# 1AC

## Adv – Hegemony

#### THREE I/Ls

#### 1.) US Rule of law hypocrisy alienates allies – plan revitalizes international support

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

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

#### 2.) Judicial deference to military courts undermines legitimacy

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

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

#### 3.) ruling on detention policies signals US commitment to reform

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

#### Lack of US legitimacy emboldens challengers causes great power wars

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

International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some ways, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. “[W]orld power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington.”368 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations – liberalism. Liberal IR theory generally holds that internal characteristics of states – in particular, the form of government – dictate states behavior, and that democracies do not go to war against one another.369 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world.370 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states.371 Because domestic and foreign issues are “more convergent” among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches’ powers.372 With respect to non-liberal states, the position of the U.S. is more “realist,” and courts should deploy a high level of deference.373 A strength of Dean Slaughter’s binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has criticized this approach because it would put courts in the difficult position of determining which countries are liberal democracies.374 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness—which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the 21st Century, America’s global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political—if not as much as in the past— but it is American politics that matters most. If the U.S. is truly an empire— and in some respects it is—the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, the management of hegemony or unipolarity requires a different set of competences. Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order.375 The hegemonic model I offer here adopts common insights from the three IR frameworks—unipolar, hegemonic, and imperial—described above. First, the “hybrid” hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America’s security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place.376 The result would be radical instability and a greater risk of major war.377 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable.378 As noted above, other nations have many incentives to continue to tolerate the current order.379 And although other nations or groups of nations—China, the European Union, and India are often mentioned—may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades to come. In 2025, the U.S. economy is projected to be twice the size of China’s.380 The U.S. accounted for half of the world’s military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors.381 Predictions of American decline are not new, and they have thus far proved premature.382 Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy.383 All three IR frameworks for describing predominant states—although unipolarity less than hegemony or empire—suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control.384 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts’ institutional competences more than the anarchic realist model. The courts’ strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts’ treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this “domestication” reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations—liberty, accountability, and effectiveness—against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

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

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

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

#### Hard power fails – only following international standards solves legitimacy

Kovacs ’13 (J – graduating student @NYU; published in the Glendon Journal of International Studies) “Legitimacy and American Declininism: A Nonstandard Approach¶ to a Platitudinous Debate”

Decline in American Legitimacy¶ The decline of American legitimacy as a super power is one that is hard to distinguish as it is based on perception, which is difficult to identify empirically. In addition, it may seem as if it is the economic or political power that is weakening. In fact, it has been American legitimacy that has been declining. This contributes to the perception all American power is incrementally diminishing. While there have been numerous episodes of American activity which have been perceived as illegitimate, one of the¶ most damaging exertions of American power seems to have been the policies and actions of the Bush administration (2001-2009) in regards to the Iraq invasion in 2003, which had violated the principles of legitimacy laid out in this essay.¶ First, the four pillars of legitimacy described by Tucker and Hendrickson will be examined and an analysis will follow, describing how the pillars have not been adhered to by the most recent Bush administration.20 The question of American legitimacy was already partially threatened at the end of the Cold War, with the United States no longer seen as necessary and automatically legitimate. This was exacerbated by the 2003 invasion of Iraq, which contravened the four pillars.¶ There was the perception that the United States was distorting international law to fit its interests, something that it had not done so overtly in the previous years since the post-1945 era (and its super power status) began. Shaw states that in the current international system, “‘authoritative deployment of violence’ is reinforced by its attachment to global symbols of legitimacy, such as the United Nations.”21 The United States did not gain the consent of the Security Council, the body that legitimizes the use of force, and so the United States bypassed legitimate practices in two ways. First, it broke with its own principles of legitimacy, as laid out by Tucker and Hendrickson and, second, the United States violated internationally accepted norms of legitimacy and military force.¶ The pillar of committed multilateralism was almost entirely abandoned by the most recent Bush administration when it could not garner support for the invasion. George W. Bush’s rhetoric of “either you’re with us or you are with the terrorists” served¶ to distance American allies that did not support the invasion, such as France. Previously, Ikenberry notes an allowance for other states to air their interests and the United States would take them into account.22 With the Iraq invasion, there were already questions circulating around the degree of its ‘rightness’ and yet the younger Bush administration pushed forward and alienated American allies.¶ Next, the identification with moderation was not adhered to as the United States entered into two wars between 2001 and 2003, not following a policy of isolationism or of restraint.23 Furthermore, this propensity for conflict undermined the fourth pillar of legitimacy, which was the apparent preservation of peace. Tucker and Hedrickson hold that the United States was afforded an understanding in the conflict with Afghanistan because of the events of September 11th, but when coupled with the invasion of Iraq, it was a worrying predicament.24 This is especially true as the United States’ claim to be ‘intervening’ in Iraq on the basis of human rights violations was largely seen as disingenuous.¶ Second, Ikenberry’s theory of American power is looked at in the context of the 2003 Iraq invasion. Where there used to be a covert presence of power, the United States had used it overtly and coercively, no longer restraining it with institutions. The military, which had been isolated geographically and on bases located offshore, now took a central and highly visible role in two conflicts within a short period of time. These two conflicts, together, took away the third dimension of restraining its power. The United States, as stated previously, did not bind itself to the resolutions of the Security¶ Council, which made its moves seem threatening, with an imperialist tint. Though the UN and its bodies are often criticized, it is still perceived to have the power to legitimize the use of force, an avenue which the United States did not follow. This is especially damaging in the current system, which has a normative aversion to inter-state wars and imperialism, accepting force only in self-defence or in the defence of human rights violations on a massive scale. The nation of Iraq does not have a clean record when it comes to human rights violations, however it was not on such a massive scale as to warrant military intervention, unlike the case with 1991 Gulf war, when it had invaded Kuwait in its defence.¶ The fourth dimension of American penetrated and institutionalized hegemonic system no longer appears to be stable, which has two effects. First, the United States’ legitimacy rested on the fact that it was perceived to be able to keep a stable system. The second result, following Watson, is that the American decline in legitimacy points to a larger crisis of legitimacy in the international order.25 Clark states that legitimacy is a form of imperialism, an integral part of the “global distribution of power.26 The American system of institutions is intricately and indubitably linked to the United States itself, and as such, whenever a crisis of legitimacy in the larger system rises, we can automatically perceive a decline in American state legitimacy.¶ Finally, Clark outlines three legitimizing principles of the international society: 1) multilateralism and a commitment to the global free market economy, 2) the collectivization of security, and 3) the adherence to a set of liberal rights values.27 The¶ principles of legitimacy in international society echo the four pillars of American legitimacy laid out by Tucker and Hendrickson. In this way we see a link between American legitimacy, the American system, and its influence on the legitimizing principles of international society. The decline is explained at the state level, and not at a systemic level as Kagan claims, because it is the actions of the United States that has placed it in a circumstance of diminishing legitimacy. An example of this is the United States policy toward Russia, after the Cold War, which was a manifestation of the switch from covert to overt power that began in the early 1990s.¶ If we accept Watson’s assertion that a break in practice with legitimacy creates tension, then we can say that the events of September 11th may have been a product of this tension or crisis of legitimacy that had begun in the post-Cold War era as a result of the increasingly overt power displays by the United States. The 2003 invasion of Iraq is therefore the most crucial blow to American legitimacy, and thus its power (in addition to the enormous economic cost of the war). Tucker and Hendrickson highlight the ‘moral’ aspect of neo-conservative foreign policy under the Bush administration, which added a secondary objective of spreading democracy, as a possible reason for beginning the conflict. Thus the Iraq invasion shows little strategic restraint and a coercive or overtly forced transition to democracy, taking away the label of a reluctant super power. American power resides in institutions, which produce “high levels of willing¶ compliance” and the “‘ability to engage in strategic restraint’”.28 In his overview of legitimacy in international society, Ian Clark questions whether legitimacy is separate from power, or if it is simply the will of the hegemon. We can use Patrick Cottrell’s definition to answer this, as he posits that power and legitimacy are complimentary, yet simultaneously distinct, since legitimacy holds a certain element of coercion, becoming a form of power in itself.¶ In the case of the United States, its power came from its hegemonic position, however since this position was seen as legitimate and necessary during the Cold War (as an opposition to the Soviet Union) American power was legitimate, with all its elements of implied coercion. Robert Kagan’s realist theory can only claim that American legitimacy fell with the “Berlin Wall and Lenin’s statues,” as a result of the unipolarity that followed in the post-Cold War era.29¶ Finally, we can sum up legitimacy as being based in opinion and perception, as well as holding an element of trust. Because something is legitimate, it is trusted and assumed that it will act in such a way as to reward trust in its power. In return, there is a perceived element of stability if the system is seen as legitimate, based on opinion and in compliance with existing norms. It is understood that norms and laws may be violated on necessity and so public opinion allows for fluidity in defining what is legitimate. Within the context of the current global system there is an emphasis on the rule of law, multilateralism, and an aversion to outright inter-state conflict. Trust was placed in the United States, as the predominant super power and creator of many institutions, that it would act in accordance to the accepted legitimate behaviour. However, with the Iraq¶ invasion and the policies pursued by the Bush administration, the accepted behaviour and trust was violated by the United States, which has led to its decline in legitimacy as a welcome super power.¶ The importance of a decline in American legitimacy is tied specifically to its link with the American system. United States legitimacy was tied to the stability that it enhanced through its institutions to which it bounds itself. With the overt power that the United States began to employ in the post-Cold War era, a tension between accepted legitimacy and practice has occurred. This may have been a contributing factor to the September 11 attacks on the United States, and in response to a perceived illegitimacy throughout non-Western regions. The Bush administration’s pursuit of unilateral foreign policy has exacerbated the crisis of legitimacy throughout the rest of the world and to the general legitimacy of the United States, as a welcome super power; with it is the question of the American system’s legitimacy. The questioning of the systemic legitimacy shows that the tension between norms and practices has created an instability, which may continue and possibly foment further conflict throughout the globe, unless the importance of legitimacy is observed and understood. International Relations theory needs to take into account different ways of perceiving power, and incorporating its immaterial aspects. By broadening the scope of theories to include non-traditional approaches such as political theory, we can more easily analyse the shifts that take place in the international system and power structure with a more nuanced observation.

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

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

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

## Adv – Adventurism

#### Failure of the Supreme Court to substantively rule on detention authority causes judicial abstention and presidential adventurism

Vaughns 13 (B.A. (Political Science), J.D., University of California, Berkeley, School of Law. Professor of Law, University of Maryland Francis King Carey School of Law.Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11 ASIAN AMERICAN LAW JOURNAL [Volume 20:7])

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

#### Two Scenarios

#### First, Obama uses adventurist detention policies to signal US African pivot

The Atlantic 10/6 “Are We Pivoting to Africa Rather Than Asia?” http://www.theatlantic.com/international/archive/2013/10/are-we-pivoting-to-africa-rather-than-asia/280318/

This weekend, the United States conducted two raids against militant Islamists in Tripoli, Libya and Barawe, Somalia. Though the action in Tripoli appeared to be more successful—FBI and CIA agents nabbed Abu Anas al-Liby, a suspected leader of Al Qaeda—the significance of both raids lies less in their immediate success and more in their implications for American involvement in Africa.¶ What was the purpose of the raids?¶ The raid in Libya this Saturday culminated in the arrest of al-Liby, who was on the most wanted terrorists list for his involvement in the 1998 bombings of American Embassies in Kenya and Tanzania.¶ Less official information is available concerning the purpose of the raid in Somalia. However, observers have suggested that this raid was tasked with the bringing the organizers of the recent Westgate Mall assault to justice. American government officials have confirmed that SEAL Team 6 was deployed to Barawe, Somalia, where they engaged in a firefight with militants before aborting the mission. No American casualties have been reported and it is estimated that seven people were killed in the exchange.¶ What is the significance of the raids for American military involvement in Africa?¶ North Africa has long seen a strong American military presence due to its proximity to America’s strategic partners in the Middle East, while East Africa cooperated with the United States in its efforts to stabilize Somalia, until the infamous Black Hawk down fiasco. The raids conducted this weekend suggest that the importance and nature of American involvement in the region is quickly changing.¶ Under the auspices of United States Africa Command, or AFRICOM, which has only been operating since 2008, American military posts in Africa may witness a change in mandate, in which they are more frequently understood as being on the frontlines of counter-terrorism policy, and less as bases from which to organize and launch action in the Arabian Peninsula and the Middle East. Though current AFRICOM missions are largely based on cooperative relationships and many of their programs emphasize the training of local participants, the change in the continent’s strategic importance may be linked to a rise in the sort of unilateral counter-terrorism policy undertaken this weekend.¶ What does this mean for American foreign policy?¶ Frequently relegated to the back-burner of American foreign policy, Africa is indeed rising in policy deliberations in Washington. This summer, President Obama made official visits to Senegal, South Africa, and Tanzania, with the aim of fostering political and economic partnerships with these countries. The cultivation of these political relationships and the increased military activity in Africa may suggest that an “African shift” will displace the “Asian pivot.”

#### Guarantees instability and war in the region – de-legitimizes governments and empowers terrorist networks

Muhammad 10/11 (2013; Jehron – freelance writer, expert in African affairs) “U.S. Gov't Destabilizing Africa through AFRICOM” http://www.finalcall.com/artman/publish/World\_News\_3/article\_100866.shtml

(FinalCall.com) - Thanks to the U.S. and its proxy-led interventions, instability in North Africa and the Middle East has spread to the African continent.¶ Violence, including the longstanding conflict (you might remember “Black Hawk Down”) in Somalia has spread to include Ethiopia, Uganda and most recent victim Kenya.¶ While global concern focuses on poison gas attacks in Syria, Iran’s alleged creation of nuclear weapons, and the coup of the first democratically- elected Egyptian president, “Libya has plunged unnoticed into its worst political and economic crisis since the defeat of Gadhafi two years ago,” according to The Independent, a UK based newspaper.¶ Not only have militias taken over the Libyan countryside and Libyan crude output gone down to a trickle, The Independent reported, “government authority is disintegrating in all parts of the country putting in doubt claims by American, British and French politicians that NATO’s military action in Libya in 2011 was an outstanding example of a successful foreign military intervention, which should be repeated in Syria.”¶ Caught off guard by America’s regime change initiative in Libya and instability it caused in places like Mali, the continent-wide African Union has yet to confront the growing footprint of AFRICOM, the U.S. Africa Command.¶ Why? It may have to do with AFRICOM’s ability to hide the real purpose of its presence in Africa.¶ According to TomDispatch.com, America’s military command “has been slipping, sneaking, creeping into Africa, deploying ever more facilities in ever more countries—and in a fashion so quiet, so covert, that just about no American (and African for that matter) has any idea this is going on.”¶ It could also be that the AU voice is muzzled since external donors (U.S. and European) funded African Union program costs in 2013 to the tune of $155.3 million or 56 percent of the total AU budget. The AU member states, according to Pambazuka.org, fund mostly operational costs, $122.8 million or 44 percent of the budget. Of this only $5.3 million “goes toward programs of the AU while 96 percent goes to operational costs,” said authors Janah Ncube and Achieng Maureen Akena.¶ Outgoing AU chairman Dr. Ping, during his last address to the executive council in 2012, said the AU has “little legitimacy in claiming marginalization in global politics when it is unable to be self-sustaining and depends on donors to support its programs,” reported Pambazuka.With the winding down of U.S. involvement in Afghanistan, ending the war in Iraq, and President Obama’s visit to Asia suggesting a rebalancing of U.S. military resources, AFRICOM’s increasing military presence, “out of the public earshot,” suggests “Africa is the battlefield of tomorrow, today,” wrote TomDispatch’s managing editor Nick Turse.¶ The increasing instability that is in the Middle East and North Africa is destined to plague the continent. The African Union, this author feels, should raise its voice wherever U.S. and European forces or proxies have intervened militarily. The interventions are deepening problems in nations and regions, creating refugees, increasing militia groups and creating more areas awash in weapons.¶ In the post 9/11 era and in the wake of U.S. “stability” operations in Africa which only accelerated during the Obama years, “militancy has spread, insurgent groups have proliferated, allies have faltered or committed abuses, terrorism has increased, the number of failed states has risen, and the continent has become more unsettled,” wrote Turse.¶ The recent massacre in a Kenyan suburb, inside an upscale shopping mall in Nairobi’s affluent Westlands area, is a case in point. Hooded gunmen claiming to be members of Al-Shaabab took responsibility for the attack in retaliation for Kenya’s role in the war against militants in Somalia. At least 72 people were killed.¶ The Somali group Al-Shaabab, according to news reports, “vowed in late 2011 to carry out a large-scale attack in Nairobi in retaliation for Kenya’s sending of troops into Somalia to fight” Islamic insurgents. AMISOM, the U.S. and European funded African Union Mission in Somalia, is to a large extent responsible for Kenya’s search and destroy incursions inside Somalia.¶ AMISOM has also used Ugandan troops. In 2010 over 60 persons, in three different suicide bomb attacks, were killed while watching the World Cup in Uganda. Al-Shabaab claimed responsibility. Yusef Sheikh Issa, an Al Shabaab commander in Somalia told the Associated Press, “Uganda is one of our enemies. Whatever makes them cry, makes us happy.”¶ If one looks deeply into what brought about the rise of Al-Shabaab you discover a U.S.-supported invasion by Ethiopia.¶ Ethiopia—following in the footsteps of the U.S.-sponsored Joint Operations Command that included the CIA—invaded Somalia under the cover of hunting for persons responsible for the bombings of U.S. embassies in Kenya and Tanzania. This invasion was the final nail in the coffin of the Islamic Courts Union, which was responsible for the closest Somalia has come to a stable government in recent history.¶ If a picture is worth a thousand words, what’s a map worth? Take the one created by TomDispatch that documents U.S. military outposts, construction, security cooperation, and deployments in Africa. “It looks,” according to Turse, “like a field of mushrooms after a monsoon.” U.S. current military involvement is found in “no fewer than 49 African nations,” he said.¶ President George W. Bush announced in 2007, the establishment of AFRICOM, a unified command for U.S. military forces in Africa. He said AFRICOM was being launched for purely peaceful reasons.¶ “Military aid and questionable trade” have always been the “the twin pillars” of America’s involvement in Africa.¶ “Imperial acquisition (or the acquisition of natural resources),” according to Crossedcrocodiles.com, “masquerades as humanitarian aid and manifests as the militarization of the continent through the U.S. Africa Command, AFRICOM.”¶ The late President Gadhafi utilized Libya’s oil wealth to block the spread of AFRICOM. With no deterrent equal to Gadhafi , the increased instability on the continent will continue.

#### Results in global nuclear war

Deutsch 2[Founder of the Rabid Tiger Project, A Political Risk Consulting and Related Research Firm (Rapid Tiger Project, http://www.rabidtigers.com/rtn/newsletterv2n9.html]

The Rabid Tiger Project believes that a nuclear war is most likely to start in Africa. Civil wars in the Congo (the country formerly known as Zaire), Rwanda, Somalia and Sierra Leone, and domestic instability in Zimbabwe, Sudan and other countries, as well as occasional brushfire and other wars (thanks in part to "national" borders that cut across tribal ones) turn into a really nasty stew. We've got all too many rabid tigers and potential rabid tigers, who are willing to push the button rather than risk being seen as wishy-washy in the face of a mortal threat and overthrown. Geopolitically speaking, Africa is open range. Very few countries in Africa are beholden to any particular power. South Africa is a major exception in this respect - not to mention in that she also probably already has the Bomb. Thus, outside powers can more easily find client states there than, say, in Europe where the political lines have long since been drawn, or Asia where many of the countries (China, India, Japan) are powers unto themselves and don't need any "help," thank you. Thus, an African war can attract outside involvement very quickly. Of course, a proxy war alone may not induce the Great Powers to fight each other. But an African nuclear strike can ignite a much broader conflagration, if the other powers are interested in a fight.

#### Second, this stirs up flashpoints in East Asia over North Korea

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

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

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

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

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

#### Asian war goes nuclear---no defense---interdependence and squo institutions don’t check

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

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

#### SCOTUS suspension clause application solves -

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

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

#### Even if the plan doesn’t change all detention policies, court ruling triggers observer effect – shifts presidential policy to favor court rulings to save face

Deeks 10/21 (2013, Ashley – Law Prof @ U of VA) “Courts Can Influence National Security Without Doing a Single Thing” http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching

While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.” Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them.¶ In the national security context, the “observer effect” can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive’s awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them.¶ Take, for example, U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so.¶ Other examples of the observer effect abound. In 2005, the Executive decided to reveal the processes by which it negotiated “diplomatic assurances” to return Guantanamo detainees to foreign countries, in an effort to fend off court decisions delaying those returns. The Government might well have won in court even without these revelations – the precedents suggested that it would have—but it hedged its bets by persuading the courts that it had in place a thorough process to ensure that the United States did not expose detainees to likely mistreatment in the receiving country.¶ Here’s another example: in the face of some adverse lower court decisions (which the Government ultimately won on appeal), the Government curtailed its own use of the “state secrets” privilege. That’s a privilege the government may invoke when a lawsuit raises legal challenges that cannot be proven or defended without disclosing information that would jeopardize U.S. national security. And the Government altered the policies pursuant to which it uses secret evidence to deport aliens, due in part to critical language in court decisions, even though the Government likely would have won the cases on the merits.¶ When should we expect to see the observer effect? In general, we should look for three things. First, there must be a triggering event. This ranges from the filing of a non-frivolous case, to some indication from a court that it may reach the merits of a case (i.e., ordering briefing on an issue, or rejecting the government’s motion for summary judgment), to the court’s consideration of the issue on the merits. The observer effect most clearly comes into play when a court becomes seized with a national security case after an extended period of judicial non-involvement in security issues, such as when federal courts started to consider the type of person the Executive lawfully may detain on the battlefield. The observer effect then kicks in to influence the Executive’s approach to the policy being challenged in the triggering case, as well as to future (or other pre-existing) Executive policies in the vicinity of that triggering case.¶ Second, future uncertainty plays a critical role in eliciting the observer effect. In some cases, the question for the Executive will be whether a court will conclude that it can or should exercise jurisdiction over a case. In other cases, Executive uncertainty will exist when it is not obvious what law will govern the dispute at issue, or where there is little precedent to guide the courts in resolving the dispute. It is this uncertainty that leaves the Executive with doubt about whether it will win the case, and that creates incentives for the Executive to alter its policies in anticipation of litigation or its outcome. After all, there are real advantages to the Executive in retaining the power to shape these national security policies, even under a potentially watchful eye of the courts.¶ The third factor that helps secure the observer effect’s operation is the likelihood of future litigation on related issues. If a court declines to defer to the Executive in a particular case, that decision is unlikely to create an observer effect if the Executive has confidence that the factual and legal questions at issue in that case will not arise again. In contrast, when the Executive perceives that a set of policies is likely to come under sustained litigation (and thus under the potential oversight of multiple judges over time), it is more likely to concertedly review—and alter—those policies.¶ When these three elements are present, the observer effect is likely to come into play. How does the Executive react? The Executive attempts to maximize the total value of two elements: a sufficiently security-focused policy and unilateral control over national security policymaking. To achieve this goal, the Executive often is willing to cede some ground on the first element to retain the second element. The Executive therefore often responds to the presence of these three elements by shifting its policy to a position that gives it greater confidence that the courts would uphold it if presented with a challenge to that policy. This does not mean that it will establish or revise its policy to a point at which it has full confidence that a court will deem the policy acceptable. Instead, the Executive has strong incentives to take a gamble: all it needs to do is establish a policy that is close enough to what a court would find acceptable that it alters the court’s calculation about whether to engage on the merits. It is, in short, a governmental game of chicken.¶ I don’t want to suggest that a potentially adverse decision by a court is the sole driver of Executive policy-making. While courts may be one important audience for national security policies, there are many other audiences, including Congress, the general public, the media, and elites. Proving what causes the Executive to select or modify a particular policy is notoriously difficult because many factors and influences usually coalesce to produce government policy. But important pressures are brought to bear by an increased Executive awareness of possible court intervention, especially because courts have the power to rewrite national security policies in a way that members of the public and the media do not.¶ One important lesson to draw from the observer effect is that it matters what signals the courts and the Executive send to each other and how they send them. When courts hear cases on the merits or when Justices issue statements related to denials of certiorari, they have the opportunity to initiate a dialogue with the Executive—whether or not the courts ultimately defer to the Executive’s position. That dialogue allows the courts to gesture at acceptable and unacceptable policy choices, while the Executive gauges which policies to adopt and how large of a “cushion” to build into those policies to avoid future adverse decisions. For instance, when Justice Kennedy (along with two other Justices) concurred in the denial of certiorari in a case called Padilla v. Hanft, his concurrence implied that the Court would step in to hear the case if the Executive, which had shifted Jose Padilla from military custody to civilian custody, re-detained Padilla as an enemy combatant. This allowed the Court to send a strong signal to the Executive about a national security policy that the Court would have a hard time upholding.¶ The observer effect has real-world implications for national security policy changes on the horizon. For example, if Congress attempts to establish judicial oversight of the Executive branch’s targeted killing program, it is useful to understand the nuanced ways in which the Executive can and does respond to potential—but somewhat uncertain—judicial oversight and decisions, even those that stop short of adjudicating issues on the merits. In shedding light on the Executive/judicial relationship, the observer effect should inform Congressional considerations in crafting such a court.¶ It is true that courts have decided only a limited number of substantive issues in the national security arena, notwithstanding the continuing proliferation of litigation. However, important substantive policy changes have occurred since 2002—changes due not to the direct sunlight of court orders, but to the shadow cast by the threat or reality of court decisions on Executive policymaking in related areas of activity. Court decisions, particularly in the national security realm, have a wider ripple effect than many recognize because the Executive has robust incentives to try to preserve security issues as its sole domain. In areas where the observer effect shifts Executive policies closer to where courts likely would uphold them, demands for deference by the Executive turn out to be more modest than they might seem if considered from the isolated vantage of a single case at a fixed point in time. It remains critical for courts to police the outer bounds of Executive national security policies, but they need not engage systematically to have a powerful effect on the shape of those policies and, consequently, the constitutional national security order.

## Plan Text

#### The United States Supreme Court should restrict presidential war powers authority by overruling the D.C. Circuit Al-Maqaleh v. Gates decision on the grounds that it violates the Suspension Clause.

## Solvency

#### Suspension Clause application solves without sacrificing military missions

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

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

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

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

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

Although the political branches of government have been primarily responsible for shaping U.S. wartime detention policy in the conflict with Al Qaeda and the Taliban, the judiciary has also played a significant role in clarifying elements of the rights and privileges owed to detainees under the Constitution and existing federal statutes and treaties. These rulings may have longterm consequences for U.S. detention policy, both in the conflict with Al Qaeda and the Taliban and in future armed conflicts. Judicial decisions concerning the meaning and effect of existing statutes and treaties may compel the executive branch to modify its current practices to conform with judicial opinion. For example, judicial opinions concerning the scope of detention authority conferred by the AUMF may inform executive decisions as to whether grounds exist to detain an individual suspected of involvement with Al Qaeda or the Taliban. Judicial decisions concerning statutes applicable to criminal prosecutions in Article III courts or military tribunals may influence executive determinations as to the appropriate forum in which to try detainees for criminal offenses. Judicial rulings may also invite response from the legislative branch, including consideration of legislative proposals to modify existing authorities governing U.S. detention policy. The 2012 NDAA, for example, contains provisions which arguably codify aspects of existing jurisprudence regarding U.S. authority to detain persons in the conflict with Al Qaeda. Judicial activity with respect to the present armed conflict may also influence legislative activity in future hostilities. For example, Congress may look to judicial rulings interpreting the meaning and scope of the 2001 AUMF for guidance when drafting legislation authorizing the executive to use military force in some future conflict. While the Supreme Court has issued definitive rulings concerning certain issues related to wartime detainees, many other issues related to the capture, treatment, and trial of suspected enemy belligerents are either the subject of ongoing litigation or are likely to be addressed by the judiciary. Accordingly, the courts appear likely to play a significant role in shaping U.S. policies relating to enemy belligerents in the foreseeable future.

#### Detention policy is incomprehensible in the status quo- only Supreme Court rulings send a clear judicial review test for lower court judges and spills over to effective Congressional policy

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

The Suspension Clause casts a broad shadow over the regulation of all forms of detention. It has exerted direct and indirect influence even in contexts where statutes largely supplant habeas corpus as the primary vehicle for judicial review. The Executive, courts, and Congress have long been concerned with avoiding Suspension Clause problems, and the Supreme Court’s own sometimes-carried-out warnings that it will narrowly interpret efforts to restrict judicial review to avoid potential Suspension Clause problems have, many years before Boumediene, helped to structure judicial review of detention. I have argued that the Suspension Clause explains why, as the Court put it in INS v. St. Cyr, “[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention

[marked]

and it is in that context that its protections have been strongest.”451 Post- Boumediene, judges may rely on the Suspension Clause more directly, and not just as a principle of constitutional avoidance. Understanding the Suspension Clause as affirmatively guaranteeing a right to habeas process to independently examine the authorization for a detention helps to explain habeas and constitutional doctrine across a range of areas. Why does habeas corpus sometimes provide access to process unavailable under the Due Process Clause, while sometimes due process provides more process than habeas would? At its core, habeas corpus provides judges with process in situations where the need for review of legal and factual questions surrounding detention is most pressing. This view of habeas process can be seen as related to the Court’s long line of decisions that guarantee a “right of access” to courts without clarifying the source of that “[s]ubstantive [r]ight.”452 In Boumediene, the Court grounded that right in the Suspension Clause. This basis for the right makes some sense of the varied nature of habeas review in which statutes and case law differ depending on the type of detention. Judicial review does not vary categorically; for example, immigration does not receive less review than postconviction or military detention habeas. Instead, judicial review varies within each category. This is the product of evolving executive detention policies, varying postconviction practice, and changes over time in federal statutes, some poorly conceived and some sensible. No one actor provides coherence to habeas practice at any time, and some of the statutes are notoriously Byzantine, poorly drafted, and illogical. Judges have long played, however, an important role in interpreting the writ (and the underlying constitutional rights). Indeed, for some time, the Supreme Court’s interventions have reinforced the role habeas plays, particularly in the executive detention context. In response to the Court’s habeas rulings, which generally avoid defining the precise reach of the Suspension Clause, Congress has drafted statutes to preserve judicial review of detentions in an effort to steer clear of Suspension Clause problems, with mixed results.

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

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

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

# 2AC

## Solvency

**No circumvention – review mechanism distributes power and insulates from pressure**

**Siegel 12** - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

BIO: \* AUTHOR Samuel P. Siegel is a Senior Editor for UCLA Law Review

The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a group of executive officials, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power insulates its decisions from presidential control: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. But there is strength in numbers." n263 Thus, even within a unitary executive, such a structure would likely temper the influence that campaign expenditures would have on the outcome of an adjudication.

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

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

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

## AT: T- Judicial Restriction

#### 1. 1. W/M – suspension clause is a restriction on WPA

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

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

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

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

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

#### 3. Restriction means a limit or qualification, and includes conditions on action

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

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

## AT: Congress

#### Judicial Independence solves disease

Greco ‘5 Greco, American Bar Association President, 11/28/2005

[Michael, "U.S. lawyers need to act.(rule of law)," The National Law Journal, Academic OneFile]

 What makes the rule of law so important that it attracted such a distinguished community? First, because the rule of law is so central to everything the legal community stands for, both in the United States and around the world. And second, because we increasingly find that our nation's top international priorities;defeating terrorism, corruption and even the spread of deadly diseases;are being undone at the ground level by poor governance and lawlessness. As Rice eloquently told the gathering, "In a world where threats pass even through the most fortified boundaries, weak and poorly governed states enable disease to spread undetected, and corruption to multiply unchecked, and hateful ideologies to grow more violent and more vengeful." The only real antidote to these global threats is governments, in all corners of the world, that operate with just, transparent and consistent legal systems that are enforced by fair and independent judiciaries. These issues are not just the province of distant foreign governments. Building the rule of law must begin at home. Recent revelations in our own country; that the CIA has maintained secret prisons for foreign detainees; underscore the urgent need for an independent, nonpartisan commission to investigate our treatment of such prisoners.

#### Extinction

Souden 2k David – Former Research Fellow @ Cambridge 2K, former Research Fellow in History at Emmanuel College, Cambridge, consultant to the Cambridge Group for the History of Population and Social Structure “Killer Diseases,” Factsheet, http://darrendixon.supanet.com/killerdiseases.htm

Nature's ability to adapt is amazing - but the consequences of that adaptation are that mutations of old diseases, we thought were long gone, may come back to haunt us. But of all these new and old diseases, AIDS poses the greatest threat. It has the capacity to mutate and evolve into new forms, and the treatments that are being developed have to take account of that. Yet the recent history of life-threatening and lethal diseases suggests that even if we conquer this disease, and all the others described here, there may be yet another dangerous micro-organism waiting in the wings. The golden age of conquering disease may be drawing to an end. Modern life, particularly increased mobility, is facilitating the spread of viruses. In fact, some experts believe it will be a virus that leads to the eventual extinction of the human race.

## AT: Political Question DA

#### Specifically, US leadership key to effective negotiations on the Montreal Protocol

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

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

#### That solves climate-tipping points

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

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

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

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

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

## AT: Kritik

#### Existence outweighs value to life

Schwartz**,**Professor of Medicine, Dartmouth, 2002[Lisa, Medical Ethics, http://www.fleshandbones.com/readingroom/pdf/399.pdf]

This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life.The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgment in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

#### Evaluate these impacts – consequences matter

Isaac, 2002

(Jeffrey C., James H. Rudy professor of Political Science and director of the Center for the Study of Democracy and Public Life at Indiana University, Bloomington, “Ends, Means and politics,” *Dissent*, Spring)

As writers such as Niccolo Machiavelli,Max Weber, Reinhold Niebuhr, and HannahArendt have taught, an unyielding concern with moral goodness undercuts political responsibility.The concern may be morally laudable, reflectinga kind of personal integrity, but it suffersfrom three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make commoncause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics—as opposed to religion—pacifism is alwaysa potentially immoral stand. In categorically repudiatingviolence, it refuses in principle tooppose certain violent injustices with any effect;and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good”may engender impotence, it is often the pursuit of “good” that generates evil. This is thelesson of communism in the twentieth century:it is not enough that one’s goals be sincere oridealistic; it is equally important, always, to askabout the effects of pursuing these goals andto judge these effects in pragmatic and historicallycontextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### Violence is objectively decreasing due to western reason and liberal democracy- spreading those ideals is key to solve conflict

Pinker ‘11 Steven Pinker is Professor of psychology at Harvard University "Violence Vanquished" Sept 24 online.wsj.com/article/SB10001424053111904106704576583203589408180.html

With all its wars, murder and genocide, history might suggest that the taste for blood is human nature. Not so, argues Harvard Prof. Steven Pinker. He talks to WSJ's Gary Rosen about the decline in violence in recent decades and his new book, "The Better Angels of Our Nature." But a better question may be, "How bad was the world in the past?" Believe it or not, the world of the past was much worse. Violence has been in decline for thousands of years, and today we may be living in the most peaceable era in the existence of our species. The decline, to be sure, has not been smooth. It has not brought violence down to zero, and it is not guaranteed to continue. But it is a persistent historical development, visible on scales from millennia to years, from the waging of wars to the spanking of children. This claim, I know, invites skepticism, incredulity, and sometimes anger. We tend to estimate the probability of an event from the ease with which we can recall examples, and scenes of carnage are more likely to be beamed into our homes and burned into our memories than footage of people dying of old age. There will always be enough violent deaths to fill the evening news, so people's impressions of violence will be disconnected from its actual likelihood. Evidence of our bloody history is not hard to find. Consider the genocides in the Old Testament and the crucifixions in the New, the gory mutilations in Shakespeare's tragedies and Grimm's fairy tales, the British monarchs who beheaded their relatives and the American founders who dueled with their rivals. Today the decline in these brutal practices can be quantified. A look at the numbers shows that over the course of our history, humankind has been blessed with six major declines of violence. The first was a process of pacification: the transition from the anarchy of the hunting, gathering and horticultural societies in which our species spent most of its evolutionary history to the first agricultural civilizations, with cities and governments, starting about 5,000 years ago. For centuries, social theorists like Hobbes and Rousseau speculated from their armchairs about what life was like in a "state of nature." Nowadays we can do better. Forensic archeology—a kind of "CSI: Paleolithic"—can estimate rates of violence from the proportion of skeletons in ancient sites with bashed-in skulls, decapitations or arrowheads embedded in bones. And ethnographers can tally the causes of death in tribal peoples that have recently lived outside of state control. These investigations show that, on average, about 15% of people in prestate eras died violently, compared to about 3% of the citizens of the earliest states. Tribal violence commonly subsides when a state or empire imposes control over a territory, leading to the various "paxes" (Romana, Islamica, Brittanica and so on) that are familiar to readers of history. It's not that the first kings had a benevolent interest in the welfare of their citizens. Just as a farmer tries to prevent his livestock from killing one another, so a ruler will try to keep his subjects from cycles of raiding and feuding. From his point of view, such squabbling is a dead loss—forgone opportunities to extract taxes, tributes, soldiers and slaves. The second decline of violence was a civilizing process that is best documented in Europe. Historical records show that between the late Middle Ages and the 20th century, European countries saw a 10- to 50-fold decline in their rates of homicide. The numbers are consistent with narrative histories of the brutality of life in the Middle Ages, when highwaymen made travel a risk to life and limb and dinners were commonly enlivened by dagger attacks. So many people had their noses cut off that medieval medical textbooks speculated about techniques for growing them back. Historians attribute this decline to the consolidation of a patchwork of feudal territories into large kingdoms with centralized authority and an infrastructure of commerce. Criminal justice was nationalized, and zero-sum plunder gave way to positive-sum trade. People increasingly controlled their impulses and sought to cooperate with their neighbors. The third transition, sometimes called the Humanitarian Revolution, took off with the Enlightenment. Governments and churches had long maintained order by punishing nonconformists with mutilation, torture and gruesome forms of execution, such as burning, breaking, disembowelment, impalement and sawing in half. The 18th century saw the widespread abolition of judicial torture, including the famous prohibition of "cruel and unusual punishment" in the eighth amendment of the U.S. Constitution. At the same time, many nations began to whittle down their list of capital crimes from the hundreds (including poaching, sodomy, witchcraft and counterfeiting) to just murder and treason. And a growing wave of countries abolished blood sports, dueling, witchhunts, religious persecution, absolute despotism and slavery. The fourth major transition is the respite from major interstate war that we have seen since the end of World War II. Historians sometimes refer to it as the Long Peace. Today we take it for granted that Italy and Austria will not come to blows, nor will Britain and Russia. But centuries ago, the great powers were almost always at war, and until quite recently, Western European countries tended to initiate two or three new wars every year. The cliché that the 20th century was "the most violent in history" ignores the second half of the century (and may not even be true of the first half, if one calculates violent deaths as a proportion of the world's population). Though it's tempting to attribute the Long Peace to nuclear deterrence, non-nuclear developed states have stopped fighting each other as well. Political scientists point instead to the growth of democracy, trade and international organizations—all of which, the statistical evidence shows, reduce the likelihood of conflict. They also credit the rising valuation of human life over national grandeur—a hard-won lesson of two world wars. The fifth trend, which I call the New Peace, involves war in the world as a whole, including developing nations. Since 1946, several organizations have tracked the number of armed conflicts and their human toll world-wide. The bad news is that for several decades, the decline of interstate wars was accompanied by a bulge of civil wars, as newly independent countries were led by inept governments, challenged by insurgencies and armed by the cold war superpowers. The less bad news is that civil wars tend to kill far fewer people than wars between states. And the best news is that, since the peak of the cold war in the 1970s and '80s, organized conflicts of all kinds—civil wars, genocides, repression by autocratic governments, terrorist attacks—have declined throughout the world, and their death tolls have declined even more precipitously. The rate of documented direct deaths from political violence (war, terrorism, genocide and warlord militias) in the past decade is an unprecedented few hundredths of a percentage point. Even if we multiplied that rate to account for unrecorded deaths and the victims of war-caused disease and famine, it would not exceed 1%. The most immediate cause of this New Peace was the demise of communism, which ended the proxy wars in the developing world stoked by the superpowers and also discredited genocidal ideologies that had justified the sacrifice of vast numbers of eggs to make a utopian omelet. Another contributor was the expansion of international peacekeeping forces, which really do keep the peace—not always, but far more often than when adversaries are left to fight to the bitter end. Finally, the postwar era has seen a cascade of "rights revolutions"—a growing revulsion against aggression on smaller scales. In the developed world, the civil rights movement obliterated lynchings and lethal pogroms, and the women's-rights movement has helped to shrink the incidence of rape and the beating and killing of wives and girlfriends. In recent decades, the movement for children's rights has significantly reduced rates of spanking, bullying, paddling in schools, and physical and sexual abuse. And the campaign for gay rights has forced governments in the developed world to repeal laws criminalizing homosexuality and has had some success in reducing hate crimes against gay people. Why has violence declined so dramatically for so long? Is it because violence has literally been bred out of us, leaving us more peaceful by nature? This seems unlikely. Evolution has a speed limit measured in generations, and many of these declines have unfolded over decades or even years. Toddlers continue to kick, bite and hit; little boys continue to play-fight; people of all ages continue to snipe and bicker, and most of them continue to harbor violent fantasies and to enjoy violent entertainment. It's more likely that human nature has always comprised inclinations toward violence and inclinations that counteract them—such as self-control, empathy, fairness and reason—what Abraham Lincoln called "the better angels of our nature." Violence has declined because historical circumstances have increasingly favored our better angels. The most obvious of these pacifying forces has been the state, with its monopoly on the legitimate use of force. A disinterested judiciary and police can defuse the temptation of exploitative attack, inhibit the impulse for revenge and circumvent the self-serving biases that make all parties to a dispute believe that they are on the side of the angels. We see evidence of the pacifying effects of government in the way that rates of killing declined following the expansion and consolidation of states in tribal societies and in medieval Europe. And we can watch the movie in reverse when violence erupts in zones of anarchy, such as the Wild West, failed states and neighborhoods controlled by mafias and street gangs, who can't call 911 or file a lawsuit to resolve their disputes but have to administer their own rough justice. Another pacifying force has been commerce, a game in which everybody can win. As technological progress allows the exchange of goods and ideas over longer distances and among larger groups of trading partners, other people become more valuable alive than dead. They switch from being targets of demonization and dehumanization to potential partners in reciprocal altruism. For example, though the relationship today between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff, and we owe them too much money. A third peacemaker has been cosmopolitanism—the expansion of people's parochial little worlds through literacy, mobility, education, science, history, journalism and mass media. These forms of virtual reality can prompt people to take the perspective of people unlike themselves and to expand their circle of sympathy to embrace them. These technologies have also powered an expansion of rationality and objectivity in human affairs. People are now less likely to privilege their own interests over those of others. They reflect more on the way they live and consider how they could be better off. Violence is often reframed as a problem to be solved rather than as a contest to be won. We devote ever more of our brainpower to guiding our better angels. It is probably no coincidence that the Humanitarian Revolution came on the heels of the Age of Reason and the Enlightenment, that the Long Peace and rights revolutions coincided with the electronic global village.

Their search for an authentic womanly experience creates a model of identity politics that fractures resistance and results in microfacism.

Wendy Brown 1993 (Phd Political Philosophy from Princeton University- fields of interest include the history of political theory, nineteenth and twentieth century Continental theory, critical theory, and cultural theory (including feminist theory, critical race theory, and postcolonial theory). She is best known for intertwining the insights of Marx, Nietzsche, Weber, Freud, Frankfurt School theorists, Foucault, and contemporary Continental philosophers to critically interrogate formations of power, political identity, citizenship, and political subjectivity in contemporary liberal democracies, UC Berkeley, “WOUNDED ATTACHMENTS,” Political Theory, Vol. 21, No. 3, 1993)

However, it is not only the tension between freedom and equality but the prior presumption of the self-reliant and self-made capacities of liberal subjects, conjoined with their unavowed dependence on and construction by a variety of social relations and forces, that makes all liberal subjects, and not only markedly disenfranchised ones, vulnerable to ressentiment: it is their situatedness within power, their production by power, and liberal discourse's denial of this situatedness and production that casts the liberal subject into failure, the failure to make itself in the context of a discourse in which its self-making is assumed, indeed, is its assumed nature. This failure, which Nietzsche calls suffering, must find either a reason within itself (which redoubles the failure) or a site of external blame on which to avenge its hurt and redistribute its pain. Here is Nietzsche's account of this moment in the production of ressentiment: For every sufferer instinctively seeks a cause for his suffering, more exactly, an agent; still more specifically a guilty agent who is susceptible to suffering-in short, some living thing upon which he can on some pretext or other, vent his affects, actually or in effigy -This ... constitutes the actual physiological cause of ressentiment, vengeful ... ness, and the like: a desire to deaden pain by means of affects ... to deaden, by means of a more violent emotion of any kind, a tormenting, secret pain that is becoming unendurable, and to drive it out of consciousness at least for the moment: for that one requires an affect, as savage an affect as possible, and, in order to excite that, any pretext at all.18 Ressentiment in this context is a triple achievement: it produces an affect (rage, righteousness) that overwhelms the hurt, it produces a culprit responsible for the hurt, and it produces a site of revenge to displace the hurt (a place to inflict hurt as the sufferer has been hurt). Together these operations both ameliorate (in Nietzsche's terms, "anaesthetize") and externalize what is otherwise "unendurable." Now, what I want to suggest is that in a culture already streaked with the pathos of ressentiment for these reasons, there are several characteristics of late moder postindustrial societies that accelerate and expand the conditions of its production. My listing is necessarily highly schematic. First, the phenomenon that William Connolly names "increased global contingency" combines with the expanding pervasiveness and complexity of domination by capital and bureaucratic state and social networks to create an unparalleled individual powerlessness over the fate and direction of one's own life, intensifying the experiences of impotence, dependence, and gratitude inher- ent in liberal capitalist orders and consitutive of ressentiment.'9 Second, the steady desacralization of all regions of life-what Weber called disenchant- ment, what Nietzsche called the death of God-would appear to add yet another reversal to Nietzsche's genealogy of ressentiment as perpetually available to "alternation of direction." In Nietzsche's account, the ascetic priest deployed notions of "guilt, sin, sinfulness, depravity and damnation" to "direct the ressentiment of the less severely afflicted sternly back upon themselves . . . and in this way [exploited] the bad instincts of all sufferers for the purpose of self-discipline, self-surveillance, and self-overcoming."20 However, the desacralizing tendencies of late modernity undermine the efficacy of this deployment and turn suffering's need for exculpation back toward a site of external agency. Third, the increased fragmentation, if not disintegration, of all forms of association until recently not organized by the commodities market-communities, churches, families-and the ubiqui- tousness of the classificatory, individuating schemes of disciplinary society combine to produce an utterly unrelieved individual, one without insulation from the inevitable failure entailed in liberalism's individualistic construc- tion. In short, the characteristics of late modern secular society, in which individuals are buffeted and controlled by global configurations of disciplinary and capitalist power of extraordinary proportions, and are at the same time nakedly individuated, stripped of reprieve from relentless exposure and accountability for themselves, together add up to an incitement to ressentiment that might have stunned even the finest philosopher of its occasions and logics. Starkly accountable, yet dramatically impotent, the late moder liberal subject quite literally seethes with ressentiment. Enter politicized identity, now conceivable in part as both product of and "reaction" to this condition, where "reaction" acquires the meaning that Nietzsche ascribed to it, namely, as an effect of domination that reiterates impotence, a substitute for action, for power, for self-affirmation that reinscribes incapacity, powerlessness, and rejection. For Nietzsche, ressentiment itself is rooted in "reaction"-the substitution of reasons, norms, and ethics for deeds-and not only moral systems but identities themselves take their bearings in this reaction. As Tracy Strong reads this element of Nietzsche's thought, Identity does not consist of an active component, but is a reaction to something . . . outside; action in itself, with its inevitable self-assertive qualities, must then become something evil, since it is identified with that against which one is reacting. The will to power of slave morality must constantly reassert that which gives definition to the slave: the pain he suffers by being in the world. Hence any attempt to escape that pain will merely result in the reaffirmation of painful structures.2 If ressentiment's "cause" is suffering, its "creative deed" is the reworking of this pain into a negative form of action, the "imaginary revenge" of what Nietzsche terms "natures denied the true reaction, that of deeds."22 This revenge is achieved through the imposition of suffering "on whatever does not feel wrath and displeasure as he does"23 (accomplished especially through the production of guilt), through the establishment of suffering as the measure of social virtue, and through casting strength and good fortune ("privilege" as we say today) as self-recriminating, as its own indictment in a culture of suffering: "it is disgraceful to be fortunate, there is too much misery."24 But in its attempt to displace its suffering, identity structured by ressentiment at the same time becomes invested in its own subjection.

This investment lies not only in its discovery of a site of blame for its hurt will, not only in its acquisition of recognition through its history of subjection (a recogni- tion predicated on injury, now righteously revalued), but also in the satisfactions of revenge that ceaselessly reenact even as they redistribute the injuries of marginalization and subordination in a liberal discursive order that alter- nately denies the very possibility of these things or blames those who experience them for their own condition. Identity politics structured by ressentiment reverses without subverting this blaming structure: it does not subject to critique the sovereign subject of accountability that liberal indi- vidualism presupposes nor the economy of inclusion and exclusion that liberal universalism establishes. Thus politicized identity that presents itself as a self-affirmation now appears as the opposite, as predicated on and requiring its sustained rejection by a "hostile external world."25 Insofar as what Nietzsche calls slave morality produces identity in reaction to power, insofar as identity rooted in this reaction achieves its moral superiority by reproaching power and action themselves as evil, identity structured by this ethos becomes deeply invested in its own impotence, even while it seeks to assuage the pain of its powerlessness through its vengeful moralizing, through its wide distribution of suffering, through its reproach of power as such. Politicized identity, premised on exclusion and fueled by the humiliation and suffering imposed by its historically structured impo- tence in the context of a discourse of sovereign individuals, is as likely to seek generalized political paralysis, to feast on generalized political impo- tence, as it is to seek its own or collective liberation. Indeed it is more likely to punish and reproach-"punishment is what revenge calls itself; with a hypocritical lie it creates a good conscience for itself'-than to find venues of self-affirming action.2

# 1AR

#### Patriarchy isn’t the root cause of war

Goldstein, IR prof, 1—Professor of International Relations at American University, 2001 (Joshua S., War and Gender: How Gender Shapes the War System and Vice Versa, pp.411-412)

I began this book hoping to contribute in some way to a deeper understanding of war – an understanding that would improve the chances of someday achieving real peace, by deleting war from our human repertoire. In following the thread of gender running through war, I found the deeper understanding I had hoped for – a multidisciplinary and multilevel engagement with the subject. Yet I became somewhat more pessimistic about how quickly or easily war may end. The war system emerges, from the evidence in this book, as relatively ubiquitous and robust. Efforts to change this system must overcome several dilemmas mentioned in this book. First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

Card on Fiat

#### Fiat builds decision-making skills.

Smith 07 (Ross, director of debate @ WFU, 1-4, http://www.mail-archive.com/edebate@www.ndtceda.com/msg01011.html)

Policy: a course of action undertaken by an agent. We are all policy makers every time we decide to undertake a course of action. Most policies are non-governmental. We have an obligation to ourselves and others to be good policy makers and advocates of good policies when dealing with others in our spheres of influence. Policy Deliberation and Debate: a METHOD for making and advocating better policy decisions. Intercollegiate debate about PUBLIC policy: a useful way of teaching the SKILLS needed for successful use of a METHOD of making and advocating good decisions. Public policy topics are especially useful because the research base is public. While we could debate about private actions by private agents, we have no way of poviding equal access to the kinds of information that would help make those debates good ones. There is a side benefit that some of what we learn about the public policy topics sometimes informs our later lives as citizens engaged in public deliberation regarding those same policies, but that is **not the primary reason** that public policy topics are necessary. Andy Ellis is a policy maker. He makes decisions about courses of action for himself and for/with others. But a topic about what Andy Ellis should do is inaccessable and, frankly, largely none of our business. But Andy Ellis has been well served by having the training in one of the better methods of choosing among and advocating whatever policies he is responsible for. That method is policy debate. Debate about public policy is a subset of debate about policy, a subset that is "debatable" because there is a common research base. The fact that the subject matter is at a remove from us personnally while still residing in the "public sphere" is a feature, not a bug.

Violence to queerness and non-western

Kibele 13; 5/9/13; “My Gender in the Face of Colonialism: A Quest,” http://originalplumbing.com/index.php/society-culture/travel/item/621-my-gender-in-the-face-of-colonialism-a-quest

One thing that I notice since relocating to the West is the social pressure (maybe even a requirement?) to define who, how, and why you are the person you are. Sometimes you can't have a simple conversation without taking three minutes to disclose all of your identities and current life practices. Needless to say that is a trend in most queer/trans spaces. The hyper-performance of identification satisfies the individual desire to feel defined and established, along with comfortably placing yourself within the structures we live under. And this definitely applies to gender discourses as well.¶ ¶ When I tell people I am gender non binary trans\* femme, I first feel overwhelmed because that is a lot of words, and then confused because I don't understand how a group of words that I not so long ago discovered in a language that isn't my own can dictate so much in my life. I was initially thrilled to have a phrase to describe who I am after years of not being able to define myself. These days however, I have been feeling a disconnect with the terminology available to describe my gender to the ways in which I live my life, per my gender. Frankly, I do not even think about my gender that much, it is more of an evolving spiral of production and reproduction as opposed to a set-in-stone definition-- And that is very exciting. ¶ ¶ But-- I realize how both my physical and mental colonization contributes to my situation: The context in which I was brought up (Middle East) is diametrically opposed to the one I am living in now (New York City). The same goes for the language and culture I currently consume. (I talk about these issues more on my personal tumblr: hysthetics.com). I have let the Western and White queer and trans discourses of gender somehow sneak their way into my life. I now realize that me seeking validation in identifying within this system not only perpetuates colonialism and cultural imperialism, it also halts me from carrying my gender to it's full potential. Sadly however, when I tell people that I don't really identify as anything, it ignites confusion and anxieties on their end and I can see from their reactions that they would much rather have a definite, documentable answer from me. (Keep in mind that my personal identification, or the lack thereof, has nothing to do with how I am treated and read in the world but that is a discussion for another article.)¶ ¶ And that is the basic practice of colonialism-- Seeing something new, and something that does not belong to you and demanding access and documentation per your values and practices.¶ ¶ Maybe I have taken in the Western individualistic self-branding idea and reverted it at exponential levels, or I simply do not get the discourse, but my answer to this uncomfortable state of being is to say that my gender is my gender and it can't be compared, situated, or categorized with anyone else's. When I identify the way I identify currently is simply an enactment of the politics of the self- because frankly I don't see any other alternative that makes sense to me right now.