# 1nc

## Off-Case

### Off

#### Restrictions are prohibitions on action --- the aff is not

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Increase means from a baseline

Rogers 5 Judge, STATE OF NEW YORK, ET AL., PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT, NSR MANUFACTURERS ROUNDTABLE, ET AL., INTERVENORS, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, lexis

 [\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See [Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=104&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b541%20U.S.%20246%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=48f016ea3eabfdb898b67b348b11662c); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

### Off

#### Plan’s reforms result in catastrophic terrorism---kills intel gathering

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Nuke terror causes extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### Off

#### Exec flexibility on detention powers now

Michael Tomatz 13, Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon. AND Colonel Lindsey O. Graham B.A., University of South Carolina, J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina, “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION,” 69 A.F. L. Rev. 1

President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Judicial review of foreign policy decks the executive flexibility necessary to solve prolif, terror, and the rise of hostile powers---link threshold is low

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

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

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

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

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

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

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

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

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

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

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

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

### Off

#### The plan identifies the non-Western world as a space devoid of the rule of law---that sets the stage for aggressive intervention and colonial plunder, which locks in neoliberal structural violence---and their ev is based on distorted representations of the rule of law that have no relationship to reality

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

Within this framework, Western law has constantly enjoyed a dominant position during the past centuries and today, thus being in the position to shape and bend the evolution of other legal systems worldwide. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, the United States have been dominating the international arena as the most powerful economic power, exporting their own legal system to the ‘periphery’, both by itself and through a set of international institutions, behaving as a neo-colonialist within the ideology known as neoliberalism.

Western countries identify themselves as law-abiding and civilized no matter what their actual history reveals. Such identification is acquired by false knowledge and false comparison with other peoples, those who were said to ‘lack’ the rule of law, such as China, Japan, India, and the Islamic world more generally. In a similar fashion today, according to some leading economists, Third World developing countries ‘lack’ the minimal institutional systems necessary for the unfolding of a market economy.

The theory of ‘lack’ and the rhetoric of the rule of law have justified aggressive interventions from Western countries into non-Western ones. The policy of corporatization and open markets, supported today globally by the so-called Washington consensus3, was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. Similar policy was used in Africa to facilitate the forced transfer of slaves to America, and today to facilitate the extraction of agricultural products, oil, minerals, ideas and cultural artefacts in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America.

Foreign-imposed privatization laws that facilitate unconscionable bargains at the expense of the people have been vehicles of plunder, not of legality. In all these settings the tragic human suffering produced by such plunder is simply ignored. In this context law played a major role in legalizing such practices of powerful actors against the powerless.5 Yet, this use of power is scarcely explored in the study of Western law.

The exportation of Western legal institutions from the West to the ‘rest’ has systematically been justified through the ideological use of the extremely politically strong and technically weak concept of ‘rule of law’. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion its positive connotations have always been taken for granted. The dominant image of the rule of law is false both historically and in the present, because it does not fully acknowledge its dark side. The false representation starts from the idea that good law (which others ‘lack’) is autonomous, separate from society and its institutions, technical, non-political, non-distributive and reactive rather than proactive: more succinctly, a technological framework for an ‘efficient’ market.

The rule of law has a bright and a dark side, with the latter progressively conquering new ground whenever the former is not empowered by a political soul. In the absence of such political life, the rule of law becomes a cold technology. Moreover, when large corporate actors dominate states (affected by a declining regulatory role), law becomes a product of the economy, and economy governs the law rather than being governed by it.

#### Global movements against neoliberal hegemony are emerging now and will be effective---the plan’s consolidation of U.S.-driven economic orthodoxy collapses democracy, causes resource wars, environmental collapse, and extinction

Vandana Shiva 12, founder of the Research Foundation for Science, Technology and Ecology, Ph.D. in Philosophy from the University of Western Ontario, chairs the Commission on the Future of Food set up by the Region of Tuscany in Italy and is a member of the Scientific Committee which advises President Zapatero of Spain, March 1, 2012, “Imposed Austerity vs Chosen Simplicity: Who Will Pay For Which Adjustments?,” online: http://www.ethicalmarkets.com/2012/03/01/imposed-austerity-vs-chosen-simplicity-who-will-pay-for-which-adjustments/

The dominant economic model based on limitless growth on a limited planet is leading to an overshoot of the human use of the earth’s resources. This is leading to an ecological catastrophe. It is also leading to intense and violent resource grab of the remaining resources of the earth by the rich from the poor. The resource grab is an adjustment by the rich and powerful to a shrinking resource base – land, biodiversity, water – without adjusting the old resource intensive, limitless growth paradigm to the new reality. Its only outcome can be ecological scarcity for the poor in the short term, with deepening poverty and deprivation. In the long run it means the extinction of our species, as climate catastrophe and extinction of other species makes the planet un-inhabitable for human societies. Failure to make an ecological adjustment to planetary limits and ecological justice is a threat to human survival. The Green Economy being pushed at Rio +20 could well become the biggest resource grabs in human history with corporations appropriating the planet’s green wealth, the biodiversity, to become the green oil to make bio-fuel, energy plastics, chemicals – everything that the petrochemical era based on fossil fuels gave us. Movements worldwide have started to say “No to the Green Economy of the 1%”.

But an ecological adjustment is possible, and is happening. This ecological adjustment involves seeing ourselves as a part of the fragile ecological web, not outside and above it, immune from the ecological consequences of our actions. Ecological adjustment also implies that we see ourselves as members of the earth community, sharing the earth’s resources equitably with all species and within the human community. Ecological adjustment requires an end to resource grab, and the privatization of our land, bio diversity and seeds, water and atmosphere. Ecological adjustment is based on the recovery of the commons and the creation of Earth Democracy.

The dominant economic model based on resource monopolies and the rule of an oligarchy is not just in conflict with ecological limits of the planet. It is in conflict with the principles of democracy, and governance by the people, of the people, for the people. The adjustment from the oligarchy is to further strangle democracy and crush civil liberties and people’s freedom. Bharti Mittal’s statement that politics should not interfere with the economy reflects the mindset of the oligarchy that democracy can be done away with. This anti-democratic adjustment includes laws like homeland security in U.S., and multiple security laws in India.

The calls for a democratic adjustment from below are witnessed worldwide in the rise of non-violent protests, from the Arab spring to the American autumn of “Occupy” and the Russian winter challenging the hijack of elections and electoral democracy.

And these movements for democratic adjustment are also rising everywhere in response to the “austerity” programmes imposed by IMF, World Bank and financial institutions which created the financial crisis. The Third World had its structural Adjustment and Forced Austerity, through the 1980s and 1990s, leading to IMF riots. India’s structural adjustment of 1991 has given us the agrarian crisis with quarter million farmer suicides and food crisis pushing every 4th Indian to hunger and every 2nd Indian child to severe malnutrition; people are paying with their very lives for adjustment imposed by the World Bank/IMF. The trade liberalization reforms dismantled our food security system, based on universal PDS. It opened up the seed sector to seed MNCs. And now an attempt is being made through the Food Security Act to make our public feeding programmes a market for food MNCs. The forced austerity continues through imposition of so called reforms, such as Foreign Direct Investment (FDI) in retail, which would rob 50 million of their livelihoods in retail and millions more by changing the production system. Europe started having its forced austerity in 2010. And everywhere there are anti-austerity protests from U.K., to Italy, Greece, Spain, Ireland, Iceland, and Portugal. The banks which have created the crisis want society to adjust by destroying jobs and livelihoods, pensions and social security, public services and the commons. The people want financial systems to adjust to the limits set by nature, social justice and democracy. And the precariousness of the living conditions of the 99% has created a new class which Guy Standing calls the “Precariate”. If the Industrial Revolution gave us the industrial working class, the proletariat, globalization and the “free market” which is destroying the livelihoods of peasants in India and China through land grabs, or the chances of economic security for the young in what were the rich industrialized countries, has created a global class of the precarious. As Barbara Ehrenreich and John Ehrenreich have written in “The making of the American 99%”, this new class of the dispossessed and excluded include “middle class professional, factory workers, truck drivers, and nurses as well as the much poorer people who clean the houses, manicure the fingernails, and maintain the lawn of the affluent”.

Forced austerity based on the old paradigm allows the 1% super rich, the oligarchs, to grab the planets resources while pushing out the 99% from access to resources, livelihoods, jobs and any form of freedom, democracy and economic security. It is often said that with increasing growth, India and China are replicating the resource intensive and wasteful lifestyles of the Western countries. The reality is that while a small 3 to 4% of India is joining the mad race for consuming the earth with more and more automobiles and air conditioners, the large majority of India is being pushed into “de-consumption” – losing their entitlements to basic needs of food and water because of resource and land grab, market grab, and destruction of livelihoods. The hunger and malnutrition crisis in India is an example of the “de-consumption” forced on the poor by the rich, through the imposed austerity built into the trade liberalization and “economic reform” policies.

There is another paradigm emerging which is shared by Gandhi and the new movements of the 99%, the paradigm of voluntary simplicity of reducing one ecological foot print while increasing human well being for all. Instead of forced austerity that helps the rich become super rich, the powerful become totalitarian, chosen simplicity enables us all to adjust ecologically, to reduce over consumption of the planets resources, it allows us to adjust socially to enhance democracy and it creates a path for economic adjustment based on justice and equity.

Forced austerity makes the poor and working families pay for the excesses of limitless greed and accumulation by the super rich. Chosen simplicity stops these excesses and allow us to flower into an Earth Democracy where the rights and freedoms of all species and all people are protected and respected.

#### Reject their ideological focus on short-term impacts---cast the ballot to fundamentally rethink the global promotion of Western law

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

Contemporary mass cultures operate within a short time-span. Most intellectuals do not acknowledge that it is exactly because of plunder of gold, silver, bioresources and so on that development accelerated in the West, so that underdevelopment is a historically produced victimization of weaker and more enclosed communities and not the disease of lesser people.

Prevailing short-term and short-sighted opportunism must be overcome. An analysis of the imperial adventure rendered in legal terms opens up a possibility for a radical rethinking of a model of development defined by Western ideas of progress, development and economic efficiency. A reconfiguration would mean, first and foremost, a clear rejection of an ideology of inherent superiority of Western culture that does not recognize that the West is itself part of something much larger.

### Off

#### The United States Court of Appeals for the District of Columbia Circuit should form an en banc panel to review its opinion in Al-Bihani v. Obama on the basis of maintaining uniformity and on the exceptional importance of the case. The en banc panel of the D.C. Circuit should decide that its ruling in Al-Bihani v. Obama has no precedential effect on any other court, that it was limited solely to the facts presented in the original case and that no court should regard Al-Bihani v. Obama as a repudiation of the Charming Betsy canon.

#### The CP solves all of their advantages & locks in SQ Presidential detention powers:

#### The CP limits the reach of al-Bihani by blocking its application in other contexts

Thomas G. Hansford & James F. Spriggs 7, 8-7-, “The Politics of Precedent on the U.S. Supreme Court,” http://press.princeton.edu/chapters/s8204.html

Second, the Court can negatively interpret a precedent by restricting its reach or calling into question its continuing importance. The Court can, for example, distinguish a precedent by finding it inapplicable to a new factual situation, limit a case by restating the legal rule in a narrower fashion, or even overrule a case and declare that it is no longer binding law (see Baum 2001, 142; Gerhardt 1991, 98-109; Johnson 1985, 1986; Maltz 1988, 382-88; Murphy and Pritchett 1979, 491-95). With this kind of interpretation, the Court expresses some level of disagreement with the precedent and, as a result, may undercut the legal authority of a precedent and diminish its applicability to other legal disputes.

#### The D.C. Circuit can rehear the case en banc

D.C. Circuit Rules ’11 – Authored by Clerks of the D.C. Circuit Court of Appeals

CIRCUIT RULES of the UNITED STATES COURT OF APPEALS for the DISTRICT OF COLUMBIA CIRCUIT, Amended Through December 1, 2011, <http://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Circuit%20Rules/$FILE/RulesDecember2011LINKSandBOOKMARKScj2013.pdf>

Rule 35. En Banc Determination¶ (a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored an ordinarily will not be ordered unless:¶ (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions;¶ (2) the proceeding involves a question of exceptional importance.

#### Their author agrees that an en banc review hearing can reassess the precedential effect of an Appellate Court ruling like Al-Bihani

Alistine ’11 – Prof of Law @ Univ. of Maryland

Michael P. Van Alstine, Prof of Law University of Maryland, Duke Law Journal, STARE DECISIS AND FOREIGN AFFAIRS <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1881137>

[KU Evidence Begins…]

It is a curious fact the Framers structured the Constitution precisely to protect against divergent interpretations of our nation’s international legal obligations by the separate state courts, but that the vast bulk of this work is now done by independent and geographically dispersed federal courts. The Supreme Court itself has repeatedly emphasized the demand for national uniformity in this field. But as Justice Scalia caustically observed in 2004 with specific reference to international law, “the lower federal courts [are] the principal actors; we review but a tiny fraction of their decisions.” The facts amply bear this out. Over 99% of the appellate treaty cases in the last decade came from the federal circuit courts. A broader study by David Sloss found a similar percentage in the period from 1970 through 2006. This principal cause for this is that, unlike in the Supreme Court, in most matters litigants have an appeal as of right to the federal circuits. The original conception was strikingly different, however. In the founding era, international law matters with relevance to national authority (especially, treaties) were under the mandatory, final control of the Supreme Court. Through a series of statutes between 1868 and 1925, however, the unifying force of this control declined dramatically. Upon the creation of the Circuit Courts of Appeal in 1891, Congress removed the right of direct appeal from district courts to the Supreme Court on treaty issues. Then, the Judiciary Act of 1925 eliminated even appeals as of right from the circuit courts and state courts in favor of discretionary review via a writ of certiorari for all but the rare constitutional challenges to treaties. Today, effectively all cases are subject only to discretionary review by the Supreme Court. The practical effect of all of these developments is that the independent, geographically dispersed courts of appeal provide the final judicial voice on nearly all matters of international law. Few would argue that these regional appellate courts (with only exceedingly rare leveling by the Supreme Court) represent an effective system for ensuring uniform fidelity to the international legal obligations of the United States. The problem is even more acute than this, however. Nearly all of the precedents in the federal circuit courts come from individual, local panels—not the regional court as a whole. The cause of this is the law-of-the-circuit doctrine. Under this doctrine, which controls in every federal circuit, a precedent created by a single three-judge panel is absolutely binding on all subsequent panels in the circuit. In the rare case that a subsequent panel misses the message, later panels are obligated to follow the earlier precedent. This doctrine is severe indeed. It prohibits reexamination of the first panel precedent even in light of subsequent insights and analyses of other circuits. The 11th Circuit recently declared this point bluntly: “The fact that other circuits disagree with [our] analysis is irrelevant.” All that remains is en banc review; but even this rare option is “not favored and ordinarily will not be ordered.” To present the point starkly, consider a hypothetical involving the Ninth Circuit. A panel majority may create a precedent on the international legal obligations of the United States that is then binding on the entire circuit. This means that a decision of two judges would control a circuit of over 60 million people, nearly 20% of the country’s entire population. The precedent would be impervious to subsequent review within the circuit as well as subsequent insights from other circuits. The law-of-the-circuit doctrine thus effectively precludes resolution of inter-circuit conflicts except for rare en banc review and in the 1% of cases the Supreme Court decides to hear. The result is a very real possibility of a localized patchwork of judicial declarations on the rights or obligations of the United States under international law. To put it mildly, such a system is discordant with the “‘concern for uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s exclusive allocation of the foreign relations power to the national government in the first place.”

[KU Evidence Ends.]

## Case

## Solvency

### No Solvency

#### The aff is a facial ruling that doesn’t require tangible policy changes

Kim Lane Scheppele 12, Laurance S. Rockefeller Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University. THE NEW JUDICIAL DEFERENCE, 92 B.U.L. Rev. 89

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides - the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won.¶ Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases - and they prevailed overwhelmingly in their claims, especially at the Supreme Court - but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question.¶ Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead.¶ [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.¶ Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference.¶ This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted - often bold, ambitious, and brave solutions - nonetheless fail to address the plights of the specific individuals who brought the cases.¶ This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something - an appearance not entirely false in the long run - while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

#### Their author also concludes in the un-highlighted portions of the 1AC that Al-Bihani is UNLIKELY to impact other court decisions and that it only contributes to an already negative image of the U.S.

Tarnogorski ’10 – Polish Inst. For Int’l Affairs

USA and Laws of War (Al-Bihani v. Obama), PDF can be found at here:

http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=112282

The trial court rejected his arguments on the grounds that his detention as a member of a force¶ supporting the Taliban regime and Al-Qaeda—evidence of which was drawn from his own¶ admissions during interrogations—was lawful. When hearing the appeal, the Court of Appeal acted¶ on the premise that U.S. law rather than “vague treaty provisions and amorphous customary principles”¶ was the sole appropriate standard by which to judge the facts of the case. The detention was¶ lawful because the government acting within the bounds of domestic law, rather than international¶ law, is the agency determining the terms and the legal criteria for the identification and detention of¶ suspects. The international laws of war are not a source of authority for U.S. courts; their significance¶ is ancillary and limited. In this context the court found the citing of international law without purpose¶ and effect.¶ The significance of this appellate ruling extends beyond one specific case of a Yemeni petitioner kept in detention. Firstly, it could sway the direction of judicial decisions in similar cases—though this seems rather unlikely in view of the shift of the Obama administration’s stance on the treatment of enemy combatants and Supreme Court’s Hamdi v Rumsfeld (2004) and Boumediene v. Bush (2008) decisions. Secondly and more importantly, the court took a position on the powers of the U.S. president as the commander-in-chief under the 18 September 2001 Authorization for Use of Military Force against states, organizations and persons responsible for the terrorist attacks of 11 September 2001. The court found that these presidential prerogatives were not limited by the international laws of war, which had not been transposed as a whole into the domestic law. It is for the legislative branch, not for international law, to delineate the limits of the president’s constitutional powers to use armed force. These powers extend to leaving at the president’s discretion the detention of persons deemed to be enemy belligerents or supporters thereof. The Al-Bihani v. Obama decision is consistent with the U.S. dualist stance on international law, as reflected, for instance, in the Supreme Court’s Medellin v. Texas ruling (2008). The United States respects binding international laws, but the extent of its commitment is at all times determined by the American sovereign. The ruling on Al-Bihani’s appeal does not amount to a permission to violate international law; it only means that international law does not constitute the basis for judicial decisions of a U.S. court. This judgment is without prejudice to the binding power of international humanitarian law, yet it effectively restricts the application of international public law and contributes to cementing a negative image of the U.S. as a power given to opportunistic treatment of international standards.

#### Waring concludes that more recent cases by the D.C. Circuit have reigned in the impact of Al-Bihani – at worst only a handful of detainees are impacted

Waring ’12 – Associate @ Winston & Strawn LLP, J.D. from Georgetown University Law Center

Spring, 2012 Georgetown Journal of International Law 43 Geo. J. Int'l L. 927, Lexis

B. Revival of International Law Despite Al-Bihani?¶ 1. Al Warafi: Affirmed in Part, Remanded in Part¶ The case of Mr. Al Warafi presented a new issue in the ongoing saga of litigation to determine the scope of the President's detention authority. Mr. Al Warafi was found to be "part of" the Taliban by the District Court, n197 and this determination was affirmed by the Circuit Court. n198 However, Mr. Al Warafi claimed to be medical personnel under Article 24 of the First Geneva Convention. n199 The Geneva Convention states that "[m]edical personnel exclusively engaged in the . . . treatment of the wounded or sick, or in the prevention of disease . . . shall be respected and protected in all circumstances [and] shall be retained only in so far as the state of health . . . of prisoners of war require." n200 Mr. Al Warafi argued that when such personnel are not needed to care for detainees they should be returned to their home country, in accordance with the Geneva Conventions. n201¶ The District Court did not make a determination on Mr. Al Warafi's Geneva Convention protection claim because it found that Al-Bihani and the MCA 2006 precluded the Geneva Conventions from being invoked as a source of rights. n202 Surprisingly, however, the D.C. Circuit Court remanded and ordered a factual finding into whether Mr. Al Warafi was "permanently and exclusively medical personnel" according to Article 24 of the First Geneva Convention. n203 The Circuit Court stated that, "assuming arguendo [the Geneva Convention's applicability]," the District Court needed to make a determination on Mr. Al Warafi's status. n204 This order seemed to imply that the results could be used to limit the scope of detention authority. Even though Al-Bihani said that international law has no role in detention authority, the Circuit Court's order in Al Warafi calls that into question. n205¶ [\*956] VI. RECOMMENDATIONS¶ The Supreme Court should review the holding in Al-Bihani because the removal of international law has caused significant upheaval in Guantanamo litigation. Since the D.C. Circuit Court is the only court system that can hear Guantanamo habeas appeals, a grant of certiorari is even more important since there are no other courts that can review. n206 As Judge Janice Brown's concurrence in Al-Bihani noted, "The common law process depends on incrementalism and eventual correction, and it is most effective where there are a significant number of cases brought before a large set of courts . . . [but in the Guantanamo context] [t]he petitions . . . are funneled through one federal district court and one appellate court." n207¶ Additionally, the Al-Bihani opinion should be reviewed because it directly conflicts with prior Supreme Court precedent. The Court in Hamdi expressly stated that the law of war should inform the scope of detention authority, and in Hamdan, the Court directed lower courts to use international law in the Guantanamo context. n208¶ However, the Supreme Court instead denied certiorari. n209 Some Court observers saw this denial as a clear signal that the Court was "at least strongly hesitant, if not entirely unwillingly, to second-guess how the D.C. Circuit Court fashions the law of detention of individuals by the U.S. military." n210 And at least two Justices have indicated that this [\*957] area of law needs to have clarification from the Court. n211 In a dissent from a certiorari denial in Noriega v. Pastrana, Justice Thomas, joined by Justice Scalia, stressed that regarding the question of whether a habeas corpus petition can invoke the Geneva Conventions as a source of rights in habeas proceedings, "[i]t is incumbent upon [the Court] to provide what guidance we can . . . ." n212 The dissent further explained that "our opinion will help the political branches and the courts discharge their responsibilities over detainee cases, and will spare detainees and the Government years of unnecessary litigation." n213¶ In light of the contradiction between the ruling in Hamdi and the ruling in Al-Bihani, the Supreme Court should take up the issue to clarify the rule of law. It is the Supreme Court's role to say "what the law is," n214 and it should do so here. The need for clarity is particularly salient given that the lives of the Guantanamo detainees are at stake. n215¶ VII. CONCLUSION¶ After the 9/11 attacks, the United States wanted to quickly gather intelligence to prevent another deadly attack from happening. In response, Congress passed the AUMF to provide the President with the authority to "prevent any future acts of international terrorism against the United States." n216 However, as the war in Afghanistan progressed and the use of Guantanamo Bay increased, it became clear that there were several questions as to just how far the President's authority extended. With respect to detention, the sources of such authority in [\*958] the twentieth century has come from explicit legislation from Congress and international law. n217 However, the AUMF did not expressly lay out the terms or scope of detention. n218 As such, the Supreme Court in Hamdi interpreted the AUMF to include detention, as this was a fundamental principle of the law of war. n219 The Court also limited the scope of detention through the application of the law of war. n220 As the Guantanamo habeas litigation began working its way through the D.C. District Court a few different formulations of detention authority developed, all using the law of war to inform that authority. n221 However, all of this changed when the D.C. Circuit Court ruled in Al-Bihani that international law had no role in limiting the President's detention authority. n222 This decision directly conflicted with Hamdi and failed to acknowledge this conflict. In addition to creating a precedent that conflicted with the Supreme Court, this decision also conflicted with the scope of detention authority described by the President and Congress. n223 As a result of Al-Bihani, the international law principles developed by the lower courts have been eliminated. The repercussions of this elimination were that several decisions that had granted habeas relief to detainees were reversed. n224 Finally, although it seemed that Al-Bihani and its progeny closed the door on international law, a recent opinion out of the D.C. Circuit Court has implied that at least some provisions of the Geneva Conventions may be relevant. n225 However, such statements are irrelevant for detainees whose petitions have been denied on the basis of expansive detention authority unlimited by the law of war.

### Aff = Meaningless

#### Al-Bihani clearly didn’t overrule the Charming Betsy doctrine---the decision that denied his appeal for re-hearing explicitly clarified that Charming Betsy didn’t apply to the case

J. Taylor Benson 11, J.D., Creighton University School of Law, June 2011, “INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN AL-BIHANI V. OBAMA CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS,” Creighton Law Review, 44 Creighton L. Rev. 1277

Al-Bihani then petitioned the United States Court of Appeals for the District of Columbia for a rehearing en banc. n71 Al-Bihani claimed in part that the circuit panel erred in declaring that international law-of-war principles have no effect on the President's detention authority. n72 The court unanimously voted to deny the petition to hear the case en banc. n73 The seven District of Columbia Circuit Court judges who did not sit on the original panel submitted a brief statement in support of denial. n74 The statement declared, without further explanation, that a determination of the role of international law-of-war principles was unnecessary to the disposition on the merits. n75

[\*1284] The three original panel judges each filed statements concurring in the denial of rehearing en banc. n76 Judge Janice Rogers Brown wrote a concurring statement in which she sought to clarify what he referred to as the concurring judges' cryptic and confusing statements that she believed served to muddy the clear holding of Al-Bihani I. n77 First, Judge Brown noted that the holding in Al-Bihani I regarding international law could not be dismissed as dicta, as the rehearing panel's statement suggested. n78 Judge Brown reasoned that the discussion of international law in Al-Bihani I was one of two alternative holdings, each holding precedential effect. n79

Addressing what she believed to be a countervailing motivation behind the en banc panel's short concurrence, Judge Brown refuted the scholarly intuition that domestic statutes are not supported by their own authority, but must rely on international common law norms. n80 Judge Brown reasoned that the idea that courts should incorporate international legal norms into domestic statutes, without a clear statement to the contrary, was alien to United States case law. n81 Conversely, Judge Brown stated that nothing in the Constitution compelled Congress to clearly enunciate the inapplicability of international common law principles. n82 Citing Murray v. Schooner Charming Betsy n83 ("Charming Betsy"), Judge Brown admitted that the only role international law played in statutory interpretation was that of construing ambiguous statutes so they do not contradict international law. n84 Stating that the AUMF was not ambiguous, Judge Brown concluded that Charming Betsy did not apply. n85

## Charming Betsy

### No Court Adoption

#### No chance the Courts enforce I-Law

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Foreign affairs legalists make sweeping claims about the American judiciary's promotion of international law, but the support for these claims is weak. In this section, we discuss some examples of contributions to international law by Congress, the courts and the executive. We then evaluate the institutional capacities and incentives of the different branches to promote international law. As we will show, the evidence points to the executive, not the judiciary, as the branch most responsible for advancing international law.

[\*528]

1. The American Judiciary's Contribution to International Law

Foreign affairs legalists celebrate the American judiciary's contributions to international law, but they can only point to a few concrete accomplishments. A handful of judge-made doctrines put limited pressure on the political branches to comply with international law. For example, the Charming Betsy canon makes it more difficult for Congress to pass a statute that violates international law by requiring Congress to be clearer than it would otherwise be. n101 International comity rules, in limited circumstances, avoid violations of international jurisdictional law that suggest that certain types of disputes are best resolved in the state with the most contacts to the litigation. n102 The federal courts' admiralty jurisprudence has developed in tandem with admiralty cases in other states, and in this way it could be considered a contribution to international law. One could also point to the willingness of the federal courts to suspend federalism constraints in order to enforce treaties in cases like Missouri v. Holland, n103 but these cases are weak and inconsistent. n104

Moreover, the empirical literature regarding the judiciary's support of international law is thin. Benvenisti cites a handful of cases that suggest that national courts - mainly in developing countries - have used international law in an effort to constrain their executives. n105 Koh also cites a very small number of cases n106 - his best examples are American ATS cases, which we discuss below. n107 Slaughter rests much of her argument on the rise of international judicial conferences, where judges from different countries meet and exchange ideas. n108 She does not provide evidence that these conferences have affected judicial outcomes. Another possibility is that judges enjoy meeting each other and learning about foreign judicial decisions, but they do not, as a matter of pragmatics or principle, allow what they learn to affect the way that they decide cases. n109

In contrast, many court decisions and judge-made doctrines cut against the claims of foreign affairs legalism. The early decision in Foster [\*529] v. Neilson n110 to distinguish between self-executing and non-self-executing treaties, n111 recently reaffirmed in Medellin v. Texas, n112 ensures that many treaties cannot be judicially enforced. These rules have been reinforced by the reluctance to find judicially enforceable rights even in treaties that are self-executing. The tradition of executive deference also limits the judiciary's ability to contribute to international law. The judiciary generally follows the executive's lead instead of pushing the executive toward greater international engagement. In treaty interpretation cases, courts frequently defer to the executive. n113

On questions of international law - the area most important to foreign affairs legalists - the judiciary's record is poor. In the notable federal common law case The Paquete Habana, n114 the Supreme Court made clear that the executive could unilaterally decide that the United States would not comply with CIL, in which case the victims of the legal violation would have had no remedy. n115 Courts have held that both the executive and Congress have the authority to violate international law n116 and that violations of international law cannot be a basis for federal-question jurisdiction. n117 For example, the Supreme Court found that an illegal, extrajudicial abduction that circumvented the terms of an international extradition treaty did not preclude a U.S. trial court's jurisdiction over the abductee. n118

The Supreme Court's treatment of international law in Medellin v. Texas n119 is also instructive. Here, the Court held that the Vienna Convention [\*530] on Consular Relations n120 was not self-executing or judicially enforceable in U.S. courts. n121 That case involved a Mexican national who had been deprived of his right to consular notification under the Convention after he was arrested. He was later sentenced to death. n122 The International Court of Justice held that the United States violated international law by failing to provide the Mexican national with access to his consulate. n123 What is striking in the Medellin context is that not only did the Supreme Court refuse to intervene in order to vindicate rights under international law (earlier, it had held that the ICJ judgment was not binding on U.S. courts), n124 but it also prevented President Bush from vindicating those rights. n125 Bush had tried to order state courts to take account of the ICJ ruling, but the Supreme Court held that he did not have the power to do so. n126

### Ilaw Fails

#### Ilaw fails --- states will either inevitably cooperate, or ilaw can’t convince them to

Eric A. Posner 9, Kirkland and Ellis Professor of Law at the University of Chicago Law School. The Perils of Global Legalism, 34-6

34 ¶ Most global legalists acknowledge that international law is created and enforced by states. They believe that states are willing to expand international law along legalistic lines because states’ long-term interests lie in solving global collective action problems. In the absence of a world govern- ment or other forms of integration, international law seems like the only way for states to solve these problems. The great difﬁculty for the global legalist is explaining why, if states create and maintain international law, they will also not break it when they prefer to free ride. In the absence of an enforcement mechanism, what ensures that states that create law and legal institutions that are supposed to solve global collective action prob- lems will not ignore them? ¶ For the rational choice theorist, the answer is plain: states cannot solve global collective action problems by creating institutions that themselves depend on global collective action. This is not to say that international law is not possible at all. Certainly, states can cooperate by threatening to retaliate against cheaters, and where international problems are matters of coordination rather than conﬂ ict, international law can go far, indeed.7 But if states (or the individuals who control states) cannot create a global government or q uasi-g overnment institutions, then it seems unlikely that they can solve, in spontaneous fashion, the types of problems that, at the national level, require the action of governments. ¶ Global legalists are not enthusiasts for rational choice theory and have ¶ 35¶ grappled with this problem in other ways.8 I will criticize their attempts in chapter 3. Here I want to focus on one approach, which is to insist that just as individuals can be loyal to government, so too can individuals (and their governments) be loyal to international law and be willing to defer to its requirements even when self-i nterest does not strictly demand that they do so. International law has force because (or to the extent that) it is legitimate.9 ¶ What makes governance or law legitimate? This is a complicated ques- tion best left to philosophers, but a simple and adequate point for present purposes is that no system of law will be perceived as legitimate unless those governed by that law believe that the law does good — serves their interests or respects and enforces their values. Perhaps more is required than this — such as political participation, for example — but we can treat the ﬁ rst condition as necessary if not sufﬁ cient. If individuals believe that a system of law does not advance their interests and respect their values, that instead it advances the interests of others or is dysfunctional and helps no one at all, they will not believe that the law is legitimate and will not voluntarily submit to its authority. ¶ Unfortunately, international law does not satisfy this condition, mainly because of its institutional weaknesses; but of course, its institutional weaknesses stem from the state system — states are not willing to tolerate powerful international agencies. In classic international law, states enjoy sovereign equality, which means that international law cannot be created unless all agree, and that international law binds all states equally. What this means is that if nearly everyone in the world agrees that some global legal instrument would be beneﬁ cial (a climate treaty, the UN charter), it can be blocked by a tiny country like Iceland (population 300,000) or a dictatorship like North Korea. What is the attraction of a system that puts a tiny country like Iceland on equal footing with China? When then at- torney general Robert Jackson tried to justify American aid for Britain at the onset of World War II on the grounds that the Nazi Germany was the aggressor, international lawyers complained that the United States could not claim neutrality while providing aid to a belligerent — there was no such thing as an aggressor in international law.10 Nazi Germany had not agreed to such a rule of international law; therefore, such a rule could not exist. Only through the destruction of Nazi Germany could international law be changed; East and West Germany could reenter international so-¶ 36¶ ciety only on other people’s terms. How could such a system be perceived to be legitimate? ¶ There is, of course, a reason why international law works in this fash- ion. Because no world government can compel states to comply with inter- national law, states will comply with international law only when doing so is in their interest. In this way, international law always depends on state consent. So international law must take states as they are, which means that little states, big states, good states, and bad states, all exist on a plane of equality. ¶

### Treaty Obligations

#### Treaty obligations are inevitable and we will meet some of them to prevent war – their impact is non-sensical

#### Multilat fails

Holmes 10---VP, foreign policy and defense studies, Heritage. Frmr Assistant Secretary of State for International Organization Affairs. While at the State Department, Holmes was responsible for developing policy and coordinating U.S. engagement at the United Nations and 46 other international organizations. Member of the CFR. Frmr adjunct prof of history, Georgetown. PhD in history, Georgetown (Kim, Smart Multilateralism and the United Nations, 21 Sept. 2010, http://www.heritage.org/research/reports/2010/09/smart-multilateralism-when-and-when-not-to-rely-on-the-united-nations)

The need for multilateralism is obvious. Nations share concerns about many problems and issues for which coordinated efforts could be mutually beneficial. Yet only rarely do all governments agree on the nature of a problem and the means to address it. At times, negotiations result in a less-than-perfect, but still acceptable, course of action. Disagreements can also lead to no action or the use of force or other confrontational measures. One of the purposes of multilateralism is to minimize the number and intensity of such confrontations. The process itself, however, is fraught with political challenges that can undermine potential solutions and even lead to other problems. For the United States, multilateralism faces its greatest challenge at the United Nations, where U.S. diplomats seek cooperative action among member nations on serious international problems. Therein lies the tension. The United Nations is first and foremost a political body made up of 192 states that rarely agree on any one issue. Even fundamental issues, such as protecting and observing human rights, a key purpose of the U.N. that all member states pledge to uphold when they join it, have become matters of intense debate. A key reason for this difficulty is the fact that the voices and votes of totalitarian and authoritarian regimes have equal weight to those of free nations at the U.N. The all-too-frequent clash of worldviews between liberty and authoritarian socialism has stymied multilateralism more than facilitated it, frequently **leading to institutional paralysis** when a unified response to grave threats to peace and security or human rights and fundamental freedoms was needed. U.S. secretary of state John Foster Dulles, who attended the San Francisco meetings that established the U.N., acknowledged this Achilles’ heel in 1954, when he told reporters: “The United Nations was not set up to be a reformatory. It was assumed that you would be good before you got in and not that being in would make you good.”[1] Fifty-five years later, the ideological fray at the U.N. has turned the terms “democracy” and “freedom” on their heads. Autocracies that deny democratic liberties at home are all too keen to call the Security Council “undemocratic” because in their view not every region, country, or bloc is sufficiently represented. During my time at the State Department, I was told repeatedly by other diplomats at the U.N. that the very concept of “freedom” is taboo because the term is “too ideologically charged.” In this environment, how can the United States or any freedom-loving country advance the purposes set forth in the U.N. Charter, including “encouraging respect for human rights and for fundamental freedoms for all,”[2] when the word “freedom” itself is considered too controversial? More money will not do it. No other nation contributes more to the U.N.’s regular budget, its peacekeeping budget, or the budgets of its myriad affiliated organizations and activities than the United States. America has continued its generous support even though Americans increasingly view the U.N. as inefficient and ineffective at best and fraudulent, wasteful, anti-American, and beyond reform at worst.[3] If the United States is to advance its many interests in the world, it needs to pursue multilateral diplomacy in a smarter, more pragmatic manner. This is especially true when Washington is considering actions taken through the United Nations. A decision to engage multilaterally should meet two criteria: First, it should be in America’s interests, and second, it will serve to advance liberty. Unless the United States can achieve both these ends acting within the U.N. system, it should find ways to work around it. Such “smart multilateralism” is not easy, particularly in multilateral settings. It requires politically savvy leaders who can overcome decades-old bureaucratic inertia at the State Department and in international organizations. **It requires the political will and diplomatic skill** of people who are dedicated to advancing U.S. interests in difficult environments, especially where progress will likely be slow and incremental. It requires a belief in the cause of liberty, gleaned from a thorough study of our nation’s history and the U.S. Constitution, and a deep appreciation for the values and principles that have made America great. Smart multilateralism requires a fundamental awareness of the strengths and weaknesses, capabilities and failings, of the U.N. and other multilateral negotiating forums, so that the United States does not overreach. Perhaps the most critical decision is whether or not to take a matter to the U.N. in the first place. It would be better to restrict U.S. engagement at the U.N. to situations in which success is possible or engagement will strengthen America’s influence and reputation. Selective engagement increases the potential for success, and success breeds success. When America is perceived to be a skillful and judicious multilateral player, it finds it easier to press its case. Smart multilateralism thus requires well-formulated and clear policy positions and a willingness to hold countries accountable when their votes do not align with our interests. Finally, smart multilateralism is not the same thing as “smart power,” a term that Secretary of State Hillary Clinton has used. Suzanne Nossell, a former diplomat at the U.S. Mission to the U.N. in New York, coined that term in 2004 and described it in an article in Foreign Affairs.[4] Smart power is seen as a takeoff of “soft power,” which suggests that America’s leaders downplay the nation’s military might as well as its historic role in establishing an international system based on the values of liberty and democracy, and de-emphasize its immense economic and military (“hard”) power. Smart power seeks to persuade other countries from a position of assumed equality among nations. This assumption has become the Achilles’ heel of the U.N. system and other Cold War–era organizations. Smart multilateralism does not make that same mistake. Challenges to Effective U.S. Multilateralism The United States belongs to dozens of multilateral organizations, from large and well-known organizations such as NATO, the World Trade Organization (WTO), and the International Monetary Fund to relatively small niche organizations such as the Universal Postal Union and the International Bureau of Weights and Measures. The 2009 congressional budget justification[5] for the U.S. Department of State included line items for U.S. contributions to some fifty distinct international organizations and budgets.[6] The United Nations and its affiliated bodies receive the lion’s share of these contributions. While the World Bank and International Monetary Fund weight voting based on contributions, most of these organizations subscribe to the notion of the equality of nations’ votes. With a few exceptions such as Taiwan,[7] all nations---no matter how small or large, free or repressed, rich or poor---have a seat at the U.N. table. Every nation’s vote is equal, despite great differences in geographic size, population, military or economic power, and financial contributions. This one-country, one-vote principle makes the U.N. an extremely difficult venue in which to wage successful multilateral diplomacy. In this environment, multilateralism becomes a double-edged sword. It can sometimes speed up global responses to global problems, as with the avian flu outbreak and the Asian tsunami. At other times, it can slow or prevent timely responses, as with halting Iran’s nuclear weapons program and stopping genocide in Darfur. Too often, multilateralism at the U.N. is the political means by which other countries and regional blocs constrain or block action. Groups of small nations can join together to outvote the great powers on key issues, and this situation can often lead to bizarre outcomes and compromises. Even seemingly noncontroversial issues, such as improving auditing of U.N. expenditures, require days of skillful, almost nonstop negotiations. The U.N. is simply too poorly primed for American multilateralism. It is a vast labyrinth of agencies, offices, committees, commissions, programs, and funds, often with overlapping and duplicative missions.[8] Lines of accountability and responsibility for specific issues or efforts are complex, confused, and often indecipherable. For example, dozens of U.N. bodies focus on development, the environment, and children’s and women’s issues. Coordination is minimal. Reliable means to assess the effectiveness of the bodies’ independent activities is practically nonexistent. Although institutional fiefdoms and bureaucratic interests strongly influence the formulation of U.N. policy, programs, and resolutions, the most powerful actors remain the member states. Each tries to persuade the U.N. as an institution to advocate and adopt its positions on the matters most important to it. The chaos of conflicting priorities rarely results in consensus for decisive action. The most common result is inaction or a lowest-common-denominator outcome. Too often, the United States also finds that other countries’ positions on an issue have been predetermined in their regional or political groupings. These groupings include the European Union; the G-77, or Group of 77 (which is really a caucus of some 130 countries, including China, Iran, and Cuba); the Non-Aligned Movement (NAM); the African Union (AU); the Arab League; and the Organization of the Islamic Conference (OIC). Some countries participate in several of these blocs. Added to this mix is heavy lobbying by “civil society” special interest groups, especially on contentious causes, which helps to explain why the United States faces an uphill battle in successfully husbanding any policy proposal through the U.N. system. Perhaps the most stunning example came under President Bill Clinton, when the United States was trying to negotiate changes to the Rome Statute, which established the International Criminal Court (ICC), so that the United States could sign it. Intense lobbying by nongovernmental organizations at the proceedings culminated in dramatic cheering when 120 countries voted in favor of the statute despite U.S. objections.[9] Of course, the most difficult forum for negotiating multilateral solutions is the Security Council, where the most serious security matters are raised and the greatest failures of multilateralism have occurred. During the Cold War, the Soviet Union largely shut down the council with its veto. As a result, the United States conducted most of its international affairs outside of the U.N., yet very few complaints of unilateralism were heard. That changed when the Soviet Union dissolved, and the hope was that the U.N. would at last become a force for good in the world. Instead, new rivalries have emerged that undermine its effectiveness. Perhaps the most frustrating development for U.S. multilateralism at the U.N. in the post–Cold War era has been the inability of the United States to develop a shared position with some of its best friends in Europe. Often, the allies say that they cannot negotiate with the United States until the European Union has taken a “common European position.” Yet after that common position has been adopted, individual European countries claim far less flexibility to negotiate. The EU also has been known to strong-arm its allies as well as its member states to oppose U.S. positions. For example, on the issue of genocide in Darfur, I witnessed the EU’s most visible leaders pressing the United States to accept the ICC as the international judicial authority to try war crimes committed in Sudan, rather than setting up an ad hoc tribunal. Furthermore, they leaned on Romania to go along with their position, even threatening Romania with punitive action if it did not. Countries hostile to the United States and to economic and political freedoms can and do take full advantage of this crack in the West’s once-unified front. Sometimes, though, the United States is its own worst enemy. Intense interagency discussions must take place before the State Department sends out any instruction cable to its negotiators at the U.N. and diplomats in capitals. Such delays can be costly because they give other countries time to sway votes against the U.S. position, leaving U.S. negotiators with little time to convince others to change their minds. For U.S. negotiators, this process can blur not only the clarity of purpose, but also policy objectives. Even after the State Department, Defense Department, and National Security Council hammer out a policy, U.S. diplomats are sometimes simply unable to advance it. Many who are fairly new to the negotiations must deal with counterparts from other countries who have worked the same issue in international settings for years. Some U.S. diplomats would rather settle for consensus than work for an outcome in which the U.S. will be isolated and which places America alongside pariah states such as Zimbabwe or Sudan, even if those countries voted with the United States for starkly different reasons.

### AT: Warming

#### No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

## Judicial Review

### AT: Kellman

#### No nuclear war from judicial abdication – Kellman’s from 1989, hundreds of instances of abdication since then disprove

### AT: Soft Power

#### Soft power fails — no empirical evidence and it’s derived from the private sector

Singh 8 (Robert, professor in the School of Politics in Birkbeck College at University of London, “The exceptional empire,” Vol. 45, Iss. 5, ProQuest)

Like many theoretical constructs in social science, 'soft power' has its appeal and adherents. But it is not unproblematic . Realists typically have had little time for such ephemeral notions as the popularity of nations as being especially consequential in international relations. In addition, there exists a paucity of empirical evidence that substantiates the premises and prescriptions of soft power. Soft power is not a commodity that governments can actively deploy in pursuit of discrete foreign policy goals, unlike hardmilitary or economic resources. Moreover, to the extent that America is attractive, most of this soft resource is supplied not by the state but the private sector -- Hollywood, television and the music industry to universities , research institutes and businesses. The influence of government on whether, where and how these resources are deployed is limited, uneven and indirect (probably for the good).Moreover, in historical terms, the literature on anti-Americanisms makes plain that long before the US had a global roleto play, the nation and its people were already objects of contempt , ridicule and bafflement, especially in Europe (Singh, 2005).Anti-Americanism predated encounters with the American 'Other'. During periods of international tension in which relatively weak interlocutorsconfront a powerful US, it is unsurprising that animus is often vented towards Washington. As one Newsweek poll recorded the sorry figuresunderpinning America's 'tarnished global image.'

#### Obama won’t use soft power — empirics prove

Lagon 11 (Mark, Chair, International Relations and Security Concentration, and Visiting Professor, MSFS Program MASTER OF SCIENCE IN FOREIGN SERVICE (MSFS), Georgetown University, "Soft Power Under Obama," 10-18, http://www.isn.ethz.ch/isn/Current-Affairs/ISN-Insights/Detail?lng=en&id=133416&contextid734=133416&contextid735=133415&tabid=133415&dynrel=4888caa0-b3db-1461-98b9-e20e7b9c13d4,0c54e3b3-1e9c-be1e-2c24-a6a8c7060233, EMM)

One irony of the Obama presidency is how much it relies on hard power. The president came into office proposing a dramatic shift from George W. Bush’s perceived unilateralism, and most of his predecessor’s hard-edged counterterrorism tactics and massive deployments in wars abroad. Yet after three years, Obama has escalated forces in Afghanistan, embraced the widespread use of unmanned drones to kill terrorists at the risk of civilian casualties, kept Guantánamo open, and killed Osama bin Laden in Pakistan in a thoroughly unilateral fashion. What he hasn’t accomplished to any great degree is what most observers assumed would be the hallmark of his approach to foreign affairs—a full assertion of the soft power that makes hard power more effective. His 2008 campaign centered on a critique of President Bush’s overreliance on hard power. Obama suggested he would rehabilitate the damaged image of America created by these excesses and show that the United States was not a cowboy nation. Upon taking office, he made fresh-start statements, such as his June 2009 remarks in Cairo, and embraced political means like dialogue, respectful multilateralism, and the use of new media, suggesting that he felt the soft power to change minds, build legitimacy, and advance interests was the key element missing from the recent US approach to the world—and that he would quickly remedy that defect. Yet President Obama’s conception of soft power has curiously lacked the very quality that has made it most efficacious in the past—the values dimension . This may seem odd for a leader who is seen worldwide as an icon of morality, known for the motto “the audacity of hope” and his deployment of soaring rhetoric. Yet his governance has virtually ignored the values dimension of soft power, which goes beyond the tradecraft of diplomacy and multilateral consultation to aggressively assert the ideals of freedom in practical initiatives. The excision of this values dimension renders soft power a hollow concept. The Obama presidency has regularly avoided asserting meaningful soft power, particularly in its relations with three countries—Iran, Russia, and Egypt—where it might have made a difference not only for those countries but for American interests as well. His reaction to the challenges these countries have posed to the US suggest that it is not soft power itself that Obama doubts, but America’s moral standing to project it.

# Block

### OVERVIEW

#### U.S. legal leadership enables a neocolonial agenda of global neoliberal domination---this link is phenomenally specific to their mechanism of boosting the prestige of U.S. courts in order to export legal norms and practices

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

There is a clear pattern of continuity, not of rupture, between the current policy trend in the international institutional setting and earlier practices, in particular colonialism. The Western world, under current U.S. leadership, having persuaded itself of its superior position, largely justified by its form of government, has succeeded in diffusing rule of law ideology as universally valid, behind whose shadows plunder hides, both in domestic and in international matters.

Present-day international interventions led by the United States are no longer openly colonial efforts. They might be called neo-colonial, imperialistic or simply post-colonial interventions. Although practically all of European colonial states (most notably Portugal, Spain, Great Britain, France, Germany and even Italy) regarded themselves as empires, the concept of ‘empire’ is what best describes the present phase of multinational capitalist development with the USA as the most important, hegemonic superpower, using the rule of law to pave the way for international corporate domination.

Export of the law can be described and explained in a variety of ways. A first example is the imperialistic/colonial rule, or imposition of law by military rules, as during military conquest: Napoleon imposed his Civil Code to French-occupied Belgium in the early nineteenth century. Similarly, General MacArthur imposed a variety of legal reforms based on the American government model in post World War II Japan, as a condition of the armistice in the aftermath of Hiroshima. Today, Western-style elections and a variety of other laws governing everyday life are imposed in countries under US occupation, such as Afghanistan and Iraq.

A second model can be described as imposition by bargaining, in the sense that acceptance of law is part of a subtle extortion11. Target countries are persuaded to adopt legal structures according to Western standards or face exclusion from international markets. This model describes the experience of China, Japan and Egypt in the early twentieth century, and, indeed, contemporary operations of the World Bank, IMF, the World Trade Organization (WTO) and other Western development agencies (United States Agency for International Development (USAID), European Bank for Reconstruction and Development (EBRD), and so on) in the ‘developing’ and former socialist world.

A third model, constructed as fully consensual, is diffusion by prestige, a deliberate process of institutional admiration that leads to the reception of law.12 According to this vision, because modernization requires complex legal techniques and institutional arrangements, the receiving legal system, more simple and primitive, cannot cope with the new necessities. It lacks the culture of the rule of law, something that can only be imported from the West. Every country that in its legal development has ‘imported’ Western law has thus acknowledged its ‘legal inferiority’ by admiring and thus voluntarily attempting to import Western institutions. Turkey during the time of Ataturk, Ethiopia at the time of Haile Selassie and Japan during the Meiji restoration are modern examples.

Interestingly, if the transplant ‘fails’, such as with the attempts to impose Western-style regulation on the Russian stock market, or as with many law and development enterprises, it is the recipient society that receives the blame. Local shortcomings and ‘lacks’ are said to have precluded progress in the development of the rule of law. When the World Bank produces a development report on legal issues, it invariably shows insensitivity for local complexities and suggests radical and universal transplantation of Western notions and institutions.

#### Global expansion of the Western conception of rule of law enables neoliberal resource plundering---turns the whole case because it causes failed transitions that are hijacked by authoritarians

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

The rule of law rhetoric has been used as a justification for ‘plunder’ (broadly definable as inequitable distribution of resources by the strong at the expenses of the weak), thus backing a claim that it has been used ‘illegally’. This can be identified as ‘the dark side of the rule of law’, which is kept silent from any public discussion. In order to deeply understand both sides of the rule of law, the close connection of such concept with the ideal of democracy has to be disentangled, and on the contrary its close association with practices of ‘plunder’ has to be recognized.

In the dominant liberal democratic tradition the rule of law has at least two different aggregates of meaning. In the first, the rule of law refers to institutions that secure property rights against governmental taking and that guarantee contractual obligations. This is the meaning of rule of law invoked by Western businessmen interested in investing abroad. International institutions such as the World Bank or the International Monetary Fund (IMF) often charge the lack of the rule of law as the main reason for insufficient foreign investment in poor countries. The rule of law is thus interpreted as the backbone of an ideal market economy. Normative recipes for market liberalization and opening up of local markets to foreign investment thus come packaged with the prestigious wrapping of the rule of law.

According to the second approach, which relates to a liberal political tradition rooted in ‘natural law’ and in the more secular form of ‘rational law’, society should be governed by the law and not by a human being acting as a ruler (sub lege, non sub homine). The law is impersonal, abstract and fair because it is applied mechanically to anyone in society, and a system is effectively governed by the rule of law when its leaders are under its restraint.

Some conservatives might favour the first meaning, protecting property and contracts. The second meaning, providing rights, is a favourite of the moderate left and of many international human rights activists seeking to do good by the use of the law (the ‘do-gooders’). Perhaps someone located in the so-called ‘Third world’ would claim to be a champion of both meanings, which appear to merge in the recent, comprehensive definition of the World Bank: ‘The rule of law requires transparent legislation, fair laws, predictable enforcement, and accountable governments to maintain order, promote the private sector growth, fight poverty and have legitimacy’.8

A system can be governed by the rule of law in one or the other sense. There are systems in which property rights are worshipped but that are still governed by ruthless, unrestricted leaders. President Fujimori’s Peru or Pinochet’s Chile are good recent examples of such arrangements, but many other authoritarian governments presently in office mainly in Africa, Asia and Latin America that follow the ‘good governance’ prescriptions of the World Bank also fall in this category.

In other systems, with good human rights credentials, governments interpret their role as significantly redistributive. Property rights may not be sacred, and a variety of ‘social theories’ may limit their extension or curtail them without compensation. In such settings, quite often, courts and scholars might develop theories that limit the enforcement of contracts in the name of justice and social solidarity. Consequently, they might fit the second but not the first definition ofthe rule of law. Scandinavian countries, amplifying attitudes shared at one time or another in history by a number of continental legal traditions such as France, Germany and Italy (or the United States’ New Deal), might offer such a model in Western societies.

Western countries have developed a strong identity as being governed by the rule of law, no matter what the actual history or the present situation might be. Such identity is obtained—as is the usual pattern—by comparison with ‘the other’, almost invariably portrayed as ‘lacking’ the rule of law.

Based on the idea that others ‘lack’ the rule of law, many external interventions have been enacted in the so-called ‘developing countries’ by Western actors. Many of such interventions, instead of being beneficial for the local society, have shown the possibility for the law to be used as an instrument of oppression and plunder, ironically representing an ‘illegal’ use of the rule of law.9

### Framework---2NC

#### Our framework is necessary to reclaim the political from state-focused methods that constrict democratic dialogue. Error replication is inevitable without interrogating the ethical foundations of the 1ac

Shampa Biswas 7 Prof of Politics @ Whitman “Empire and Global Public Intellectuals: Reading Edward Said as an International Relations Theorist” Millennium 36 (1) p. 117-125

The recent resuscitation of the project of Empire should give International Relations scholars particular pause.1 For a discipline long premised on a triumphant Westphalian sovereignty, there should be something remarkable about the ease with which the case for brute force, regime change and empire-building is being formulated in widespread commentary spanning the political spectrum. Writing after the 1991 Gulf War, Edward Said notes the US hesitance to use the word ‘empire’ despite its long imperial history.2 This hesitance too is increasingly under attack as even self-designated liberal commentators such as Michael Ignatieff urge the US to overcome its unease with the ‘e-word’ and selfconsciously don the mantle of imperial power, contravening the limits of sovereign authority and remaking the world in its universalist image of ‘democracy’ and ‘freedom’.3 Rashid Khalidi has argued that the US invasion and occupation of Iraq does indeed mark a new stage in American world hegemony, replacing the indirect and proxy forms of Cold War domination with a regime much more reminiscent of European colonial empires in the Middle East.4 The ease with which a defence of empire has been mounted and a colonial project so unabashedly resurrected makes this a particularly opportune, if not necessary, moment, as scholars of ‘the global’, to take stock of our disciplinary complicities with power, to account for colonialist imaginaries that are lodged at the heart of a discipline ostensibly interested in power but perhaps far too deluded by the formal equality of state sovereignty and overly concerned with security and order. Perhaps more than any other scholar, Edward Said’s groundbreaking work in Orientalism has argued and demonstrated the long and deep complicity of academic scholarship with colonial domination.5 In addition to spawning whole new areas of scholarship such as postcolonial studies, Said’s writings have had considerable influence in his own discipline of comparative literature but also in such varied disciplines as anthropology, geography and history, all of which have taken serious and sustained stock of their own participation in imperial projects and in fact regrouped around that consciousness in a way that has simply not happened with International Relations.6 It has been 30 years since Stanley Hoffman accused IR of being an ‘American social science’ and noted its too close connections to US foreign policy elites and US preoccupations of the Cold War to be able to make any universal claims,7 yet there seems to be a curious amnesia and lack of curiosity about the political history of the discipline, and in particular its own complicities in the production of empire.8 Through what discourses the imperial gets reproduced, resurrected and re-energised is a question that should be very much at the heart of a discipline whose task it is to examine the contours of global power. Thinking this failure of IR through some of Edward Said’s critical scholarly work from his long distinguished career as an intellectual and activist, this article is an attempt to politicise and hence render questionable the disciplinary traps that have, ironically, circumscribed the ability of scholars whose very business it is to think about global politics to actually think globally and politically. What Edward Said has to offer IR scholars, I believe, is a certain kind of global sensibility, a critical but sympathetic and felt awareness of an inhabited and cohabited world. Furthermore, it is a profoundly political sensibility whose globalism is predicated on a cognisance of the imperial and a firm non-imperial ethic in its formulation. I make this argument by travelling through a couple of Said’s thematic foci in his enormous corpus of writing. Using a lot of Said’s reflections on the role of public intellectuals, I argue in this article that IR scholars need to develop what I call a ‘global intellectual posture’. In the 1993 Reith Lectures delivered on BBC channels, Said outlines three positions for public intellectuals to assume – as an outsider/exile/marginal, as an ‘amateur’, and as a disturber of the status quo speaking ‘truth to power’ and self-consciously siding with those who are underrepresented and disadvantaged.9 Beginning with a discussion of Said’s critique of ‘professionalism’ and the ‘cult of expertise’ as it applies to International Relations, I first argue the importance, for scholars of global politics, of taking politics seriously. Second, I turn to Said’s comments on the posture of exile and his critique of identity politics, particularly in its nationalist formulations, to ask what it means for students of global politics to take the global seriously. Finally, I attend to some of Said’s comments on humanism and contrapuntality to examine what IR scholars can learn from Said about feeling and thinking globally concretely, thoroughly and carefully. IR Professionals in an Age of Empire: From ‘International Experts’ to ‘Global Public Intellectuals’ One of the profound effects of the war on terror initiated by the Bush administration has been a significant constriction of a democratic public sphere, which has included the active and aggressive curtailment of intellectual and political dissent and a sharp delineation of national boundaries along with concentration of state power. The academy in this context has become a particularly embattled site with some highly disturbing onslaughts on academic freedom. At the most obvious level, this has involved fairly well-calibrated neoconservative attacks on US higher education that have invoked the mantra of ‘liberal bias’ and demanded legislative regulation and reform10, an onslaught supported by a well-funded network of conservative think tanks, centres, institutes and ‘concerned citizen groups’ within and outside the higher education establishment11 and with considerable reach among sitting legislators, jurists and policy-makers as well as the media. But what has in part made possible the encroachment of such nationalist and statist agendas has been a larger history of the corporatisation of the university and the accompanying ‘professionalisation’ that goes with it. Expressing concern with ‘academic acquiescence in the decline of public discourse in the United States’, Herbert Reid has examined the ways in which the university is beginning to operate as another transnational corporation12, and critiqued the consolidation of a ‘culture of professionalism’ where academic bureaucrats engage in bureaucratic role-playing, minor academic turf battles mask the larger managerial power play on campuses and the increasing influence of a relatively autonomous administrative elite and the rise of insular ‘expert cultures’ have led to academics relinquishing their claims to public space and authority.13 While it is no surprise that the US academy should find itself too at that uneasy confluence of neoliberal globalising dynamics and exclusivist nationalist agendas that is the predicament of many contemporary institutions around the world, there is much reason for concern and an urgent need to rethink the role and place of intellectual labour in the democratic process. This is especially true for scholars of the global writing in this age of globalisation and empire. Edward Said has written extensively on the place of the academy as one of the few and increasingly precarious spaces for democratic deliberation and argued the necessity for public intellectuals immured from the seductions of power.14 Defending the US academy as one of the last remaining utopian spaces, ‘the one public space available to real alternative intellectual practices: no other institution like it on such a scale exists anywhere else in the world today’15, and lauding the remarkable critical theoretical and historical work of many academic intellectuals in a lot of his work, Said also complains that ‘the American University, with its munificence, utopian sanctuary, and remarkable diversity, has defanged (intellectuals)’16. The most serious threat to the ‘intellectual vocation’, he argues, is ‘professionalism’ and mounts a pointed attack on the proliferation of ‘specializations’ and the ‘cult of expertise’ with their focus on ‘relatively narrow areas of knowledge’, ‘technical formalism’, ‘impersonal theories and methodologies’, and most worrisome of all, their ability and willingness to be seduced by power.17 Said mentions in this context the funding of academic programmes and research which came out of the exigencies of the Cold War18, an area in which there was considerable traffic of political scientists (largely trained as IR and comparative politics scholars) with institutions of policy-making. Looking at various influential US academics as ‘organic intellectuals’ involved in a dialectical relationship with foreign policy-makers and examining the institutional relationships at and among numerous think tanks and universities that create convergent perspectives and interests, Christopher Clement has studied US intervention in the Third World both during and after the Cold War made possible and justified through various forms of ‘intellectual articulation’.19 This is not simply a matter of scholars working for the state, but indeed a larger question of intellectual orientation. It is not uncommon for IR scholars to feel the need to formulate their scholarly conclusions in terms of its relevance for global politics, where ‘relevance’ is measured entirely in terms of policy wisdom. Edward Said’s searing indictment of US intellectuals – policy-experts and Middle East experts - in the context of the first Gulf War20 is certainly even more resonant in the contemporary context preceding and following the 2003 invasion of Iraq. The space for a critical appraisal of the motivations and conduct of this war has been considerably diminished by the expertise-framed national debate wherein certain kinds of ethical questions irreducible to formulaic ‘for or against’ and ‘costs and benefits’ analysis can simply not be raised. In effect, what Said argues for, and IR scholars need to pay particular heed to, is an understanding of ‘intellectual relevance’ that is larger and more worthwhile, that is about the posing of critical, historical, ethical and perhaps unanswerable questions rather than the offering of recipes and solutions, that is about politics (rather than techno-expertise) in the most fundamental and important senses of the vocation.21

#### Framework---policymakers and legal intellectuals use representations of the rule of law as a positive force that bear no relationship to reality---interrogating flawed understandings of the rule of law undermines the truth-value of their claims about its tangible effects---our framework arg is not about the rhetoric of the 1AC but rather the rhetoric of judges and policymakers which means none of their spin about “judge choice” or severing reps applies

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

The expression ‘rule of law’ has gained currency well outside the specialized learning of lawyers. It has reached political and cultural spheres, entering everyday discourse and media language, it is pronounced in countless political speeches and promenades on the agendas of private and public actors.

Unfortunately, the term has incrementally lost clarity and is today interpreted in widely disparate ways. ‘Rule of law’ is almost never carefully defined as a concept; users of the expression allude to meanings that they assume to be clear and objective but are not so. Rule of law has thus become part of that dimension of tacit knowledge, described by Polanyi in his classic study of human communications.6 Naturally, this would be a perfectly innocent and common phenomenon, not worthy of inquiry, were it not for the weighty political implications of the phrase in different contexts.7

The connotations of the expression ‘rule of law’ have always been implicitly positive. Today, the concept is inextricably linked to the notion of democracy, thus becoming a powerful, almost indisputable, positively loaded ideal. Who could argue against a society governed under democracy and the rule of law?

The rule of law lives today in a comfortable limbo, stretched to fit the needs of every side of the political spectrum as a symbol or an icon rather than as a real-life institutional arrangement with its pros and cons to be discussed and understood as those of any other cultural artefact. It is necessary to get to a better understanding of this powerful political weapon, and to question its almost sacred status, by analyzing it as a Western cultural artefact, closely connected with the diffusion of Western political and economic domination.

### FW/Alt---Jones 99

#### Critical intellectualism key to solve extinction---voting negative outweighs hypothetical plan consequences

**Jones 99**—IR, Aberystwyth (Richard, “6. Emancipation: Reconceptualizing Practice,” Security, Strategy and Critical Theory, http://www.ciaonet.org/book/wynjones/wynjones06.html, AMiles)

The central political task of the intellectuals is to aid in the construction of a counterhegemony and thus undermine the prevailing patterns of discourse and interaction that make up the currently dominant hegemony. **This** task **is accomplished through educational activity**, because, as Gramsci argues, “every relationship of ‘hegemony’ is necessarily a pedagogic relationship” (Gramsci 1971: 350). Discussing the relationship of the “philosophy of praxis” to political practice, Gramsci claims: It [the theory] does not tend to leave the “simple” in their primitive philosophy of common sense, but rather to lead them to a higher conception of life. If it affirms the need for contact between intellectuals and “simple” it is not in order to restrict scientific activity and preserve unity at the low level of the masses, but precisely in order to construct an intellectual–moral bloc which can make politically possible the intellectual progress of the mass and not only of small intellectual groups. (Gramsci 1971: 332–333) According to Gramsci, this attempt to construct an alternative “intellectual–moral bloc” should take place under the auspices of the Communist Party—a body he described as the “modern prince.” Just as Niccolò Machiavelli hoped to see a prince unite Italy, rid the country of foreign barbarians, and create a virtù–ous state, Gramsci believed that the modern prince could lead the working class on its journey toward its revolutionary destiny of an emancipated society (Gramsci 1971: 125–205). Gramsci’s relative optimism about the possibility of progressive theorists playing a constructive role in emancipatory political practice was predicated on his belief in the existence of a universal class (a class whose emancipation would inevitably presage the emancipation of humanity itself) with revolutionary potential. It was a gradual loss of faith in this axiom that led Horkheimer and Adorno to their extremely pessimistic prognosis about the possibilities of progressive social change. But does a loss of faith in the revolutionary vocation of the proletariat necessarily lead to the kind of quietism ultimately embraced by the first generation of the Frankfurt School? The conflict that erupted in the 1960s between them and their more radical students suggests not. Indeed, contemporary critical theorists claim that the deprivileging of the role of the proletariat in the struggle for emancipation is actually a positive move. Class remains a very important axis of domination in society, but it is not the only such axis (Fraser 1995). Nor is it valid to reduce all other forms of domination—for example, in the case of gender—to class relations, as orthodox Marxists tend to do. To recognize these points is not only a first step toward the development of an analysis of forms of exploitation and exclusion within society that is more attuned to social reality; it is also a realization that there are other forms of emancipatory politics than those associated with class conflict. 1 This in turn suggests new possibilities and problems for emancipatory theory. Furthermore, the abandonment of faith in revolutionary parties is also a positive development. The history of the European left during the twentieth century provides myriad examples of the ways in which the fetishization of party organizations has led to bureaucratic immobility and the confusion of means with ends (see, for example, Salvadori 1990). The failure of the Bolshevik experiment illustrates how disciplined, vanguard parties are an ideal vehicle for totalitarian domination (Serge 1984). Faith in the “infallible party” has obviously been the source of strength and comfort to many in this period and, as the experience of the southern Wales coalfield demonstrates, has inspired brave and progressive behavior (see, for example, the account of support for the Spanish Republic in Francis 1984). But such parties have so often been the enemies of emancipation that they should be treated with the utmost caution. Parties are necessary, but their fetishization is potentially disastrous. History furnishes examples of progressive developments that have been positively influenced by organic intellectuals operating outside the bounds of a particular party structure (G. Williams 1984). Some of these developments have occurred in the particularly intractable realm of security. These examples may be considered as “resources of hope” for critical security studies (R. Williams 1989). They illustrate that ideas are important or, more correctly, that change is the product of the dialectical interaction of ideas and material reality. One clear security–related example of the role of critical thinking and critical thinkers in aiding and abetting progressive social change is the experience of the peace movement of the 1980s. At that time the ideas of dissident defense intellectuals (the “alternative defense” school) encouraged and drew strength from peace activism. Together they had an effect not only on short–term policy but on the dominant discourses of strategy and security**, a far more important result in the long run.** The synergy between critical security intellectuals and critical social movements and the potential influence of both working in tandem can be witnessed particularly clearly in the fate of common security. As Thomas Risse–Kappen points out, the term “common security” originated in the contribution of peace researchers to the German security debate of the 1970s (Risse–Kappen 1994: 186ff.); it was subsequently popularized by the Palme Commission report (Independent Commission on Disarmament and Security Issues 1982). Initially, mainstream defense intellectuals dismissed the concept as hopelessly idealistic; it certainly had no place in their allegedly hardheaded and realist view of the world. However, notions of common security were taken up by a number of different intellectual communities, including the liberal arms control community in the United States, Western European peace researchers, security specialists in the center–left political parties of Western Europe, and Soviet “institutchiks”—members of the influential policy institutes in the Soviet Union such as the United States of America and Canada Institute (Landau 1996: 52–54; Risse–Kappen 1994: 196–200; Kaldor 1995; Spencer 1995). These communities were subsequently able to take advantage of public pressure exerted through social movements in order to gain broader acceptance for common security. In Germany, for example, “in response to social movement pressure, German social organizations such as churches and trade unions quickly supported the ideas promoted by peace researchers and the SPD” (Risse–Kappen 1994: 207). Similar pressures even had an effect on the Reagan administration. As Risse–Kappen notes: When the Reagan administration brought hard–liners into power, the US arms control community was removed from policy influence. It was the American peace movement and what became known as the “freeze campaign” that revived the arms control process together with pressure from the European allies. (Risse–Kappen 1994: 205; also Cortright 1993: 90–110) Although it would be difficult to sustain a claim that the combination of critical movements and **intellectuals** persuaded the Reagan government to adopt the rhetoric and substance of common security in its entirety, it is clear that it did at least **have a substantial impact on ameliorating U.S. behavior.** The most dramatic and certainly the most unexpected impact of alternative defense ideas was felt in the Soviet Union. Through various East–West links, which included arms control institutions, Pugwash conferences, interparty contacts, and even direct personal links, a coterie of Soviet policy analysts and advisers were drawn toward common security and such attendant notions as “nonoffensive defense” (these links are detailed in Evangelista 1995; Kaldor 1995; Checkel 1993; Risse–Kappen 1994; Landau 1996 and Spencer 1995 concentrate on the role of the Pugwash conferences). This group, including Palme Commission member Georgii Arbatov, Pugwash attendee Andrei Kokoshin, and Sergei Karaganov, a senior adviser who was in regular contact with the Western peace researchers Anders Boserup and Lutz Unterseher (Risse–Kappen 1994: 203), then influenced Soviet leader Mikhail Gorbachev. Gorbachev’s subsequent championing of common security may be attributed to several factors. It is clear, for example, that new Soviet leadership had a strong interest in alleviating tensions in East–West relations in order to facilitate much–needed domestic reforms (“the interaction of ideas and material reality”). But what is significant is that the Soviets’ commitment to common security led to significant changes in force sizes and postures. These in turn aided in the winding down of the Cold War, the end of Soviet domination over Eastern Europe, and even the collapse of Russian control over much of the territory of the former Soviet Union. At the present time, in marked contrast to the situation in the early 1980s, common security is part of the common sense of security discourse. As MccGwire points out, the North Atlantic Treaty Organization (NATO) (a common defense pact) is using the rhetoric of common security in order to justify its expansion into Eastern Europe (MccGwire 1997). This points to an interesting and potentially important aspect of the impact of ideas on politics. As concepts such as common security, and collective security before it (Claude 1984: 223–260), are adopted by governments and military services, they inevitably become somewhat debased. The hope is that enough of the residual meaning can survive to **shift the parameters of the debate** in a potentially progressive direction. Moreover, the adoption of the concept of common security by official circles provides critics with a useful tool for (immanently) critiquing aspects of security policy (as MccGwire 1997 demonstrates in relation to NATO expansion). The example of common security is highly instructive. First, it indicates that critical intellectuals can be politically engaged and play a role—a significant one at that—in making the world a better and safer place. Second, it points to potential future addressees for critical international theory in general, and critical security studies in particular. Third, it also underlines the role of ideas in the evolution of society. Although most proponents of critical security studies reject aspects of Gramsci’s theory of organic intellectuals, in particular his exclusive concentration on class and his emphasis on the guiding role of the party, the desire for engagement and relevance must remain at the heart of their project. The example of the peace movement suggests that critical theorists can still play the role of organic intellectuals and that this organic relationship need not confine itself to a single class; it can involve alignment with different coalitions of social movements that campaign on an issue or a series of issues pertinent to the struggle for emancipation (Shaw 1994b; R. Walker 1994). Edward Said captures this broader orientation when he suggests that critical intellectuals “are always tied to and ought to remain an organic part of an ongoing experience in society: of the poor, the disadvantaged, the voiceless, the unrepresented, the powerless” (Said 1994: 84). In the specific case of critical security studies, this means placing the experience of those men and women and communities for whom the present world order is a cause of insecurity rather than security at the center of the agenda and making suffering humanity rather than raison d’état the prism through which problems are viewed. Here the project stands full–square within the critical theory tradition. If “all theory is for someone and for some purpose,” then critical security studies is for “the voiceless, the unrepresented, the powerless,” and its purpose is their emancipation. The theoretical implications of this orientation have already been discussed in the previous chapters. They involve a fundamental reconceptualization of security with a shift in referent object and a broadening of the range of issues considered as a legitimate part of the discourse. They also involve a reconceptualization of strategy within this expanded notion of security. But the question remains at the conceptual level of how these alternative types of theorizing—even if they are self–consciously aligned to the practices of critical or new social movements, such as peace activism, the struggle for human rights, and the survival of minority cultures—can become “a force for the direction of action.” Again, Gramsci’s work is insightful. In the Prison Notebooks, Gramsci advances a sophisticated analysis of how dominant discourses play a vital role in upholding particular political and economic orders, or, in Gramsci’s terminology, “historic blocs” (Gramsci 1971: 323–377). Gramsci adopted Machiavelli’s view of power as a centaur, half man, half beast: a mixture of consent and coercion. Consent is produced and reproduced by a ruling hegemony that holds sway through civil society and through which ruling or dominant ideas become widely dispersed. 2 In particular, Gramsci describes how ideology becomes sedimented in society and takes on the status of common sense; it becomes subconsciously accepted and even regarded as beyond question. **Obviously**, for Gramsci, **there is nothing immutable about the values that permeate society; they can and do change.** In the social realm, ideas and institutions that were once seen as natural and beyond question (i.e., commonsensical) in the West, such as feudalism and slavery, are now seen as anachronistic, unjust, and unacceptable. In Marx’s well–worn phrase, “All that is solid melts into the air.” Gramsci’s intention is to harness this potential for change and ensure that it moves in the direction of emancipation. To do this he suggests a strategy of a “war of position” (Gramsci 1971: 229–239). Gramsci argues that in states with developed civil societies, such as those in Western liberal democracies, any successful attempt at progressive **social change requires** a slow, **incremental**, even **molecular, struggle** to break down the prevailing hegemony and construct an alternative counterhegemony to take its place. Organic intellectuals have a crucial role to play in this process by helping to undermine the “natural,” “commonsense,” internalized nature of the status quo. This in turn helps create political space within which alternative conceptions of politics can be developed and new historic blocs created. I contend that Gramsci’s strategy of a war of position suggests an appropriate model for proponents of critical security studies to adopt in relating their theorizing to political practice. The Tasks of Critical Security Studies If the project of critical security studies is conceived in terms of a war of position, then the main task of those intellectuals who align themselves with the enterprise is to attempt to undermine the prevailing hegemonic security discourse. This may be accomplished by utilizing specialist information and expertise to engage in an immanent critique of the prevailing security regimes, that is, comparing the justifications of those regimes with actual outcomes. When this is attempted in the security field, the prevailing structures and regimes are found to fail grievously on their own terms. Such an approach also involves challenging the pronouncements of those intellectuals, traditional or organic, whose views serve to legitimate, and hence reproduce, the prevailing world order. This challenge entails teasing out the often subconscious and certainly unexamined assumptions that underlie their arguments while **drawing attention to the normative viewpoints that are smuggled into mainstream thinking** about security behind its positivist facade. In this sense, proponents of critical security studies approximate to Foucault’s notion of “specific intellectuals” who use their expert knowledge to challenge the prevailing “regime of truth” (Foucault 1980: 132). However, critical theorists might wish to reformulate this sentiment along more familiar Quaker lines of “speaking truth to power” (this sentiment is also central to Said 1994) or even along the eisteddfod lines of speaking “truth against the world.” Of course, traditional strategists can, and indeed do, sometimes claim a similar role. Colin S. Gray, for example, states that “strategists must be prepared to ‘speak truth to power’” (Gray 1982a: 193). But the difference between Gray and proponents of critical security studies is that, whereas the former seeks to influence policymakers in particular directions without questioning the basis of their power, the latter aim at a thoroughgoing critique of all that traditional security studies has taken for granted. Furthermore, critical theorists base their critique on the presupposition, elegantly stated by Adorno, that “the need to lend suffering a voice is the precondition of all truth” (cited in Jameson 1990: 66). The aim of critical security studies in attempting to undermine the prevailing orthodoxy is ultimately educational. As Gramsci notes, “Every relationship of ‘hegemony’ is necessarily a pedagogic relationship” (Gramsci 1971: 350; see also the discussion of critical pedagogy in Neufeld 1995: 116–121). Thus, by criticizing the hegemonic discourse and advancing alternative conceptions of security based on different understandings of human potentialities, the approach is simultaneously playing a part in eroding the legitimacy of the ruling historic bloc and contributing to the development of a counterhegemonic position. There are a number of avenues open to critical security specialists in pursuing this educational strategy. As teachers, they can try to foster and encourage skepticism toward accepted wisdom and open minds to other possibilities. They can also take advantage of the seemingly unquenchable thirst of the media for instant punditry to forward alternative views onto a broader stage. Nancy Fraser argues: “As teachers, we try to foster an emergent pedagogical counterculture.... As critical public intellectuals we try to inject our perspectives into whatever cultural or political public spheres we have access to” (Fraser 1989: 11). Perhaps significantly, support for this type of emancipatory strategy can even be found in the work of the ultrapessimistic Adorno, who argues: In the history of civilization there have been not a few instances when delusions were healed not by focused propaganda, but, in the final analysis, because scholars, with their unobtrusive yet insistent work habits, studied what lay at the root of the delusion. (cited in Kellner 1992: vii) Such “unobtrusive yet insistent work” does not in itself create the social change to which Adorno alludes. The conceptual and the practical **dangers of collapsing practice into theory must be guarded against**. Rather, **through** their **educational** **activities**, proponents of critical security studies should aim to provide support for those social movements that promote emancipatory social change. By providing a critique of the prevailing order and legitimating alternative views, **critical theorists** can **perform a valuable role in** supporting the struggles of **social movements**. That said, the role of theorists is not to direct and instruct those movements with which they are aligned; instead, the relationship is reciprocal. The experience of the European, North American, and Antipodean peace movements of the 1980s shows how influential social movements can become when their efforts are harnessed to the intellectual and educational activity of critical thinkers. For example, in his account of New Zealand’s antinuclear stance in the 1980s, Michael C. Pugh cites the importance of the visits of critical intellectuals such as Helen Caldicott and Richard Falk in changing the country’s political climate and encouraging the growth of the antinuclear movement (Pugh 1989: 108; see also Cortright 1993: 5–13). In the 1980s peace movements and critical intellectuals interested in issues of security and strategy drew strength and succor from each other’s efforts. If such critical social movements do not exist, then this creates obvious difficulties for the critical theorist. But even under these circumstances, the theorist need not abandon all hope of an eventual orientation toward practice. Once again, the peace movement of the 1980s provides evidence of the possibilities. At that time, the movement benefited from the intellectual work undertaken in the lean years of the peace movement in the late 1970s. Some of the theories and concepts developed then, such as common security and nonoffensive defense, were eventually taken up even in the Kremlin and played a significant role in defusing the second Cold War. Those ideas developed in the 1970s can be seen in Adornian terms of a “message in a bottle,” but in this case, contra Adorno’s expectations, they were picked up and used to support a program of emancipatory political practice. Obviously, one would be naive to understate the difficulties facing those attempting to develop alternative critical approaches within academia. Some of these problems have been alluded to already and involve the structural constraints of academic life itself. Said argues that many problems are caused by what he describes as the growing “professionalisation” of academic life (Said 1994: 49–62). Academics are now so constrained by the requirements of job security and marketability that they are extremely risk–averse. It pays—in all senses—to stick with the crowd and avoid the exposed limb by following the prevalent disciplinary preoccupations, publish in certain prescribed journals, and so on. The result is the navel gazing so prevalent in the study of international relations and the seeming inability of security specialists to deal with the changes brought about by the end of the Cold War (Kristensen 1997 highlights the search of U.S. nuclear planners for “new targets for old weapons”). And, of course, the pressures for conformism are heightened in the field of security studies when governments have a very real interest in marginalizing dissent. Nevertheless, opportunities for critical thinking do exist, and this thinking can connect with the practices of social movements and become a “force for the direction of action.” The experience of the 1980s, when, in the depths of the second Cold War, critical thinkers risked demonization and in some countries far worse in order to challenge received wisdom, thus arguably playing a crucial role in the very survival of the human race, should act as both an inspiration and a challenge to critical security studies.

### Warming

#### Aff is anxisou

Dodds 12 Joseph, MPhil, Psychoanalytic Studies, Sheffield University, UK, MA, Psychoanalytic Studies, Sheffield University, UK BSc, Psychology and Neuroscience, Manchester University, UK, Chartered Psychologist (CPsychol) of the British Psychological Society (BPS), and a member of several other professional organizations such as the International Neuropsychoanalysis Society, Psychoanalysis and Ecology at the Edge of Chaos p 27 \*gender mod

Why psychoanalysis? On the face of it, it seems frankly irrelevant. Surely it is the basic sciences of geology, ecology, biology, and climatology that we need, combined with various hi-tech engineering? Yes and no. The science informing us of the risks and possible technical solutions has run far ahead of our psychological state. We are not yet at the point emotionally of being able to clearly grasp the threat, and act accordingly. We need to ask why this issue, despite its current prominence, fails to ignite people's motivation for the major changes science tells us is necessary. This concerns not only the 'public' but the academy and the psychoanalytic community. In spite of the fact that Harold Searles was already writing in 1960 that psychoanalysts need to acknowledge the psychological importance of the non-human environment, until very recently his colleagues have almost entirely ignored him.

In this section we explore some of the theories with which we may be able to construct a psychoanalysis of ecology. Fuller elaboration will involve incorporating approaches from the sciences of complexity and ecology, and Deleuze and Guattari's 'geophilosophy' or 'ecosophy', which itself emerged in critical dialogue with psychoanalysis and complexity theory. However, we first need to explore the ecological potential within psychoanalysis itself, as without the latter's methods and theories for unmasking hidden motivations and phantasies, this investigation will not be able to proceed.

Renee Lertzman (2008), one of the first psychoanalytically informed social scientists to engage with the ecological crisis, describes a common surreal aspect of our everyday responses to 'eco-anxiety', the experience of flipping through a newspaper and being suddenly confronted with:

the stop-dead-in-your-tracks, bone-chilling kind of ecological travesties taking place around our planet today ... declining honey bees, melting glaciers, plastics in the sea, or the rate of coal plants being built in China each second. But how many of us actually do stop dead in our tracks? Have we become numb? ... if so, how can we become more awake and engaged to what is happening?

Environmental campaigners have become increasingly frustrated and pessimistic. Even as their messages spread further and further, and as scientists unite around their core concerns, there is an alarming gap between increasingly firm evidence and public response. The fact that oil companies donate millions to climate 'sceptic' groups doesn't help (Vidal 2010). Nor does the fact that eight European companies which are together responsible for 5-10 per cent of the emissions covered in the EU emissions trading system (Bayet, BASF, BP, GDF Suez, ArcelorMittal, Lafarge, E.ON, and Solvay) gave $306,100 to senatorial candidates in the 2010 United States midterm elections who either outright deny climate change ($107,200) or pledge they will block all climate change legislation ($240,200), with the most flagrant deniers getting the most funds (Goldenberg 2010; Climate Action Network 2010). These are the same companies that campaign against EU targets of 30 per cent reductions in emissions using current inaction in the United States as a justification, while claiming their official policy is that climate change is a major threat and they are committed to doing all they can to help in the common cause of dealing with the danger (for the full report see Climate Action Network 2010).

Recent opinion polls show climate scepticism is on the rise in the UK as well. In February 2010 a BBC-commissioned poll by Populus (BBC 2010a, 2010b) of 1,001 adults found that 25 per cent didn't think global warming was happening, a rise of 8 per cent since a similar poll in November 2009. Belief that climate change was real fell from 83 per cent to 75 per cent, while only 26 per cent believed climate change was established as largely man-made compared with 41 per cent in November. A third of those agreeing climate change was real felt consequences had been exaggerated (up from a fifth) while the number of those who felt risks had been understated fell from 38 per cent to 25 per cent (see Figure 3). According to Populus director M. Simmonds, 'it is very unusual ... to see such a dramatic shift in opinion in such a short period ... The British public are sceptical about man's contribution to climate change and becoming more so' (BBC 2010a).

Most remarkable here is the discrepancy between public and expert opinion. According to the chief scientific advisor at the Department for the Environment, Food and Rural Affairs, Professor Robert Watson: 'Action is urgently needed ... We need the public to understand that climate change is serious so they will change their habits and help us move towards a low-carbon economy.' Why this shift? Whilst the poll took place with the background of heavy snow and blizzards in the UK, always a convenient backdrop to climate sceptic jokes, the BBC (2010a) article focused on a high-profile story concerning stolen emails alleging scientific malpractice at the University of East Anglia (UEA). While this was a very serious accusation, no mainstream scientific body seriously imagines it changes in any real way the overall science, and yet this is not how the public perceived it.

Subsequently, the UK Parliament's Commons Science and Technology Committee completed its investigation into the case (BBC 2010c). The MPs' committee concluded there was no evidence that UEA's Professor Phil Jones had manipulated data, or tried 'to subvert the peer review process' and that 'his reputation, and that of his climate research unit, remained intact' (BBC

2010c). The report noted that 'it is not standard practice in climate science to publish the raw data and the computer code in academic papers' and that 'much of the data that critics claimed Prof Jones has hidden, was in fact already publicly available' (BBC 2010c) but called strongly for a greater culture of transparency in science. The report concluded that it 'found no reason in this unfortunate episode to challenge the scientific consensus that global warming is happening and is induced by human activity' (BBC 2010c).

This story was followed closely by another in January 2010 when the IPCC admitted a mistake concerning the timetable of Himalayan glacial melting. In such a lengthy report of over 3 000 pages, produced from the combined efforts of the world scientific community on a topic with as many variables as climate change, it is unsurprising some estimates need revising. Undoubtably there will be more revisions in the future, some major. It is important to emphasize that for the world's scientists the overall picture has not been affected, but public perception is completely different, with triumphant claims of proof 'it is all made up'. No doubt many sceptics will use the Parliamentary committee's report as further evidence of an institutional cover-up.

The important psychological point is that people are ready for such events, indeed eager for it - the psychosocial equivalent of a sandpile in a state of self-organized criticality (Palombo 1999; Bak 1994), when a single grain can cause a major avalanche cascading through the whole system. Understanding such subtle shifts, and the often unconscious motivations behind them, is where psychoanalysis perhaps more than any other discipline has a lot to offer. As Lertzman (2008) writes:

What if the core issue is more about how humans respond to anxiety? ... [Environmental problems ... conjure up anxieties that ... we are done for, and nothing can really be done ... To help me understand more, I turn to Freud ... because I have found few others who speak as eloquently, and sensitively about what humans do when faced with anxiety or anxiety-provoking news.

Freud, civilization, nature and the dialectic of the Enlightenment

Is Freud really relevant to understanding our current crisis? While he was very much engaged in relating psychology to social issues, from war to racism, group psychology and the discontents of civilization (Freud 1913a, 1915, 1921, 1927, 1930), he was writing during a period when the possibility that human activities could bring the Earth's ecosystems to the brink of collapse would have been hard to contemplate. Romanticism may have complained about 'unweaving rainbows' and industry's 'dark satanic mills', but by Freud's day this could be seen as Luddite anti-progress talk, especially for those working within the Weltangschung of science and the Enlightenment to which Freud (1933) pinned his psychoanalytic flag. However, much of our current bewildering situation can be understood as rooted in part in a world view that was at its zenith during Freud's day and, as Lertzman (2008) suggests, in our responses to anxiety. In addition, Freud did offer us some crucial reflections on our relationship with nature:

The principle task of civilization, its actual raison d'etre, is to defend us against nature. We all know that in many ways civilization does this fairly well already, and clearly as time goes on it will do it much better. But no one is under the illusion that nature has already been vanquished; and few dare hope that she will ever be entirely subdued to man.

(Freud 1927: 51)

Here we can see an interesting ambivalence in Freud's rhetorical style, which perhaps unwittingly captures two crucial aspects of our civilization's relationship to 'Nature' and thus begins to open up a psychoanalytic approach to ecology. First, he depicts a series of binary oppositions typical for his era, and not so different in our own: human versus nature, man versus woman and (more implicitly) order versus chaos. Here we find the classic tropes of the Enlightenment, modernity, patriarchy, industrialism and capitalism, which Jungian ecopsychologist Mary-Jane Rust (2008) calls the myths we live by. The myths she is referring to in particular are the 'myth of progress' and the 'myth of the Fall'. She argues that in order to create a sustainable future, or indeed any future, we need to find other stories, other myths, through which to live our lives, to rethink how we have fallen and what it means to progress. Freud's work suggests that Western culture views civilization as a defence against nature, and against wildness, inner and outer, but as Rust (2008: 5) writes, at 'this critical point in human history we most urgently need a myth to live by which is about living with nature, rather than fighting it.' Thus, according to Rust,

we find ourselves ... between stories (Berry 1999), in a transitional space ... of great turbulence, with little to hold onto save the ground of our own experience. Our therapeutic task ... is to understand how these myths still shape our internal worlds, our language, and our defences ... [S]omewhere in the midst of 'sustainability' ... lies an inspiring vision of transformation ... We need to dig deep, to re-read our own myths as well as find inspiration from the stories of others.

(ibid.)

The myth of progress enters the climate change debate in calls for geo-engineering and Utopian techno-fixes such as putting thousands of mirrors in space, and in the dismissal of even gentle questioning of current economic models of unlimited growth. We will later look at Harold Searles' (1972) approach to our fascination with technology and its role in the current crisis. Returning to Freud, however, there is, as always, another side, an implicit awareness that the feeling of mastery civilization gives us is in many ways a dangerous illusion. Behind our need for mastery lies our fear and trembling in the face of the awesome power of mother nature.

There are the elements which seem to mock at all human control: the earth, which quakes and is torn apart and buries all human life and its works; water, which deluges and drowns everything in turmoil; storms, which blow everything before them ... With these forces nature rises up against us, majestic, cruel and inexorable; she brings to our mind once more our weakness and helplessness, which we thought to escape through the work of civilization.

(Freud 1927: 15-16)

Here is the other side of Freud's writing on the relation between 'Nature' and 'Civilization', with humanity portrayed as a weak and helpless infant in awe and fear of a mighty and terrible mother. The lure and horror of matriarchy lie behind the defensive constructs of patriarchal civilization, just as Klein's paranoid-schizoid fears of fragmentation, engulfment, and annihilation lie behind later castration threats (Hinshelwood 1991).

With each new earthquake or flood, nature erupts into culture -similar to Kristeva's (1982) description of the eruption of the 'semiotic' into the 'symbolic' - and we are thrown back into a state of terror. The 'illusion' in the title of Freud's 1927 essay The Future of an Illusion was meant to refer to how religion arose to deal with these anxieties. However, the structural function of the myth of progress, while undoubtably more successful in terms of practical benefits, can also be included here. In these words of Freud we have already a deep understanding, albeit largely implicit, of our own current crisis: a relationship to nature based on a master-slave system of absolute binaries, and an attempt to maintain an illusory autonomy and control in the face of chaos.

There is often a tension in Freud, between the celebration of Enlightenment values found in works such as The Future of an Illusion (1927) and the more Romantic Freud who won the Goethe prize and constantly emphasized the elements Enlightenment rationality leaves out such as jokes, dreams, slips and psychological symptoms. Thus, as well as being a perfect example of the Enlightenment with its call to make the unconscious conscious and give the 'rational' ego greater power over the wilds of the id, psychoanalysis also provides a serious challenge to this way of thinking. There will always be something beyond our control. We are not, and never can be, masters in our own house, and the core of who we are is irrational, and often frightening. Marcuse (1998) touched on a similar tension when declaring Freud's (1930) Civilization and Its Discontents both the most radical critique of Western culture and its most trenchant defence. Psychoanalysis, as always, is exquisitely ambivalent.

Ultimately, for Freud, both the natural world and our inner nature are untamable and the most we can hope for are temporary, fragile, anxious compromises between competing forces (Winter & Koger 2004). The chaos of nature we defend against is also the chaos of our inner nature, the wildness in the depths of our psyche. Civilization does not only domesticate livestock but also humanity itself (Freud & Einstein 1933: 214). However, attempts to eliminate the risk have in many ways dangerously backfired, comparable to the ways that the historical programmes aiming to eliminate forest fires in the United States have led to far bigger and more uncontrollable fires taking the place of previously smaller and more manageable ones (Diamond 2006: 43-47).

The control promised by the Enlightenment, the power of the intellect to overcome chaos (environmental and emotional), is therefore at least partly a defensive and at times dangerous illusion. In our age of anxiety, with the destruction of civilization threatened by nuclear holocaust, ecosystemic collapse, bioweapons and dirty bombs, Freud's warning is more relevant than ever:

Humans\* have gained control over the forces of nature to such an extent that with their help they would have no difficulty in exterminating one another to the last man ... hence comes a large part of their current unrest, their unhappiness and their mood of anxiety.

(Freud 1930: 135)

Freud's binaries 'masculine/Enlightenment/control/autonomy' versus 'feminine/nature/chaos/dependency' also lead us to consider what Gregory Bateson (2000: 95) called the 'bipolar characteristic' of Western thought, which even tries 'to impose a binary pattern upon phenomena which are not dual in nature: youth versus age, labor versus capital, mind versus matter - and, in general, lack[s] the organizational devices for handling triangular systems/ In such a culture, as with the child struggling to come to terms with the Oedipal situation, 'any "third" party is always regarded ... as a threat' (ibid.).

Deleuze and Guattari describe such dualistic forms of thinking using the ecological metaphor of the tree with its fork-branch patterns (although they would not use the term metaphor): 'Arborescent systems are hierarchical systems with centers of signifiance and subjectification ... an element only receives information from a higher unit, and only receives a subjective affection along preestablished paths' (Deleuze & Guattari 2003a: 16). However, Freud's 'arborescent' system of binaries can also show us the way out, capturing the psychological bind we are now in. As Deleuze and Guattari (2003a: 277) write: 'The only way to get outside the dualisms is ... to pass between, the intermezzo.' Deconstructing these dualisms allows us to think about how our destructive urge to dominate and control is connected to our fear of acknowledging dependency on this largest of 'holding environments', the ultimate 'environment mother' (Winnicott 1999,1987).

### Liberal/Democratic Peace/Trade Solves War

[in AT pinker democratic peace]

#### Democratic/liberal peace theory ignores the violence that goes into creating pliant regimes willing to trade with the US---naturalizes mass violence in the interim and makes long term collapse inevitable

Herman 12—professor emeritus of finance at the Wharton School, University of Pennsylvania (Edward, 7/25/12, Reality Denial : Steven Pinker's Apologetics for Western-Imperial Volence, http://www.zcommunications.org/reality-denial-steven-pinkers-apologetics-for-western-imperial-volence-by-edward-s-herman-and-david-peterson-1)

Pinker’s establishment ideology kicks-in very clearly in his comparative treatment of communism, on the one hand, and democracy and capitalism, on the other. He is explicit that whereas communism is a “utopian” and dangerous “ideology” from which most of the world’s serious violence allegedly flowed during the past century, democracy, capitalism, “markets,” “gentle commerce,” and the like, are all tied to liberalism—or more exactly to “classical liberalism.”[133] These institutional forms are not the result of ideologies, much less utopian and dangerous; they are the historically more advanced permutations of the Leviathan that help to elicit those components of the neurobiology of peaceableness (or “better angels” as opposed to “inner demons”) for which the human brain has been naturally selected over evolutionary time. Hence, they are sources of the alleged decline in violence, and their spread is a force for positive and more peaceful change in the world.[134]¶ Not so communism. At the outset of Chapter 6, “The New Peace,” Pinker approvingly quotes Aleksandr Solzhenitsyn’s line that, unlike the communists, “Shakespeare’s evildoers stopped short at a dozen corpses [b]ecause they had no ideology” driving them. (295) In discussing the alleged mental traits of the members of a society mobilized to commit genocide, he argues that “Utopian creeds that submerge individuals into moralized categories may take root in powerful regimes and engage their full destructive might,” and highlights “Marxism during the purges, expulsions, and terror-famines in Stalin’s Soviet Union, Mao’s China, and Pol Pot’s Cambodia.” (328) In his 2002 book, The Blank Slate: The Modern Denial of Human Nature, he devoted several pages to what he called the “Marxist genocides of the twentieth century,” and noted that “Historians are currently debating whether the Communists’ mass-executions, forced marches, slave labor, and man-made famines led to one hundred million deaths or ‘only’ twenty-five million.”[135] And in the section of the current book titled “The Trajectory of Genocide,” Pinker cites the authority of the “democratic peace” theorist and “atrocitologist” Rudolph Rummel, who in his 1994 book Death By Government wrote that whereas “totalitarian communist governments slaughter their people by the tens of millions[,]…many democracies can barely bring themselves to execute serial murderers.”[136] (357)¶ As we have seen, Pinker rewrites history to accommodate this familiar establishment perspective, so that the Cold War was rooted in communist expansionism and U.S. efforts at containment, and the several million deaths in the Korean and Vietnam wars were attributable to the communists’ fanatical unwillingness to surrender to superior force, not to anti-communist and racist attitudes that facilitated the U.S. military’s mass killings of distant peoples. He deals with U.S. state-capitalism’s support and sponsorship of the corrupt open-door dictatorships of Suharto, Marcos, Mobutu, Pinochet, Diem, the Greek Colonels, and the National Security States of Latin America (among many others), and the “burgeoning” of torture following the end of the Cold War, by eye aversion. ¶ In Pinker’s view, the Third World’s troubled areas are suffering from their failure to absorb the civilizing lessons modeled for them in the United States and other advanced countries. He ignores the eight-decades-long massive U.S. investment in the military and ideological training, political takeovers, and subsequent support of Third World dictators in numerous U.S. client terror states, including Guatemala, transformed from a democracy to terror state in 1954, Brazil, shifted from a democracy to military dictatorship in 1964, the Philippines in 1972, and Chile the same in 1973, among many others. A tabulation by one of the present authors in 1979 found that 26 of the 35 states in that era that used torture on an administrative basis were U.S. clients, all of them recipients of U.S. military and economic aid.[137] These clients were capitalist in structure, but threatened and employed force to keep the lower orders disorganized and more serviceable to the local elites and transnational corporations investing there. One Latin American Church document of that period spoke of the local U.S.-supported regimes as imposing an economic model so repressive that it “provoked a revolution that did not exist.”[138] This was a deliberate “decivilizing” process, with the civilized serving as co-managers.¶ We have seen that Pinker finds the modern era peaceful by focusing on the absence of war between the major powers, downplaying the many murderous wars carried out by the West (and mainly the United States) against small countries, and falsely suggesting that the lesser-country conflicts are home-grown, even where, as in the cases of Iraq and Afghanistan, it was U.S. military assaults that precipitated the internal armed conflicts, with the United States then actively participating in them. The Israeli occupation and multi-decade ethnic cleansing of Palestine he misrepresents as a “cycle of deadly revenge,” with only Israel fighting against “terrorism” in this cycle. He speaks of Islamic and communist ideology as displaying violent tendencies, and congratulates the U.S. military for allegedly overcoming the kind of racist attitudes reported at the time of the Vietnam war (U.S. soldiers referring to Vietnamese as “gooks,” slopes,” and the like)—but the military’s new humanism is another piece of Pinker misinformation and pro-war propaganda. And he fails to cite the numerous instances of Israeli leaders referring to Palestinians as “grasshoppers,” “beasts walking on two legs,” “crocodiles,” “insects,” and a “cancer,” or Israeli rabbis decrying them as the “Amalekites” of the present era, calling for extermination of these unchosen people.[139]¶ As regards Israel, Pinker never mentions the Israeli belief in a “promised land” and “chosen people” who may be fulfilling God’s will in dispossessing Palestinians.[140] Although the lack of angelic behavior in these assaults and this language, ethnic cleansing, and dispossession process is dramatic, and has had important effects on the attitudes and behavior of Islamic peoples, it fails to fit Pinker’s ideological system and political agenda, and therefore is not a case of conflict with ideological roots. ¶ For Pinker, there is also nothing ideological in the “miracle of the market” (Reagan), no “stark utopia” in Friedrich von Hayek’s assertion that the “particulars of a spontaneous order cannot be just or unjust,”[141] no ideology in the faith that an unconstrained free market will not produce intolerable inequalities and majority resistance that in turn require the likes of Pinochet, Suharto, or Hitler to reassert the requisite “stability.” It is simply outside of Pinker’s orbit of thought that liberalism and neoliberalism in the post-Soviet world are ideologies that have serviced an elite in a class war; that the major struggles and crises that we have witnessed, over climate change, the massive upward redistribution of income and wealth, the global surge of disposable workers, and the enlargement of NATO and the police-and-surveillance state, are features of a revitalized consolidation of class power, under more angelic names like “reform,” “free markets,” “flexibility,” “stability,” and “fiscal discipline.” For Pinker, the huge growth of the prison population shows the lack of “self-control” of the incarcerated savages still with us; and it is one merit of the liberal state that it gets the bad guys off the streets. ¶ Another device that Pinker uses when weighing capitalism versus communism is to take notorious state abuses committed in the name of communism (e.g., under Joseph Stalin), not as perversions of communism, but as inherent in its ideology, and flowing directly from it. Many historians and leftists have long argued that Stalinism constituted a radical betrayal and perversion of genuine communism, and that it emerged out of crises and stresses that made anything approaching genuine communism unreachable.[142] Pinker never addresses this kind of explanation and exemption of real-world communism, but he does this implicitly for real-world degenerate forms of capitalism. Thus, Nazi Germany and its mass murders are not credited to capitalism’s account, even though Germany under the Nazis was still capitalist in economic form and surely a variant of capitalism arising under stress and threat from below, with important business support.[143] Suharto’s Indonesia and Pinochet’s Chile could be said to fit this same pattern. Rightwing believers in the crucial importance of free markets, such as Friedrich von Hayek and Milton Friedman, approved of Pinochet’s rule, which ended political freedom and freedom of thought, but worked undeviatingly for corporate interests and rights. But it took only one decade of the Chicago Boys’ privatizations and other “reforms” for Chile’s economy and financial system to collapse. In the harsh depression that ensued, the banks were re-nationalized and their foreign creditors bailed-out in a process sometimes called the “Chicago Road to Socialism,” but then shortly thereafter they were re-privatized all over again, at bargain-basement prices.[144] (Pinochet does not show up in Pinker’s index; Chile does, but never as a free market state loved by von Hayek, Friedman, and the Chicago School of Economics, and supported by the United States.)¶ In one of his book’s more outlandish moments, Pinker even allocates Nazism and the holocaust to communism. He writes that since “Hitler read Marx in 1913,” Marxism led definitively if “more circuitously” to the “[dekamegamurders] committed by the Nazi regime in Germany.”[145] (343) But while there is no evidence that Hitler really examined Marx or accepted any of his or his fellow Marxist writers’ ideas,[146] it is incontestable fact that Hitler held Marxism in contempt, and that communism and communists ranked very high among Hitler’s and the Nazi’s demons and targets (along with Jews) when they held power in Germany.[147] So is the fact that racist theories and “mismeasure of man” literature in the Houston Stewart Chamberlain tradition—of which Richard Herrnstein and Charles Murray arguably are heirs—were fanatically embraced by Hitler, and therefore linked to Nazism—and not very “circuitously,” either. ¶ Pinker not only doesn’t credit the Nazi holocaust to capitalism, he also fails to give capitalism credit for the extermination of the Native Americans in the Western Hemisphere and the huge death tolls from the Slave Trades,[148] which should have been prevented by the rising “better angels.” As noted, he also ignores democratic capitalism’s responsibility for the surge of colonialism in the 18th and 19th centuries, the associated holocausts,[149] and the death-dealing and exploitation of the Western-sponsored terror states in Indonesia, the Philippines, Latin America and elsewhere. He also fails to address the huge toll of structural violence under capitalism flowing from its domestic and global dispossession processes, and, interestingly, intensifying with the post-1979 transformation of China and the breakup of the Soviet bloc and Soviet Union (1989-1991), which reduced any need on the part of Western capitalism to show concern for the well-being of its own working class majority. This helps explain the significant global increases in inequality and dispossession and slum-city enlargement over the past two decades, a period that Pinker calls the “New Peace” and depicts as an age of accelerating “Civilization”!¶ Pinker refers to the deaths during China’s Great Leap Forward (1958-1961) as a “Mao masterminded…famine that killed between 20 million and 30 million people.”[150] (331) For Pinker, clearly, the dead were victims of a deliberate policy that demonstrates the evil behind communist ideology. But as the development economists Jean Drèze and Amartya Sen have pointed out, China under Mao installed a massive and effective system of public medical services, as well as literacy and nutrition programs that greatly benefitted the general population in the years prior to the famine—a fact that is difficult to reconcile with the allegation that Mao regarded mass starvation as an acceptable means to some other end. Instead, Drèze and Sen blamed this tragedy on the lack of democracy in China, with the absence of pressure from below and a lack of timely knowledge of policy failure significantly offsetting the life-saving benefits of communist China’s medical and other social welfare programs.[151] ¶ Drèze and Sen also compared the number of deaths caused by this famine under Mao with the number of deaths caused by what they called the “endemic undernutrition and deprivation” that afflicts India’s population year-in and year-out. “Estimates of extra mortality [from China’s famine] vary from 16.5 million to 29.5 million,” they wrote, “arguably the largest in terms of total excess mortality in recorded history.”[152] But “despite the gigantic size of excess mortality in the Chinese famine,” they continued, the “extra mortality in India from regular deprivation in normal times vastly overshadows the former. Comparing India’s death rate of 12 per thousand with China’s 7 per thousand, and applying that difference to India’s population of 781 million in 1986, we get an estimate of excess normal mortality in India of 3.9 million per year. This implies that every eight years or so more people die in India because of its higher death rate than died in China in the gigantic famine….India seems to manage to fill its cupboard with more skeletons every eight years than China put there in its years of famine.”[153] Indeed, by 2005, some 46 percent (or 31 million) of India’s children were underweight, and 79 percent suffered anemia. “Forty years of efforts to raise how much food-grains Indians are able to eat has been destroyed by a mere dozen years of economic reform,” Jawaharal Nehru University economist Utsa Patnaik observes.[154]

### AT Kurasawa

**Kurasawa concludes neg—**

1. **He concedes alarmism destroys predictions and collapses into manufactured technostrategic discourse**

**Kurasawa 4** Professor of Sociology @ York Universty of Toronto, Constellations, 11.4

Foremost among the **possible distortions** of farsightedness is **alarmism**, the manufacturing of unwarranted and unfounded **doomsday scenarios**. State and market institutions may seek to **produce a culture of fear** by deliberately stretching interpretations of reality beyond the limits of the plausible so as to exaggerate the prospects of impending catastrophes, or yet again, by intentionally promoting certain prognoses over others for instrumental purposes. Accordingly, regressive dystopias can operate as Trojan horses

advancing political agendas or commercial interests that would otherwise be susceptible to public scrutiny and opposition. Instances of this kind of manipulation of the dystopian imaginary are plentiful: the invasion of Iraq in the name of fighting terrorism and an imminent threat of use of ‘weapons of mass destruction’; the severe curtailing of American civil liberties amidst fears of a collapse of ‘homeland security’; the neoliberal dismantling of the welfare state as the only remedy for an ideologically constructed fiscal crisis; the conservative expansion of policing and incarceration due to supposedly spiraling crime waves; and so forth. Alarmism constructs and codes the future in particular ways, producing or reinforcing certain crisis narratives, belief structures, and rhetorical conventions. As much as **alarmist ideas beget a culture of fear**, the reverse is no less true.

### P

#### The permutation is the worst form of paranoid politics—it gives into their threats of immediate consequences and thereby feeds their psychosis—it’s tantamount to a crack addict who says “this is my last time”—the belief we can fill the gaps in security and then move beyond it fails to escape the grip of anxiety and is the ultimate inauthentic act—complete rejection is critical

**Neocleous 8** [Mark Neocleous, Prof. of Government @ Brunel, *Critique of Security*, 185-6]

The only way out of such a dilemma, to escape the **fetish**, is perhaps to eschew the logic of security altogether – to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain ‘this is an insecure world’ and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security. This impasse exists because security has now become so all-encom passing that it marginalises all else, most notably the constructive conﬂicts, **debates and discussions that animate political life**. The con stant prioritising of a mythical security as a political end – as the political end – **constitutes a rejection of politics** in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conﬂicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible – that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it removes it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efﬁcient way to achieve ‘security’, despite the fact that we are never quite told – never could be told – what might count as having achieved it. Security politics is, in this sense, an anti-politics,141 dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore **need to get beyond security politics,** not add yet more ‘sectors’ to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives. Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that’s left behind? But I’m inclined to agree with Dalby: maybe there is no hole.142 The mistake has been to think that there is a hole and that this hole needs to be ﬁlled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up re afﬁrming the state as the terrain of modern politics, the grounds of security. The real task is not to ﬁll the supposed hole with yet another vision of security, but to ﬁght for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That’s the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as signiﬁcant as the positive in setting thought on new paths. For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding‘more security’ (while meekly hoping that this increased security doesn’t damage our liberty) is to **blind ourselves to the possibility of** building real alternatives **to the authoritarian tendencies in contemporary politics**. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that ‘security’ helps consolidate the power of the existing forms of social domination and justiﬁes the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different con ception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and ‘insecurities’ that come with being human; it requires accepting that ‘securitizing’ an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift.143

### AT Movements fail

#### The assumption everyone will be neoliberal is self-fulfilling and false---particularly in the context of energy, voting neg actively creates a non-neoliberal public sphere---imaginaries of the public are more important in shaping policy

Joanne Swaffield 12, Professor of Economics at The University of York, 2012, “Can ‘climate champions’ save the planet? A critical reflection on neoliberal social change,” Environmental Politics, Vol. 21, No. 2, p. 248-267

We believe that the difference between the way that climate champions conceive of other people's motivations and their own motivations is potentially important. In a recent paper, Walker et al. (2010) have argued that ‘imaginaries of the public' can influence policy- and decision-making in the renewable energy sector. Their research indicates that decisions (e.g. about technology, siting and public engagement) are influenced by the ways in which ‘actors in technical-industrial and policy networks’ construct and imagine the motivations and (re)actions of the public (Walker et al. 2010, p. 943). They suggest that it might even be possible for the ‘imagined public’ to be more significant than ‘real’ publics:

Indeed, depending on how the subjectivity and agency of the public is anticipated and internalised into organisational strategies and working practices of different actors within and across sectoral networks, this imagined public might be of greater long-term significance than the ‘real’ version of specific publics encountered in meeting rooms and community halls. (Walker et al. 2010, p. 943)

Our research suggests that something similar may be occurring with the climate champions in our study. Their ‘imagined public’ has a significant influence on how they think the problem of climate change might be tackled and the strategies that they employ as climate champions. Their approach is shaped by their expectations of the ‘neoliberal person’ (the economically rational, autonomous chooser who has the right to choose his ethical commitments) that they imagine their colleagues and other people in the wider society to be. Of course, Walker et al. (2010, p. 943) recognise that ‘[the] real and the imagined are clearly not disconnected here, but neither are they necessarily the same’. The champions’ imaginary neoliberal person is based, in part, on their experience of their ‘real’ colleagues and other people that they have encountered. However, it is also an imagined character – and perhaps, a caricature – produced and reproduced through neoliberal narratives, and their associated material-discursive practices, including (among many others) the (neoliberal) practices that the champions use to promote climate-friendly behaviour. If we treat other people as archetypal ‘neoliberal’ persons, we should not be too surprised if they react in the way that we have anticipated. In other words, the imagined ‘neoliberal’ person becomes ‘real’ partly as a consequence of our acting as if it existed.

However, if we ‘scratch beneath the surface’ of a ‘neoliberal’ person, as we did with our climate champions, we may find that their ‘inner life’ is much richer and more complex than the neoliberal conception of the person allows. Our research supports the claims of Barnett et al. (2008, p. 643) that the neoliberal conception of the person does not take seriously the fact that ‘people are argumentative subjects through and through’. In our interviews, the champions displayed a ‘capacity for ordinary moral reasoning’ in response to the moral ‘dilemmas and conundrums’ posed by climate change (Barnett et al. 2008, p. 649). In other words, they were able to recognise and reflect on the moral issues raised by climate change, identify alternative moral responses, and offer reasons to justify some responses or to reject other responses. Similar observations have been made by other researchers who have examined the discursive practices of people involved in climate-protection programmes informed by a neoliberal understanding of social change (Hobson 2002, Slocum 2004). If they are encouraged to reflect on climate change (or other moral issues), most people do not think like the archetypal ‘neoliberal’ person.

We believe that this suggests that it may be worth exploring an alternative ‘deliberative’ or ‘co-inquiry’ model for programmes aimed at mobilising action on climate change. The neoliberal model of social change, used by Global Action Plan and some other providers of training and resources for climate action programmes, reproduces neoliberal social relations. More ‘deliberative’ models, which would train and encourage champions to facilitate ‘ordinary moral reasoning’ about the ‘dilemmas and conundrums’ of climate change in the workplace and elsewhere, might challenge neoliberal social relations. If we imagine other people as moral agents, it is more likely that they will realise their potential to think and act as if they are moral agents. It may also be more likely that they will recognise the limitations of a neoliberal approach to tackling the problem of climate change. In our view, the development of climate champion schemes that encourage and train climate champions to become deliberative environmental citizens, rather than neoliberal environmental citizens, might promote more imaginative engagement with the challenge of climate change.10 A neoliberal environmental citizen does not question the limitations that a neoliberal understanding of social change imposes on how we can address the problem of climate change. A deliberative environmental citizen starts from the assumption that we can only understand and respond effectively to the problem of climate change through collective deliberation. If climate champions are encouraged to overcome their (neoliberal) reluctance to engage their colleagues in serious discussions about the moral (and the political, social, cultural, economic and technological) issues raised by climate change, they might find that their colleagues are moral agents too.

## T

### Overview

#### There's a clear brightline---restrictions require a floor and a ceiling---oversight is a floor but doesn't set a cap on the President's potential actions

USCA 77, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 564 F.2d 292, 1977 U.S. App. LEXIS 10899,. 1978 Fire & Casualty Cases (CCH) P317

Continental argues that even if the Aetna and Continental policies provide coverage for the Cattuzzo accident, that coverage should [\*\*8] be limited to a total of $300,000 because Atlas agreed to procure "not less than" $300,000 coverage. The District Court properly found that the subcontract language does not support a restriction on the terms of Continental's policy because the subcontract only sets a floor, not a ceiling, for coverage.

### AT: We Meet

#### Authority is the exercise of power over others

OED 13 (http://www.oed.com/viewdictionaryentry/Entry/13349)

authority, n.

I. Power to enforce obedience.

a. Power or right to enforce obedience; moral or legal supremacy; the right to command, or give an ultimate decision.

b. in authority: in a position of power; in possession of power over others.

### AT: C/I

### AT: Area

#### “In the area” means all of the activities

UN 13

(United Nations Law of the Sea Treaty, http://www.un.org/depts/los/convention\_agreements/texts/unclos/part1.htm)

PART I INTRODUCTION Article 1

Use of terms and scope¶ 1. For the purposes of this Convention:¶ (1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;¶ (2) "Authority" means the International Seabed Authority;¶ (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;