



THE GREAT WRIT WRONGED

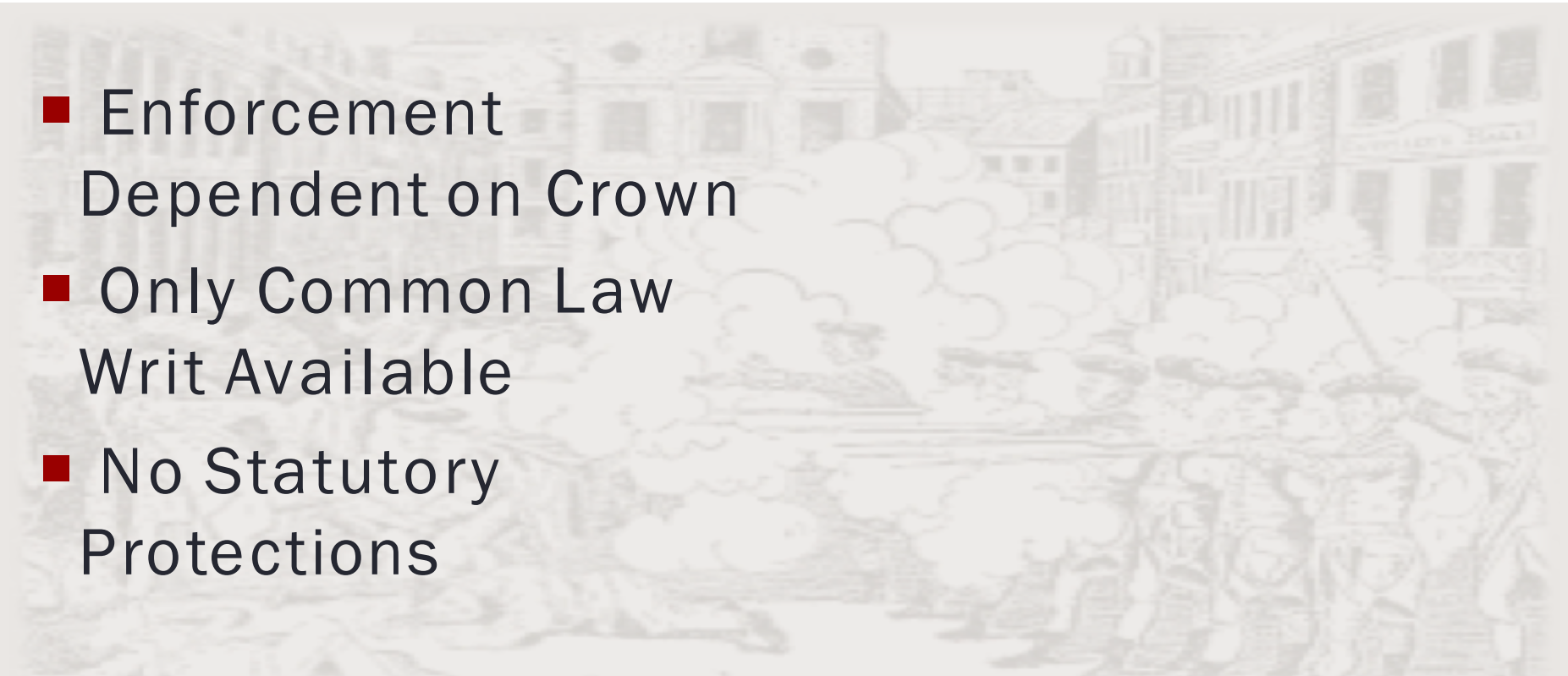
Joe Wlos and
Prof. Moyer
Summer 2013

HISTORY OF *HABEAS CORPUS*

- Latin: “You May Have the Body”
- Importance in Common Law
 - Failed Enforcement in 1640
 - Successful *Habeas Corpus* Act of 1679
- Jurisdiction and Suspension



HABEAS IN COLONIAL AMERICA

- 
- Enforcement
Dependent on Crown
 - Only Common Law
Writ Available
 - No Statutory
Protections

“WE ARE SLAVES.”

Cotton Mather | Massachusetts

**“THE PRIVILEGE OF THE
WRIT OF *HABEAS*
CORPUS SHALL NOT BE
SUSPENDED, UNLESS
WHEN IN CASES OF
REBELLION OR INVASION
THE PUBLIC SAFETY MAY
REQUIRE IT.”**
– U.S. CONSTITUTION
ARTICLE I, SECTION 9

Language
submitted by
Gouverneur*
Morris of PA

*Not Actually a
Governor

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graph TD; A["Congress Suspends Writ for Public Safety"] --> B["President Arrests Without Habeas"]; B --> C["Courts Determine If Suspension Constitutional"]; C --> A;
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Congress
Suspends Writ
for Public
Safety

President
Arrests
Without
Habeas

Courts
Determine If
Suspension
Constitutional


Suspension
Process
Envisioned by
the Framers

HABEAS SUSPENSION PRE-9/11

- Washington Refused for Whiskey Rebellion
- Jefferson Denied during Burr Conspiracy
- Lincoln Unilaterally Suspends in 1861
- Grant Suspends to Combat Ku Klux Klan
- Two Groups of Nazis Denied during WWII



THE BUSH ADMINISTRATION

- 
- All Suspected Terrorists Tried by Military Commission
 - “Dared” Supreme Court to Intervene
 - 3 Cases in 2004

“ALL NECESSARY ... FORCE”

Authorization for Use of Military Force | 2001

SUPREME COURT IN 2004



Rasul v. Bush

Foreign Citizens Held
at U.S. Base in Cuba

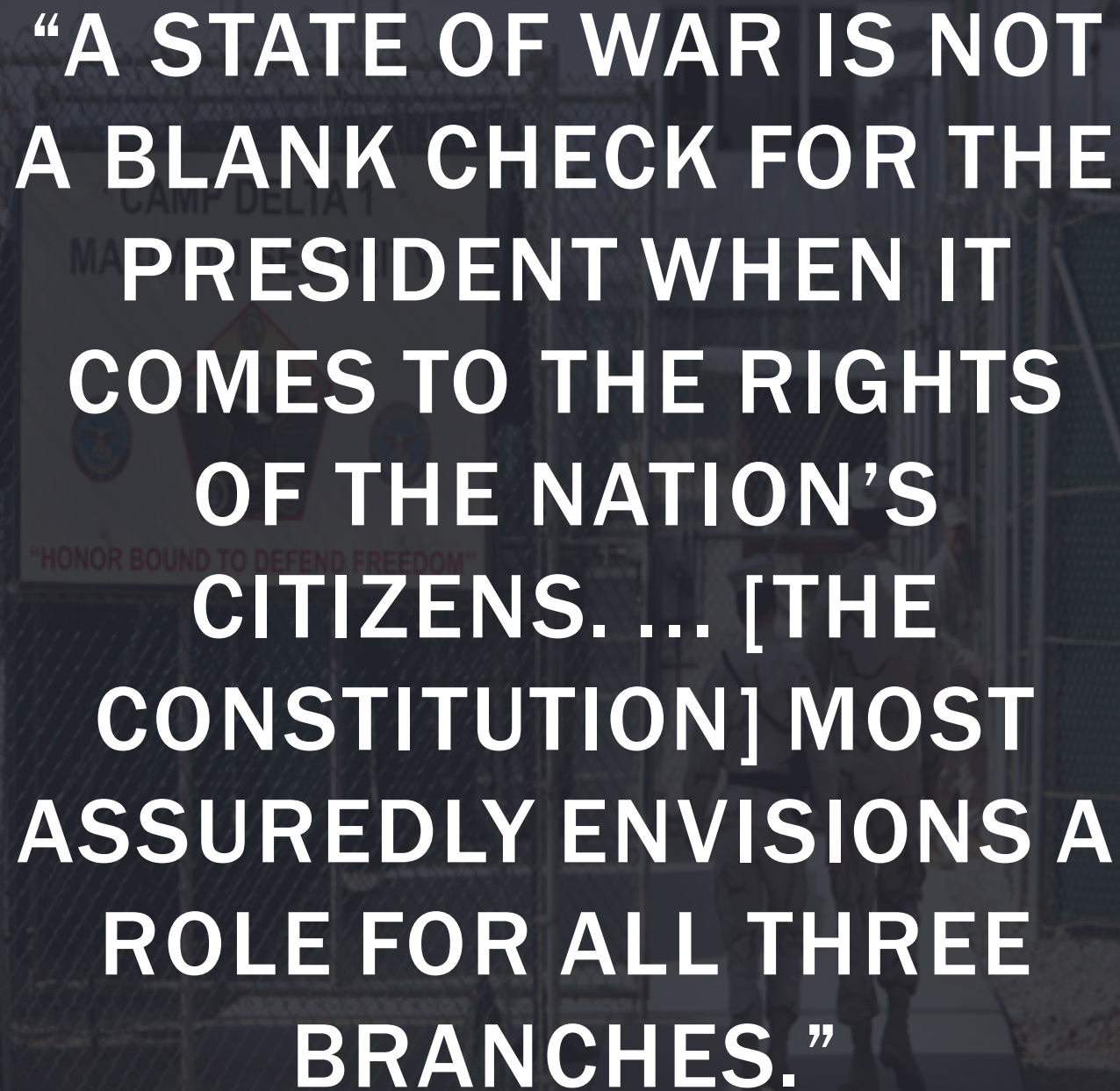
Rumsfeld v. Padilla

U.S. Citizen Held in
South Carolina



Hamdi v. Rumsfeld

U.S. Citizen Captured
in Afghanistan



**“A STATE OF WAR IS NOT
A BLANK CHECK FOR THE
PRESIDENT WHEN IT
COMES TO THE RIGHTS
OF THE NATION’S
CITIZENS. ... [THE
CONSTITUTION] MOST
ASSUREDLY ENVISIONS A
ROLE FOR ALL THREE
BRANCHES.”**

Justice Sandra
Day O’Conner
in *Hamdi v.
Rumsfeld*

HAMDAN AND BOUMEDIENE

- *Hamdan v. Rumsfeld*
 - Combatant Status Review Tribunals Created after *Hamdi*
 - Unconstitutional and Illegal under Geneva
- *Boumediene v. Bush*
 - Congress Passed Military Commission Act
 - Can't Deny Jurisdiction



**“THE [SUSPENSION
CLAUSE] ENSURES THAT,
EXCEPT DURING PERIODS
OF FORMAL SUSPENSION,
THE JUDICIARY WILL
HAVE A TIME-TESTED
DEVICE ... TO MAINTAIN
THE DELICATE BALANCE
OF GOVERNANCE.”**

Justice
Anthony
Kennedy in
*Boumediene v.
Bush*

GUANTANAMO BAY BY THE NUMBERS



United States Naval Station Guantanamo Bay lies on the southeastern shore of Cuba and comprises **45 square miles** of land and water - approximately **.1% of the total area of the island**.

166 current detainees

Approximately 100 on hunger strike



ANNUAL COSTS OF DETENTION

\$150M a year or

\$900K/year per Guantanamo detainee

compare with

 **\$60K/year** per inmate at federal "supermax" prison*

 **\$25K/year** per average federal inmate

* The prison in Colorado that holds domestic terrorists Eric Rudolph and Ted Kaczynski



PERSONNEL

2,200 staff members or



Approximately 1 detainee for every 13 staff members

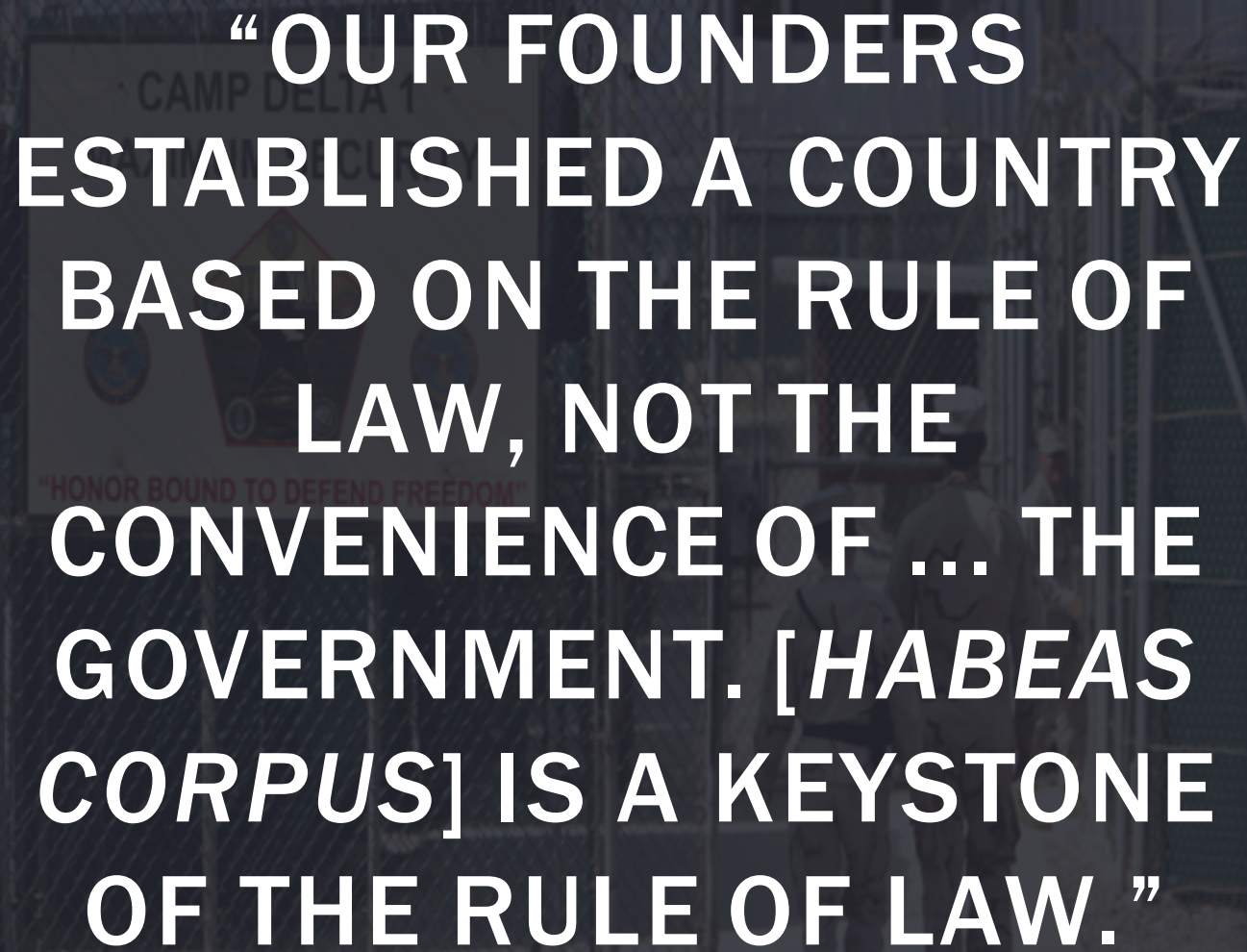
SOLUTIONS FOR *HABEAS* TODAY

- New Federal Court
- Original Jurisdiction in Suspected Terrorist *Habeas* Petitions
- Independence from Political Pressure



“... CREATE A BUFFER ZONE”

Judge Robert Bork | 1990



**“OUR FOUNDERS
ESTABLISHED A COUNTRY
BASED ON THE RULE OF
LAW, NOT THE
CONVENIENCE OF ... THE
GOVERNMENT. [*HABEAS
CORPUS*] IS A KEYSTONE
OF THE RULE OF LAW.”**

Boston College
Law Prof. Dan
Coquillette