of powers.259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall’s admonition that “it is a constitution we are expounding.”260 Consequently, “[i]t is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government.”261 And while brave jurists have made such assertions throughout the Court’s history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies. For example, in Korematsu—one of the worst examples of judicial deference in times of crisis—Justice Jackson dissented, but he did so “with explicit resignation about judicial powerlessness,” and concern that it was widely believed that “civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime.”262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility.

#### This incentivizes presidential adventurism - leads to tyranny and makes all of your impacts more likely

Yang ’11 (Christina – dissertation @ Emory, advised by Michael Sullivan - PhD, Vanderbilt University, 2000 JD, Yale Law School, 1998 “Reconstructing Habeas: Towards a New Emergency Scheme!”

In the wake of 9/11 and since the start of the War on Terror, the government – including the Obama administration – has justified its self-expanded powers with the security argument. The government, its supporters argue, requires such powers in order to adequately protect the American people. In other words, the President did not seek out expansion of powers because he wanted to; no, it was for the safety and wellbeing of the American people. To say the least, it is a difficult argument – that, we, the government, require greater discretion for your, the citizen’s, own good – to outright reject. After all, who doesn’t wish to feel safe, to feel protected, and well looked after? Are we to say, “No thanks, I’ll keep my freedom and take my chances with the terrorists.” Sure, some will; but the majority will not. Exploding bombs, collapsing skyscrapers, and the deaths of those we know are immediately cognizable and evoke strong emotional responses. Liberties, separation-of-powers concerns, on the other hand, are far less tangible and far more abstract. Yes, everybody can rally behind freedom as an idea; but when faced with the choice between continual fear and more restricted freedoms, most prefer to feel safe than sorry. As a result, our politics are skewed a certain way. As the greater public continually says, “Better safe than sorry,” in turn the government justifies its actions with “Better safe than sorry, that’s what America wants.” Put bluntly, this is not the case where the status quo is acceptable. We are not dealing with a situation in which we could or could not change – in which the wheel ain’t broke so don’t fix it. Preventive detention in the aftermath of emergency has time and time again shown itself to be abusive when allowed to be under the sole discretion of the executive. And in many ways, the practice is incompatible with our enduring values of freedom, transparency, due process, and minority protections. Remember, absolute power corrupts absolutely. Bruce Ackerman attempted with his emergency constitution to place it beneath the purview of the legislative branch, but as we have shown, such a solution does not adequately address the fundamental problem of preventive detention: mistaken imprisonment. Oftentimes, preventive paradigms cast broad dragnets which subsequently result in the imprisonment of countless innocents – that is, individuals of a targeted minority group, e.g. persons of Arab ancestry or Muslim faith. The national security theorists, the Jack Bauer enthusiasts, have tried to convince us that increased security is all we require in times of emergency – that everything else is secondary. Exceptional times call for exceptional measures. Rights can be recovered, but can lives? Can nations? The reality is, however, the terrorist threat is not nearly as grave as these security apologists make it out to be. Yes, a terrorist attack is undoubtedly tragic and may even result in the loss of thousands of lives; nonetheless, it is not capable of toppling or overtaking governments. Isolated terrorist attacks, in short, are not existential threats. Too often, the safety – bought at the price of liberty – the government offers is illusory. As Steven T. Wax observes, “The searches of baby strollers at airports does little or nothing for safety in the air and nothing at all for the safety of trains, trucks, shipping, and chemical and power plants.”20 We need to be smart about our security and not buy into the fallacy of the more intrusive security measures automatically leads to greater safety. Not to mention, as has been shown throughout this paper, rounding up people based on paranoia, profiling, or any other arbitrary reason, not only does nothing to help our security, but also harms us insofar as we fail to differentiate between the legitimate and the illegitimate. Indeed, such actions damage our integrity as a country that believes in the maxim “innocent until proven guilty,” as a country that believes there is more to life than feeling safe and secure in our physical and material being. We need to instead ask ourselves exactly how much freedom we are willing to give up in the name of increased security? We must keep in mind the long-term costs, and not just the short-term benefits, of granting our president, our law enforcement, and our military freer and freer reign. Small sacrifices inevitably accumulate, and subsequently can morph into much bigger sacrifices than we are actually willing to give up. Furthermore, we owe those harmed – those wrongly detained – better than just monetary compensation. They deserve more than a “sorry” or an “our mistake, here’s some cash to make you whole.” They warrant, at the very least, an apology which vows this is the last time we make this recurring mistake: “We sincerely apologize for your wrongful detention, we will do our very best to make sure this does not happen again.” And so, in arguing for a framework in which the Suspension Clause is the absolute minimum in the arena of preventive detention, we remain the most true to our American ideals.21 It is then, during times of crisis and emergency, the task of the judiciary – the most politically-insulated branch of government – to uphold the writ of habeas corpus in its constitutional form, i.e. the Suspension Clause, and thereby set the absolute minimum in times of exigency. It is the responsibility of judges to force the executive to justify his actions in a court of law as well as the court – domestic and international – of public opinion. Most importantly, it is the time-honored duty of this nation’s legal guardians to ensure that the ideals which informed our founding are not lost. In more colloquial terms, it is up to our judges – through the vehicle of habeas corpus – to be the good man in the storm. After all, in the age of terror, “[i]f anybody destroys our legacy of freedom, it will be us.”22 Thus, the upkeep and preservation of our freedom, our values and beliefs, is our responsibility – and ours alone. Indeed, by the time Al Maqaleh, or another case like it, comes before the Supreme Court of the United States, we – the people, the lawyers, the judges – should be prepared to not simply enforce the new habeas emergency paradigm by extending the writ to all those detained by the United States, but also to do better, with each subsequent generation, as a nation dedicated to an enduring legacy of freedom.

#### Nuclear war from arm sales.

Scales and Spitz 12 (Ann Scales, prof at U Denver law school. Laura Spitz, prof at U Colorado Law School. The Jurisprudence of the Military-Industrial ComplexSeattle Journal for Social Justice Volume 1 | Issue 3 Article 51 10-11-2012)

First, our nation’s history and legitimacy rest upon a separation of military power from democratic governance. For that reason, the armed forces are subject to constitutional constraint. Second, however, as an aspect of separation of powers, courts try not to interfere in areas of foreign policy and military affairs. Often this is referred to as the “political question” doctrine, a determination that a matter is beyond the capabilities of judges. The strongest argument for this deference is that the political branches—or the military itself—have superior expertise in military matters. That may be true in some situations. I am not sure, for example, the Supreme Court would have been the best crowd to organize the invasion of Normandy. But what we now have is an increasingly irrational deference.7 Consider three cases: a. In Korematsu v. United States,8 the Supreme Court said the internment of Japanese-Americans at the beginning of 1942 was constitutional, based upon a military assessment of the possibility of espionage in preparation for a Japanese invasion of the United States. It turns out that the information provided by the military to the Supreme Court was falsified.9 But note two things: (1) the nation was in the midst of a declared world war, and (2) in subsequent less urgent circumstances, Korematsu would seem to argue strongly for military justifications to have to be based upon better, more reliable information than was offered there. b. In the 1981 case of Rostker v. Goldberg,10 the Supreme Court decided that it was constitutional for Congress to exclude women from the peacetime registration of potential draftees, even though both the Department of Defense and the Army Chief of Staff had testified that including women would increase military readiness. But Congress got the benefit of the military deference doctrine as a cover for what I think was a sinister political purpose—to protect the manliness of war—and the Supreme Court felt perfectly free to ignore what those with the real expertise had to say. c. Most recently, in Hamdi v. Rumsfeld,11 the Fourth Circuit held that a U.S. citizen who had been designated an “enemy combatant”12 could be detained indefinitely without access to counsel. In this case, however, not only is there no declared war,13 but also, the only evidence regarding Mr. Hamdi was a two-page affidavit by a Defense Department underling, Mr. Mobbs. Mobbs stated that Mr. Hamdi was captured in Afghanistan, and had been affiliated with a Taliban military unit. The government would not disclose the criteria for the “enemy combatant” designation, the statements of Mr. Hamdi that allegedly satisfied those criteria, nor any other bases for the conclusion of Taliban “affiliation.”14 And that is as good as the evidence for life imprisonment without trial has to be. Deference to the military has become abdication. In other words, what we presently have is not civilian government under military control, but something potentially worse, a civilian government ignoring military advice,15 but using the legal doctrine of military deference for its own imperialist ends. Third, the gigantic military establishment and permanent arms industry are now in the business of justifying their continued existences. This justification is done primarily, as you know, by retooling for post-Cold War enemies—the so-called “rogue states”—while at the same time creating new ones, for example by arming corrupt regimes in Southeast Asia.16 I was reminded of this recently when we went to see comedian Kate Clinton. She thought Secretary Powell had taken too much trouble in his presentation attempting to convince the Security Council that Iraq had weapons of mass destruction.17 Why not, she asked, “just show them the receipts?” Fourth, we have seen the exercise of extraordinary influence by arms makers on both domestic and foreign policy. For domestic pork barrel and campaign finance reasons, obsolete or unproven weapons systems continue to be funded even when the military does not want them!18 And, just when we thought we had survived the nuclear arms race nightmare, the United States has undertaken to design new kinds of nuclear weapons,19 even when those designs have little military value.20 Overseas, limitations on arms sales are being repealed, and arms markets that should not exist are being constantly expanded21 for the sake of dumping inventory, even if those weapons are eventually used for “rogue” purposes by rogue states. This system skews security considerations, and militarizes foreign policy. Force has to be the preferred option because other conduits of policy are not sufficiently well-funded. Plus, those stockpiled weapons have got to be used or sold so that we can build more. Fifth, enlarging upon this in a document entitled The National Security Policy of the United States, we were treated last September to “the Bush doctrine,” which for the first time in U.S. history declares a preemptive strike policy. This document states, “America will act against emerging threats before they are fully formed.”22 If they are only emerging and not fully formed, you may wonder, how will we know they are “threats”? Because someone in Washington has that perception, and when the hunch hits, it is the official policy of this country to deploy the military.23 All options—including the use of nuclear weapons—are always on the table.

#### Also flashpoints in East Asia over North Korea

Symonds 4-5-13 [Peter, leading staff writer for the World Socialist Web Site and a member of its International Editorial Board. He has written extensively on Middle Eastern and Asian politics, contributing articles on developments in a wide range of countries, “Obama’s “playbook” and the threat of nuclear war in Asia,” http://www.wsws.org/en/articles/2013/04/05/pers-a05.html]

The Obama administration has engaged in reckless provocations against North Korea over the past month, inflaming tensions in North East Asia and heightening the risks of war. Its campaign has been accompanied by the relentless demonising of the North Korean regime and claims that the US military build-up was purely “defensive”. However, the Wall Street Journal and CNN revealed yesterday that the Pentagon was following a step-by-step plan, dubbed “the playbook”, drawn up months in advance and approved by the Obama administration earlier in the year. The flights to South Korea by nuclear capable B-52 bombers on March 8 and March 26, by B-2 bombers on March 28, and by advanced F-22 Raptor fighters on March 31 were all part of the script.¶ There is of course nothing “defensive” about B-52 and B-2 nuclear strategic bombers. The flights were designed to demonstrate, to North Korea in the first instance, the ability of the US military to conduct nuclear strikes at will anywhere in North East Asia. The Pentagon also exploited the opportunity to announce the boosting of anti-ballistic missile systems in the Asia Pacific and to station two US anti-missile destroyers off the Korean coast.¶ According to CNN, the “playbook” was drawn up by former defence secretary Leon Panetta and “supported strongly” by his replacement, Chuck Hagel. The plan was based on US intelligence assessments that “there was a low probability of a North Korean military response”—in other words, that Pyongyang posed no serious threat. Unnamed American officials claimed that Washington was now stepping back, amid concerns that the US provocations “could lead to miscalculations” by North Korea.¶ However, having deliberately ignited one of the most dangerous flashpoints in Asia, there are no signs that the Obama administration is backing off. Indeed, on Wednesday, Defence Secretary Hagel emphasised the military threat posed by North Korea, declaring that it presented “a real and clear danger”. The choice of words was deliberate and menacing—an echo of the phrase “a clear and present danger” used to justify past US wars of aggression.¶ The unstable and divided North Korean regime has played directly into the hands of Washington. Its bellicose statements and empty military threats have nothing to do with a genuine struggle against imperialism and are inimical to the interests of the international working class. Far from opposing imperialism, its Stalinist leaders are looking for a deal with the US and its allies to end their decades-long economic blockade and open up the country as a new cheap labour platform for global corporations.¶ As the present standoff shows, Pyongyang’s acquisition of a few crude nuclear weapons has in no way enhanced its defence against an American attack. The two B-2 stealth bombers that flew to South Korea could unleash enough nuclear weapons to destroy the country’s entire industrial and military capacity and murder even more than the estimated 2 million North Korean civilians killed by the three years of US war in Korea in the 1950s.¶ North Korea’s wild threats to attack American, Japanese and South Korean cities only compound the climate of fear used by the ruling classes to divide the international working class—the only social force capable of preventing war.¶ Commentators in the international media speculate endlessly on the reasons for the North Korean regime’s behaviour. But the real question, which is never asked, should be: why is the Obama administration engaged in the dangerous escalation of tensions in North East Asia? The latest US military moves go well beyond the steps taken in December 2010, when the US and South Korean navies held provocative joint exercises in water adjacent to both North Korea and China.¶ Obama’s North Korea “playbook” is just one aspect of his so-called “pivot to Asia”—a comprehensive diplomatic, economic and military strategy aimed at ensuring the continued US domination of Asia. The US has stirred up flashpoints throughout the region and created new ones, such as the conflict between Japan and China over the disputed Senkaku/Diaoyu islands in the East China Sea. Obama’s chief target is not economically bankrupt North Korea, but its ally China, which Washington regards as a dangerous potential rival. Driven by the deepening global economic crisis, US imperialism is using its military might to assert its hegemony over Asia and the entire planet.¶ The US has declared that its military moves against North Korea are designed to “reassure” its allies, Japan and South Korea, that it will protect them. Prominent figures in both countries have called for the development of their own nuclear weapons. US “reassurances” are aimed at heading off a nuclear arms race in North East Asia—not to secure peace, but to reinforce the American nuclear monopoly.¶ The ratcheting-up of tensions over North Korea places enormous pressures on China and the newly-selected leadership of the Chinese Communist Party. An unprecedented public debate has opened up in Beijing over whether or not to continue to support Pyongyang. The Chinese leadership has always regarded the North Korean regime as an important buffer on its northeastern borders, but now fears that the constant tension on the Korean peninsula will be exploited by the US and its allies to launch a huge military build-up.¶ Indeed, all of the Pentagon’s steps over the past month—the boosting of anti-missile systems and practice runs of nuclear capable bombers—have enhanced the ability of the US to fight a nuclear war against China. Moreover, the US may not want to provoke a war, but its provocations always run the risk of escalating dangerously out of control. Undoubtedly, Obama’s “playbook” for war in Asia contains many more steps beyond the handful leaked to the media. The Pentagon plans for all eventualities, including the possibility that a Korean crisis could bring the US and China head to head in a catastrophic nuclear conflict.

#### Korea war draws in every great power.

Stares and Wit 9 (Paul B., General John W. Vessey senior fellow for conflict prevention and director of the center for preventive action of CFR and Joel S., adjunct senior research fellow at the Weather head East Asia Institute at Columbia University and a visiting fellow at the US Korea Institute at John Hopkins, “Preparing for Sudden Change in North Korea”)

These various scenarios would present the United States and the neighboring states with challenges and dilemmas that, depending on how events were to unfold, could grow in size and complexity. Important and vital interests are at stake for all concerned. North Korea is hardly a normal country located in a strategic backwater of the world. As a nuclear weapons state and exporter of ballistic missile systems, it has long been a serious proliferation concern to Washington. With one of the world’s largest armies in possession of huge numbers of long-range artillery and missiles, it can also wreak havoc on America’s most important Asian allies––South Korea and Japan––both of which are home to large numbers of American citizens and host to major U.S. garrisons committed to their defense. Moreover, North Korea abuts two great powers—China and Russia––that have important interests at stake in the future of the peninsula. That they would become actively engaged in any future crisis involving North Korea is virtually guaranteed. Although all the interested powers share a basic interest in maintaining peace and stability in northeast Asia, a major crisis from within North Korea could lead to significant tensions and––as in the past–– even conflict between them. A contested or prolonged leadership struggle in Pyongyang would inevitably raise questions in Washington about whether the United States should try to sway the outcome.5 Some will almost certainly argue that only by promoting regime change will the threat now posed by North Korea as a global proliferator, as a regional menace to America’s allies, and as a massive human rights violator, finally disappear. Such views could gain some currency in Seoul and even Tokyo, though it seems unlikely. Beijing, however, would certainly look on any attempt to promote a pro-American regime in Pyongyang as interference in the internal affairs of a sovereign state and a challenge to China’s national interests. This and other potential sources of friction could intensify should the situation in North Korea deteriorate. The impact of a severe power struggle in Pyongyang on the availability of food and other basic services could cause tens and possibly hundreds of thousands of refugees to flee North Korea. The pressure on neighboring countries to intervene with humanitarian assistance and use their military to stem the flow of refugees would likely grow in these circumstances. Suspicions that the situation could be exploited by others for political advantage would add to the pressure to act sooner rather than later in a crisis. China would be the most likely destination for refugees because of its relatively open and porous border; its People’s Liberation Army (PLA) has reportedly developed contingency plans to intervene in North Korea for possible humanitarian, peacekeeping, and “environmental control” missions.6 Besides increasing the risk of dangerous military interactions and unintended escalation in sensitive borders areas, China’s actions would likely cause considerable consternation in South Korea about its ultimate intentions toward the peninsula. China no doubt harbors similar fears about potential South Korean and American intervention in the North.

#### Asian war goes nuclear---no defense.

C. Raja Mohan 13, distinguished fellow at the Observer Research Foundation in New Delhi, March 2013, Emerging Geopolitical Trends and Security in the Association of Southeast Asian Nations, the People’s Republic of China, and India (ACI) Region,” background paper for the Asian Development Bank Institute study on the Role of Key Emerging Economies, http://www.iadb.org/intal/intalcdi/PE/2013/10737.pdf

Three broad types of conventional conflict confront Asia. The first is the prospect of war between great powers. Until a rising PRC grabbed the attention of the region, there had been little fear of great power rivalry in the region. The fact that all major powers interested in Asia are armed with nuclear weapons, and the fact that there is growing economic interdependence between them, has led many to argue that great power conflict is not likely to occur. Economic interdependence, as historians might say by citing the experience of the First World War, is not a guarantee for peace in Asia. Europe saw great power conflict despite growing interdependence in the first half of the 20th century. Nuclear weapons are surely a larger inhibitor of great power wars. Yet we have seen military tensions build up between the PRC and the US in the waters of the Western Pacific in recent years. The contradiction between the PRC’s efforts to limit and constrain the presence of other powers in its maritime periphery and the US commitment to maintain a presence in the Western Pacific is real and can only deepen over time.29 We also know from the Cold War that while nuclear weapons did help to reduce the impulses for a conventional war between great powers, they did not prevent geopolitical competition. Great power rivalry expressed itself in two other forms of conflict during the Cold War: inter-state wars and intra-state conflict. If the outcomes in these conflicts are seen as threatening to one or other great power, they are likely to influence the outcome. This can be done either through support for one of the parties in the inter-state conflicts or civil wars. When a great power decides to become directly involved in a conflict the stakes are often very high. In the coming years, it is possible to envisage conflicts of all these types in the ACI region. ¶ Asia has barely begun the work of creating an institutional framework to resolve regional security challenges. Asia has traditionally been averse to involving the United Nations (UN) in regional security arrangements. Major powers like the PRC and India are not interested in “internationalizing” their security problems—whether Tibet; Taipei,China; the South China Sea; or Kashmir—and give other powers a handle. Even lesser powers have had a tradition of rejecting UN interference in their conflicts. North Korea, for example, prefers dealing with the United States directly rather than resolve its nuclear issues through the International Atomic Energy Agency and the UN. Since its founding, the involvement of the UN in regional security problems has been rare and occasional.¶ The burden of securing Asia, then, falls squarely on the region itself. There are three broad ways in which a security system in Asia might evolve: collective security, a concert of major powers, and a balance of power system.30 Collective security involves a system where all stand for one and each stands for all, in the event of an aggression. While collective security systems are the best in a normative sense, achieving them in the real world has always been difficult. A more achievable goal is “cooperative security” that seeks to develop mechanisms for reducing mutual suspicion, building confidence, promoting transparency, and mitigating if not resolving the sources of conflict. The ARF and EAS were largely conceived within this framework, but the former has disappointed while the latter has yet to demonstrate its full potential. ¶ A second, quite different, approach emphasizes the importance of power, especially military power, to deter one’s adversaries and the building of countervailing coalitions against a threatening state. A balance of power system, as many critics of the idea point out, promotes arms races, is inherently unstable, and breaks down frequently leading to systemic wars. There is growing concern in Asia that amidst the rise of Chinese military power and the perception of American decline, many large and small states are stepping up their expenditure on acquiring advanced weapons systems. Some analysts see this as a structural condition of the new Asia that must be addressed through deliberate diplomatic action. 31 A third approach involves cooperation among the great powers to act in concert to enforce a broad set of norms—falling in between the idealistic notions of collective security and the atavistic forms of balance of power. However, acting in concert involves a minimum level of understanding between the major powers. The greatest example of a concert is the one formed by major European powers in the early 18th century through the Congress of Vienna after the defeat of Napoleonic France. The problem of adapting such a system to Asia is the fact that there are many medium-sized powers who would resent any attempt by a few great powers to impose order in the region.32 In the end, the system that emerges in Asia is likely to have elements of all the three models. In the interim, though, there are substantive disputes on the geographic scope and the normative basis for a future security order in Asia.

#### Suspension Clause application checks adventurism

Sidhu ’11 (Dawinder - J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania. Lead counsel for amici curiae constitutional law scholars “Shadowing the Flag: Extending the Habeas Writ Beyond Guantanamo” http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1597&context=wmborj

There is nothing in these foundational principles to indicate that the responsibility of the judiciary to check the Executive and thereby safeguard individual liberty is restricted by geography. Nor is there any sense from them that the potential for the Executive to detain someone unlawfully—which provides the factual predicate necessitating the judiciary’s involvement—does not exist outside the territorial bounds of the United States. And there is nothing that may be reasonably extracted from them that suggests that the Executive may act anywhere in the world, but that the supervisory need for the courts is confined to the borders of the United States. The remainder— or difference between the unbounded reach of executive power and the enclosed power of the courts—offers ample room for executive conduct to devolve into tyranny because the courts are unable to measure such conduct against the rule of law. To fulfill the full promise of the writ of habeas corpus and identify arbitrary and wrongful imprisonments, the judicial writ must shadow executive conduct. If the Executive summons the powers of its office and the government that it heads to imprison an individual in any part of the world, it subjects the detainee to the authority of the United States, including the oversight of the judicial branch of its federal government. In other words, the courts are awakened or agitated, by necessity, by the Executive to sanitize governmental conduct by way of law. The proposition is quite simple: where the Executive may act, so the courts may follow—otherwise, we condone a situation, intolerable to the Framers, in which Law is King inside the four corners of the United States, but where the American King is Law outside of it. This understanding of the scope of the habeas writ is supported not only by the historical purposes of the writ and the constitutional tripartite checking scheme, but also by several ancillary arguments. The first points to the common law. Even before the formation of an independent United States, the writ, which the American legal system imported from the AngloSaxon tradition, ran extraterritorially. As Sir William Blackstone explained with respect to the writ, “the king is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted.”159 Moreover, at common law “[e]ven those designated enemy aliens,” like the petitioners in al Maqaleh, “retained habeas corpus rights to challenge their enemy designation.”160 The second is a textual argument that the Suspension Clause—which “protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account”161 and, unless formally suspended, enables the judiciary to serve “as an important judicial check on the Executive’s discretion in the realm of detentions”162—is not restricted by territory by the Constitution’s own terms. Because “[t]he Suspension Clause contains no territorial limitation with respect to its scope,” argues Richard A. Epstein, “it’s a perfectly natural reading to say wherever the United States exerts power, there habeas corpus will run.”163 The third relates to the transcendence already of territorial barriers concerning the issuance of the writ. While the Supreme Court in Ahrens required district courts to issue the statutory habeas writ only if the petitioner was within its territorial jurisdiction,164 the Court subsequently departed from this restrictive view of jurisdiction to hold that habeas “petitioners’ absence from the district does not present a jurisdictional obstacle to the consideration of the claim.”165 The Court rejected the contention that a petitioner’s “presence within the territorial confines of the district is an invariable prerequisite” to the statutory habeas writ.166 The fourth identifies the proper focus of the writ. The focal point of the habeas petition is not the petitioner himself, but rather the government official holding him, namely the custodian. “The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,” the Court has explained.167 Accordingly, “[s]o long as the custodian can be reached by service of process, the court can issue a writ . . . even if the prisoner himself is confined outside the court’s territorial jurisdiction.”168 The emphasis on the jailer, rather than the petitioner, for purposes of habeas jurisdiction is in lockstep with the view, advanced thus far in this Article, that because the habeas writ is a means for the courts to check the Executive, and, specifically, to ensure that it detains an individual only in conformance with the law, the writ has the potential to run wherever the Executive is detaining an individual. Indeed, there can be little doubt that the custodian is but an agent of or proxy for the Executive itself169—the Executive makes the legal decision; the jailer holds the key.170 The fifth argument recognizes the trend of an increasingly broadening interpretation of habeas jurisdiction. “[T]he general spirit and genius of our institutions has tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States,” according to the Court.171 An expansive view of the courts’ jurisdiction to hear habeas petitions, where geography and sovereignty are without preclusive effect on such jurisdiction, is consistent with this observation. The sixth enumerates an essential characteristic of the writ: its flexibility. The writ is an “inherently elastic concept”172 disentangled from formal restrictions.173 The seventh takes notice of the globalized world in which we live and within which the Executive may detain an individual. A rule by which habeas can follow the Executive wherever it acts comports with the realities of an increasingly globalized and technologically advanced world in which the Executive can detain—and has detained, as the post–9/11 campaigns demonstrate—individuals thousands of miles from the shores of the United States.174 Nations will act outside of their territorial borders with greater regularity, frequency, and ease as the world becomes “smaller”—confining judicial review to borders that are readily pierced leaves the rule of law in an outdated and stationary state while the Executive frolics both inside and outside his land and whisks away detainees at his whim.175 The relevance of the globalized world, marked by technology, is particularly salient today after 9/11.176 It should render less persuasive any suggestion that habeas be understood only as it was in 1789 or in Eisentrager, when technology and resources did not allow for the transnational, global activities that are commonplace today and thus call for evolving and more practically applicable meanings of habeas.177 “It must never be forgotten,” the Supreme Court wrote in 1939, “that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired.”178 In short, geography and sovereignty should not impair the otherwise critical and constitutionally vital purposes of the habeas writ.

## Contention 2 is Legitimacy

#### Three I/Ls

#### 1) Rule of law hypocrisy alienates allies

Yang ’11 (Christina – dissertation @ Emory, advised by Michael Sullivan - PhD, Vanderbilt University, 2000 JD, Yale Law School, 1998 “Reconstructing Habeas: Towards a New Emergency Scheme!”

In this global war on terror, America cannot stand alone. But in the aftermath of 9/11, we have become more and more alone. “Once a leading exponent of the rule of law,” David Cole observes, “the United States is now widely viewed as a systematic and arrogant violator of the most basic norms of human rights law – including the prohibitions against torture, disappearances, and arbitrary detention.”104 We cannot afford to alienate our friends with our actions. This loss of legitimacy is not simply harmful because it paints us in hypocritical colors, but because it also leaves us more vulnerable to terrorist attack inasmuch our governmental abuses in the arena of detention “fuels the animus and resentment that inspire the attacks against us in the first place.”105 We only confirm what the terrorists have been saying all along. In the end, the fight against terrorism is fundamentally a battle for hearts and minds.106 The more we win over our enemies, the fewer enemies we have to be concerned about. But the battle is not won with money; it is not won with victory. It is won by a long term commitment to civil liberties and the rule of law – everything that America was once known to stand for – as well as proof that even in the short term, we will act with legitimacy, fairness, and within the constraints of law. “As any leader instinctively knows,” Cole advises, “it is far better to have people follow your lead because they view you as legitimate than to have to try to compel others by force to adhere to your will.”107 Our allies were once willing to aid us in our cause – for the cause, the fight against terrorism, is neither illegitimate nor unworthy of pursuit. They are more reluctant now because we have compromised our legitimacy – i.e., the sincerity of our reasons for fighting this fight – when we employ illegitimate means to reach our ends. We require the help of our allies; and so in order to keep them on our side, we need to maintain “our historic position of leadership in the global spread of the rule of law,” thus reminding them of the “virtue of [the] legal commitments they [too] have made.”108

#### 2.) Deference to military courts

Pereira 08 Marcia Pereira 08, Civil Litigation &Transactional Attorney and University of Miami School of Law Graduate, Spring, "ARTICLE: THE "WAR ON TERROR" SLIPPERY SLOPE POLICY: GUANTANAMO BAY AND THE ABUSE OF EXECUTIVE POWER," University of Miami International & Comparative Law Review, 15 U. Miami Int'l & Comp. L. Rev. 389, Lexis

As these examples reveal, many propositions have been advanced to provide for a solution to these detainees with no particular success. Meanwhile, human rights advocates have their eyes centered on our nation. The Human Rights Watch has recently expressed its concerns with respect to the MCA. It advanced that the military commissions "fall far short of international due process standards." n156 It has been articulated that U.S. "artificial" derogation from the Geneva Conventions by virtue [\*440] of the MCA leaves open the door for other States to "opt-out" as well. In other words, any step back from the Geneva Conventions could also provoke mistreatment of captured U.S. military personnel. In addition, scholars of international jurisprudence claim there have been over 50 years since Geneva was entered into force and it has been applied in every conflict. n157 However, U.S. current policies undercut the overarching principles under international law to strive for uniform human rights policies around the World. In the current state of affairs, the Executive branch becomes three branches in one: legislator, executive enforcer, and judge of its own actions. The lack of independent judicial oversight deprives detainees from the opportunity of impartial judicial review of verdicts, regardless of their arbitrariness or lack of legal soundness.¶ In response to the consequences of this expansive executive power, the U.N. Human Rights Committee stated that the use of military courts could present serious problems as far as the equitable, impartial, independent administration of justice is concerned. As detainees have increasingly been deemed non-enemy-combatants, it is possible to assess how the Executive, now Congressional actions, captures civilians who had no connection to the armed conflict. In other words, as a consequence of the disparate overreaching power of the political branches and a rather weakened Judiciary, the U.S. is substantially regarded by the international community with complete disapproval.¶ Thus, the impact of U.S. current polities in the International Community is, at the very least, alarming. If entitling the detainees to a unified due process approach seems unrealistic, at minimum, they should be treated in a manner consistent with the principles of the Geneva Conventions. Relevant provisions in the Third Convention provide that detainees are entitled to a presumption of protection thereunder, "until such time as their status has been determined by a competent tribunal." The detainees must first be designated as civilians, combatant, or criminals rather than lumped into a single composite group of unlawful combatants by presidential fiat. Moreover, the International Covenant on Civil and Political Rights mandates that "[n]o one shall be subjected to arbitrary arrest or detention and those deprived of liberty shall be entitled [\*441] to take proceedings before a court." n158 The meaning of "court" within the Covenant was aimed at civilian courts, not military, in the sense that the preoccupation was to provide them with a fair adjudication with respect to the detainees' status. Yet, the U.S. Government chose to ignore the requirements under international law despite apparently false claims that it would be followed. n159 Instead, as previously discussed in Part II of this Article, Congress made sure that international law does not provide a substantive basis of relief for these detainees' claims by virtue of the MCA.¶ The vast cultural, economic and political differences among signatory States were deemed as plausible justification for permitting reservations treaties. By this mechanism, the States are provided the opportunity to somewhat "tailor" multilateral treaties to their realities. It is evident that the U.S. Government has granted itself the right not to be entirely bound by international law. How wise the use of this mechanism was undertaken by U.S. may be reflected by the current the impact of U.S. policies toward international law mandates. As the detainees' situation develops, however, the U.S. image within the international community is in serious jeopardy. As a result a widespread criticism of the U.S. policies generated an atmosphere of wariness of U.S's ability and willingness to preserve individuals' fundamental rights at any time a situation is categorized as "emergency."¶ [\*442] V. CONCLUSION¶ All the problems outlined in this Article can be corrected. It would not take more than going back to the Constitution and reconstituting the Framers' intent in promoting the leadership of the country as an integral body composed by the three branches of Government. The U.S. Government should ensure that the wide gap between domestic law and the law of armed conflict is minimized by allowing those tried before military commissions to receive trials up to the level of American justice. If no action is taken, the American justice once internationally admired will give space to a stain in the American history. Congress should be more active in undertaking its role of making the law rather than merely voting on proposals based on their political agenda or the Executive's wishes. The Judiciary should step up and actively "say what the law is" rather than handing down amorphous rulings stigmatizing detainees on the basis of their citizenship status. Under basic constitutional principles, doing justice means equal protections of the laws. Using the claim of times of emergency to justify abusive treatment does not foster a democratic society. If the military is not able to advance legal grounds to hold these detainees, they should be released. The Judiciary should be eager to have a case challenging the MCA sooner rather than later and take the opportunity to lay down a clearly ruling on how these detainees should be accorded equal safeguards regardless of their race, national origin, or status. In other words, the Judiciary should take back what Congress has taken away, through implementing major modifications to the Executive's ill-conceived policies regarding commissions. In terms of meaningful separation of powers mandates, what the Constitution has given, Congress cannot take away.

#### 3.) Plan sends a committed signal to reform.

Hathaway et al 13, Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, and Freya Pitts, J.D. candidates at Yale Law School, Philip Levitz and Sirine Shebaya J.D.s Yale Law School (2012), Winter, "Article: The Power To Detain: Detention of Terrorism Suspects After 9/11," The Yale Journal of International Law, 38 Yale J. Int'l L. 123, Lexis

2. Legitimacy ¶ Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. n245 The federal courts, for example, provide more robust hearsay protections than the commissions. n246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. n247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate.¶ Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. n249 Such errors can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly. n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251¶ 3. Strategic Advantages¶ ¶ There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.

#### Two Impacts –

#### First is Hegemony –

#### The plan’s external oversight on detention maintains heg ---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424¶ The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.¶ The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436¶ Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438¶ At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440¶ The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.¶ Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449¶ Conclusion¶ When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Solves status competition—that’s the biggest cause of war.

Wohlforth 9 - William C. Wohlforth is a professor of government at Dartmouth College, “Unipolarity, Status Competition, and Great Power War”, World Politics, 61.1, Jan, MUSE

Do Great Powers Care about Status? Mainstream theories generally posit that states come to blows over an international status quo only when it has implications for their security or material well-being. The guiding assumption is that a state’s satisfaction [End Page 34] with its place in the existing order is a function of the material costs and benefits implied by that status.24 By that assumption, once a state’s status in an international order ceases to affect its material wellbeing, its relative standing will have no bearing on decisions for war or peace. But the assumption is undermined by cumulative research in disciplines ranging from neuroscience and evolutionary biology to economics, anthropology, sociology, and psychology that human beings are powerfully motivated by the desire for favorable social status comparisons. This research suggests that the preference for status is a basic disposition rather than merely a strategy for attaining other goals.25 People often seek tangibles not so much because of the welfare or security they bring but because of the social status they confer. Under certain conditions, the search for status will cause people to behave in ways that directly contradict their material interest in security and/or prosperity. Much of this research concerns individuals, but international politics takes place between groups. Is there reason to expect individuals who act in the name of states to be motivated by status concerns? Compelling findings in social psychology suggest a positive answer. Social identity theory (sit) has entered international relations research as a psychological explanation for competitive interstate behavior.26 According to the theory’s originator, Henri Tajfel, social identity is “that part of an individual’s self-concept which derives from his knowledge of his membership of a social group (or groups) together with the value and emotional significance attached to that membership.”27 Tajfel and his followers argue that deep-seated human motivations of self-definition and self-esteem induce people to define their identity in relation to their in-group, to compare and contrast that in-group with out-groups, and to want that comparison to reflect favorably on themselves. In a [End Page 35] remarkable set of experiments that has since been replicated dozens of times, Tajfel and his collaborators found that simply assigning subjects to trivially defined “minimal” in-groups led them to discriminate in favor of their in-group at the expense of an out-group, even when nothing else about the setting implied a competitive relationship. Although sit appears to provide a plausible candidate explanation for interstate conflict, moving beyond its robust but general implication about the ubiquitous potential for status seeking to specific hypotheses about state behavior has proved challenging. In particular, experimental findings concerning which groups individuals will select as relevant comparisons and which of many possible identity-maintenance strategies they will choose have proved highly sensitive to the assumptions made about the social context. The results of experimental research seeking to predict responses to status anxiety—whether people will choose social mobility (identifying with a higher status group), social creativity (seeking to redefine the relevant status-conferring dimensions to favor those in which one’s group excels), social conflict (contesting the status-superior group’s claim to higher rank), or some other strategy—are similarly highly context dependent.28 For international relations the key unanswered question remains: under what circumstances might the constant underlying motivation for a positive self-image and high status translate into violent conflict? While sit research is suggestive, standard concerns about the validity of experimental findings are exacerbated by the fact that the extensive empirical sit literature is generally not framed in a way that captures salient features of international relations. The social system in which states operate is dramatically simpler than the domestic social settings much of the research seeks to capture. Decision makers’ identification with the state is generally a given, group boundaries are practically impermeable, and there are very few great powers and very limited mobility. For states, comparison choice and the selection of status- maintenance strategies are constrained by exogenous endowments and geographical location. Natural and historical endowments—size and power potential—vary much more among states than among individuals [End Page 36] and so play a much larger role in determining hierarchies and influencing the selection of identity maintenance strategies. Assumptions built into most sit research to date generally do not capture these realities of interstate life. In particular, standard sit research designs beg the question of the expected costs of competing for status. Experiments do not generally posit situations in which some groups are endowed with demonstrably superior means with which to discriminate in favor of their own group at the expense of out-groups. Indeed, built in to most experimental setups is an implied assumption of material equality among groups. Yet international politics is notable as a social realm with especially large disparities in material capabilities, and decision makers are unlikely to follow identity-maintenance strategies that are demonstrably beyond their means. Nevertheless, there is no reason to doubt the relevance for states of sit’s core finding that individual preferences for higher status will affect intergroup interactions. Individuals who identify with a group transfer the individual’s status preference to the group’s relations with other groups. If those who act on behalf of a state (or those who select them) identify with that state, then they can be expected to derive utility from its status in international society. In addition, there are no evident reasons to reject the theory’s applicability to interstate settings that mimic the standard sit experimental setup—namely, in an ambiguous hierarchy of states that are comparable in material terms. As Jacques Hymans notes: “In the design of most sit experiments there is an implicit assumption of rough status and power parity. Moreover, the logic of sit theory suggests that its findings of ingroup bias may in fact be dependent on this assumption.”29 Status conflict is thus more likely in flat, ambiguous hierarchies than in clearly stratified ones. And there are no obvious grounds for rejecting the basic finding that comparison choice will tend to be “similar but upward” (that is, people will compare and contrast their group with similar but higher status groups).30 In most settings outside the laboratory this leaves a lot of room for consequential choices, but in the context of great power relations, the set of feasible comparison choices is constrained in highly consequential ways. [End Page 37] How Polarity Affects Status Competition sit is often seen in a scholarly context that contrasts power-based and identity-based explanations.31 It is thus put forward as a psychological explanation for competitive behavior that is completely divorced from distributions of material resources. But there is no theoretical justification for this separation. On the contrary, a long-standing research tradition in sociology, economics, and political science finds that actors seek to translate material resources into status. Sociologists from Weber and Veblen onward have postulated a link between material conditions and the stability of status hierarchies. When social actors acquire resources, they try to convert them into something that can have more value to them than the mere possession of material things: social status. As Weber put it: “Property as such is not always recognized as a status qualification, but in the long run it is, and with extraordinary regularity.” 32 This link continues to find support in the contemporary economics literature on income distribution and status competition.33 Status is a social, psychological, and cultural phenomenon. Its expression appears endlessly varied; it is thus little wonder that the few international relations scholars who have focused on it are more struck by its variability and diversity than by its susceptibility to generalization. 34 Yet if sit captures important dynamics of human behavior, and if people seek to translate resources into status, then the distribution of capabilities will affect the likelihood of status competition in predictable ways. Recall that theory, research, and experimental results suggest that relative status concerns will come to the fore when status hierarchy is ambiguous and that people will tend to compare the states with which they identify to similar but higher-ranked states.35 Dissatisfaction arises not from dominance itself but from a dominance that [End Page 38] appears to rest on ambiguous foundations. Thus, status competition is unlikely in cases of clear hierarchies in which the relevant comparison out-groups for each actor are unambiguously dominant materially. Applied to international politics, this begins to suggest the conditions conducive to status competition. For conflict to occur, one state must select another state as a relevant comparison that leaves it dissatisfied with its status; it must then choose an identity-maintenance strategy in response that brings it into conflict with another state that is also willing to fight for its position. This set of beliefs and strategies is most likely to be found when states are relatively evenly matched in capabilities. The more closely matched actors are materially, the morelikely they areto experience uncertainty about relative rank. When actors start receiving mixed signals—some indicating that they belong in a higher rank while others reaffirm their present rank—they experience status inconsistency and face incentives to resolve the uncertainty. When lower-ranked actors experience such inconsistency, they will use higher-ranked actors as referents. Since both high- and low-status actors are biased toward higher status, uncertainty fosters conflict as the same evidence feeds contradictory expectations and claims. When the relevant out-group is unambiguously dominant materially, however, status inconsistency is less likely. More certain of their relative rank, subordinate actors are less likely to face the ambiguity that drives status competition. And even if they do, their relative weakness makes strategies of social competition an unlikely response. Given limited material wherewithal, either acquiescence or strategies of social creativity are more plausible responses, neither of which leads to military conflict. The theory suggests that it is not just the aggregate distribution of capabilities that matters for status competition but also the evenness with which key dimensions— such as naval, military, economic, and technological—are distributed. Uneven capability portfolios—when states excel in different relevant material dimensions—make status inconsistency more likely. When an actor possesses some attributes of high status but not others, uncertainty and status inconsistency are likely.36 The more a lower-ranked actor matches the higher-ranked group in some but not all key material dimensions of status, the more likely it is to conceive an interest in contesting its rank and the more [End Page 39] likely the higher-ranked state is to resist. Thus, status competition is more likely to plague relations between leading states whose portfolios of capabilities are not only close but also mismatched. Hypotheses When applied to the setting of great power politics, these propositions suggest that the nature and intensity of status competition will be influenced by the nature of the polarity that characterizes the system. Multipolarity implies a flat hierarchy in which no state is unambiguously number one. Under such a setting, the theory predicts status inconsistency and intense pressure on each state to resolve it in a way that reflects favorably on itself. In this sense, all states are presumptively revisionist in that the absence of a settled hierarchy provides incentives to establish one. But the theory expects the process of establishing a hierarchy to be prone to conflict: any state would be expected to prefer a status quo under which there are no unambiguous superiors to any other state’s successful bid for primacy. Thus, an order in which one’s own state is number one is preferred to the status quo, which is preferred to any order in which another state is number one. The expected result will be periodic bids for primacy, resisted by other great powers.37 For its part, bipolarity, with only two states in a material position to claim primacy, implies a somewhat more stratified hierarchy that is less prone to ambiguity. Each superpower would be expected to see the other as the main relevant out-group, while second-tier major powers would compare themselves to either or both of them. Given the two poles’ clear material preponderance, second-tier major powers would not be expected to experience status dissonance and dissatisfaction, and, to the extent they did, the odds would favor their adoption of strategies of social creativity instead of conflict. For their part, the poles would be expected to seek to establish a hierarchy: each would obviously prefer to be number one, but absent that each would also prefer an ambiguous status quo in which neither is dominant to an order in which it is unambiguously outranked by the other. Unipolarity implies the most stratified hierarchy, presenting the starkest contrast to the other two polar types. The intensity of the competition over status in either a bipolar or a multipolar system might [End Page 40] vary depending on how evenly the key dimensions of state capability are distributed—a multipolar system populated by states with very even capabilities portfolios might be less prone to status competition than a bipolar system in which the two poles possess very dissimilar portfolios. But unipolarity, by definition, is characterized by one state possessing unambiguous preponderance in all relevant dimensions. The unipole provides the relevant out-group comparison for all other great powers, yet its material preponderance renders improbable identity-maintenance strategies of social competition. While second-tier states would be expected to seek favorable comparisons with the unipole, they would also be expected to reconcile themselves to a relatively clear status ordering or to engage in strategies of social creativity. General Patterns of Evidence Despite increasingly compelling findings concerning the importance of status seeking in human behavior, research on its connection to war waned some three decades ago.38 Yet empirical studies of the relationship between both systemic and dyadic capabilities distributions and war have continued to cumulate. If the relationships implied by the status theory run afoul of well-established patterns or general historical findings, then there is little reason to continue investigating them. The clearest empirical implication of the theory is that status competition is unlikely to cause great power military conflict in unipolar systems. If status competition is an important contributory cause of great power war, the1n, ceteris paribus, unipolar systems should be markedly less war-prone than bipolar or multipolar systems. And this appears to be the case. As Daniel Geller notes in a review of the empirical literature: “The only polar structure that appears to influence conflict probability is unipolarity.”39 In addition, a larger number of studies at the dyadic level support the related expectation that narrow capabilities gaps and ambiguous or unstable capabilities hierarchies increase the probability of war.40 [End Page 41] These studies are based entirely on post-sixteenth-century European history, and most are limited to the post-1815 period covered by the standard data sets. Though the systems coded as unipolar, near-unipolar, and hegemonic are all marked by a high concentration of capabilities in a single state, these studies operationalize unipolarity in a variety of ways, often very differently from the definition adopted here. An ongoing collaborative project looking at ancient interstate systems over the course of two thousand years suggests that historical systems that come closest to the definition of unipolarity used here exhibit precisely the behavioral properties implied by the theory. 41 As David C. Kang’s research shows, the East Asian system between 1300 and 1900 was an unusually stratified unipolar structure, with an economic and militarily dominant China interacting with a small number of geographically proximate, clearly weaker East Asian states.42 Status politics existed, but actors were channeled by elaborate cultural understandings and interstate practices into clearly recognized ranks. Warfare was exceedingly rare, and the major outbreaks occurred precisely when the theory would predict: when China’s capabilities waned, reducing the clarity of the underlying material hierarchy and increasing status dissonance for lesser powers. Much more research is needed, but initial exploration of other arguably unipolar systems—for example, Rome, Assyria, the Amarna system—appears consistent with the hypothesis.43 Status Competition and Causal Mechanisms <Evidence Continues Several Pages Later> Conclusion The evidence suggests that narrow and asymmetrical capabilities gaps foster status competition even among states relatively confident of their basic territorial security for the reasons identified in social identity theory and theories of status competition. Broad patterns of evidence are consistent with this expectation, suggesting that unipolarity shapes strategies of identity maintenance in ways that dampen status conflict. The implication is that unipolarity helps explain low levels of military competition and conflict among major powers after 1991and that a return to bipolarity or multipolarity would increase the likelihood ofsuch conflict. This has been a preliminary exercise. The evidence for the hypotheses explored here is hardly conclusive, but it is sufficiently suggestive to warrant further refinement and testing, all the more so given [End Page 56] the importance of the question at stake. If status matters in the way the theory discussed here suggests, then the widespread view that the rise of a peer competitor and the shift back to a bipolar or multipolar structure present readily surmountable policy challenges is suspect. Most scholars agree with Jacek Kugler and Douglas Lemke’s argument: “[S]hould a satisfied state undergo a power transition and catch up with dominant power, there is little or no expectation of war.” 81 Given that today’s rising powers have every material reason to like the status quo, many observers are optimistic that the rise of peer competitors can be readily managed by fashioning an order that accommodates their material interests. Yet it is far harder to manage competition for status than for most material things. While diplomatic efforts to manage status competition seem easy under unipolarity, theory and evidence suggest that it could present much greater challenges as the system moves back to bipolarity or multipolarity. When status is seen as a positional good, efforts to craft negotiated bargains about status contests face long odds. And this positionality problem is particularly acute concerning the very issue unipolarity solves: primacy. The route back to bipolarity or multipolarity is thus fraught with danger. With two or more plausible claimants to primacy, positional competition and the potential for major power war could once again form the backdrop of world politics. [End Page 57]

#### No offense- Collapse causes lash-out─

Goldstein ‘7 (Avery, Professor of Global Politics and International Relations @ University of Pennsylvania, “Power transitions, institutions, and China's rise in East Asia: Theoretical expectations and evidence,” Journal of Strategic Studies, Volume 30, Issue 4 & 5 August)

Two closely related, though distinct, theoretical arguments focus explicitly on the consequences for international politics of a shift in power between a dominant state and a rising power. In War and Change in World Politics, Robert Gilpin suggested that peace prevails when a dominant state’s capabilities enable it to ‘govern’ an international order that it has shaped. Over time, however, as economic and technological diffusion proceeds during eras of peace and development, other states are empowered. Moreover, the burdens of international governance drain and distract the reigning hegemon, and challengers eventually emerge who seek to rewrite the rules of governance. As the power advantage of the erstwhile hegemon ebbs, it may become desperate enough to resort to the ultima ratio of international politics, force, to forestall the increasingly urgent demands of a rising challenger. Or as the power of the challenger rises, it may be tempted to press its case with threats to use force. It is the rise and fall of the great powers that creates the circumstances under which major wars, what Gilpin labels ‘hegemonic wars’, break out.13 Gilpin’s argument logically encourages pessimism about the implications of a rising China. It leads to the expectation that international trade, investment, and technology transfer will result in a steady diffusion of American economic power, benefiting the rapidly developing states of the world, including China. As the US simultaneously scurries to put out the many brushfires that threaten its far-flung global interests (i.e., the classic problem of overextension), it will be unable to devote sufficient resources to maintain or restore its former advantage over emerging competitors like China. While the erosion of the once clear American advantage plays itself out, the US will find it ever more difficult to preserve the order in Asia that it created during its era of preponderance. The expectation is an increase in the likelihood for the use of force – either by a Chinese challenger able to field a stronger military in support of its demands for greater influence over international arrangements in Asia, or by a besieged American hegemon desperate to head off further decline. Among the trends that alarm those who would look at Asia through the lens of Gilpin’s theory are China’s expanding share of world trade and wealth (much of it resulting from the gains made possible by the international economic order a dominant US established); its acquisition of technology in key sectors that have both civilian and military applications (e.g., information, communications, and electronics linked with the ‘revolution in military affairs’); and an expanding military burden for the US (as it copes with the challenges of its global war on terrorism and especially its struggle in Iraq) that limits the resources it can devote to preserving its interests in East Asia.14 Although similar to Gilpin’s work insofar as it emphasizes the importance of shifts in the capabilities of a dominant state and a rising challenger, the power-transition theory A. F. K. Organski and Jacek Kugler present in The War Ledger focuses more closely on the allegedly dangerous phenomenon of ‘crossover’– the point at which a dissatisfied challenger is about to overtake the established leading state.15 In such cases, when the power gap narrows, the dominant state becomes increasingly desperate to forestall, and the challenger becomes increasingly determined to realize the transition to a new international order whose contours it will define. Though suggesting why a rising China may ultimately present grave dangers for international peace when its capabilities make it a peer competitor of America, Organski and Kugler’s power-transition theory is less clear about the dangers while a potential challenger still lags far behind and faces a difficult struggle to catch up. This clarification is important in thinking about the theory’s relevance to interpreting China’s rise because a broad consensus prevails among analysts that Chinese military capabilities are at a minimum two decades from putting it in a league with the US in Asia.16 Their theory, then, points with alarm to trends in China’s growing wealth and power relative to the United States, but especially looks ahead to what it sees as the period of maximum danger – that time when a dissatisfied China could be in a position to overtake the US on dimensions believed crucial for assessing power. Reports beginning in the mid-1990s that offered extrapolations suggesting China’s growth would give it the world’s largest gross domestic product (GDP aggregate, not per capita) sometime in the first few decades of the twentieth century fed these sorts of concerns about a potentially dangerous challenge to American leadership in Asia.17 The huge gap between Chinese and American military capabilities (especially in terms of technological sophistication) has so far discouraged prediction of comparably disquieting trends on this dimension, but inklings of similar concerns may be reflected in occasionally alarmist reports about purchases of advanced Russian air and naval equipment, as well as concern that Chinese espionage may have undermined the American advantage in nuclear and missile technology, and speculation about the potential military purposes of China’s manned space program.18 Moreover, because a dominant state may react to the prospect of a crossover and believe that it is wiser to embrace the logic of preventive war and act early to delay a transition while the task is more manageable, Organski and Kugler’s powertransition theory also provides grounds for concern about the period prior to the possible crossover.19

#### Scenario Two is Climate Change

#### Leadership key to coalitions—solves warming and every major impact.

Greenberg 5 – Director Emeritus and Honorary Vice Chairman of the Council on Foreign Relations and a member of the Trilateral Commission, Maurice, “On Leadership”, The National Interest, 12/1, http://www.nationalinterest.org/Article.aspx?id=10874

I am concerned that these are not the issues being discussed by our political leadership and that the United States is abdicating its role as a global leader. There are a number of **problems** that **require** the **U**nited **S**tates to step forward and exercise **leadership**. In matters of world trade, the Doha Round has not been a booming success. Promises of aid for Africa have turned out to be little more than promises. We have **transnational threats such as terrorism**, **environmental degradation and** the spread of **disease**. We have an issue of global warming. I'm not a scientist, but I am concerned that the intensity **and** strength of natural disasters has grown. Ocean **warming** has occurred by several degrees of temperature, ice flows are melting in the poles--what is going to be the impact of that on the world's climate? There are a whole host of issues that **are** not simply matters of American national interest, but **are** global, **planetary interests**. And make no mistake, **if the** **U**nited **S**tates **does not lead, who will?** The future of the European Union is a question mark. The proposed constitution was not enthusiastically embraced by Europe's population. More and more Europeans are dissatisfied with the euro, which, I might add, seems less and less likely to replace the dollar as the leading currency for global trade and finance. American **leadership is essential to put together** the broad-based **coalitions necessary to tackle these** **problems.** Our **national interest is served by continuing to build up** our **relations with other states, creating** a network of **mutual interdependence, rather than** ignoring problems or **isolating ourselves** from the rest of the world.

#### Leadership key to amended Montreal Protocol

US-EPA 12 U.S. Environmental Protection Agency¶ June 2012¶ 2¶ Benefits of Addressing HFCs under the Montreal Protocol¶ June 2012 http://www.epa.gov/ozone/downloads/Benefits%20of%20Addressing%20HFCs%20Under%20the%20Montreal%20Protocol,%20June%202012.pdf

The Montreal Protocol has been an unparalleled environmental success story. It is the only international agreement to achieve universal ratification. It has completed an enormous task in the phaseout of CFCs and halons—chemicals that had become pervasive in multiple industries. It established a schedule to phaseout the remaining important ODS (namely, HCFCs). Under the Montreal Protocol, Article 5 and non-Article 5 countries together have not only set the ozone layer on a path to recovery by mid-century but have reduced greenhouse gases by over 11 Gigatons CO2eq per year, providing an approximate 10-year delay in the onset of the effects of climate change.34 This legacy is now at risk. Although safe for the ozone layer, the continued emissions of HFCs— primarily as alternatives to ODS but also from the continued production of HCFC-22—will have an immediate and significant effect on the Earth’s climate system. Without further controls, it is predicted that HFC emissions could negate the entire climate benefits achieved under the Montreal Protocol. HFCs are rapidly increasing in the atmosphere. HFC-use is forecast to grow, mostly due to increased demand for refrigeration and air conditioning, particularly in Article 5 countries. There is a clear connection to the Montreal Protocol’s CFC and HCFC phaseout and the increased use of HFCs. However, it is possible to maintain the climate benefits achieved by the Montreal Protocol by using climate-friendly alternatives and addressing HFC consumption. Recognizing the concerns with continued HFC consumption and emissions, the actions taken to date to address them, the need for continued HFC use in the near future for certain applications, and the needed for better alternatives, Canada, Mexico and the United States have proposed an amendment to phase down HFC consumption and to reduce byproduct emissions of HFC-23, the HFC with the highest GWP. The proposed Amendment would build on the success of the Montreal Protocol, rely on the strength of its institutions, and realize climate benefits in both the near and long-term. Table 10 displays the projected benefits from the Amendment.

#### That solves climate-tipping points

AP 9 AP, Fox News, “Obama Administration to Push For Major Initiative to Fight Global Warming”, 4/30/9 http://www.foxnews.com/politics/2009/04/30/obama-administration-push-major-initiative-fight-global-warming/#ixzz2eoLvyx00

The Obama administration, in a major environmental policy shift, is leaning toward asking 195 nations that ratified the U.N. ozone treaty to enact mandatory reductions in hydrofluorocarbons, according to U.S. officials and documents obtained by The Associated Press.¶ ¶ "We're considering this as an option," Environmental Protection Agency spokeswoman Adora Andy said Wednesday, emphasizing that while a final decision has not been made it was accurate to describe this as the administration's "preferred option."¶ ¶ The change -- the first U.S.-proposed mandatory global cut in greenhouse gases -- would transform the ozone treaty into a strong tool for fighting global warming.¶ ¶ "Now it's going to be a climate treaty, with no ozone-depleting materials, if this goes forward," an EPA technical expert said Wednesday, speaking on condition of anonymity because a final decision is pending.¶ ¶ The expert said the 21-year-old ozone treaty known as the Montreal Protocol created virtually the entire market for hydrofluorocarbons, or HFCs, so including them in the treaty would take care of a problem of its own making.¶ ¶ It's uncertain how that would work in conjunction with the Kyoto Protocol, the world's climate treaty, which now regulates HFCs and was rejected by the Bush administration. Negotiations to replace Kyoto, which expires in 2012, are to be concluded in December in Denmark.¶ ¶ The Montreal Protocol is widely viewed as one of the most successful environmental treaties because it essentially eliminated the use of chlorofluorocarbons, or CFCs, blamed for damaging the ozone layer over Antarctica.¶ ¶ Because they do not affect the ozone layer, HFCs broadly replaced CFCs as coolants in everything from refrigerators, air conditioners and fire extinguishers to aerosol sprays, medical devices and semiconductors.¶ ¶ But experts say the solution to one problem is now worsening another.¶ ¶ As a result, the U.S. is calling HFCs "a significant and growing source of emissions" that could be eliminated more quickly in several ways, including amending the ozone treaty or creating "a legally distinct agreement" linked to the Montreal Protocol, says a March 27 State Department briefing paper presented at one of two recent meetings on the topic.¶ ¶ State Department officials told participants at one of last month's meetings that the United States wants to amend the Montreal Protocol to phase out the use of HFCs, a change praised by environmentalists. But there appear to be some interagency snags.¶ ¶ Though the State Department secured backing from the Pentagon and other agencies for amending the Montreal Protocol, some opposition remains within the administration, U.S. officials say. It is not clear if the proposal to eliminate HFCs will be submitted by next week, in time to be considered at a meeting in November by parties to the Montreal Protocol.¶ ¶ Proponents say eliminating HFCs would have an impact within our lifetimes. HFCs do most of their damage in their first 30 years in the atmosphere, unlike carbon dioxide which spreads its impact over a longer period of time.¶ ¶ "Retiring HFCs is our best hope of avoiding a near-term tipping point for irreversible climate change. It's an opportunity the world simply cannot afford to miss, and every year we delay action on HFCs reduces the benefit," said Alexander von Bismarck, executive director of the Environmental Investigation Agency, a nonprofit watchdog group in Washington that first pitched the idea two years ago.¶ ¶ Globally, a huge market has sprung up around the use of HFCs, a man-made chemical, as a result of their promotion under the Montreal Protocol. Several billion dollars have been spent through an affiliated fund to prod countries to stop making and using CFCs and other ozone-damaging chemicals and to instead use cheap and effective chemicals like HFCs.¶ ¶ Scientists say eliminating use of HFCs would spare the world an amount of greenhouse gases up to about a third of all CO2 emissions about two to four decades from now. Manufacturers in both Europe and the U.S. have begun to replace HFCs with so-called natural refrigerants such as hydrocarbons, ammonia or carbon dioxide.¶ ¶ HFCs can be up to 10,000 times more powerful than carbon dioxide as climate-warming chemicals, according to U.S. government data.¶ ¶ Currently they account for only about 2 percent of all greenhouse-gas emissions, but the U.N.'s Intergovernmental Panel on Climate Change warned in 2005 that use of HFCs was growing at 8.8 percent per year.¶ ¶ More recent studies concur and show that HFCs are on a path to reach about 11 billion tons of greenhouse gases, which would constitute up to a third of all greenhouse gas emissions by sometime within 2030 and 2040 under some CO2-reduction scenarios.¶ ¶ House Democrats also are adding to the pressure on HFCs.¶ ¶ In an April 3 letter to President Barack Obama, California Rep. Henry Waxman, chairman of the House Energy and Commerce Committee, and Massachusetts Rep. Edward Markey, chairman of the energy and environment subcommittee, urged the White House to offer an amendment to the Montreal Protocol this year.¶ ¶ "Although we strongly support a comprehensive international agreement on climate change, we believe that adding HFCs to the existing Montreal Protocol would be a sensible, cost-effective method of addressing a small but growing piece of the problem," they wrote.¶ ¶ Waxman and Markey also have drafted legislation laying out a broad outline for phasing out HFCs in the United States.¶ ¶ Worldwide, phasing out HFCs under the Montreal Protocol could prevent 90 billion tons of greenhouse gases by 2040, by including nations like India and China that were not part of the Kyoto treaty.¶ ¶ Nations such as Argentina, the Federated States of Micronesia, Mauritius and Mexico have recently pushed for climate protections under the Montreal Protocol, arguing every possible tool must be used to combat climate change.¶ ¶ The EPA in April determined that hydrofluorocarbons were one of six greenhouse gases endangering human health and welfare, a ruling that could eventually lead to mandatory reductions in the U.S. under the Clean Air Act.¶ ¶ "This is a strong sign of new American leadership in atmospheric protection," said von Bismarck.

#### Extinction—4 degree triggers.

Roberts 13—citing the World Bank Review’s compilation of climate studies

- 4 degree projected warming, can’t adapt

- heat wave related deaths, forest fires, crop production, water wars, ocean acidity, sea level rise, climate migrants, biodiversity loss

David, “If you aren’t alarmed about climate, you aren’t paying attention” [http://grist.org/climate-energy/climate-alarmism-the-idea-is-surreal/] January 10 //mtc

We know we’ve raised global average temperatures around 0.8 degrees C so far. We know that 2 degrees C is where most scientists predict catastrophic and irreversible impacts. And we know that we are currently on a trajectory that will push temperatures up 4 degrees or more by the end of the century. What would 4 degrees look like? A recent World Bank review of the science reminds us. First, it’ll get hot: Projections for a 4°C world show a dramatic increase in the intensity and frequency of high-temperature extremes. Recent extreme heat waves such as in Russia in 2010 are likely to become the new normal summer in a 4°C world. Tropical South America, central Africa, and all tropical islands in the Pacific are likely to regularly experience heat waves of unprecedented magnitude and duration. In this new high-temperature climate regime, the coolest months are likely to be substantially warmer than the warmest months at the end of the 20th century. In regions such as the Mediterranean, North Africa, the Middle East, and the Tibetan plateau, almost all summer months are likely to be warmer than the most extreme heat waves presently experienced. For example, the warmest July in the Mediterranean region could be 9°C warmer than today’s warmest July. Extreme heat waves in recent years have had severe impacts, causing heat-related deaths, forest fires, and harvest losses. The impacts of the extreme heat waves projected for a 4°C world have not been evaluated, but they could be expected to vastly exceed the consequences experienced to date and potentially exceed the adaptive capacities of many societies and natural systems. [my emphasis] Warming to 4 degrees would also lead to “an increase of about 150 percent in acidity of the ocean,” leading to levels of acidity “unparalleled in Earth’s history.” That’s bad news for, say, coral reefs: The combination of thermally induced bleaching events, ocean acidification, and sea-level rise threatens large fractions of coral reefs even at 1.5°C global warming. The regional extinction of entire coral reef ecosystems, which could occur well before 4°C is reached, would have profound consequences for their dependent species and for the people who depend on them for food, income, tourism, and shoreline protection. It will also “likely lead to a sea-level rise of 0.5 to 1 meter, and possibly more, by 2100, with several meters more to be realized in the coming centuries.” That rise won’t be spread evenly, even within regions and countries — regions close to the equator will see even higher seas. There are also indications that it would “significantly exacerbate existing water scarcity in many regions, particularly northern and eastern Africa, the Middle East, and South Asia, while additional countries in Africa would be newly confronted with water scarcity on a national scale due to population growth.” Also, more extreme weather events: Ecosystems will be affected by more frequent extreme weather events, such as forest loss due to droughts and wildfire exacerbated by land use and agricultural expansion. In Amazonia, forest fires could as much as double by 2050 with warming of approximately 1.5°C to 2°C above preindustrial levels. Changes would be expected to be even more severe in a 4°C world. Also loss of biodiversity and ecosystem services: In a 4°C world, climate change seems likely to become the dominant driver of ecosystem shifts, surpassing habitat destruction as the greatest threat to biodiversity. Recent research suggests that large-scale loss of biodiversity is likely to occur in a 4°C world, with climate change and high CO2 concentration driving a transition of the Earth’s ecosystems into a state unknown in human experience. Ecosystem damage would be expected to dramatically reduce the provision of ecosystem services on which society depends (for example, fisheries and protection of coastline afforded by coral reefs and mangroves.) New research also indicates a “rapidly rising risk of crop yield reductions as the world warms.” So food will be tough. All this will add up to “large-scale displacement of populations and have adverse consequences for human security and economic and trade systems.” Given the uncertainties and long-tail risks involved, “there is no certainty that adaptation to a 4°C world is possible.” There’s a small but non-trivial chance of advanced civilization breaking down entirely. Now ponder the fact that some scenarios show us going up to 6 degrees by the end of the century, a level of devastation we have not studied and barely know how to conceive. Ponder the fact that somewhere along the line, though we don’t know exactly where, enough self-reinforcing feedback loops will be running to make climate change unstoppable and irreversible for centuries to come. That would mean handing our grandchildren and their grandchildren not only a burned, chaotic, denuded world, but a world that is inexorably more inhospitable with every passing decade.

#### Warming is anthropogenic - prefer our comprehensive study.

Green 13 – Professor of Chemistry @ Michigan Tech,

\*John Cook – Fellow @ Global Change Institute, produced climate communication resources adopted by organisations such as NOAA and the U.S. Navy

\*\*Dana Nuccitelli – MA in Physics @ UC-Davis

\*\*\*Mark Richardson – PhD Candidate in Meteorology, et al.,

(“Quantifying the consensus on anthropogenic global warming in the scientific literature,” Environmental Research Letters, 8.2)

An accurate perception of the degree of scientific consensus is an essential element to public support for climate policy (Ding et al 2011). Communicating the scientific consensus also increases people's acceptance that climate change (CC) is happening (Lewandowsky et al 2012). Despite numerous indicators of a consensus, there is wide public perception that climate scientists disagree over the fundamental cause of global warming (GW; Leiserowitz et al 2012, Pew 2012). In the most comprehensive analysis performed to date, we have extended the analysis of peer-reviewed climate papers in Oreskes (2004). We examined a large sample of the scientific literature on global CC, published over a 21 year period, in order to determine the level of scientific consensus that human activity is very likely causing most of the current GW (anthropogenic global warming, or AGW). Surveys of climate scientists have found strong agreement (97–98%) regarding AGW amongst publishing climate experts (Doran and Zimmerman 2009, Anderegg et al 2010). Repeated surveys of scientists found that scientific agreement about AGW steadily increased from 1996 to 2009 (Bray 2010). This is reflected in the increasingly definitive statements issued by the Intergovernmental Panel on Climate Change on the attribution of recent GW (Houghton et al 1996, 2001, Solomon et al 2007). The peer-reviewed scientific literature provides a ground-level assessment of the degree of consensus among publishing scientists. An analysis of abstracts published from 1993–2003 matching the search 'global climate change' found that none of 928 papers disagreed with the consensus position on AGW (Oreskes 2004). This is consistent with an analysis of citation networks that found a consensus on AGW forming in the early 1990s (Shwed and Bearman 2010). Despite these independent indicators of a scientific consensus, the perception of the US public is that the scientific community still disagrees over the fundamental cause of GW. From 1997 to 2007, public opinion polls have indicated around 60% of the US public believes there is significant disagreement among scientists about whether GW was happening (Nisbet and Myers 2007). Similarly, 57% of the US public either disagreed or were unaware that scientists agree that the earth is very likely warming due to human activity (Pew 2012). Through analysis of climate-related papers published from 1991 to 2011, this study provides the most comprehensive analysis of its kind to date in order to quantify and evaluate the level and evolution of consensus over the last two decades. 2. Methodology This letter was conceived as a 'citizen science' project by volunteers contributing to the Skeptical Science website (www.skepticalscience.com). In March 2012, we searched the ISI Web of Science for papers published from 1991–2011 using topic searches for 'global warming' or 'global climate change'. Article type was restricted to 'article', excluding books, discussions, proceedings papers and other document types. The search was updated in May 2012 with papers added to the Web of Science up to that date. We classified each abstract according to the type of research (category) and degree of endorsement. Written criteria were provided to raters for category (table 1) and level of endorsement of AGW (table 2). Explicit endorsements were divided into non-quantified (e.g., humans are contributing to global warming without quantifying the contribution) and quantified (e.g., humans are contributing more than 50% of global warming, consistent with the 2007 IPCC statement that most of the global warming since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations). Table 1. Definitions of each type of research category. Category Description Example (1) Impacts Effects and impacts of climate change on the environment, ecosystems or humanity '...global climate change together with increasing direct impacts of human activities, such as fisheries, are affecting the population dynamics of marine top predators' (2) Methods Focus on measurements and modeling methods, or basic climate science not included in the other categories 'This paper focuses on automating the task of estimating Polar ice thickness from airborne radar data...' (3) Mitigation Research into lowering CO2 emissions or atmospheric CO2 levels 'This paper presents a new approach for a nationally appropriate mitigation actions framework that can unlock the huge potential for greenhouse gas mitigation in dispersed energy end-use sectors in developing countries' (4) Not climate-related Social science, education, research about people's views on climate 'This paper discusses the use of multimedia techniques and augmented reality tools to bring across the risks of global climate change' (5) Opinion Not peer-reviewed articles 'While the world argues about reducing global warming, chemical engineers are getting on with the technology. Charles Butcher has been finding out how to remove carbon dioxide from flue gas' (6) Paleoclimate Examining climate during pre-industrial times 'Here, we present a pollen-based quantitative temperature reconstruction from the midlatitudes of Australia that spans the last 135 000 years...' Table 2. Definitions of each level of endorsement of AGW. Level of endorsement Description Example (1) Explicit endorsement with quantification Explicitly states that humans are the primary cause of recent global warming 'The global warming during the 20th century is caused mainly by increasing greenhouse gas concentration especially since the late 1980s' (2) Explicit endorsement without quantification Explicitly states humans are causing global warming or refers to anthropogenic global warming/climate change as a known fact 'Emissions of a broad range of greenhouse gases of varying lifetimes contribute to global climate change' (3) Implicit endorsement Implies humans are causing global warming. E.g., research assumes greenhouse gas emissions cause warming without explicitly stating humans are the cause '...carbon sequestration in soil is important for mitigating global climate change' (4a) No position Does not address or mention the cause of global warming (4b) Uncertain Expresses position that human's role on recent global warming is uncertain/undefined 'While the extent of human-induced global warming is inconclusive...' (5) Implicit rejection Implies humans have had a minimal impact on global warming without saying so explicitly E.g., proposing a natural mechanism is the main cause of global warming '...anywhere from a major portion to all of the warming of the 20th century could plausibly result from natural causes according to these results' (6) Explicit rejection without quantification Explicitly minimizes or rejects that humans are causing global warming '...the global temperature record provides little support for the catastrophic view of the greenhouse effect' (7) Explicit rejection with quantification Explicitly states that humans are causing less than half of global warming 'The human contribution to the CO2 content in the atmosphere and the increase in temperature is negligible in comparison with other sources of carbon dioxide emission' Abstracts were randomly distributed via a web-based system to raters with only the title and abstract visible. All other information such as author names and affiliations, journal and publishing date were hidden. Each abstract was categorized by two independent, anonymized raters. A team of 12 individuals completed 97.4% (23 061) of the ratings; an additional 12 contributed the remaining 2.6% (607). Initially, 27% of category ratings and 33% of endorsement ratings disagreed. Raters were then allowed to compare and justify or update their rating through the web system, while maintaining anonymity. Following this, 11% of category ratings and 16% of endorsement ratings disagreed; these were then resolved by a third party. Upon completion of the final ratings, a random sample of 1000 'No Position' category abstracts were re-examined to differentiate those that did not express an opinion from those that take the position that the cause of GW is uncertain. An 'Uncertain' abstract explicitly states that the cause of global warming is not yet determined (e.g., '...the extent of human-induced global warming is inconclusive...') while a 'No Position' abstract makes no statement on AGW. To complement the abstract analysis, email addresses for 8547 authors were collected, typically from the corresponding author and/or first author. For each year, email addresses were obtained for at least 60% of papers. Authors were emailed an invitation to participate in a survey in which they rated their own published papers (the entire content of the article, not just the abstract) with the same criteria as used by the independent rating team. Details of the survey text are provided in the supplementary information (available at stacks.iop.org/ERL/8/024024/mmedia). 3. Results The ISI search generated 12 465 papers. Eliminating papers that were not peer-reviewed (186), not climate-related (288) or without an abstract (47) reduced the analysis to 11 944 papers written by 29 083 authors and published in 1980 journals. To simplify the analysis, ratings were consolidated into three groups: endorsements (including implicit and explicit; categories 1–3 in table 2), no position (category 4) and rejections (including implicit and explicit; categories 5–7). We examined four metrics to quantify the level of endorsement: (1) The percentage of endorsements/rejections/undecideds among all abstracts. (2) The percentage of endorsements/rejections/undecideds among only those abstracts expressing a position on AGW. (3) The percentage of scientists authoring endorsement/ rejection abstracts among all scientists. (4) The same percentage among only those scientists who expressed a position on AGW (table 3). Table 3. Abstract ratings for each level of endorsement, shown as percentage and total number of papers. Position % of all abstracts % among abstracts with AGW position (%) % of all authors % among authors with AGW position (%) Endorse AGW 32.6% (3896) 97.1 34.8% (10 188) 98.4 No AGW position 66.4% (7930) — 64.6% (18 930) — Reject AGW 0.7% (78) 1.9 0.4% (124) 1.2 Uncertain on AGW 0.3% (40) 1.0 0.2% (44) 0.4 3.1. Endorsement percentages from abstract ratings Among abstracts that expressed a position on AGW, 97.1% endorsed the scientific consensus. Among scientists who expressed a position on AGW in their abstract, 98.4% endorsed the consensus. The time series of each level of endorsement of the consensus on AGW was analyzed in terms of the number of abstracts (figure 1(a)) and the percentage of abstracts (figure 1(b)). Over time, the no position percentage has increased (simple linear regression trend 0.87% ± 0.28% yr−1, 95% CI, R2 = 0.66,p < 0.001) and the percentage of papers taking a position on AGW has equally decreased. Reset Figure 1. (a) Total number of abstracts categorized into endorsement, rejection and no position. (b) Percentage of endorsement, rejection and no position/undecided abstracts. Uncertain comprise 0.5% of no position abstracts. Export PowerPoint slide Download figure: Standard (154 KB)High-resolution (248 KB) The average numbers of authors per endorsement abstract (3.4) and per no position abstract (3.6) are both significantly larger than the average number of authors per rejection abstract (2.0). The scientists originated from 91 countries (identified by email address) with the highest representation from the USA (N = 2548) followed by the United Kingdom (N = 546), Germany (N = 404) and Japan (N = 379) (see supplementary table S1 for full list, available at stacks.iop.org/ERL/8/024024/mmedia). 3.2. Endorsement percentages from self-ratings We emailed 8547 authors an invitation to rate their own papers and received 1200 responses (a 14% response rate). After excluding papers that were not peer-reviewed, not climate-related or had no abstract, 2142 papers received self-ratings from 1189 authors. The self-rated levels of endorsement are shown in table 4. Among self-rated papers that stated a position on AGW, 97.2% endorsed the consensus. Among self-rated papers not expressing a position on AGW in the abstract, 53.8% were self-rated as endorsing the consensus. Among respondents who authored a paper expressing a view on AGW, 96.4% endorsed the consensus. Table 4. Self-ratings for each level of endorsement, shown as percentage and total number of papers. Position % of all papers % among papers with AGW position (%) % of respondents % among respondents with AGW position (%) Endorse AGWa 62.7% (1342) 97.2 62.7% (746) 96.4 No AGW positionb 35.5% (761) — 34.9% (415) — Reject AGWc 1.8% (39) 2.8 2.4% (28) 3.6 aSelf-rated papers that endorse AGW have an average endorsement rating less than 4 (1 =explicit endorsement with quantification, 7 = explicit rejection with quantification). bUndecided self-rated papers have an average rating equal to 4. cRejection self-rated papers have an average rating greater than 4. Figure 2(a) shows the level of self-rated endorsement in terms of number of abstracts (the corollary to figure 1(a)) and figure 2(b) shows the percentage of abstracts (the corollary to figure 1(b)). The percentage of self-rated rejection papers decreased (simple linear regression trend −0.25% ± 0.18% yr−1, 95% CI, R2 = 0.28,p = 0.01, figure 2(b)). The time series of self-rated no position and consensus endorsement papers both show no clear trend over time. Reset Figure 2. (a) Total number of endorsement, rejection and no position papers as self-rated by authors. Year is the published year of each self-rated paper. (b) Percentage of self-rated endorsement, rejection and no position papers. Export PowerPoint slide Download figure: Standard (149 KB)High-resolution (238 KB) A direct comparison of abstract rating versus self-rating endorsement levels for the 2142 papers that received a self-rating is shown in table 5. More than half of the abstracts that we rated as 'No Position' or 'Undecided' were rated 'Endorse AGW' by the paper's authors. Table 5. Comparison of our abstract rating to self-rating for papers that received self-ratings. Position Abstract rating Self-rating Endorse AGW 791 (36.9%) 1342 (62.7%) No AGW position or undecided 1339 (62.5%) 761 (35.5%) Reject AGW 12 (0.6%) 39 (1.8%) Figure 3 compares the percentage of papers endorsing the scientific consensus among all papers that express a position endorsing or rejecting the consensus. The year-to-year variability is larger in the self-ratings than in the abstract ratings due to the smaller sample sizes in the early 1990s. The percentage of AGW endorsements for both self-rating and abstract-rated papers increase marginally over time (simple linear regression trends 0.10 ± 0.09% yr−1, 95% CI, R2 = 0.20,p = 0.04 for abstracts, 0.35 ± 0.26% yr−1, 95% CI, R2 = 0.26,p = 0.02 for self-ratings), with both series approaching approximately 98% endorsements in 2011. Reset Figure 3. Percentage of papers endorsing the consensus among only papers that express a position endorsing or rejecting the consensus. Export PowerPoint slide Download figure: Standard (83 KB)High-resolution (128 KB) 4. Discussion Of note is the large proportion of abstracts that state no position on AGW. This result is expected in consensus situations where scientists '...generally focus their discussions on questions that are still disputed or unanswered rather than on matters about which everyone agrees' (Oreskes 2007, p 72). This explanation is also consistent with a description of consensus as a 'spiral trajectory' in which 'initially intense contestation generates rapid settlement and induces a spiral of new questions' (Shwed and Bearman 2010); the fundamental science of AGW is no longer controversial among the publishing science community and the remaining debate in the field has moved to other topics. This is supported by the fact that more than half of the self-rated endorsement papers did not express a position on AGW in their abstracts. The self-ratings by the papers' authors provide insight into the nature of the scientific consensus amongst publishing scientists. For both self-ratings and our abstract ratings, the percentage of endorsements among papers expressing a position on AGW marginally increased over time, consistent with Bray (2010) in finding a strengthening consensus. 4.1. Sources of uncertainty The process of determining the level of consensus in the peer-reviewed literature contains several sources of uncertainty, including the representativeness of the sample, lack of clarity in the abstracts and subjectivity in rating the abstracts. We address the issue of representativeness by selecting the largest sample to date for this type of literature analysis. Nevertheless, 11 944 papers is only a fraction of the climate literature. A Web of Science search for 'climate change' over the same period yields 43 548 papers, while a search for 'climate' yields 128 440 papers. The crowd-sourcing techniques employed in this analysis could be expanded to include more papers. This could facilitate an approach approximating the methods of Doran and Zimmerman (2009), which measured the level of scientific consensus for varying degrees of expertise in climate science. A similar approach could analyze the level of consensus among climate papers depending on their relevance to the attribution of GW. Another potential area of uncertainty involved the text of the abstracts themselves. In some cases, ambiguous language made it difficult to ascertain the intended meaning of the authors. Naturally, a short abstract could not be expected to communicate all the details of the full paper. The implementation of the author self-rating process allowed us to look beyond the abstract. A comparison between self-ratings and abstract ratings revealed that categorization based on the abstract alone underestimates the percentage of papers taking a position on AGW. Lastly, some subjectivity is inherent in the abstract rating process. While criteria for determining ratings were defined prior to the rating period, some clarifications and amendments were required as specific situations presented themselves. Two sources of rating bias can be cited: first, given that the raters themselves endorsed the scientific consensus on AGW, they may have been more likely to classify papers as sharing that endorsement. Second, scientific reticence (Hansen 2007) or 'erring on the side of least drama' (ESLD; Brysse et al 2012) may have exerted an opposite effect by biasing raters towards a 'no position' classification. These sources of bias were partially addressed by the use of multiple independent raters and by comparing abstract rating results to author self-ratings. A comparison of author ratings of the full papers and abstract ratings reveals a bias toward an under-counting of endorsement papers in the abstract ratings (mean difference 0.6 in units of endorsement level). This mitigated concerns about rater subjectivity, but suggests that scientific reticence and ESLD remain possible biases in the abstract ratings process. The potential impact of initial rating disagreements was also calculated and found to have minimal impact on the level of consensus (see supplemental information, section S1 available at stacks.iop.org/ERL/8/024024/mmedia). 4.2. Comparisons with previous studies Our sample encompasses those surveyed by Oreskes (2004) and Schulte (2008) and we can therefore directly compare the results. Oreskes (2004) analyzed 928 papers from 1993 to 2003. Over the same period, we found 932 papers matching the search phrase 'global climate change' (papers continue to be added to the ISI database). From that subset we eliminated 38 papers that were not peer-reviewed, climate-related or had no abstract. Of the remaining 894, none rejected the consensus, consistent with Oreskes' result. Oreskes determined that 75% of papers endorsed the consensus, based on the assumption that mitigation and impact papers implicitly endorse the consensus. By comparison, we found that 28% of the 894 abstracts endorsed AGW while 72% expressed no position. Among the 71 papers that received self-ratings from authors, 69% endorse AGW, comparable to Oreskes' estimate of 75% endorsements. An analysis of 539 'global climate change' abstracts from the Web of Science database over January 2004 to mid-February 2007 found 45% endorsement and 6% rejection (Schulte 2008). Our analysis over a similar period (including all of February 2007) produced 529 papers—the reason for this discrepancy is unclear as Schulte's exact methodology is not provided. Schulte estimated a higher percentage of endorsements and rejections, possibly because the strict methodology we adopted led to a greater number of 'No Position' abstracts. Schulte also found a significantly greater number of rejection papers, including 6 explicit rejections compared to our 0 explicit rejections. See the supplementary information (available at stacks.iop.org/ERL/8/024024/mmedia) for a tabulated comparison of results. Among 58 self-rated papers, only one (1.7%) rejected AGW in this sample. Over the period of January 2004 to February 2007, among 'global climate change' papers that state a position on AGW, we found 97% endorsements. 5. Conclusion The public perception of a scientific consensus on AGW is a necessary element in public support for climate policy (Ding et al 2011). However, there is a significant gap between public perception and reality, with 57% of the US public either disagreeing or unaware that scientists overwhelmingly agree that the earth is warming due to human activity (Pew 2012). Contributing to this 'consensus gap' are campaigns designed to confuse the public about the level of agreement among climate scientists. In 1991, Western Fuels Association conducted a $510 000 campaign whose primary goal was to 'reposition global warming as theory (not fact)'. A key strategy involved constructing the impression of active scientific debate using dissenting scientists as spokesmen (Oreskes 2010). The situation is exacerbated by media treatment of the climate issue, where the normative practice of providing opposing sides with equal attention has allowed a vocal minority to have their views amplified (Boykoff and Boykoff 2004). While there are indications that the situation has improved in the UK and USA prestige press (Boykoff 2007), the UK tabloid press showed no indication of improvement from 2000 to 2006 (Boykoff and Mansfield 2008). The narrative presented by some dissenters is that the scientific consensus is '...on the point of collapse' (Oddie 2012) while '...the number of scientific "heretics" is growing with each passing year' (Allègre et al 2012). A systematic, comprehensive review of the literature provides quantitative evidence countering this assertion. The number of papers rejecting AGW is a miniscule proportion of the published research, with the percentage slightly decreasing over time. Among papers expressing a position on AGW, an overwhelming percentage (97.2% based on self-ratings, 97.1% based on abstract ratings) endorses the scientific consensus on AGW.

## Plan Text

#### The United States Supreme Court should restrict presidential war powers authority by overruling the D.C. Circuit Al-Maqaleh v. Gates decision.

## Contention 3 is Solvency

#### Detention policy is incomprehensible in the status quo- only Supreme Court rulings send a clear judicial review test.

Garrett 12 (Brandon, Roy L. and Rosamund Woodruff Morgan Professor of Law, University of Virginia School of Law. HABEAS CORPUS AND DUE PROCESSCORNELL LAW REVIEW [Vol. 98:47] page lexis)

The Suspension Clause casts a broad shadow over the regulation of all forms of detention. It has exerted direct and indirect influence even in contexts where statutes largely supplant habeas corpus as the primary vehicle for judicial review. The Executive, courts, and Congress have long been concerned with avoiding Suspension Clause problems, and the Supreme Court’s own sometimes-carried-out warnings that it will narrowly interpret efforts to restrict judicial review to avoid potential Suspension Clause problems have, many years before Boumediene, helped to structure judicial review of detention. I have argued that the Suspension Clause explains why, as the Court put it in INS v. St. Cyr, “[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”451 Post- Boumediene, judges may rely on the Suspension Clause more directly, and not just as a principle of constitutional avoidance. Understanding the Suspension Clause as affirmatively guaranteeing a right to habeas process to independently examine the authorization for a detention helps to explain habeas and constitutional doctrine across a range of areas. Why does habeas corpus sometimes provide access to process unavailable under the Due Process Clause, while sometimes due process provides more process than habeas would? At its core, habeas corpus provides judges with process in situations where the need for review of legal and factual questions surrounding detention is most pressing. This view of habeas process can be seen as related to the Court’s long line of decisions that guarantee a “right of access” to courts without clarifying the source of that “[s]ubstantive [r]ight.”452 In Boumediene, the Court grounded that right in the Suspension Clause. This basis for the right makes some sense of the varied nature of habeas review in which statutes and case law differ depending on the type of detention. Judicial review does not vary categorically; for example, immigration does not receive less review than postconviction or military detention habeas. Instead, judicial review varies within each category. This is the product of evolving executive detention policies, varying postconviction practice, and changes over time in federal statutes, some poorly conceived and some sensible. No one actor provides coherence to habeas practice at any time, and some of the statutes are notoriously Byzantine, poorly drafted, and illogical. Judges have long played, however, an important role in interpreting the writ (and the underlying constitutional rights). Indeed, for some time, the Supreme Court’s interventions have reinforced the role habeas plays, particularly in the executive detention context. In response to the Court’s habeas rulings, which generally avoid defining the precise reach of the Suspension Clause, Congress has drafted statutes to preserve judicial review of detentions in an effort to steer clear of Suspension Clause problems, with mixed results.

#### SCOTUS is key – influences presidential and legislative agendas over detention policy

Elsea & Garcia ’12 (Jennifer & Michael – legislative attorneys) “Judicial Activity Concerning

Enemy Combatant Detainees: Major Court Rulings” http://www.fas.org/sgp/crs/natsec/R41156.pdf

Although the political branches of government have been primarily responsible for shaping U.S. wartime detention policy in the conflict with Al Qaeda and the Taliban, the judiciary has also played a significant role in clarifying elements of the rights and privileges owed to detainees under the Constitution and existing federal statutes and treaties. These rulings may have longterm consequences for U.S. detention policy, both in the conflict with Al Qaeda and the Taliban and in future armed conflicts. Judicial decisions concerning the meaning and effect of existing statutes and treaties may compel the executive branch to modify its current practices to conform with judicial opinion. For example, judicial opinions concerning the scope of detention authority conferred by the AUMF may inform executive decisions as to whether grounds exist to detain an individual suspected of involvement with Al Qaeda or the Taliban. Judicial decisions concerning statutes applicable to criminal prosecutions in Article III courts or military tribunals may influence executive determinations as to the appropriate forum in which to try detainees for criminal offenses. Judicial rulings may also invite response from the legislative branch, including consideration of legislative proposals to modify existing authorities ((MARKED))

governing U.S. detention policy. The 2012 NDAA, for example, contains provisions which arguably codify aspects of existing jurisprudence regarding U.S. authority to detain persons in the conflict with Al Qaeda. Judicial activity with respect to the present armed conflict may also influence legislative activity in future hostilities. For example, Congress may look to judicial rulings interpreting the meaning and scope of the 2001 AUMF for guidance when drafting legislation authorizing the executive to use military force in some future conflict. While the Supreme Court has issued definitive rulings concerning certain issues related to wartime detainees, many other issues related to the capture, treatment, and trial of suspected enemy belligerents are either the subject of ongoing litigation or are likely to be addressed by the judiciary. Accordingly, the courts appear likely to play a significant role in shaping U.S. policies relating to enemy belligerents in the foreseeable future.

#### Suspension Clause solves without sacrificing military missions

Nelson ’11 (Luke - B.A., University of Minnesota Duluth, 2007; J.D. Candidate, University of New Hampshire School of Law, 2011) “Territorial Sovereignty and the Evolving Boumediene Factors: Al Maqaleh v. Gates and the Future of Detainee Habeas Corpus Rights” http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-nelson.pdf

Lastly, Al Maqaleh presents another opportunity for the Supreme Court to provide further guidance on the practical-obstacles factor. As mentioned earlier, the inherent deficiency of a multi-factored, functional test is its arbitrary and unequal application.144 The Boumediene Court’s deficient guidance on the practical-obstacles factor only exacerbates this problem. Unquestionably, deference to the President and military leaders regarding decisions on military necessity, operations in an active theater of war, and reasonable detention of enemy combatants should not be circumvented. However, questions remain regarding the risk of executive manipulation of the Boumediene test.145 For instance, one question is the effect on the practical-obstacles analysis when a detainee is captured beyond an active theater of war and later transported into an active theater for detention. This scenario played out in Al Maqaleh. In our current “Global War on Terrorism,” another lingering question is the actual boundaries of an active theater of war.146 A detainee should not be denied Suspension Clause protections because the government transported him into an active theater where the Suspension Clause would arguably not reach. Furthermore, another question is the effect of military necessity and the military mission on the practicalobstacles factor. These questions require that a delicate and fine line be drawn. On one hand are the surest safeguards of liberty and the separation of powers check on the executive.147 On the other hand is the importance of the military mission and executive deference in international conflict policy decisions. The answer to these questions must include some level of deference to the legitimate needs of the armed forces in advancing the military mission148 but also address the pertinent constitutional issues that cannot be overlooked. Safe to say, the writ of habeas corpus is one of these pertinent constitutional issues. However, as the Boumediene Court recognized, the executive branch is entitled to a “reasonable period of time” before a court will entertain a habeas corpus petition from a detainee.149 This reasonable period of time is necessary to allow the military to screen and review the detainee and determine the detainee’s combatant status.150 This balance between the military mission and an individual’s surest safeguard of liberty will allow the courts to maintain a practical, functional, and detainee-by-detainee, detention-site-by-detention-site application of the habeas test that the Boumediene Court envisioned.

#### Reversing stance of judicial deference solves adventurism – forces government accountability

Knowles, 2009 (Robert, Acting assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution,” Arizona State Law Journal, 41 Ariz. St. L.J. 87, October)

The accountability justification generally overstates the degree to which courts are insulated from politics.286 On the domestic front, Supreme Court appointments have become an increasingly prominent issue in presidential elections, at least since Roe v. Wade and the nominations of Robert Bork and Clarence Thomas.287 Although foreign affairs have not played much of a role in these debates thus far, this is almost certainly due to the courts’ generally deferential approach to foreign relations controversies. When the courts have been bolder, such as in the three Guantánamo cases, they have captured the attention of policy-makers and the public, creating issues for presidential campaigns.288 Moreover, accountability cuts both ways. It is a core purpose of the separation of powers.289 The courts can serve an important information-forcing role that assists the People in holding the executive branch accountable for foreign affairs decisions, many of which are shrouded in secrecy.290 Court cases require the government to articulate clearly the rationales for its policies and the procedures through which those policies were enacted. Habeas corpus forces federal officers to justify their detention of individuals whose imprisonment would otherwise remain unscrutinized.291 In any event, assuming that the courts are relatively less accountable than the political branches, this aspect of the constitutional regime is accepted in the domestic context. Why should foreign affairs require faster and easier accountability? Ultimately, the one-voice arguments for special deference— for uniformity, accountability, and avoiding embarrassment—must be grounded in assumptions about the peculiar requirements of managing a great power’s foreign policy in an anarchic world. These are considerations of realpolitik, which I discuss in the next subpart.

#### Failing to articulate habeas standards for lower court judges makes indefinite detention inevitable and triggers your disads

Sparrow 11 (Indefinite Detention After Boumediene: Judicial Trailblazing in Uncharted and Unfamiliar Territory SUFFOLK UNIVERSITY LAW REVIEW [Vol. XLIV:261 p lexis Tyler Sparrow is an associate in the Securities Department, and a member of the Litigation and Enforcement Practice Group]

This section will argue that the current guidance on detainee habeas corpus actions offered by the Supreme Court as well as the Executive and Legislative branches is vague and inadequate.100 Because of this inadequacy, federal district court judges cannot proceed with any confidence that their judgments will stand, nor can the litigants form any reasonable predictions from the case law.101 This section will then examine how more definitive Supreme Court precedent would help to unify the case law dealing with detainee habeas corpus actions.102 Finally, this section will argue that adoption of legislation clearly addressing the substantive scope of the government’s detention authority would clarify the law for the public, the federal courts, and most importantly those detained without charge.103 The Supreme Court’s holding in Boumediene was limited to the constitutional issues regarding Guantanamo detainees’ access to the writ of habeas corpus, leaving all questions of procedure and substantive scope-ofdetention authority to the lower federal courts.104 This lack of guidance has drawn criticism from legal scholars and federal judges alike.105 A group of noted legal scholars observed that, in holding Guantanamo detainees were entitled to seek the writ of habeas corpus, the Supreme Court “gave only the barest sketch of what such proceedings should look like, leaving a raft of questions open for the district and appellate court judges.”106 Furthermore, the Obama Administration has stated that it will not seek further legislation from Congress to justify or clarify its detention authority.107 This lack of guidance has led to disparate results in detainee habeas corpus actions with similar facts, based not on the merits of the cases, but rather on which particular judge hears the petition.108 B. Need for Supreme Court Precedent Addressing Standards and Procedure for Detainee Habeas Corpus Actions The Supreme Court’s refusal to address the substantive scope of the government’s detention authority in Boumediene has left the task to federal district court judges, who are free to apply whichever standard they see fit, regardless of its disparity from the standard being applied down the hall of the very same courthouse.109 For instance, it is up to the district judges whether to analyze detention authority under the rubric of “substantial support” for the Taliban and/or Al Qaeda, or the rubric pertaining to being a “part of” either of these groups.110 There are also differing opinions as to when, and how long, a detainee’s relationship with the Taliban and/or Al Qaeda must have existed to justify detention, under either the “part of” or “substantial support” rationales.111 Differing judicial approaches can also be seen in the weight of evidence required to justify detention, as well as how to treat hearsay and evidence obtained in the face of coercion.112 This creates a situation where neither the government nor the detainee “can be sure of the rules of the road in the ongoing litigation, and the prospect that allocation of a case to a particular judge may prove dispositive on the merits can cut in either direction.”113 The Supreme Court has the opportunity to unify these divergent paths by finally ruling on questions such as the substantive scope of the government’s detention authority, the standard and weight of evidence required for continued detention, whether a relationship with the Taliban and/or Al Qaeda can be sufficiently vitiated, and the reliability of hearsay evidence and statements made under coercion.114

# 2AC

## Solvency

### AT Circumvention

**Obama believes he is constrained by statute – won’t circumvent**

Saikrishna **Prakash 12,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

## Adventurism

### 2AC: Flex

#### Oversight doesn’t determine flexibility---tech, elusive enemies and personnel outweigh

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Even if the promoters of unfettered executive power were justified in associating legal rules with ineffectiveness during emergencies, their single-minded obsession with circumventing America's allegedly "super-legalistic culture" n33 would need explaining. Let us stipulate, for the sake of argument, that civil liberties, due process, treaty obligations, and constitutional checks and balances make national-security crises somewhat harder to manage. If so, they would still rank quite low among the many factors that render the terrorist threat a serious one. None of them rivals in importance the extraordinary vulnerabilities created by technological advances, especially the proliferation of compact weapons of extraordinary destructiveness, in the context of globalized communication, transportation, and banking. None of them compares to a shadowy, dispersed, and elusive enemy that cannot be effectively deterred. And none of them is as constraining as the scarcity of linguistically and culturally knowledgeable personnel and other vital national-security assets, including satellite coverage of battle zones, which the government must allocate in some rational way in response to an obscure, evolving, multidimensional, and basically immeasurable threat.¶ The curious belief that laws written for normal times are especially important obstacles to defeating the terrorist enemy is based less on evidence and argument than on a hydraulic reading of the liberty-security relationship. One particular implication of the hydraulic model probably explains the psychological appeal of a metaphor that is patently inadequate descriptively: if the main thing preventing us from defeating the enemy is "too much law," then the pathway to national security is easy to find; all we need to do is to discard [\*318] the quaint legalisms that needlessly tie the executive's hands. That this comforting inference is the fruit of wishful thinking is the least that might be said.

#### Cred matters more than flexibility

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### Preserving the judicial right to due process enhances productive executive flex—unrestrained flex is worse for decision making

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

In the face of an unprecedented national-security threat, individual rights, far from invariably interfering with the effectiveness of the executive branch, may sometimes serve a vitally pragmatic function. Those who deny this possibility, in principle, misunderstand due process as a rigid restraint. Laws that discipline executive decision making should not be understood as laying down sharp lines between the permitted and the forbidden. Besides being a personal liberty, a suspect's right to challenge the evidence against him is simultaneously a duty of the government to provide a plausible rationale for its requests to apply coercive force. A right that is enforceable against the government is best understood not as a rigid limit, therefore, but as a rebuttable presumption. In this framework, rights demarcate provisional no-go zones into which government entry is prohibited unless and until an adequate justification can be given for government action. If the executive branch violates a right that it is usually required to respect, it has to give a reason why.¶ This is how legal rights contribute to a democratic culture of justification. A private right is neither a non-negotiable value nor an insurmountable barrier, but rather a trip-wire and a demand for government explanation of its actions. The rights of the accused are therefore the obligations of the prosecution. Before criminally punishing an individual, the executive must give reasons why such punishment is deserved before a judicial tribunal that can refuse consent. Here lies the difference between a constitutional executive and an absolute monarch: the former must give reasons for his actions, while the latter can simply announce tel est mon plaisir. n72¶ For analogous reasons, it is one-sided and even obscurantist to describe habeas corpus, on balance, as a gratuitous hindrance to effectiveness in counterterrorism. It can occasionally involve risks, but habeas does not "tie the government's hands." Like the traditional charge-or-release rule, habeas simply forces the executive to give plausible reasons for its actions. Such a right is a spur, therefore, not a rein. It may sometimes appear to be a roadblock, [\*333] obstructing effective action, but it is also an incentive to take reasonable care, aimed at increasing the likelihood of intelligent decision making even under enormous pressure and time constraints. Abolishing such incentives will not guarantee intelligent, focused, and effective government action.¶ Advocates of executive discretion in the war on terror are perfectly right to point out that legal restrictions on the executive can occasionally impede effective action. But their analysis is one-sided and too narrowly focused; they need to add that the absence of legal restrictions on the executive, in turn, can encourage irresponsible, profligate, and self-defeating choices. The genuine challenge of counterterrorism is to balance the two symmetrical risks, not to pretend that following rules is risky while circumventing rules is not.¶ An administration that is legally exempted from providing reasons for its actions also has a weak incentive to develop and implement a coherent overall policy. One reason why the United States was able to treat various terrorist suspects in its custody (Salim Ahmed Hamdan, Yaser Hamdi, David Hicks, John Walker Lindh, Khaled al-Masri, Zacarias Moussaoui, Jose Padilla, and Mohammad al-Qahtani) in incomprehensibly erratic and inconsistent ways may have been that it was never forced to explain publicly, or perhaps even behind closed doors, exactly what it was doing. The Bush administration also allocated scarce resources behind a veil of national-security secrecy - that is, without having to explain the security-security tradeoffs it was making. The outcomes, as they have gradually come to light, do not look even vaguely pragmatic.¶ That violations of personal liberty can, under some conditions, severely damage national security is also relevant to the dispute about trying terrorist suspects before Article III courts (or before ordinary military courts-martial). That national security could be damaged by open trials has been frequently alleged. And the possibility cannot be ruled out. But advocates of executive discretion rarely mention the potential damage to national security of closed or partially closed trials and the potential strategic benefits of open and visibly fair trials. This is unfortunate because a fully public trial of mass murdering zealots, using visibly fair procedures, would provide an exceptional opportunity to rivet the attention of the world on the heinous acts and twisted mentality of the jihadists; this is something that no procedure that looks rigged, where Muslim defendants appear in any way railroaded, can possibly do.¶ Transparent judicial procedures, although they may be costly along some dimensions, can also help convince domestic and foreign onlookers that decisions of guilt and innocence are being made responsibly, not arbitrarily. They can vindicate tough counterterrorism policies and refute the allegation that authorities are exaggerating the threat to national security. Public willingness to cooperate with counterterrorism efforts depends on public confidence in the essential fairness of law-enforcement authorities. n73 Such [\*334] confidence is especially vital for managing a threat, such as Islamist terrorists with access to WMD, that is likely to endure for decades, if not longer.¶ Even more, the transcripts of past public trials of Islamic terrorists have provided a trove of open-source and relatively reliable information that independent scholars and analysts have used to help the country make sense of the motives and operational techniques of the enemy. Many dots will remain unconnected if such information is reserved for the exclusive perusal of a few individuals with high security clearances operating in isolation from outside criticism.¶ Yes, wholly public trials may possibly expose the sources and methods of U.S. counterterrorism agencies. n74 But the alternative, trials conducted on the basis of undisclosed information, will likely cause equivalent damage, due to the perverse incentives that they engender. Once again, the tacit tradeoff here involves security versus security. One predictable motive for reluctance to hold a trial in open court might be the embarrassing untrustworthiness of sources and shoddiness of investigative methods. Expecting a closed trial, in effect, investigators and prosecutors have a much weaker incentive to take reasonable care to ferret out reliable information and to use dependable techniques for ascertaining the facts. This is how executive discretion can erode executive professionalism. If terrorism investigators and prosecutors fail to take reasonable care, they will then need secrecy not for the respectable reason that secrecy protects security, but for the discreditable reason that secrecy conceals the illicit shortcuts of investigators who are subjectively convinced, on no compelling grounds, that their guesses and hunches are always totally right. Those who imagine the possible security benefits of such deviations from ordinary standards of due process are not completely mistaken. They have simply over-generalized a partial perspective, unjustifiably ignoring the equally likely possibility of security losses.¶ Subjectively, without any doubt, a president and his entourage can experience congressional and judicial oversight as an annoying hindrance to free and "flexible" action, just as a prosecutor can experience independent trial judges, discovery rules, defense attorneys, and public trials as obstacles to putting away "obviously guilty" suspects. But rules can be subjectively experienced as disabling restraints when, on balance, they actually serve to facilitate adaptation to reality. That is how shield laws and whistleblower laws ideally function, for example. n75 Double-blind tests, as mentioned earlier, work [\*335] in a similar way, allowing the system of scientific research to make progress and adapt to reality, even if individual researchers feel to some extent hemmed in by the system's constraints.¶ The executive branch's obligation to give reasons for its actions is built into the American legal system, both at the micro-level of criminal trials and at the macro-level of checks and balances. To hinder the fatal slide from flexibility to arbitrariness, from expediency to recklessness, the U.S. legal and constitutional system requires the executive branch to test the factual premises of the use of force in some sort of adversarial process. This is the most important way in which due process can enhance governmental performance.¶ To illustrate how some form of adversarial process might have been useful in the war on terror, we need only consider the possibility that either a serious congressional inquiry before going to war in Iraq or a semi-public trial of Khalid Sheikh Mohammed would have discredited the myth of an Osama-Saddam connection, one of the principal delusions that pumped up public support for a misbegotten war.¶ And what were the consequences of brushing aside the presumption of innocence and worries about mistaken identity at Guantanamo Bay, where hundreds of detainees have now spent seven years in administrative detention without the detaining authority having to explain why? By failing to provide even perfunctory individualized hearings, that is, by failing to select with minimal care among individuals delivered for a fee to the American authorities in Afghanistan and elsewhere, the U.S. government (I exaggerate to make my point) sent the first 700 "stunt doubles" who came into its custody to the detention-and-interrogation center in Cuba, thereby misspending our scarce interrogation capacities on individuals of minimal or no intelligence value. n76 And Guantanamo is not the only situation in which jettisoning traditional rules for presumed tactical gains has proved strategically self-defeating.¶ As Shakespeare's Iago and Othello memorably illustrate, pre-constitutional and therefore legally unconstrained power wielders are notoriously vulnerable to being manipulated by disinformation. Today's advocates of a "monarchical" swelling of presidential discretion tend to underestimate this particular cost of acting with excessive secrecy and [\*336] dispatch. n77 Besides contracting individual rights, a loosening of evidentiary standards can simultaneously harm national security by encouraging liars to clog the system with disinformation and false leads and discouraging honest people from reporting what they observe. If authorities begin shipping suspects to prison camps, where they are held incommunicado, without double-checking the alleged evidence, they unwittingly create incentives for malicious or self-serving witnesses to swarm out of the woodwork. (Call this "the elasticity of supply" of informants with hidden agendas.) Contrariwise, well-intentioned people will hesitate to communicate their observations of suspicious activity next door, lest an innocent neighbor be incarcerated for years on the basis of misperceptions that could easily have been dispelled in court.

## T- Judicial Restriction

#### suspension clause is a restriction on WPA

Natelson 8/19/13 (After a quarter of a century as Professor of Law at the University of Montana, he recently retired to work full time at Colorado's Independence Institute.) “Where is the Power to Suspend Habeas Corpus?” http://blog.tenthamendmentcenter.com/2013/08/where-is-the-power-to-suspend-habeas-corpus/#.UmL\_E5TwIic

The Constitution’s Suspension Clause (Art. I, Section 9, cl. 2) limits when the writ of habeas corpus can be suspended. But the Constitution doesn’t seem to grant the federal government power to suspend the writ in the first place. Why not? And why limit a power never given?¶ In an Aug. 17 Wall Street Journal piece, constitutional law professor Nicholas Quinn Rosenkrantz infers that Congress has the sole suspension authority from the structure of the constitutional text. He writes:¶ “Since the Suspension Clause appears in Article I of the Constitution, which is predominately about the powers of Congress, there is a strong argument that only Congress can suspend the habeas writ.”¶ He concludes that when President Abraham Lincoln suspended the writ, he probably intruded on Congress’s prerogative, and thereby exceeded his constitutional authority. (Professor Rosenkrantz also gives Lincoln credit for trying to cure the constitutional defect.)¶ This is largely correct, but the organization of the text is not the sole reason. When read in legal and historical context, the language of the Constitutiondoes give the federal government authority to suspend the writ.¶ Here’s why: At the time of the Founding, suspending habeas was a recognized incident of war powers—repeatedly resorted to both by Parliament and by the Continental Congress. When the Constitution granted Congress authority to declare war, this grant carried with it the incidental power to suspend the writ. (The Necessary and Proper Clause confirmed this.) For more on that, see my book The Original Constitution: What It Actually Said and Meant, pp. 106-07.¶ The President’s power to serve as commander-in-chief also carried with it incidental authority to suspend the writ. (The Necessary and Proper Clause doesn’t apply to the President, but for other reasons the doctrine of incidental powers does.) However, the President’s suspension authority was limited to the actual theater of war. See p. 134.¶ Thus, Professor Rosenkranz was correct to conclude that Lincoln exceeded this authority by suspending the writ over large areas outside the war theater.

#### 2. We meet – Habeas corpus is a judicial restriction

Justice Kennedy ‘8 (Speaking in the Context of Bomedine v. Bush which dealt with presidential authority to deny HC to indef detentions) “LAKHDAR BOUMEDIENE, ET AL., PETITIONERS 06–1195 v. GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, ET AL. KHALED A. F. AL ODAH, NEXT FRIEND OF FAWZI KHALID ABDULLAH FAHAD AL ODAH, ET AL., PETITIONERS 06–1196 v. UNITED STATES ET AL. ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT” http://www.law.cornell.edu/supct/pdf/06-1195P.ZO

Our basic charter cannot be contracted away like this. The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply. Even when the United States acts outside its borders, its powers are not “absolute and unlimited” but are subject “to such restrictions as are expressed in the Constitution.” Murphy v. Ramsey, 114 U. S. 15, 44 (1885). Abstaining from questions involving formal sovereignty and territorial governance is one thing. To hold the political branches have the power to switch the Constitution on or off at will is quite another. The former position reflects this Court’s recogni tion that certain matters requiring political judgments are best left to the political branches. The latter would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not this Court, say “what the law is.” Marbury v. Madison, 1 Cranch 137, 177 (1803). These concerns have particular bearing upon the Suspension Clause question in the cases now before us, for the writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of powers. The test for determining the scope of this provision must not be subject to manipulation by those whose power it is designed to restrain.

#### 3. Al-Maqaleh v. gates decision would be ruled on the grounds that it violates the suspension clause

Nelson ’11 (Luke - B.A., University of Minnesota Duluth, 2007; J.D. Candidate, University of New Hampshire School of Law, 2011) “Territorial Sovereignty and the Evolving Boumediene Factors: Al Maqaleh v. Gates and the Future of Detainee Habeas Corpus Rights” http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-nelson.pdf

b. Executive Manipulation A second factor that deserves inclusion into the Boumediene test would analyze whether the executive branch transferred the detainee into an active theater of war following apprehension. This factor would guard against potential executive manipulation by transferring detainees into an active theater of war, thereby distorting Boumediene’s third factor—practical obstacles in extending the Suspension Clause. Interestingly, the D.C. Circuit in Al Maqaleh even invited the Supreme Court to modify the three-factor test by adding “manipulation by the Executive.”130 Maintaining the current three-factor test risks executive manipulation by transferring detainees beyond the reach of the Suspension Clause. In Boumediene, Justice Kennedy briefly noted that, had Guantanamo Bay been located within an active theater of war, the practical obstacles would weigh against extending the Suspension Clause protections to the detainees.131 In Al Maqaleh, all four Bagram detainees were allegedly captured beyond Afghanistan and later transferred into the Afghanistan theater.132 Relying on Justice Kennedy’s statement in Boumediene, the D.C. Circuit held that the third factor weighed “overwhelmingly” in favor of not extending the Suspension Clause to the Bagram detainees because Bagram remained in an active theater of war.133 Thus, once the government transfers a detainee into an active theater, the practical-obstacles factor, considered a “primary driver” under the habeas test,134 is greatly affected.

#### CI - Restriction means a limit or qualification, and includes conditions on action

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition."). P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

## 2AC: Risk K

#### Causal chains in the 1AC verify our truth claims – assumptions about the world are validated by the results of our research and analysis – our form of knowledge does not produce value claims it is the result of validated value claims

Fluck, PhD in International Politics from Aberystwyth, 2010 (Matthew, November, “Truth, Values and the Value of Truth in Critical International Relations Theory” Millennium Journal of International Studies, Vol 39 No 2, SagePub)

Critical Realists arrive at their understanding of truth by inverting the post-positivist attitude; rather than asking what knowledge is like and structuring their account of the world accordingly, they assume that knowledge is possible and ask what the world must be like for that to be the case.36 This position has its roots in the realist philosophy of science, where it is argued that scientists must assume that the theoretical entities they describe – atoms, gravity, bacteria and so on – are real, that they exist independently of thoughts or discourse.37 Whereas positivists identify causal laws with recurrent phenomena, realists believe they are real tendencies and mechanisms. They argue that the only plausible explanation for the remarkable success of science is that theories refer to these real entities and mechanisms which exist independently of human experience.38 Against this background, the Critical Realist philosopher Roy Bhaskar has argued that truth must have a dual aspect. On the one hand, it must refer to epistemic conditions and activities such as ‘reporting judgements’ and ‘assigning values’. On the other hand, it has an inescapably ontic aspect which involves ‘designating the states of affairs expressed and in virtue of which judgements are assigned the value “true’’’. In many respects the epistemic aspect must dominate; we can only identify truth through certain epistemic procedures and from within certain social contexts. Nevertheless, these procedures are oriented towards independent reality. The status of the conclusions they lead us to is not dependent on epistemic factors alone, but also on independently existing states of affairs. For this reason, Bhaskar argues that truth has a ‘genuinely ontological’ use.39 Post-positivists would, of course, reply that whilst such an understanding of truth might be unproblematic in the natural sciences, in the social sciences the knower is part of the object known. This being the case, there cannot be an ontic aspect to the truths identified. Critical Realists accept that in social science there is interaction between subject and object; social structures involve the actions and ideas of social actors.40 They add, however, that it does not follow that the structures in question are the creations of social scientists or that they are simply constituted through the ideas shared within society at a given moment.41 According to Bhaskar, since we are born into a world of structures which precede us, we can ascribe independent existence to social structures on the basis of their pre-existence. We can recognise that they are real on the basis of their causal power – they have a constraining effect on our activity.42 Critical Realists are happy to agree to an ‘epistemological relativism’ according to which knowledge is a social product created from a pre-existing set of beliefs,43 but they maintain that the reality of social structures means that our beliefs about them can be more or less accurate

– we must distinguish between the way things appear to us and the way they really are. There are procedures which enable us to rationally choose between accounts of reality and thereby arrive at more accurate understandings; epistemological relativism does not preclude judgemental rationalism.44 It therefore remains possible to pursue the truth about social reality.

## 2AC: XO

#### No precedence, congress and courts can overturn or eliminate executive orders.

William G. Howell, Associate Prof Gov Dep @ Harvard 2005(Unilateral Powers: A Brief

Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Links to politics – immense opposition to bypassing debate

Hallowell 13

(Billy Hallowell, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/, KB)

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Exec fiat is a voter---aff authors assume the exec WON’T act---no comparative lit kills aff ground and real world education

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

## 2AC: Immigration

#### 1. CIR is DOA – Shutdown Drained His PC and Increased Congressional Partisanship

By Amie Parnes 10/18/13 05:30 AM ET Obama’s hollow debt victory http://thehill.com/homenews/administration/329219-obamas-hollow-debt-victory#ixzz2i5oBnwAU

President Obama’s victory over congressional Republicans is likely to have a short shelf life.¶ Even the president’s staunchest allies are skeptical that his triumph in the debt-ceiling battle has produced much capital for the White House to spend on priorities like immigration reform. ¶ “I don’t know that this changes anything,” one former senior administration official said. “I don’t think the president has new mojo from this.”¶ “What did they really do? They brought the country to the same place where we were a few weeks ago,” the former official said. “This isn’t like he passed healthcare. He ended a government shutdown and raised the debt limit. Those are routine items. It’s not like he campaigned on it.”¶ Obama took his second victory lap in two days Thursday on the heels of the bipartisan deal, chiding congressional Republicans for engaging in political brinksmanship with the economy on the day the government reopened after a 16-day shutdown.¶ He also blamed the GOP — as he has in recent days — for bringing the nation dangerously close to defaulting on the debt limit. ¶ “You don’t like a particular policy or a particular president, then argue for your position,” Obama said in the State Dining Room at the White House. “Go out there and win an election.”¶ “Push to change it,” the president said. “But don’t break it.”¶ While he rallied White House allies with the sentiment, he also angered Republicans, who felt it was a sucker punch.¶ “The president’s admonishment ignores his own shortcomings,” said one senior Republican adviser working on Capitol Hill. “The fact is, he shares equal blame for the shutdown. It’s not as if the stalemate was created overnight. The shutdown is fallout from Obama’s lack of outreach and his ineffective approach to being a leader.”¶ The GOP adviser — who acknowledged defeat in the fight — said Obama’s admonition was “entirely void of the substance of the debate and designed to demonize legitimate opposition.¶ “[It] totally ignored was the president’s own past opposition to raising the debt ceiling and the months leading to this episode when the White House could have been working with Congress to avoid such a crisis,” the adviser said.¶ Republican strategist Ron Bonjean said he didn’t expect relations between Obama and Republicans to improve.¶ “No one has political capital at this point to really accomplish major legislative initiatives by the end of this year,” Bonjean said. “It’s highly unlikely that any comprehensive immigration reform bill would be able to move through the House after such a bruising fight over the shutdown and the debt ceiling.”

#### 2. Shutdown Concessions Strengthened GOP Gridlock – Obama Gained Zero Momentum From the Win

By Tim Stanley US Historian 10/16 October 16th, 2013 US debt ceiling crisis – Barack Obama has won the shutdown. His prize is a lame duck presidency http://blogs.telegraph.co.uk/news/timstanley/100241757/us-debt-ceiling-crisis-barack-obama-has-won-the-shutdown-his-prize-is-a-lame-duck-presidency/

Second, what has Obama really won? He keeps his precious healthcare reform and he gets government open again – but tomorrow morning he will still have the same gridlocked political system that he had the night before. The shutdown is a rare example of him winning, but remember that this lame duck president has not only had a very simple (and, frankly, inoffensive) gun control bill killed in the Senate but was so spooked by bad poll numbers that he tried to dump responsibility for military action in Syria onto the Congress – before quietly dropping the idea altogether. Any thought that the shutdown payoff will be that he can sail an immigration reform package comfortably through Congress is pure fantasy. This is a broken presidency living out its last few years either holding off Republican attacks or lazily cruising the country on some pointless, endless, fatuous campaign trail. Obama's administration is politically bankrupt.¶ The talk for the next week will be about how the Tea Party is dead and Republicans must elect a politically correct, middle-of-the-road, unimaginative, establishment, compromising candidate in 2016 (preferably a singing sloth, cos the polls show that Americans just love those). But the reality is that US politics right now is a mess for both Left and Right, and the country is stuck in partisan limbo until the 2014 midterms or even the 2016 presidential election. This is not a Republican problem, it is an American problem.

#### 3. Won’t pass—House blocking, Boehner weakness, not enough time

Fabian, 10/16/13(“The House Can't Handle Immigration Reform [Analysis]”, http://abcnews.go.com/ABC\_Univision/house-handle-immigration-reform-analysis/story?id=20587483)//Holmes

A Divided Party The House has struggled to build majorities around bills that can actually become law in a divided capital. Since last year, House leaders have failed to pass their “Plan B” to avert the fiscal cliff, a farm bill, and their last-ditch gambit to resolve the shutdown and debt ceiling, as NBC’s “First Read” noted. The same goes for immigration. After the Senate passed a sweeping immigration overhaul with a bipartisan vote in June, House GOP leaders convened a “special conference” on the issue. But they emerged from the meeting with no clear plan upon which a majority of members could agree. In the meantime, none of the small-bore immigration bills favored by Republicans have seen a vote on the floor of the House. A bipartisan Gang of lawmakers who were drafting a broad immigration overhaul broke apart last month. And a House Democratic bill that closely mirrors the Senate’s bill is going nowhere. Four months after that special conference, an immigration bill that could pass the House looks as out of reach as ever. Boehner’s Weakness House Speaker John Boehner (R-Ohio) has made every effort to placate rebellious Tea Party elements within the House GOP, yet he has still struggled to form majorities around major pieces of legislation. That’s been the main reason for the holdup on immigration. The Senate’s immigration bill likely has the votes -- between Democrats and a handful of Republicans -- to pass the House. But Boehner has refused to violate the unwritten “Hastert Rule," under which legislation must have the support of the majority of the majority to come to the floor. That’s because most House Republicans likely oppose a path to citizenship for undocumented immigrants. Pro-immigration advocates have pointed out that Boehner has broken the Hastert Rule on at least three key votes this year. They argue that the Speaker may do it again, especially to pass a proposal that’s backed by business interests and party strategists who believe it’s necessary to start winning back Latino voters. Boehner may even violate it to end the current fiscal crisis. But yesterday’s failure on the fiscal crisis further weakened Boehner’s hand within his conference. That makes it even less likely that he will roll them over to pass a bill that’s at the top of President Obama’s list of domestic priorities. Time Supporters of immigration reform have long hoped to pass a bill by the end of next year, fearing that the process could stall in 2014, an election year. But that looks as unlikely as ever.

#### 4. No backlash

Christina Wells. 2004. Missouri Law Review. 69 Mo. L. Rev. 903]

The judicial system is a powerful institution. In the context of resolving constitutional issues, many people, the Court included, believe that the judicial system has the final (and, thus, most powerful) say. [227](http://www.lexis.com/research/retrieve?_m=645eb78e5a4ca40f9b39fd897b3d69ed&docnum=8&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=af713d8d0144550c03d29846d5bce179&focBudTerms=&focBudSel=all" \l "n227#n227" \t "_self) To be sure, executive officials, past and present, have asserted that national security matters are particularly within the executive branch's ambit, suggesting that they do not share this view of the Court's legitimacy. [228](http://www.lexis.com/research/retrieve?_m=645eb78e5a4ca40f9b39fd897b3d69ed&docnum=8&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=af713d8d0144550c03d29846d5bce179&focBudTerms=&focBudSel=all" \l "n228#n228" \t "_self) Even so, executive officials rarely flout the Court's authority, instead preferring to enlist the Court's support (which the Court often willingly provides). Executive officials might prove more willing to deny the Court's authority if it engaged in more rigorous review of executive decisions regarding national security. However, popular support for the institution of judicial review would likely preclude outright executive defiance [229](http://www.lexis.com/research/retrieve?_m=645eb78e5a4ca40f9b39fd897b3d69ed&docnum=8&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=af713d8d0144550c03d29846d5bce179&focBudTerms=&focBudSel=all" \l "n229#n229" \t "_self) and could eventually spur acceptance. This might be especially true if the Court's constitutional standards of review focused more explicitly on decision-making processes, thus avoiding the impression that the Court was substituting its judgment for the executive's.

#### Plan’s bipartisan---previous proposals prove support

Nick Sibilla 12, "Bipartisan effort to ban indefinite detention, amend the NDAA", May 18, www.constitutioncampaign.org/blog/?p=7479#.UjHhXz8uhuk

Democrats and Tea Party Republicans are advocating a new proposal to ban indefinite detention on American soil. After President Obama signed the National Defense Authorization Act (NDAA) last year, anyone accused of being a terrorist, committing any “belligerent act” or even providing “material support,” can now be detained indefinitely by the military without a trial. This includes American citizens.¶ Fortunately, a bipartisan coalition is working to stop the NDAA. Congressmen Adam Smith (D-WA), a Ranking Member of the House Armed Services Committee, and Justin Amash (R-MI), who Reason magazine called “the next Ron Paul,” have sponsored an amendment to the latest defense authorization bill, currently on the House floor.¶ If adopted, the Smith-Amash Amendment would make three significant changes to the NDAA. First, it would amend Section 1021 (which authorizes indefinite detention) to ensure that those detained will not be subject to military commissions, but civilian courts established under Article III of the Constitution. As Congressman Smith put it, this would “restore due process rights.”¶ Second, the Smith-Amash Amendment would ban “transfer to military custody:”¶ No person detained, captured, or arrested in the United States, or a territory or possession of the United States, may be transferred to the custody of the Armed Forces for detention…¶ Finally, their amendment would repeal Section 1022 of the NDAA, which mandates military custody for those accused of foreign terrorism.¶ Both Smith and Amash have criticized the NDAA. Amash blasted the NDAA as “one of the most anti-liberty pieces of legislation of our lifetime.” In a letter urging his Republican colleagues to support the amendment, Amash writes:¶ A free country is defined by the rule of law, not the government’s whim. Americans demand that we protect their right to a charge and trial.¶ Meanwhile, in an interview with The Hill, Smith was concerned about the potential abuses of power:¶ It is very, very rare to give that amount of power to the president [and] take away any person’s fundamental freedom and lock them up without the normal due process of law…Leaving this on the books is a dangerous threat to civil liberties.¶ The Smith-Amash Amendment is expected to be voted on later this week. So far, it has 60 co-sponsors in the House. Meanwhile, Senators Mark Udall (D-CO) and Patrick Leahy (D-VT) have introduced a similar bill in the Senate.

#### 6. Courts shield

Stoutenborough et al. 6 (James, Political Science Dept @ Utah, Reassessing the Impact of Supreme Court Decisions on Public Opinion, Political Research Quarterly, p. 419)

In many cases, courts have been empowered by and served the interests of other political actors. While this undermines the countermajoritarian difficulty as an empirical hypothesis, it is not at all reassuring from a democratic perspective. Judicial review can provide an opportunity for elected political actors to evade responsibilities or to pursue policies while evading electoral consequences. Such actions may enhance or enable domination by letting those actors pursue policies that might lead to domination without suffering electoral consequences. The possibility that judicial review can provide another outlet that permits legislators to "run from daylight"85 and effect important policy changes with a minimum of public scrutiny is a serious concern, and may especially contribute to domination by powerful economic elites. An additional concern is that judicial review can have the perverse effect of making legislators less attentive to their constitutional responsibilities, as they may vote for legislation they believe to be unconstitutional under the assumption that the courts will correct their mistake.86

#### 8. Political capital’s irrelevant and winners win—

Hirsch 2-7-13. Michael Hirsh “There’s No Such Thing as Political Capital.” chief correspondent for National Journal. He also contributes to 2012 Decoded. Hirsh previously served as the senior editor and national economics correspondent for Newsweek, based in its Washington bureau. [http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207]

The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### 9. Detention debate in congress inevitable- NDAA vote this fall

Obsburn 9/11 (C. Dixon Obsburn Law and Security ProgramTwelve Years Later: 9/11 Demands Justice, Not GTMO http://www.humanrightsfirst.org/2013/09/11/twelve-years-later-911-demands-justice-not-gtmo/)

Congress has taken note.  The Senate is set to debate Guantanamo again when the National Defense Authorization Act hits the Senate floor this fall.  The bill reported out of committee removes restrictions on transfers from Guantanamo to the United States for prosecution, incarceration or medical treatment.  The bill also permits transfers for purposes of repatriation or resettlement so long as the Secretary of Defense notifies Congress and takes steps to mitigate the risks associated with transfers.  There are some fresh factors that may convince Members of Congress that it is finally time to close Guantanamo.

#### 10. Hedges appeal coming out- the court will rule on INDEFINITE DETENTION

RT 9/3 (Supreme Court to rule on fate of indefinite detention for Americans under NDAA http://rt.com/usa/ndaa-scotus-hedges-suit-359/)

The United States Supreme Court is being asked to hear a federal lawsuit challenging the military’s legal ability to indefinitely detain persons under the National Defense Authorization Act of 2012, or NDAA. According to Pulitzer Prize-winning journalist Chris Hedges — a co-plaintiff in the case — attorneys will file paperwork in the coming days requesting that the country’s high court weigh in on Hedges v. Obama and determine the constitutionality of a controversial provision that has continuously generated criticism directed towards the White House since signed into law by President Barack Obama almost two years ago and defended adamantly by his administration in federal court in the years since.

#### 11. No legislation and Mexico reform solves

CSM 9/8 “Mexico's reforms are key to US immigration reform” http://www.csmonitor.com/Commentary/the-monitors-view/2013/0908/Mexico-s-reforms-are-key-to-US-immigration-reform

The US Congress returns to work this week with little prospect of passing a proposed overhaul of the nation’s immigration laws – and not because Syria and budget battles have taken the spotlight. No, the main reason lies in a common fear that more Mexicans will illegally cross the border if the ones already in the United States are given a path to citizenship. Is that fear founded? Not if one sees hope in the startling progress made in Mexico over the past nine months in ending partisan gridlock. An unexpected multiparty political consensus, called the Pact for Mexico and forged last December after a presidential election, has passed one reform after another with the plan to lift nearly half of Mexicans out of poverty. The latest proposed reform, a revamp of tax policy, was released Sunday by President Enrique Peña Nieto even as tens of thousands of Mexicans protested the next big reform, an opening of the state-run energy industry to foreign investment. Mexico’s Congress has already passed several key reforms, breaking entrenched powers in public education, broadcasting, and telecommunications while removing legal immunity for officials for criminal prosecution. Mr. Peña Nieto calls these steps “transformational” and wisely set a deadline to finish them by the end of the year. They are aimed at raising economic growth to 6 percent from the current 1 to 2 percent while increasing revenue to build a strong social safety net. RELATED: Mexico as model for US political reform? Poor growth has been the main driver of poor Mexicans to the US – despite the strong patriotism among Mexicans. The reforms are designed to buttress that love of country so more Mexicans don’t flee – or join a criminal drug gang. What helps account for this surprising political momentum that emerged 12 years after full democracy was restored in Mexico? Unlike in Washington, top elected leaders have formed bonds of trust for the sake of the country. They saw a political power vacuum being filled by violent drug gangs. “We’ve all gotten to know each other very well,” Aurelio Nuño, chief of staff to Peña Nieto, told The Wall Street Journal. “You come to see each other as people, not just politicians.” A big test will come in passing energy reforms, which require a constitutional change. Last March, Peña Nieto persuaded the ruling Institutional Revolutionary Party to go along with such change – despite the PRI’s history in nationalizing the oil industry in 1938. The shift helps challenge the notion that Mexico’s identity is wrapped up in maintaining the government oil monopoly, Petróleos Mexicanos, or Pemex. RELATED: Mexico's role in US immigration debate Pemex faces a bleak future in providing the government with revenue unless it brings in foreign expertise to tap the country’s large reserves of deep-water petroleum and onshore shale gas. Without such reform, Mexico could become a net importer of oil by 2020. It already imports almost half its gasoline, despite reserves nearly as large as Kuwait’s. Lifting up the poorest Mexicans may take years. Fewer than half of young people now finish high school. But the country has made a bold and urgent start. These reforms are the missing part of the “comprehensive” immigration reform in the US. The issue of border security – which is built on fear of more illegal immigration – may be less of an issue if Mexico continues its courageous reforms.

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#### Won’t pass—House blocking, Boehner weakness, not enough time

Fabian, 10/16/13(“The House Can't Handle Immigration Reform [Analysis]”, http://abcnews.go.com/ABC\_Univision/house-handle-immigration-reform-analysis/story?id=20587483)//Holmes

A Divided Party The House has struggled to build majorities around bills that can actually become law in a divided capital. Since last year, House leaders have failed to pass their “Plan B” to avert the fiscal cliff, a farm bill, and their last-ditch gambit to resolve the shutdown and debt ceiling, as NBC’s “First Read” noted. The same goes for immigration. After the Senate passed a sweeping immigration overhaul with a bipartisan vote in June, House GOP leaders convened a “special conference” on the issue. But they emerged from the meeting with no clear plan upon which a majority of members could agree. In the meantime, none of the small-bore immigration bills favored by Republicans have seen a vote on the floor of the House. A bipartisan Gang of lawmakers who were drafting a broad immigration overhaul broke apart last month. And a House Democratic bill that closely mirrors the Senate’s bill is going nowhere. Four months after that special conference, an immigration bill that could pass the House looks as out of reach as ever. Boehner’s Weakness House Speaker John Boehner (R-Ohio) has made every effort to placate rebellious Tea Party elements within the House GOP, yet he has still struggled to form majorities around major pieces of legislation. That’s been the main reason for the holdup on immigration. The Senate’s immigration bill likely has the votes -- between Democrats and a handful of Republicans -- to pass the House. But Boehner has refused to violate the unwritten “Hastert Rule," under which legislation must have the support of the majority of the majority to come to the floor. That’s because most House Republicans likely oppose a path to citizenship for undocumented immigrants. Pro-immigration advocates have pointed out that Boehner has broken the Hastert Rule on at least three key votes this year. They argue that the Speaker may do it again, especially to pass a proposal that’s backed by business interests and party strategists who believe it’s necessary to start winning back Latino voters. Boehner may even violate it to end the current fiscal crisis. But yesterday’s failure on the fiscal crisis further weakened Boehner’s hand within his conference. That makes it even less likely that he will roll them over to pass a bill that’s at the top of President Obama’s list of domestic priorities. Time Supporters of immigration reform have long hoped to pass a bill by the end of next year, fearing that the process could stall in 2014, an election year. But that looks as unlikely as ever.

Obama got no momentum

By Tim Stanley US Historian 10/16 October 16th, 2013 US debt ceiling crisis – Barack Obama has won the shutdown. His prize is a lame duck presidency http://blogs.telegraph.co.uk/news/timstanley/100241757/us-debt-ceiling-crisis-barack-obama-has-won-the-shutdown-his-prize-is-a-lame-duck-presidency/

Second, what has Obama really won? He keeps his precious healthcare reform and he gets government open again – but tomorrow morning he will still have the same gridlocked political system that he had the night before. The shutdown is a rare example of him winning, but remember that this lame duck president has not only had a very simple (and, frankly, inoffensive) gun control bill killed in the Senate but was so spooked by bad poll numbers that he tried to dump responsibility for military action in Syria onto the Congress – before quietly dropping the idea altogether. Any thought that the shutdown payoff will be that he can sail an immigration reform package comfortably through Congress is pure fantasy.

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This is a broken presidency living out its last few years either holding off Republican attacks or lazily cruising the country on some pointless, endless, fatuous campaign trail. Obama's administration is politically bankrupt.¶ The talk for the next week will be about how the Tea Party is dead and Republicans must elect a politically correct, middle-of-the-road, unimaginative, establishment, compromising candidate in 2016 (preferably a singing sloth, cos the polls show that Americans just love those). But the reality is that US politics right now is a mess for both Left and Right, and the country is stuck in partisan limbo until the 2014 midterms or even the 2016 presidential election. This is not a Republican problem, it is an American problem.

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In many cases, courts have been empowered by and served the interests of other political actors. While this undermines the countermajoritarian difficulty as an empirical hypothesis, it is not at all reassuring from a democratic perspective. Judicial review can provide an opportunity for elected political actors to evade responsibilities or to pursue policies while evading electoral consequences. Such actions may enhance or enable domination by letting those actors pursue policies that might lead to domination without suffering electoral consequences. The possibility that judicial review can provide another outlet that permits legislators to "run from daylight"85 and effect important policy changes with a minimum of public scrutiny is a serious concern, and may especially contribute to domination by powerful economic elites. An additional concern is that judicial review can have the perverse effect of making legislators less attentive to their constitutional responsibilities, as they may vote for legislation they believe to be unconstitutional under the assumption that the courts will correct their mistake.86

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