# 1AC

### Contention 1 is Indefinite Detention

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

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.

#### Obama has used indefinite detention powers to suppress social justice movements at home and abroad- statutory authority creates a state of exception in regards to detention policy.

Ford 11 (Glen, Black Action Radio. “The Racist Roots of Obama’s Preventative Detention” http://blackagendareport.com/content/racist-roots-obama%E2%80%99s-preventive-detention)

With his claim to the right to kill and indefinitely detain American citizens without charge or trial, President Obama “has crossed a Constitutional Rubicon that would have been beyond the capacity of George Bush or any white Republican.” The groundwork for Obama’s nullification of the rule of law was laid through federal “prosecutions whose sole purpose has been to establish that there exists an ‘enemy within’ U.S. borders, that it is largely Black as well as Muslim, and which requires a greatly expanded police state with extraordinary powers.” It should have been clear that the United States was on the road to [preventive detention](http://www.salon.com/2009/05/22/preventive_detention/) of U.S. citizens back in 2006, when the federal government went after the so-called Liberty City Seven, Black men from Miami’s poorest ghetto who were charged with plotting terrorist attacks. With unrelenting zeal, the U.S. Justice Department pressed the case that men who were too poor to escape their own devastated neighborhood – some of whom were actually homeless – represented a grave danger to the United States. They were charged with plotting to bring down the Sears Tower, even though only one of them had ever been to Chicago, and none knew anything about explosives. It took three trials to convict five of the Liberty City Seven, who were sent to prison during President Obama’s first year in office. They have since been joined by the Newburgh 4 and many others, in prosecutions whose sole purpose has been to establish that there exists an “enemy within” U.S. borders, that it is largely Black as well as Muslim, and which requires a greatly expanded police state with extraordinary powers. Before one can successfully eviscerate the Constitution in the name of national security, one must first demonstrate to the public that there exists a class of people for whom the new laws are intended, fellow citizens whose presence is such a danger to society that the rule of law as previously understood should no longer apply. Under George Bush and Barack Obama, the FBI has dedicated vast resources to conjuring up the specter of dark and dangerous internal enemies – with an emphasis on “dark.” The FBI chose to troll its informants and their fishhooks dangling with money among the poor of the Liberty Citys and Newburgh New York’s of the nation, creating a profile of the kind of people that the law should not protect. Under both Republicans and Democrats, the national security state has proven adept at using race, ethnicity and class like battering rams to demolish Constitutional protections. “ It is a great historical irony that the election of the First Black President has vastly accelerated the assault on the most elementary rights to due process – rights without which the rule of law simply disappears. A man who looks like the ethnic group that is most opposed to abuses of state power, a constitutional lawyer from the group that has suffered the most from arbitrary imprisonment, is leading the charge towards indefinite preventive detention of U.S. citizens. Barack Obama announced his principled support for preventive detention only a few months into his term, in the [spring of 2009](http://www.youtube.com/watch?feature=player_embedded&v=IwjCsBQGozM). He didn’t specifically include U.S. citizens in his framework of detention, back then, but once Obama took unto himself the power to assassinate his fellow Americans without trial or charge, preventive detention of citizens became inevitable. Obama has crossed a Constitutional Rubicon that would have been beyond the capacity of George Bush or any white Republican. He is, by these deeds alone, the most effective evil on the political scene, today. But Obama's nullification of the rule of law was ultimately made possible because this country remains so eager to deny Constitutional protections to Black and poor people, like the Liberty City Seven. Its citizens will sacrifice their own freedoms, just to spite the rights of darker people. And that is how they will lose those freedoms.

#### The plan should be read as *method* – court precedent is the scene of power and a necessary site of political agency

Anderson 95 [Virginia, Assoc Prof of English, “Antithetical Ethics,” *JAC* 15.2, p.273-6]

None of what the Constitution implies, according to Burke, is in the Constitution; it is rather dependent on the Constitution-behind-the-Constitution, or the social and historical context. Because the elements governing decisions about implications are not in the Constitution, they are "free" -they allow, even require, a de facto amendment of the Constitution with each judicial act (387). In these cases, Burke says, since as regards the more generalized goods and guaranties [sic] in the Constitution, (with undefined private rights confronted by undefined public powers), the implications of one clause can be extrapollated [sic] to the point where they encroach on the implications of another, ... the proportional method, involving a hierarchy among the clauses, is the only one that a Justice could use in the great majority of cases. (388) Hence, in order to win the right of judicial review, Marshall adopted the behavior of a litigant. In his choice of a hypothetical case, he cast the situation in terms of an absolute opposition. This practice mirrors the entire process of Constitutional review. Litigating attorneys essentialize; they define issues in terms of antagonistic wishes each says ought to prevail absolutely. They open debate much as Jarratt suggests Gorgias did, by proposing antitheses, or, if Burke is right, by pointing out antitheses already embedded in the Constitution. In Jarratt's reading of sophistic discourse, one storyteller played the role of both attorneys, performing this disruptive function. In Burke's narrative, each litigant takes on a part of an "either this or that" structure. The Court then reconstructs the Constitution by examining the antithetical claims in light of the Constitution-behind-the-Constitution-the current exigencies and circumstances. As it does so, it creates new linkages or sets of relationships among the simultaneously extant possibilities held in suspension by the contending voices of the litigating attorneys. These new connections or relationships are multiple, preserved in the range of conflicting judicial opinions van Geel describes. They do not eliminate or mask the embedded antitheses. Moreover, the review process guarantees their temporality and assures their susceptibility to argument, both public and judicial. Hence, they are paratactic connections. They are peripeteia, moments of decision in Constitutional "development," wherever that may lead. A straightforward example is the conflict between the two phrases of the First Amendment "establishment clause," which commands the state to "make no law" concerning a national religion, thus problematizing any insertion of religion into public schools. At the same time, this clause guarantees teachers as well as students the right to practice their religion freely, which suggests they ought to be able to proselytize anywhere they choose. We may now be seeing a turning point in the saga of this issue, as the proportional valorization of one clause over the other shifts. Strict constructionists might argue that the Constitution cannot be so freely manipulated, but Burke accuses these critics of perpetuating what he calls "the fiction of positive law" (363). This philosophy of limited interpretation insists that "the Constitutional enactment itself is the criterion for judicial interpretations of motive," and contends that one should look "only to the Constitution itself' and not to variable external circumstances to legitimize interpretation (362). But the felicity of such strict reading, according to Burke, must be a fiction because in his philosophy, acts like the Constitution are affected by what he calls the scene-act ratio (362). An act that is heroic in one set of circumstances becomes an act of bravado or even of cowardice in another because acts are changed by the scenes in which they occur. Burke alleges that the fiction that the Constitution, like a traditional narrative shorn of context, contains some timeless set of injunctions in fact serves to buttress whatever "scenic" forces happen to be able to impose their own reading, just as the apparent permanence of the content of traditional narrative is a function of the persuasive power of the teller who happens to control the stage at the time. We cannot pin down exactly how our scene differs from that of the 1780s. "What they must have meant" is a rhetorical creation of arguers with a full arsenal of persuasive devices to draw on and the authority to use them. As a result, the current content of our Constitution enforces the capitalist ethic, as capitalists are the ones presently most able to drive home their interpretation. But as I have argued, the advocacy of strong polemicists is not the only force that acts on these re-creations, limiting the power of judges to diddle with fundamental laws at will. These "new acts" are bound by precedent. Precedent may be read as evil and stultifying tradition, but it also can and must be recognized as part of the contingent context. It is part of the Constitution-behind- the-Constitution, the set of

social, historical, and political exigencies the sophists drew on in choosing both stories and readings. Moreover, it has positive values. True, it can obliterate memory. Allowed to stand unchallenged, it can act like a traditional reading of a story, masking the injustices that undergird it and legitimizing heroes who would turn into villains were their full biographies known. It can naturalize as givens the interested victories of those who have always held power; the sanctification of property, for example, has proved a hard template to shout down. But precedent can also be the conduit for memory. Investigated and historicized, it can become instead a visible narrative that allows us to keep the genesis of our actions and thus their ethical implications always before us. What is more, it brakes the power of those footloose judges, who, otherwise, can lead the Constitution into whatever dance they wish. Thus, like most elements in the mix, precedent is a complex force bound up with all the other forces that influence patterns of social order. Its power to limit and direct options is both a threat and a help. For example, it provides a source of connections that may ameliorate some of the problems a metonymic ethics entails. While paratactic or metonymic possibilities may be unlimited, the very multiplicity that renders them ethical also limits their efficacy. When so many links are possible, it can indeed be hard for one link to establish itself as monolithic, but at the same time, no one connection may be able to assert itself over the cacophony, even when such an alliance would further social justice. Potential connections will not "stick" on their own; someone must champion them, making them make sense in different people's differing terms. For example, women of color have no self-evident reason to bridge the gulf that separates them from wealthy white women in order to resist a shared oppression. Someone must remind the two groups of what they share and argue for the link. Environmentalists long failed to join forces with minority communities to fight pollution. Successful argument-that is, making successful meaningful identifications with listeners and interlocutors-depends on the ability to connect or reconnect divergent elements successfully, to couple shared but submerged values within different groups. Precedent, which is in fact a form of traditional narrative, is just one of the potential connections in this mix, but it is one of the most compelling, a boon to a rhetor able to use it and a danger to the rhetor who forgets its power to dominate and occlude. In judicial review, precedent comprises public expectations of fair play and honor and hard fought ethical victories as well as oppressive stagnation or obfuscation. Judges ground their new acts in its promises. It provides an a priori cohesion that can be enlisted as a matrix on which new coherences can be grafted. While it must be disrupted if it is to be reconstructed, its total disruption would make way for Lyotardian amnesia, in which the past we need to know about in order to act ethically disappears. Therefore, freedom from the weight of precedent will not necessarily equalize narratives or release them into infinitely free interplay. Such a dream echoes the myth of the free market, which our own history assures us can never exist. We can't go back to an anarchic Eden, from which everyone could start off on equal footing. Even if we could, too much power for a few inevitably accrues by too many accidents as history piles up. New power concatenations will arise from the flux. Serendipitously, some good formation may result from the unbridled play of luck and persuasion; just as likely, it will not. We forget that custom and law were, as Jurgen Habermas reminds us, developed to combat the arbitrariness of power and to introduce some small measure of predictability into human fortunes. Precedent is a permutation of that predictability, a way of limiting random acts. The sophistic calculus Jarratt describes did not demand an anarchic return to pure beginnings; instead, it began with tradition, understood it, and spoke to the audience that tradition had produced.

#### This form of detention the 1AC challenges is racialized and problematic

Gouldin 12 [Lauryn, Assist. Prof of Law at Syracuse, “When Deference is Dangerous,” American Criminal Law Review 49, p.1360-7]

Before evaluating the factors that prompted judicial acquiescence in the material-witness context, it is important to highlight that the incomplete factual information available about these cases lends itself to speculation, not to conclusive determinations. The analysis is also limited by our inability to peer into the minds of the judges in these cases. With those caveats in mind, there are at least two significant influences on the judiciary that merit closer examination: cognitive biases and pressure to defer. These potential explanations implicate different but equally important conceptions of judicial independence. They are not offered as alternative theories—both factors likely played a role in creating what one scholar has described as the “dangerously credulous Judiciary.”167 A. Cognitive Biases The first explanation focuses on the judicial decision-making process and considers the extent to which the excess of caution in these cases may be attributable to cognitive biases. There is growing literature on the psychology of judging.168 Although the neutral and detached role of the judiciary is often celebrated in Supreme Court opinions,169 it is widely understood that judges are neither as independent nor as deliberative as these mythological descriptions suggest.170 While the idealized vision of the judicial branch views it as immune from the partisanship that infects the “political” branches,171 political scientists and judicial scholars have made a persuasive case that judicial decision-making is strongly influenced by a judge’s attitudes.172 Although those forces certainly impact judicial behavior, our system anticipates and tolerates attitudinal differences or preconceptions.173 The focus here is, instead, on the potential influence of impermissible biases or preconceptions.174 The material-witness arrests and detentions occurred in the context of several factors that are known to impair decision-making. As such, it is appropriate to evaluate the role that those types of cognitive biases may have played in these cases. The following subsections explain the relationship between intuition and deliberation, consider the ways that perceptions of threat can be distorted, and examine the potential role of ethnic or religious biases.1. Intuition, Deliberation, and Overconfidence Researchers looking at the questions of how people make decisions generally agree that there are “two ‘systems’ of cognitive operations by which human beings evaluate risky situations.”175 The processes of the intuitive system are “spontaneous, intuitive, effortless, and fast,”176 and they generally operate as a subconscious “shortcut” for “more deliberative or analytic assessment.”177 While this intuitive system allows for more rapid decision-making, it is also more vulnerable to emotional influences and racial or ethnic biases.178 By contrast, our deliberative system requires “effort, motivation, concentration, and the execution of learned rules.”179 Chris Guthrie, Jeffrey Rachlinksi, and Andrew Wistrich have researched and written extensively about the ways that cognitive biases may distort judicial decision-making.180 Their model “views judges as ordinary people who tend to make intuitive . . . decisions, but who can override their intuitive reactions with complex, deliberative thought.”181 In fact, they have found some evidence that judges may actually be more skilled (than non-judges) at compensating for cognitive biases by forcing themselves to be deliberative when sensitive or troublesome issues arise.182 That being said, because all humans tend to be overconfident and because judges are presumed to have good judgment, there is a risk that judges may be less willing to acknowledge or correct their cognitive biases.183 This overconfident bias can be particularly problematic in cases “where accurate judgments are difficult to make” and where the decision-makers “possess some expertise.”184 2. Threat Assessment and Probability Neglect Efforts to gauge risk under stress are vulnerable to well-established cognitive biases or distortions. Risk assessments often rely on what is called the “availability heuristic” which is the tendency to measure the probability of an event by the ease with “which instances or occurrences can be brought to mind.”185 When salient examples of worst-case scenarios like terrorist attacks can readily be brought to mind, individuals are vulnerable to “probability neglect.”186 Probability neglect describes the phenomenon where “[a]n intense, often highly visual reaction to the thought of a terrorist attack can easily crowd out judgments about probability.”187 A “‘dreaded’ risk” like a terrorist attack is perceived as more threatening “because it is potentially catastrophic, we lack control over terrorists, and we do not voluntarily become terrorist victims.”188 A decade later, the significance of the 9/11 attacks in forging the country’s foreign and domestic priorities is evident, as is their imprint on our national consciousness. Our collective national fear of another terrorist attack has been palpable. Executive branch rhetoric has continued to emphasize worst-case scenarios, in part to justify aggressive foreign policy decisions.189 Judges have also described the threat in terrifying terms. In his dissent in the Hamdan v. Rumsfeld case, Justice Thomas emphasized the novel challenges of battling al Qaeda, which he described as: [A] worldwide, hydra-headed enemy, who lurks in the shadows conspiring to reproduce the atrocities of September 11, 2001, and who has boasted of sending suicide bombers into civilian gatherings, has proudly distributed videotapes of beheadings of civilian workers, and has tortured and dismembered captured American soldiers.190 One federal judge evaluating the government’s invocation of national security concerns in the First Amendment context provided this apt assessment of judicial vulnerability to probability neglect: Inevitably, the events of 9/11 and the constant reminders in the popular media of security alerts color perceptions of the risks around us, including the perceptions of judges. The risks of violence and the dire consequences of that violence seem more probable and more substantial than they were before 9/11.191 The point of this analysis is certainly not to suggest that the general fear of terrorism is unfounded. But that does not mean that the response has always been rational.192 This research suggests that one possible explanation for judges’ failure to consider alternatives to the arrests and detentions that were ordered in these cases was their subconscious overestimation of the risk of another terrorist attack.193 3. Religious, Ethnic, and National Origin Biases Overestimating the likelihood of another terrorist attack is only part of the problem. Cognitive biases may also have distorted judicial perceptions of the dangerousness of the specific individuals in these cases.194 The fact that these material witnesses all fit a specific profile raises questions about what role religious, ethnic, or national origin biases may have played in these cases. Human Rights Watch summarized the demographic of the material-witness population in their report: All of the seventy material witnesses [identified by Human Rights Watch] were men. All but one was Muslim, by birth or conversion. All but two were of Middle Eastern, African, or South Asian descent, or African-American. Seventeen were U.S. citizens. The rest were nationals of Algeria, Canada, Djibouti, Egypt, France, India, Ivory Coast, Jordan, Lebanon, Pakistan, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Yemen.195 Perceptions of groups of people are subject to particular cognitive biases. In general, our brains “cop[e] with information overload” by sorting people “according to similarities in their essential features.”196 Even in studies where participants are randomly assigned to groups, people assume that members of their own group are similar to themselves and that members of the “out-group” are similar to each other.197 Where there are actual differences between groups, the negative qualities or behaviors of out-group members are exaggerated and members of the out-group are increasingly viewed as all being alike.198 As additional information comes in, people give more attention to information that confirms their expectations, 199 and tend to filter out “inconsistent information.”200 Many scholars have considered, in analyses of a variety of post-9/11 investigative practices, the degree to which conclusions about “suspicion” or “dangerous- ness” are premised on race, ethnicity or religion.201 Scholars debate the appropriateness of initially targeting some (or all) of these witnesses based on factors that certainly included their ethnicity and religious practices.202 In their assessments of the relative importance of various flight risk factors, judges in the material-witness cases seem to have accepted law enforcement officers’ and prosecutors’ skepticism of the extent to which traditionally weighty factors would deter flight. Instead, judges gave greater weight to speculation about witnesses’ foreign ties and travel habits, the types of information deemed insufficient in Bacon, and factors which can obviously serve as proxies for race or ethnicity.203 The fact that high-security detention was routinely deemed necessary to manage the risk of flight also suggests the influence of illegitimate biases. These outcomes generally confirm what psychologists predict: “[L]eft to their own devices in times of stress, people, including judges, tend to vastly exaggerate and react against the threats posed by disfavored groups.”204

### Contention 2 is Climate Change

#### 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 – plan’s key to solve

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

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

#### 3.) Federal ruling on detention policies signals US commitment to reform – boosts legitimacy

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

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

#### Leadership solves coalitions that solve warming

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

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

#### 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.

#### The impact is unimaginable suffering - 4\* tipping points is the point of no return.

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

- 4 degree projected warming, can’t adapt

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

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

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

#### Warming is anthropogenic – most comphrensive analysis to date proves

Green 13 – Professor of Chemistry @ Michigan Tech,

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

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

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

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

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

#### Despite this near scientific consensus, denialism is endemic.

CFR 11 9/25/11 Council on Foreign Relations, reposted from the AP written by Charles Hanley AP Special correspondent, AP: The American 'Allergy' to Global Warming: Why?,http://www.cfr.org/climate-change/ap-american-allergy-global-warming-why/p26042?cid=rss-fullfeed-apthe\_americanallergyto\_-092511&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+cfr\_main+%28CFR.org+-+Main+Site+Feed%29&utm\_content=Google+Reader

NEW YORK (AP) — Tucked between treatises on algae and prehistoric turquoise beads, the study on page 460 of a long-ago issue of the U.S. journal Science drew little attention. "I don't think there were any newspaper articles about it or anything like that," the author recalls. But the headline on the 1975 report was bold: "Are We on the Brink of a Pronounced Global Warming?" And this article that coined the term may have marked the last time a mention of "global warming" didn't set off an instant outcry of angry denial. \_\_\_ EDITOR'S NOTE: Climate change has already provoked debate in a U.S. presidential campaign barely begun. An Associated Press journalist draws on decades of climate reporting to offer a retrospective and analysis on global warming and the undying urge to deny. \_\_\_ In the paper, Columbia University geoscientist Wally Broecker calculated how much carbon dioxide would accumulate in the atmosphere in the coming 35 years, and how temperatures consequently would rise. His numbers have proven almost dead-on correct. Meanwhile, other powerful evidence poured in over those decades, showing the "greenhouse effect" is real and is happening. And yet resistance to the idea among many in the U.S. appears to have hardened. What's going on? "The desire to disbelieve deepens as the scale of the threat grows," concludes economist-ethicist Clive Hamilton. He and others who track what they call "denialism" find that its nature is changing in America, last redoubt of climate naysayers. It has taken on a more partisan, ideological tone. Polls find a widening Republican-Democratic gap on climate. Republican presidential candidate Rick Perry even accuses climate scientists of lying for money. Global warming looms as a debatable question in yet another U.S. election campaign. From his big-windowed office overlooking the wooded campus of the Lamont-Doherty Earth Observatory in Palisades, N.Y., Broecker has observed this deepening of the desire to disbelieve. "The opposition by the Republicans has gotten stronger and stronger," the 79-year-old "grandfather of climate science" said in an interview. "But, of course, the push by the Democrats has become stronger and stronger, and as it has become a more important issue, it has become more polarized." The solution: "Eventually it'll become damned clear that the Earth is warming and the warming is beyond anything we have experienced in millions of years, and people will have to admit..." He stopped and laughed. "Well, I suppose they could say God is burning us up." The basic physics of anthropogenic — manmade — global warming has been clear for more than a century, since researchers proved that carbon dioxide traps heat. Others later showed CO2 was building up in the atmosphere from the burning of coal, oil and other fossil fuels. Weather stations then filled in the rest: Temperatures were rising. "As a physicist, putting CO2 into the air is good enough for me. It's the physics that convinces me," said veteran Cambridge University researcher Liz Morris. But she said work must go on to refine climate data and computer climate models, "to convince the deeply reluctant organizers of this world." The reluctance to rein in carbon emissions revealed itself early on. In the 1980s, as scientists studied Greenland's buried ice for clues to past climate, upgraded their computer models peering into the future, and improved global temperature analyses, the fossil-fuel industries were mobilizing for a campaign to question the science. By 1988, NASA climatologist James Hansen could appear before a U.S. Senate committee and warn that global warming had begun, a dramatic announcement later confirmed by the Intergovernmental Panel on Climate Change (IPCC), a new, U.N.-sponsored network of hundreds of international scientists. But when Hansen was called back to testify in 1989, the White House of President George H.W. Bush edited this government scientist's remarks to water down his conclusions, and Hansen declined to appear. That was the year U.S. oil and coal interests formed the Global Climate Coalition to combat efforts to shift economies away from their products. Britain's Royal Society and other researchers later determined that oil giant Exxon disbursed millions of dollars annually to think tanks and a handful of supposed experts to sow doubt about the facts. In 1997, two years after the IPCC declared the "balance of evidence suggests a discernible human influence on global climate," the world's nations gathered in Kyoto, Japan, to try to do something about it. The naysayers were there as well. "The statement that we'll have continued warming with an increase in CO2 is opinion, not fact," oil executive William F. O'Keefe of the Global Climate Coalition insisted to reporters in Kyoto. The late Bert Bolin, then IPCC chief, despaired. "I'm not really surprised at the political reaction," the Swedish climatologist told The Associated Press. "I am surprised at the way some of the scientific findings have been rejected in an unscientific manner." In fact, a document emerged years later showing that the industry coalition's own scientific team had quietly advised it that the basic science of global warming was indisputable. Kyoto's final agreement called for limited rollbacks in greenhouse emissions. The United States didn't even join in that. And by 2000, the CO2 built up in the atmosphere to 369 parts per million — just 4 ppm less than Broecker predicted — compared with 280 ppm before the industrial revolution. Global temperatures rose as well, by 0.6 degrees C (1.1 degrees F) in the 20th century. And the mercury just kept rising. The decade 2000-2009 was the warmest on record, and 2010 and 2005 were the warmest years on record. Satellite and other monitoring, meanwhile, found nights were warming faster than days, and winters more than summers, and the upper atmosphere was cooling while the lower atmosphere warmed — all clear signals greenhouse warming was at work, not some other factor. The impact has been widespread. An authoritative study this August reported that hundreds of species are retreating toward the poles, egrets showing up in southern England, American robins in Eskimo villages. Some, such as polar bears, have nowhere to go. Eventual large-scale extinctions are feared. The heat is cutting into wheat yields, nurturing beetles that are destroying northern forests, attracting malarial mosquitoes to higher altitudes. From the Rockies to the Himalayas, glaciers are shrinking, sending ever more water into the world's seas. Because of accelerated melt in Greenland and elsewhere, the eight-nation Arctic Monitoring and Assessment Program projects ocean levels will rise 90 to 160 centimeters (35 to 63 inches) by 2100, threatening coastlines everywhere. "We are scared, really and truly," diplomat Laurence Edwards, from the Pacific's Marshall Islands, told the AP before the 1997 Kyoto meeting. Today in his low-lying home islands, rising seas have washed away shoreline graveyards, saltwater has invaded wells, and islanders desperately seek aid to build a seawall to shield their capital. The oceans are turning more acidic, too, from absorbing excess carbon dioxide. Acidifying seas will harm plankton, shellfish and other marine life up the food chain. Biologists fear the world's coral reefs, home to much ocean life and already damaged from warmer waters, will largely disappear in this century The greatest fears may focus on "feedbacks" in the Arctic, warming twice as fast as the rest of the world. The Arctic Ocean's summer ice cap has shrunk by half and is expected to essentially vanish by 2030 or 2040, the U.S. National Snow and Ice Data Center reported Sept. 15. Ashore, meanwhile, the Arctic tundra's permafrost is thawing and releasing methane, a powerful greenhouse gas. These changes will feed on themselves: Released methane leads to warmer skies, which will release more methane. Ice-free Arctic waters absorb more of the sun's heat than do reflective ice and snow, and so melt will beget melt. The frozen Arctic is a controller of Northern Hemisphere climate; an unfrozen one could upend age-old weather patterns across continents. In the face of years of scientific findings and growing impacts, the doubters persist. They ignore long-term trends and seize on insignificant year-to-year blips in data to claim all is well. They focus on minor mistakes in thousands of pages of peer-reviewed studies to claim all is wrong. And they carom from one explanation to another for today's warming Earth: jet contrails, sunspots, cosmic rays, natural cycles. "Ninety-eight percent of the world's climate scientists say it's for real, and yet you still have deniers," observed former U.S. Rep. Sherwood Boehlert, a New York Republican who chaired the House's science committee. Christiana Figueres, Costa Rican head of the U.N.'s post-Kyoto climate negotiations, finds it "very, very perplexing, this apparent allergy that there is in the United States. Why?" The Australian scholar Hamilton sought to explain why in his 2010 book, "Requiem for a Species: Why We Resist the Truth About Climate Change." In an interview, he said he found a "transformation" from the 1990s and its industry-financed campaign, to an America where climate denial "has now become a marker of cultural identity in the 'angry' parts of the United States." "Climate denial has been incorporated in the broader movement of right-wing populism," he said, a movement that has "a visceral loathing of environmentalism." An in-depth study of a decade of Gallup polling finds statistical backing for that analysis. On the question of whether they believed the effects of global warming were already happening, the percentage of self-identified Republicans or conservatives answering "yes" plummeted from almost 50 percent in 2007-2008 to 30 percent or less in 2010, while liberals and Democrats remained at 70 percent or more, according to the study in this spring's Sociological Quarterly. A Pew Research Center poll last October found a similar left-right gap. The drop-off coincided with the election of Democrat Barack Obama as president and the Democratic effort in Congress, ultimately futile, to impose government caps on industrial greenhouse emissions. Boehlert, the veteran Republican congressman, noted that "high-profile people with an 'R' after their name, like Sarah Palin and Michele Bachmann, are saying it's all fiction. Pooh-poohing the science of climate change feeds into their basic narrative that all government is bad." The quarterly study's authors, Aaron M. McCright of Michigan State University and Riley E. Dunlap of Oklahoma State, suggested climate had joined abortion and other explosive, intractable issues as a mainstay of America's hardening left-right gap. "The culture wars have thus taken on a new dimension," they wrote. Al Gore, for one, remains upbeat. The former vice president and Nobel Prize-winning climate campaigner says "ferocity" in defense of false beliefs often increases "as the evidence proving them false builds." In an AP interview, he pointed to tipping points in recent history — the collapse of the Berlin Wall, the dismantling of U.S. racial segregation — when the potential for change built slowly in the background, until a critical mass was reached. "This is building toward a point where the falsehoods of climate denial will be unacceptable as a basis for policy much longer," Gore said. "As Dr. Martin Luther King Jr. said, 'How long? Not long.'" Even Wally Broecker's jest — that deniers could blame God — may not be an option for long. Last May the Vatican's Pontifical Academy of Sciences, arm of an institution that once persecuted Galileo for his scientific findings, pronounced on manmade global warming: It's happening. Said the pope's scientific advisers, "We must protect the habitat that sustains us."

#### This pattern of denialism underscores the privilege of white conservative men who do not and may never suffer the horrors of climate change.

Mooney 11 Chris Mooney, science and political journalist specializing in science in politics, the psychology of denialism, Knight Science Journalism Fellow, MIT; Visiting Associate, Center for Collaborative History, Princeton U; 8/2/11 (“What’s Up With Conservative White Men and Climate Change Denial?,”<http://www.desmogblog.com/what-s-conservative-white-men-and-climate-change-denial>)
They’re the conservative white men … climate denial blogs serve to fan the flames.

They come at you at public events, wanting to argue. They light up the switchboards whenever there’s a radio show about climate change. They commandeer your blog comments section. They have a seemingly insatiable desire to debate, sometimes quite aggressively. They’re the conservative white men (CWM) of climate change denial, and we’ve all gotten to know them in one way or another. But we haven’t had population-level statistics on them until recently, courtesy of a new paper in Global Environmental Change (apparently not online yet, but **[live](http://www.conservationmagazine.org/2011/07/cool-white-dudes/%22%20%5Ct%20%22_blank)** in the blogosphere as of late last week) by sociologists Aaron McCright and Riley Dunlap. It’s entitled “Cool Dudes: The denial of climate change among conservative white males in the United States.” Among other data, McCright and Dunlap show the following: — 14% of the general public doesn’t worry about climate change at all, but among CWMs the percentage jumps to 39%. — 32% of adults deny there is a scientific consensus on climate change, but 59% of CWMs deny what the overwhelming majority of the world’s scientists have said. — 3 adults in 10 don’t believe recent global temperature increases are primarily caused by human activity. Twice that many – 6 CWMs out of every ten – feel that way. What’s more, and in line with a number of post I’ve written in the past, McCright and Dunlap also find among these CWMs a phenomenon I sometimes like to call “smart idiocy.” Even as they deny mainstream climate science, conservative white males are also more likely than average U.S. adults to think they understand the science they deny—that they’re right, the scientists are wrong, and they can prove it. Indeed, they’re just dying to debate you and refute you. The authors bring up two possible explanations for the broad CWM phenomenon, both based on literature in the social sciences. The first is “identity-protective cognition” theory (or what I would call [motivated reasoning](http://motherjones.com/politics/2011/03/denial-science-chris-mooney%22%20%5Ct%20%22_blank)). The second is “[system justification” theory](http://en.wikipedia.org/wiki/System_justification%22%20%5Ct%20%22_blank), which is just what it sounds like: the study of why people, often implicitly and subconsciously, are motivated to ratify and reaffirm the status quo—why their default position is against, rather than for, progressive change. Motivated reasoning suggests that men who have “hierarchical” values—resisting reforms to increase economic or social equality, believing that some people should be running things and some should be taking orders, or that it’s perfectly okay and normal that some will succeed and some will fail—will be more inclined defend a social system that’s structured in this way. Such a tendency has been used in the past to explain the “[white male effect](http://en.wikipedia.org/wiki/Cultural_cognition%22%20%5Cl%20%22.22White_male_effect.22%22%20%5Ct%20%22_blank)”: White men tend to downplay all manner of risks, especially environmental ones, but also risks posed by things like the vast proliferation of guns in America. This, presumably, is both because they’re less harmed by such risks overall (the burden often falls more on the disadvantaged), but also because they have trouble personally conceiving of the reality of these risks (they don’t see the current state of things as being very bad or objectionable). But why do men downplay climate risks in particular? Here’s where “system justification” theory comes in: If climate change is real and human caused, it potentially threatens the whole economic order and those who have built it and benefited from it. It is the most inconvenient of truths. So the idea is that the men who benefit from the fossil-fuel based energy system will rationalize and defend that system from challenge—and the science of climate change is, in some ways, the ultimate challenge. (More on this [here](http://psp.sagepub.com/content/36/3/326.abstract%22%20%5Ct%20%22_blank).) This, by the way, may help to explain why conservatives so often liken the promotion of mainstream climate science, and advocacy for greenhouse gas emission controls, to a secret agenda to advance global socialism or communism. It isn’t—we’re so far from a left wing revolution in this country that the whole idea is laughable—but you can see how this wild claim might make more sense to them than it does to you and me. There’s also a strong element of groupthink here, write McCright and Dunlap. Conservative white male elites like Rush Limbaugh disseminate the climate denial message, and then their followers come to associate with it and build identities around it: To the extent that conservative white males in the general public view their brethren within the elite sectors as an ingroup, then we expect that the former also will tend to reject the global warming claims of the scientific community, the environmental movement, and environmental policy-makers. In short, they will espouse climate change denial to defend the information disseminated within their in-group and to protect their cultural identity as conservative white males.

#### We must challenge this denialism by creating a counter-concensus on global warming.

Hamilton 9 Hamilton: Denying the coming global holocaust <http://www.crikey.com.au/2009/11/16/hamilton-denying-the-coming-climate-holocaust/> [Clive Hamilton, Professor of Public Ethics at the Centre for Applied Philosophy and Public Ethics (CAPPE)[1] and the Vice-Chancellor's Chair in Public Ethics at Charles Sturt University.[2] He is the Founder and former Executive Director of the The Australia Institute. Overseas Commonwealth Postgraduate Scholar and completed his Doctorate at the Institute of Development Studies at the University of Sussex. Senior Visiting Fellow of the School of Forestry and Environmental Studies of Yale University. Professor at Oxford.]

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| Climate sceptics resent being called deniers because of the odium associated with Holocaust revisionism. Even critics of the sceptics are careful to distance themselves from the implication that they are comparing climate denialism with Holocaust denialism for fear of being seen to trivialise the Holocaust by suggesting some sort of moral equivalence. Judgments about moral equivalence depend on the ethical standpoint one adopts. For consequentialists the morality of an action is judged by its outcomes. For those who adopt this ethical standpoint, any assessment of the consequences of the two forms of truth-rejection would conclude that climate deniers deserve greater moral censure than Holocaust deniers because their activities are more dangerous. If the David Irvings of the world were to succeed, and the public rejected the mountain of evidence for the Holocaust, then the consequences would be a rewriting of history and a probable increase in anti-Semitism. If the climate deniers were to succeed, and stopped the world responding to the mountain of evidence for human-induced global warming, then hundreds of millions of mostly impoverished people around the world would die from the effects of climate change. They will die from famine, flood and disease caused by our unwillingness to act. The Stern report provides some sobering estimates: an additional 30-200 million people at risk of hunger with warming of only 2-3°C; an additional 250-500 million at risk if temperatures rise above 3°C; some 70-80 million more Africans exposed to malaria; and an additional 1.5 billion exposed to dengue fever. Instead of dishonouring the deaths of six million in the past, climate deniers risk the lives of hundreds of millions in the future. Holocaust deniers are not responsible for the Holocaust, but climate deniers, if they were to succeed, would share responsibility for the enormous suffering caused by global warming. It is a ghastly calculus, yet it is worth making because the hundreds of millions of dead are not abstractions, mere chimera until they happen. We know with a high degree of certainty that if we do nothing they will die. But not everyone adopts a consequentialist ethic. An alternative ethical stance is to judge climate deniers not by the effects of what they do but by the rightness of their activities (a so-called duty ethic) or by their character and motives (a virtue ethic). |

## Plan Text

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

## Contention 3 is Solvency

The government is currently able to control the discourse surrounding the war on terror – No Alternative discourse has surfaced to counter their use of fear. Our reading and defense of the 1AC is essential to fill the discursive vacuum. Repeated iterations of our aff can change public psychology, ensuring change in policy -

Zinn, 4 [Howard Zinn, Our War on Terrorism, The Progressive, November 2004 Issue, https://www.progressive.org/nov04/zinn1104.html]

I am calling it "our" war on terrorism because I want to distinguish it from Bush's war on terrorism, and from Sharon's, and from Putin's. What their wars have in common is that they are based on an enormous deception: persuading the people of their countries that you can deal with terrorism by war. These rulers say you can end our fear of terrorism--of sudden, deadly, vicious attacks, a fear new to Americans--by drawing an enormous circle around an area of the world where terrorists come from (Afghanistan, Palestine, Chechnya) or can be claimed to be connected with (Iraq), and by sending in tanks and planes to bomb and terrorize whoever lives within that circle.¶ Since war is itself the most extreme form of terrorism, a war on terrorism is profoundly self-contradictory. Is it strange, or normal, that no major political figure has pointed this out?¶ Even within their limited definition of terrorism, they--the governments of the United States, Israel, Russia--are clearly failing. As I write this, three years after the events of September 11, the death toll for American servicemen has surpassed 1,000, more than 150 Russian children have died in a terrorist takeover of a school, Afghanistan is in chaos, and the number of significant terrorist attacks rose to a twenty-one-year high in 2003, according to official State Department figures. The highly respected International Institute for Strategic Studies in London has reported that "over 18,000 potential terrorists are at large with recruitment accelerating on account of Iraq."¶ With the failure so obvious, and the President tripping over his words trying to pretend otherwise (August 30: "I don't think you can win" and the next day: "Make no mistake about it, we are winning"), it astonishes us that the polls show a majority of Americans believing the President has done "a good job" in the war on terrorism.¶ I can think of two reasons for this.¶ First, the press and television have not played the role of gadflies, of whistleblowers, the role that the press should play in a society whose fundamental doctrine of democracy (see the Declaration of Independence) is that you must not give blind trust to the government. They have not made clear to the public--I mean vividly, dramatically clear--what have been the human consequences of the war in Iraq.¶ I am speaking not only of the deaths and mutilations of American youth, but the deaths and mutilations of Iraqi children. (I am reading at this moment of an American bombing of houses in the city of Fallujah, leaving four children dead, with the U.S. military saying this was part of a "precision strike" on "a building frequently used by terrorists.") I believe that the American people's natural compassion would come to the fore if they truly understood that we are terrorizing other people by our "war on terror."¶ A second reason that so many people accept Bush's leadership is that no counterargument has come from the opposition party. John Kerry has not challenged Bush's definition of terrorism. He has not been forthright. He has dodged and feinted, saying that Bush has waged "the wrong war, in the wrong place, at the wrong time." Is there a right war, a right place, a right time? Kerry has not spoken clearly, boldly, in such a way as to appeal to the common sense of the American people, at least half of whom have turned against the war, with many more looking for the wise words that a true leader provides. He has not clearly challenged the fundamental premise of the Bush Administration: that the massive violence of war is the proper response to the kind of terrorist attack that took place on September 11, 2001.¶ Let us begin by recognizing that terrorist acts--the killing of innocent people to achieve some desired goal--are morally unacceptable and must be repudiated and opposed by anyone claiming to care about human rights. The September 11 attacks, the suicide bombings in Israel, the taking of hostages by Chechen nationalists--all are outside the bounds of any ethical principles.¶ This must be emphasized, because as soon as you suggest that it is important, to consider something other than violent retaliation, you are accused of sympathizing with the terrorists. It is a cheap way of ending a discussion without examining intell

igent alternatives to present policy.¶ Then the question becomes: What is the appropriate way to respond to such awful acts? The answer so far, given by Bush, Sharon, and Putin, is military action. We have enough evidence now to tell us that this does not stop terrorism, may indeed provoke more terrorism, and at the same time leads to the deaths of hundreds, even thousands, of innocent people who happen to live in the vicinity of suspected terrorists.¶ What can account for the fact that these obviously ineffective, even counterproductive, responses have been supported by the people of Russia, Israel, the United States? It's not hard to figure that out. It is fear, a deep, paralyzing fear, a dread so profound that one's normal rational faculties are distorted, and so people rush to embrace policies that have only one thing in their favor: They make you feel that something is being done. In the absence of an alternative, in the presence of a policy vacuum, filling that vacuum with a decisive act becomes acceptable.¶ And when the opposition party, the opposition Presidential candidate, can offer nothing to fill that policy vacuum, the public feels it has no choice but to go along with what is being done. It is emotionally satisfying, even if rational thought suggests it does not work and cannot work.¶ If John Kerry cannot offer an alternative to war, then it is the responsibility of citizens, with every possible resource they can muster, to present such an alternative to the American public.¶ Yes, we can try to guard in every possible way against future attacks, by trying to secure airports, seaports, railroads, other centers of transportation. Yes, we can try to capture known terrorists. But neither of those actions can bring an end to terrorism, which comes from the fact that millions of people in the Middle East and elsewhere are angered by American policies, and out of these millions come those who will carry their anger to fanatic extremes.¶ The CIA senior terrorism analyst who has written a book signed "Anonymous" has said bluntly that U.S. policies--supporting Sharon, making war on Afghanistan and Iraq--"are completing the radicalization of the Islamic world."¶ Unless we reexamine our policies--our quartering of soldiers in a hundred countries (the quartering of foreign soldiers, remember, was one of the grievances of the American revolutionaries), our support of the occupation of Palestinian lands, our insistence on controlling the oil of the Middle East--we will always live in fear. If we were to announce that we will reconsider those policies, and began to change them, we might start to dry up the huge reservoir of hatred where terrorists are hatched.¶ Whoever the next President will be, it is up to the American people to demand that he begin a bold reconsideration of the role our country should play in the world. That is the only possible solution to a future of never-ending, pervasive fear. That would be "our" war on terrorism.

#### 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, 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,

marked

 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 makes indefinite detention inevitable.

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

#### Role of the Ballot is to challenge national security law. This is not mutually exclusive with their ballot

#### Solely acting outside the realm of the law fails to provide a solution- institutions are inevitable and key

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory, but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

The AFF torques sovereignty against itself, deploying precedents at hand while demanding decisions grounded in universal principles
Michaelsen, English Prof, MSU, and Shershow, English Prof, UC-Davis, 2004 Scott Michaelsen and Scott Cutler Shershow, 1-11-04, "The Guantánamo "Black Hole": The Law of War and the Sovereign Exception," Middle East Report, http://www.merip.org/mero/mero011104

Sovereignty Against Itself¶ The act of sovereignty that captures the Guantánamo detainees only to push them beyond the reach and protection of the sovereign state is the very manifestation of the existing state system and its corollary values. Critics are confronted with a Hobson's choice between attempting to limit or suspend the exercise of sovereignty through increasing legal regulation or endorsing the exercise of sovereignty as a necessary corrective to injustice (as in the king's or executive's pardon). On this point, progressive legal theorists have been split. But the ultimate answer cannot lie solely in the enforcement of existing international law and the production of yet more international documents within the same framework, nor in the tenuous hope for occasional exceptions to that sovereign exceptionality that is always the essential form of sovereign power. International law alone will never avail, and not merely because its own logic always holds in reserve a right to the same indiscriminate violence that it condemns in the guerrilla, the pirate or the terrorist. Sovereignty is the principle and activity that founds the state, and therefore constitutes its innermost and outermost possibility. The sovereign black hole, loophole or zone of legal limbo is foundational for the existing juridico-political order. Even more broadly, within that order, the absolute end of sovereignty is unthinkable. Without sovereignty, no decisions; and without decisions, no justice.¶ Since sovereignty itself is inevitable, yet particular instances of sovereign power must still be confronted and challenged, critics of the current situation must assume a double responsibility. On the one hand, the present resources of national and international law must indeed be pursued to their limits, to discover and interpret precedents for the urgent decisions of the day, and, more importantly, to set new precedents for decisions still to come. But on the other hand, since law itself cannot in principle ever be adequate to the full enormity of Guantánamo, sovereignty itself must be torqued in a strange reversal, and made to work against itself. In other words, the sovereignty of strong states with the power to decide global matters—the sovereignty that is, after all, finally a collective force, a power "of the people, by the people and for the people"—must be expended without reserve in the name, not of law, but of justice, to the point where the territory and its boundary trembles. Such is not a mechanism or method which might be codified, because it will involve sovereign (and hence unprecedented) acts and decisions; and because its goal is a justice understood as an infinite task of thinking our relation to the Other. But as Jacques Derrida suggests, "the fact that law is deconstructible is not bad news"; rather, one can "find in this the political chance to all historical progress." All this is perhaps difficult to imagine in a world so dominated by reasons of state and the fanaticism of borders and identities. But the urgency of the task can hardly be overstated. At any rate, one thing is clear: at Guantánamo Bay, as Walt Kelly once observed, "we have met the enemy and he is us."

#### Fiat may be illusory but plan focus is key to logical decision-making skills

**Smith** 0**7** (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.

Individual action is wholey insufficient to solve for environmental calamities.

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Martens, S. & Spaargaren, G. 2005. The politics of sustainable consumption: the case of the Netherlands. Sustainability: Science, Practice, & Policy 1(1):29-42. Proquest

We begin with a discussion of the possible weaknesses inherent in more consumption-oriented environmental policies, and consider the “individualization” of politics and political responsibilities as developed by Bauman (1993) and Princen et al. (2002). Many environmental problems are ultimately rooted in the conduct of institutional actors, such as companies and governments. Under these circumstances, there is little merit imposing obligations on citizen-consumers, who not only lack the power to influence the organization of production and consumption, but also cannot—and arguably should not—be held responsible for issues that arise out of the “treadmill of production and consumption” (Schnaiberg, 1980). It is likely to be unproductive, and above all illegitimate, to burden citizen-consumers with remedying such problems. If policy initiatives only advance individual solutions—and ignore institutional actors—socially regressive and environmentally ineffectual outcomes will be the result.

#### Even if the legal sphere is inaccessible, legal education builds community capacity- critical for the struggle towards justice

Hair 01

(Penda D Louder than Words:Lawyers, Communities and the Struggle for Justice, <http://www.racialequitytools.org/resourcefiles/hair.pdf>, Penda D. Hair is Co-Director of the Advancement Project at the Rockafeller Foundation, The many lawyers, clients, community organizations and activists whose visionary work in the field is reflected herein generously shared their time, experiences, lessons and mistakes, as well as triumphs. This is their report. I have tried to be an accurate and thoughtful recorder. Dayna L. Cunningham, Associate Director of the Rockefeller Foundation’s Working Communities Division, conceived this project and brought together the people and the resources to bring it to fruition. Her penetrating ideas on race and lawyering infuse every page of the Report. As important, her strong belief in the project and her incredible determination inspired the author and the advisers, and pushed this work to completion. Susan P. Sturm, Professor of Law, Columbia Law School, and Lani Guinier, Professor of Law, Harvard Law School, were participants from the inception, helping to frame the project, identify case studies and put together the larger group of advisers. Angela Glover Blackwell, then Vice President of the Rockefeller Foundation (now President of PolicyLink, a national organization working to identify, support and promote local policy innovation), played a critical role in initiating and supporting this project and provided many valuable insights. Fifteen advisers guided the development of this report. Coming from national civil rights organizations, local public-interest law centers, universities and foundations, all of the advisers in their separate capacities have been deeply involved in the struggle for justice for many years. Their commitment to this project has been unwavering. )

Louder Than Words“the full range of problem-solving tasks that lawyers traditionally employ to enhance the political and economic capacity of their paying clients.” Lawyers possess key technical and transactional skills for building community capacity. They can advise clients about vehicles for structuring organizations and transactions. They can identify sources of capital, analyze regulatory schemes, negotiate on the client’s behalf, structure relationships, draft agreements and navigate procedural obstacles. 2 By defining problems in ways that target structural obstacles and providing research that highlights structural elements of exclusion, lawyers can also explore with community members the importance of democracy and engagement as a means of achieving more responsive policies. For example in the Boston Chinatown case, the attorneys researched and publicized, then challenged, the 34-year history of land-use decisions by the local, state and federal authorities that led to the virtual disappearance of open space in Chinatown. In Greensboro, activists focused on local incentives that were enacted to prevent corporate flight but rewarded companies that paid lower wages. In the Texas Ten Percent Plan case, the lawyers drafted creative legislation that targeted educational-system failure and provided research to demonstrate the linkages between systematic barriers and student performance. Attorney/Client Relationships Legal options are important tools in the fight for racial inclusion. But lawyers will be most effective if they are connected and responsive to constituencies. In the traditional representation model, lawyers are the chief problem solvers. They frame the claims and legal theories and generally neither cultivate nor rely on the prvoblem-solving skills of their clients. They tell clients what is possible and give voice to client concerns through pleadings and formal proceedings that may marginalize or compartmentalize local knowledge and expertise. Clients can become dependent on lawyers as problem solvers. Leadership development within the community takes low priority. Legitimate protest may get discouraged in favor of “respectable” legal channels. Given the procedural nature of litigation, in the traditional representation model, high priority is placed on technical indicia of success. It is hard to assess impact on a community with the traditional tools of the lawyer. By contrast, under a community-based approach, the particularized knowledge and skills of lawyers retains its critically important role. But when the ultimate goal is working with clients or a community to exercise their voice, changes occur in the nature of relationships, the definition of problems, the ways lawyers perform their tasks and the way they evaluate success. By drawing on local resources the attorneys can “bring together different fragments and patterns of local community know-how to bear on their work.” 3 Significantly, many of the best models of this approach first emerged within the civil rights movement, when lawyers were called to assist activists such as the Freedom Riders in local communities. 2 See, e.g., Ann Southworth, “Taking the Lawyer Out of Progressive Lawyering,” 46 Progressive Lawyering, at 213, 223 (1993). One of many practical examples of such transactional contributions is found in the creative argument by a Brooklyn Legal Services attorney that a New York statute governing tax-exempt bond financing for hospital expansion permitted a local medical clinic to utilize such bonds. See, “So Goes a Nation,” supra. 3 Gerald Lopez, Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice, (Westview Press, 1992), at 53. 143 Chapter 7Many racial-justice innovators are driven to adopt more participatory approaches by the necessity of understanding changing forms of racial exclusion today. To protect against exploitation of low-wage and immigrant workers, to respond to the assault on affirmative action, to combat massive shifts of resources from cities to expanding suburbs, to halt environmental degradation in minority communities, and to win incorporation of increasingly diverse noncitizen populations requires thoroughgoing knowledge of the impacts on people’s lives. Lawyers and clients must collaboratively engage in problem-solving efforts to make this knowledge available. New approaches that stress engagement may build upon the traditional role of legal counselor/adviser by interpreting and applying legal standards. However, in the case studies, lawyers were most effective when they functioned as part of a broader problem-solving process, working to mediate between the role of the law and the goals of organized and cohesive community members. This is particularly important when community aspirations are not easily translated within the existing paradigms of justice. In this role, lawyers continuously ask how the law can be interpreted and applied to advance community goals. When possible, they reject abstract legal theories in favor of appeals to community values and for concrete practical needs. They also assist clients in drawing on their own problem-solving skills, demystifying the law and lawyering, and encouraging people to handle routine legal problems on their own. It requires special attention to avoid a hasty resort to more structured and familiar legal procedures that can overtake the slower, less-scripted process of community-centered lawyering. Significantly different skills are needed than the litigation and transactional approaches taught in law school. The lawyer’s inquiry begins by looking at the concrete needs and values of community members. The goal is to frame claims within a larger moral vision rather than principally in terms of a formal legal theory. Thus, in Greensboro, the formal claim of the Kmart workers came under Title VII employment discrimination and several employees brought a successful lawsuit on these grounds. But the community-centered vision of the ministers was larger, putting the workers’ claims for fair individual treatment within the larger context of a community struggling to defend its declining living standard against irresponsible corporate behavior. At the same time, the ministers connected their vision to legitimate local economic and business needs. Kmart’s motion for a restraining order to stop the protests might have silenced the ministers. The lawyers intervened at a critical moment in their struggle, converting the lawsuit from a device to stifle the community’s voice to an additional opportunity to tell the workers’ story. Attorney James Ferguson joined the ministers, union representatives and community members at press conferences and other public activities. Rather than present very tight legal arguments focused on specific procedural issues, they filed expansive papers to surface the underlying issues of racism and exploitation that concerned community members. They worked 144 Louder Than Wordsclosely with community members, listening to what they were trying to accomplish. They involved them in the court proceedings so that community members could grasp the connections between the legal work and their struggles. The lawyers also measured their success in terms of community objectives, rather than in terms of procedural outcomes.

#### Agency and Activism- Simualted national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Taking solely individual approaches fails to change macro-level societal trends that replicates the impacts

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of *habitus*. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the *habitus* can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A *habitus* (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the *habitus* can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the *habitus* and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the *habitus*. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

#### The neg plays into the hands of Americanness - advertently affirming a paradigm which underpins the structures of assimilation and exclusion.

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In Philip Kan Gotanda's 2002 "The Wind Cries Mary" (an adaptation of Henrik Ibsen's "Hedda Gabler"), Eiko/Hedda ends the play (and her life) by committing seppuku, Japanese ritual suicide by dagger to the neck—not the long sword to the gut (so often portrayed in popular Western representation), the method properly reserved for a certain class of men, Eiko pointedly lectures in an earlier scene. But far more radical than the change in weaponry is Gotanda's placement of the act: Eiko dies front and center stage in full view of the audience (if not her distracted family and friends), unlike the sequestered Hedda.[1](http://muse.jhu.edu.libproxy.trinity.edu/journals/journal_of_speculative_philosophy/v018/18.2shimakawa.html%22%20%5Cl%20%22FOOT1) It is a somewhat surprising choice for Eiko, who has chafed under her husband's and in-laws' expectations of her as a "China doll," who demands coffee when her orientalist husband offers her green tea, who likes listening to Hendrix at full volume (much to the annoyance of her pop music-loving husband). In short, Eiko is neither a China doll nor Cio-Cio San, that fabled delicate "Butterfly" archetype of Asian (especially Japanese) femininity, transportingly erotic and beautiful in her death-driven devotion to her (white) husband and child. In one sense, then, her act is one of fierce defiance, her victory over the racist construction of oriental femininity into which the play, the world depicted in it (Berkeley ca. 1968), and especially the other characters, attempt to interpellate her. You want to see a real Japanese woman? in effect she taunts them, I'll show you a real Japanese [American] woman.[2](http://muse.jhu.edu.libproxy.trinity.edu/journals/journal_of_speculative_philosophy/v018/18.2shimakawa.html%22%20%5Cl%20%22FOOT2) And yet...the feminist debate over Hedda's "liberatory" end persists here as well: how "victorious" can self-annihilation be? What does it mean to say that the way one "wins" the gendering/racialization "game" is to opt out by killing oneself? And do so in the most spectacularly "oriental" way possible? Eiko's death, I would suggest, dramatizes the vexed condition of "ethnic" performance for Asian Pacific Americans. Caught between the (potentially self-canceling) pressures of exoticism/orientalism on the one hand, and erasure/invisibility on the other, Asian Pacific American theatre artists have the difficult task of carving out a space in which to perform an Asian Pacific Americanness [End Page 149] that is often too "American" to register as racially or ethnically distinct, and/or too "Asian" to be legible as American. This dilemma is, of course, simply a reflection of the larger paradox posed by "multiculturalism" as a national origin myth. As Anne Anlin Cheng has observed, "while racial and social integration offer the preeminent American social myths, assimilation remains one of the deepest sources of anxiety in the American psyche" (Cheng 2001, 70). While Cheng's excellent study maps the psychic effects of racialization both on and by Asian Pacific Americans, I want to consider the paradox of American multiculturalism from a slightly different perspective: how might we make sense of it as an effect/production of national identity itself? Elsewhere I've suggested that Asian Pacific Americanness (in mainstream representation) is an effect of "national abjection," the production of national identity (as a racialized/gendered phantasm/ideal) through the designation of that which is deemed "abject"/not-American (Shimakawa 2002). Julia Kristeva defines abjection as both a state and a process—the condition/position of that which is deemed loathsome and the process by which that appraisal is made—and deems "abject and abjection [as] ... the primers of my culture" (Kristeva 1982, 2). It is, for her, the means by which the subject/"I" is produced: by establishing perceptual and conceptual borders around the self and "jettison[ing]" that which is deemed objectionable, the subject comes into (and maintains) self-consciousness. The abject, Kristeva asserts, is constituted of that which is, at a foundational level, integral to the whole; what fuels the ongoing project of abjection is the drive to expel (and thereby differentiate from) that which, on some level, cannot be fully or decisively expelled. The abject, it is important to note, does not achieve a (stable) status of object—the term often used to describe the position of (racially or sexually) disenfranchised groups in analyses of the politics of representation. Read as abject, Asian Pacific Americanness thus occupies a role both necessary to and mutually constitutive of national subject formation—but does not result in the formation of an Asian Pacific American subject, or even an Asian Pacific American object. Rather, I deploy the discourse of abjection in describing Asian American performance because (as in Kristeva's formulation) "there is nothing objective or objectal to the abject. It is simply a frontier" (9). What characterizes Asian Pacific Americanness as it comes into visibility, I would argue, is its constantly-shifting relation to U.S. Americanness, a movement between visibility and invisibility, foreignness and domestication/assimilation; it is that movement between enacted by and upon Asian Pacific Americans that marks the boundaries of Asian American cultural (and sometimes legal) citizenship. In order for U.S. Americanness to maintain its symbolic coherence, the national abject continually must be both made present and jettisoned. In positing the paradigm of abjection as a national/cultural identity-formative process, this essay offers a way of "reading" Asian Americanness [End Page 150] in relation to and as a product of U.S. Americanness—that is, as occupying the seemingly contradictory, yet functionally essential, position of a constituent element/sign of American multiculturalismand radical other/foreigner. Given this oscillation, it is difficult to imagine a unified response or direct reaction and indeed, Asian Pacific American theatre artists have produced material that is correspondingly varied. From "Chinaman" Frank Chin's call for an Asian Pacific American theatre that would depict "real" Asian Americans and "authentic" Asian immigrant cultures/practices/mythologies and thereby disprove the grotesque "Charlie Chan" stereotypes prevalent in popular media (Chin 1995) to Pan Asian Repertory founding Artistic Director Tisa Chang's vision of an Asian American theatre in which "an Asian American could play ... a Blanche Dubois" (Chang 1994), Asian Pacific American theatre artists often find themselves having to assert their (authentic) difference and their ("American") sameness at the same time. However, neither of these strategies manages to escape the logic of abjection altogether: the insistence on "authentic" Asian (American) cultural representation (the attempt to present "our" culture/histories as a corrective to stereotypical-orientalist representations) is a reaction to an (unjust or incorrect) assignment of abject status; an assertion of "our" Americanness (the "we are just like other Americans" approach) is fueled by a desire to identify with the deject (mainstream) national subject rather than the excluded abject. Is it possible to conceive a strategy that short-circuits the national abjection process altogether? In other words, is there a way to recognize the tensions inherent in the project of "performing ethnicity" that does not rely implicitly on the integrity of a (raced) national subject?

#### Identity-for-itself is a trump card that renders politics inoperable - our habitat must be bounded by questions of how we OUGHT to live as opposed to the ways we should be perceived - this sticks the negs politics in a framework of resistance, guts their solvency.

Brown 95—prof at UC Berkeley (Wendy, States of Injury, 47-51)

The postmodern exposure of the imposed and created rather than dis- covered character of all knowledges—of the power-surtuscd, struggle-¶48¶produced quality of all truths, including reigning political and scientific ones—simultaneously exposes the groundlessness of discovered norms or visions. It also reveals the exclusionary and regulatory function of these norms: white women who cannot locate themselves in Nancy Hartsock’s account of women’s experience or women s desires, African American women who do not identify with Patricia Hill Collinss account of black women’s ways of knowing, are once again excluded from the Party of Humanism—this time in its feminist variant. ¶Our alternative to reliance upon such normative claims would seem to be engagement in political struggles in which there are no trump cards such as “morality” or “truth."Our alternative, in other words, is to struggle within an amoral political habitat for temporally bound and fully contestable visions of who we are and how we ought to live. Put still another way, postmodernity unnerves feminist theory not merely because it deprives us of uncomplicated subject standing, as Christine Di Stefano suggests, or of settled ground for knowledge and norms, as Nancy Hartsock argues, or of "centered selves and “emancipatory knowledge," as Seyla Bcnhabib avers. Postmodernity unsettles feminism because it erodes the moral ground that the subject, truth, and nor- mativity coproduce in modernity. When contemporary feminist political theorists or analysts complain about the antipolitical or unpolitical nature of postmodern thought—thought that apprehends and responds to this erosion—they arc protesting, inter' aha, a Nictzschcan analysis of truth and morality as fully implicated in and by power, and thereby dplegiti- mated qua Truth and Morality Politics, including politics with passion- ate purpose and vision, can thrive without a strong theory of the subject, without Truth, and without scientifically derived norms—one only need reread Machiavelli, Gramsci, or Emma Goldman to see such a politics flourish without these things. The question is whether fnninist politics can prosper without a moral apparatus, whether feminist theorists and activists will give up substituting Truth and Morality for politics. Are we willing to engage in struggle rather than recrimination, to develop our faculties rather than avenge our subordination with moral and epistemological gestures, to fight for a world rather than conduct process on the existing one? Nictzschc insisted that extraordinary strengths of character and mind would be necessary to operate in thce domain of epistemological and religious nakedness he heralded. But in this heexcessively individualized a challenge that more importantly requires the deliberate development of postmoral and antirelativist political spaces, practices of deliberation, and modes of adjudication.¶49¶The only way through a crisis of space is to invent a new space —Fredric Jameson. “Postmodernism"¶Precisely because of its incessant revelation of settled practices and identi- ties as contingent, its acceleration of the tendency to melt all that is solid into air. what is called postmodernity poses the opportunity to radically sever the problem of the good from the problem of the true, to decide “what we want” rather than derive it from assumptions or arguments about “who we are.” Our capacity to exploit this opportunity positively will be hinged to our success in developing new modes and criteria for political judgment. It will also depend upon our willingness to break certain modernist radical attachments, particularly to Marxism’s promise (however failed) of meticulously articulated connections betwreen a com- prehensive critique of the present and norms for a transformed future—a science of revolution rather than a politics of oneResistance, the practice most widely associated with postmodern polit- ical discourse, responds to without fully meeting the normativity chal- lenge of postmodernity. A vital tactic in much political w’ork as wrcll as for mere survival, resistance by itself does not contain a critique, a vision, or grounds for organized collective efforts to enact either. Contemporary affection for the politics of resistance issues from postmodern criticism’s perennial authority problem: our heightened consciousncss of the will to power in all political “positions” and our wrariness about totalizing an- alyses and visions. Insofar as it eschew’s rather than revisesthese problematic practices, resistance-as-politics does not raise the dilemmas of responsibility and justification entailed in “affirming” political projects and norms. In this respect, like identity politics, and indeed sharing with identity politics an excessively local viewpoint and tendency toward positioning without mapping, the contemporary vogue of resistance is more a symptom of postmodernity’s crisis of political space than a coherent response to it. Resistance goes nowhere in particular, has no inherent attachments, and hails no particular vision; as Foucault makes clear, resistance is an effect of and reaction to power, not an arrogation of it.¶What postmodernity disperses and postmodern feminist politics requires are cultivated political spaces for posing and questioning feminist political norms, for discussing the nature of “the good” for women. Democratic political space is quite undcrtheonzed in contemporary femi- nist thinking, as it is everywhere in latc-twentieth-ccntury political the- ory, primarily bccausc it is so little in evidence. Dissipated by the increasing tcchnologizing of would-be political conversations and pro- cesses, by the erosion of boundaries around specifically political domains¶50¶and activities, and by the decline of movement politics, political spaces are scarcer and thinner today than even in most immediately prior epochs of Western history. In this regard, their condition mirrors the splayed and centrifuged characteristics of postmodern political power. Yet precisely because of postmodernity’s disarming tendencies toward political disori- entation, fragmentation, and technologizing, the creation of spaces where political analyses and norms can be proffered and contested is su- premely important.¶Political space is an old theme in Western political theory, incarnated by the polis practices of Socrates, harshly opposed by Plato in the Repub- lic, redeemed and elaborated as metaphysics by Aristotle, resuscitated as salvation for modernity by Hannah Arendt. jnd given contemporary spin in Jurgen Habermas's theories of ideal speech situations and com- municative rationality. The project of developing feminist postmodern political spaces, while enriched by pieces of this tradition, necessarily also departs from it. In contrast with Aristotle’s formulation, feminist politi- cal spaces cannot define themselves against the private sphere, bodies, reproduction and production, mortality, and all the populations and is- sues implicated in these categories. Unlike Arendt’s, these spaces cannot be pristine, ratified, and policed at their boundaries but are necessarily cluttered, attuned to earthly concerns and visions, incessantly disrupted, invaded, and reconfigured. Unlike Habermas, wc can harbor no dreams of nondistorted communication unsullied by power, or even of a ‘com- mon language,’\* but wc recognize as a permanent political condition par- tiality of understanding and expression, cultural chasms whose nature may be vigilantly identified but rarely “resolved,” and the powers of words and images that evoke, suggest, and connote rather than transmit meanings.42 Our spaces, while requiring some definition and protection, cannot be clean, sharply bounded, disembodied, or permanent: to engage postmodern modes of power and honor specifically feminist knowledges, they must be heterogenous, roving, relatively noninstitutionalized, and democratic to the point of exhaustion.¶Such spaces are crucial for developing the skills and practices of post- modern judgment, addressing the problem of “how to produce a discourse on justicc . . . when one no longer relies on ontology or epistemology.”43 Postmodemity’s dismantling of metaphysical foundations for justice renders us quite vulnerable to domination by technical reason ¶51¶unless we seize the opportunity this erosion also creates to develop democratic processes for formulating postepistemelogical and postontological judgments. Such judgements require learning how to have public conversations with each other, arguing from a vision about the common (“what I want for us") rather than from identity (“who I am”), and from explicitly postulated norms and potential common values rather than false essentialism or unreconstructed private interest.44 Paradoxically, such public and comparatively impersonal arguments carry potential for greater accountability than arguments from identity or interest. While the former may be interrogated to the ground by others, the latter are insulated from such inquiry with the mantle of truth worn by identity-based speech. Moreover, post identity political positions and conversations potentially replace a politics of difference with a politics of diversity—differences grasped from a perspective larger than simply one point in an ensemble. Postidentity public positioning requires an outlook that discerns structures of dominance within diffused and disorienting orders of power, thereby stretching toward a more politically potent analysis than that which our individuated and fragmented existences can generate. In contrast to Di Stefano's claim that 'shared identity” may constitute a more psychologically and politically reliable basis for “attachment and motivation on the part of potential activists,” I am suggesting that political conversation oriented toward diversity and the common, toward world rather than self, and involving a conversion of ones knowledge of the world from a situated (subject) position into a public idiom, offers us the greatest possibility of countering postmodern social fragmentations and political disintegrations.¶Feminists have learned well to identify and articulate our "subject positions —we have become experts at politicizing the “I”that is produced through multiple sites ofpower and subordination. But the very practice so crucial to making these elements of power visible and subjectivity political may be partly at odds with the requisites for developing political conversation among a complex and diverse “we.” We may need to learn public speaking and the pleasures of public argument not to overcome our situatedness, but in order to assume responsibility for our situations and to mobilize a collective discourse that will expand them. For the political making of a feminist future that does not reproach the history on which it is borne, we may need to loosen our attachments to subjectivity, identity, and morality and to redress our underdeveloped taste for political argument.

#### National focus good- it enhances local efforts by creating a common rallying cry and provides NETWORKS necessary for collaboration – local justice efforts will be ineffective on their own

Hair 01

(Penda D Louder than Words:Lawyers, Communities and the Struggle for Justice, <http://www.racialequitytools.org/resourcefiles/hair.pdf>, Penda D. Hair is Co-Director of the Advancement Project at the Rockafeller Foundation, The many lawyers, clients, community organizations and activists whose visionary work in the field is reflected herein generously shared their time, experiences, lessons and mistakes, as well as triumphs. This is their report. I have tried to be an accurate and thoughtful recorder. Dayna L. Cunningham, Associate Director of the Rockefeller Foundation’s Working Communities Division, conceived this project and brought together the people and the resources to bring it to fruition. Her penetrating ideas on race and lawyering infuse every page of the Report. As important, her strong belief in the project and her incredible determination inspired the author and the advisers, and pushed this work to completion. Susan P. Sturm, Professor of Law, Columbia Law School, and Lani Guinier, Professor of Law, Harvard Law School, were participants from the inception, helping to frame the project, identify case studies and put together the larger group of advisers. Angela Glover Blackwell, then Vice President of the Rockefeller Foundation (now President of PolicyLink, a national organization working to identify, support and promote local policy innovation), played a critical role in initiating and supporting this project and provided many valuable insights. Fifteen advisers guided the development of this report. Coming from national civil rights organizations, local public-interest law centers, universities and foundations, all of the advisers in their separate capacities have been deeply involved in the struggle for justice for many years. Their commitment to this project has been unwavering. )

However, local justice work is built on a scaffolding of racial-justice laws, policies and practices erected and maintained by the national civil rights organizations. Despite devolution, this is a nation closely knit together by media and communications links. Local efforts are greatly enhanced by the efforts of national groups dealing with Congress, federal administrative agencies and the media. Many of the most visible efforts against racial equity have been mounted and/or orchestrated by a handful of national organizations as part of a coordinated nationwide offensive. 6 Such efforts necessitate a coordinated, nationwide response, which is best pursued by national organizations. For example, when the Office of Civil Rights released a new set of educational testing guidelines, a barrage of negative editorials and op-ed pieces were released in The Wall Street Journal, The Washington Post and other publications. No locally based legal or organizing effort could effectively and consistently respond to such attacks, which can have significant influence in national policy debates. However, because of working relationships between local litigators and national organizations, groups like the Leadership Conference on Civil Rights, LDF and others have effectively worked to counter attacks on the new guidelines. Three basic elements comprise the civil rights legal scaffolding: • The statutory and administrative framework of federal rights protection including Title VI, 7 the Voting Rights Act, Title I, 8 Title VII, 9 and a host of agency regulations and enforcement mechanisms. In an ongoing way, these structures provide a legal basis for creative and innovative racial-justice claims; • The network of national organizations that monitor and respond to major national trends in civil rights and collaborate with local efforts to address rights violations; • The national opinion leaders who provide an alternative to the majority narrative on public issues of interest to minorities. Many legal controversies end up in the Supreme Court, the federal appellate courts or the U.S. Congress. Lawyers from national organizations specialize in dealing with issues in these national venues in a way that local lawyers cannot. Activists and local lawyers in the Texas Ten Percent Plan case, the Los Angeles MTA case and the El Monte garment-workers case had partnerships with MALDEF, LDF and NAPALC— all national organizations that provided a range of resources to these local struggles. For many local organizations, partnership with a national organization gives them access to the Department of Justice and other national enforcement agencies, to members of Congress, national media, large law firms and other resources. All of this can heighten their leverage with local power structures. With their broader platforms and access, national organizations can help to highlight important local issues. Many local offenders fear the consequences of having a national spotlight thrown on them. Indeed, they rely on the invisibility of racial injustice to ensure the continued marginalization of minority communities. The involvement of national groups can serve as an important prod to public officials who ignore or abandon the goals of equity and justice in their policies, programs and conduct. Improvements in communication and accessibility of information, as well as advances in educational opportunity over the past several generations, have resulted in a dramatic surge in the number of advocates, organizers and attorneys “in the field.” Many, while not formally on the staffs of national groups, have ongoing relationships with them. Particularly if these advocates and activists have adequate support on technical issues, they can be more effective in community capacity building and organizing than has traditionally been the case for national organization staff. For both national and local groups there is growing understanding of the power of strategies that combine the strengths of local and national work. For example, NAACP LDF and the Lawyers’ Committee for Civil Rights Under Law have supported amendments to strengthen Title VI, have monitored Supreme Court and lower-court decisions construing this statute, and have filed briefs in and litigated important cases—all to ensure that this law remains available to protect victims of discrimination. Without this work, lawsuits and settlements such as the MTA case would not be possible in the future.