# 1AC

## Contention 1 is Adventurism

#### 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.

#### This incentivizes presidential adventurism which devolves into tyranny and makes all of your impact scenarios more likely

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

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

#### Independently results in nuclear war from judicial abdication.

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

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

#### Also stirs up flashpoints in East Asia.

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

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

#### These wars go nuclear.

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

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

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

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

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

#### Suspension Clause application checks presidential adventurism

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

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

## Contention 2 is 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.

#### Extinction—4 degree projections triggers numerous scenarios

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.

## 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

#### 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, 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.

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

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

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

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

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

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

# 2AC

## 2AC: K

#### Academic debates about threats result in better policy-making—real threats can be confronted and risks can be weighed.

Stephen Walt, Professor of Political Science, University of Chicago, 1991, INTERNATIONAL STUDIES QUARTERLY, p. 229-30

A recurring theme of this essay has been the twin dangers of separating the study of security affairs from the academic world or of shifting the focus of academic scholarship too far from real-world issues. The danger of war will be with us for some time to come, and states w63.ill continue to acquire military forces for a variety of purposes. Unless one believes that ignorance is preferable to expertise, the value of independent national security scholars should be apparent. Indeed, history suggests that countries that suppress debate on national security matters are more likely to blunder into disaster, because misguided policies cannot be evaluated and stopped in time. As in other areas of public policy, academic experts in security studies can help in several ways. In the short term, academics are well placed to evaluate current programs, because they face less pressure to support official policy. The long-term effects of academic involvement may be even more significant: academic research can help states learn from past mistakes and can provide the theoretical innovations the produce better policy choices in the future. Furthermore, their role in training the new generation of experts gives academics an additional avenue of influence.

#### Predictions are feasible. They can be made logically from empirical evidence.

Chernoff ‘9 (Fred, Prof. IR and Dir. IR – Colgate U., European Journal of International Relations, “Conventionalism as an Adequate Basis for Policy-Relevant IR Theory”, 15:1, Sage)

For these and other reasons, many social theorists and social scientists have come to the conclusion that prediction is impossible. Well-known IR reflexivists like Rick Ashley, Robert Cox, Rob Walker and Alex Wendt have attacked naturalism by emphasizing the interpretive nature of social theory. Ashley is explicit in his critique of prediction, as is Cox, who says quite simply, ‘It is impossible to predict the future’ (Ashley, 1986: 283; Cox, 1987: 139, cf. also 1987: 393). More recently, Heikki Patomäki has argued that ‘qualitative changes and emergence are possible, but predictions are not’ defective and that the latter two presuppose an unjustifiably narrow notion of ‘prediction’.14 A determined prediction sceptic may continue to hold that there is too great a degree of complexity of social relationships (which comprise ‘open systems’) to allow any prediction whatsoever. Two very simple examples may circumscribe and help to refute a radical variety of scepticism. First, we all make reliable social predictions and do so with great frequency. We can predict with high probability that a spouse, child or parent will react to certain well-known stimuli that we might supply, based on extensive past experience. More to the point of IR prediction – scepticism, we can imagine a young child in the UK who (perhaps at the cinema) (1) picks up a bit of 19th-century British imperial lore thus gaining a sense of the power of the crown, without knowing anything of current balances of power, (2) hears some stories about the US–UK invasion of Iraq in the context of the aim of advancing democracy, and (3) hears a bit about communist China and democratic Taiwan. Although the specific term ‘preventative strike’ might not enter into her lexicon, it is possible to imagine the child, whose knowledge is thus limited, thinking that if democratic Taiwan were threatened by China, the UK would (possibly or probably) launch a strike on China to protect it, much as the UK had done to help democracy in Iraq. In contrast to the child, readers of this journal and scholars who study the world more thoroughly have factual information (e.g. about the relative military and economic capabilities of the UK and China) and hold some cause-and-effect principles (such as that states do not usually initiate actions that leaders understand will have an extremely high probability of undercutting their power with almost no chances of success). Anyone who has adequate knowledge of world politics would predict that the UK will not launch a preventive attack against China. In the real world, China knows that for the next decade and well beyond the UK will not intervene militarily in its affairs. While Chinese leaders have to plan for many likely — and even a few somewhat unlikely — future possibilities, they do not have to plan for various implausible contingencies: they do not have to structure forces geared to defend against specifically UK forces and do not have to conduct diplomacy with the UK in a way that would be required if such an attack were a real possibility. Any rational decision-maker in China may use some cause-and-effect (probabilistic) principles along with knowledge of specific facts relating to the Sino-British relationship to predict (P2) that the UK will not land its forces on Chinese territory — even in the event of a war over Taiwan (that is, the probability is very close to zero). The statement P2 qualifies as a prediction based on DEF above and counts as knowledge for Chinese political and military decision-makers. A Chinese diplomat or military planner who would deny that theory-based prediction would have no basis to rule out extremely implausible predictions like P2 and would thus have to prepare for such unlikely contingencies as UK action against China. A reflexivist theorist sceptical of ‘prediction’ in IR might argue that the China example distorts the notion by using a trivial prediction and treating it as a meaningful one. But the critic’s temptation to dismiss its value stems precisely from the fact that it is so obviously true. The value to China of knowing that the UK is not a military threat is significant. The fact that, under current conditions, any plausible cause-and-effect understanding of IR that one might adopt would yield P2, that the ‘UK will not attack China’, does not diminish the value to China of knowing the UK does not pose a military threat. A critic might also argue that DEF and the China example allow non-scientific claims to count as predictions. But we note that while physics and chemistry offer precise ‘point predictions’, other natural sciences, such as seismology, genetics or meteorology, produce predictions that are often much less specific; that is, they describe the predicted ‘events’ in broader time frame and typically in probabilistic terms. We often find predictions about the probability, for example, of a seismic event in the form ‘some time in the next three years’ rather than ‘two years from next Monday at 11:17 am’. DEF includes approximate and probabilistic propositions as predictions and is thus able to catagorize as a prediction the former sort of statement, which is of a type that is often of great value to policy-makers. With the help of these ‘non-point predictions’ coming from the natural and the social sciences, leaders are able to choose the courses of action (e.g. more stringent earthquake-safety building codes, or procuring an additional carrier battle group) that are most likely to accomplish the leaders’ desired ends. So while ‘point predictions’ are not what political leaders require in most decision-making situations, critics of IR predictiveness often attack the predictive capacity of IR theory for its inability to deliver them. The critics thus commit the straw man fallacy by requiring a sort of prediction in IR (1) that few, if any, theorists claim to be able to offer, (2) that are not required by policy-makers for theory-based predictions to be valuable, and (3) that are not possible even in some natural sciences.15 The range of theorists included in ‘reflexivists’ here is very wide and it is possible to dissent from some of the general descriptions. From the point of view of the central argument of this article, there are two important features that should be rendered accurately. One is that reflexivists reject explanation–prediction symmetry, which allows them to pursue causal (or constitutive) explanation without any commitment to prediction. The second is that almost all share clear opposition to predictive social science.16 The reflexivist commitment to both of these conclusions should be evident from the foregoing discussion.

#### Securitizing discourse in the context of climate change is the only way to -> change

Barnett '1 Jon is with the Macmillan Brown Centre for Pacific Studies, University of Canterbury (Tyndall Centre for Climate Change Research, "Security and Climate Change, October 2001)

Despite these problems with any potential climate-change security discourse, it may nevertheless have some utility. Security communicates a certain gravitas that is arguably necessary in climate change policy. In that climate change is a security problem for certain groups, identifying it as such suggests that it is an issue that warrants a policy response commensurate in effort if not in kind with war. A critical and ambiguous concept in the UNFCCC is its reference to ‘dangerous’ levels of climate change. Because it is an accentuated discourse on vulnerability, security encapsulates danger much better than concepts such as sustainability, vulnerability or adaptation, and it offers a framework in which danger can be recast as widespread risks to welfare and (in the case of small island states) sovereignty. Security can also serve as an integrative concept which links local (human security), national (national security) and global (international security) levels of environmental change and response. It also integrates mitigation and adaptation as both are essential to security from climate risks. Finally, understanding processes that render groups insecure – and climate change is but one of these – brings to the fore issues of equity and the operation of the international political-economy. Further, although it should not be overstated, security addresses the possibility of violent social upheaval. It also brings military expenditure and its environmental impacts into consideration. The ability of conventional national security discourse and policy to appropriate climate change is a matter of how climate security risks are understood, and who talks about them.

#### Reps focus trades of with material change

**Solas 2** – John, PhD in Humanities and Lecturer in Rural Social Welfare at the School of Behavioural and Social Sciences and Humanities (“The poverty of postmodern human services,” Australian Social Work, vol. 55, is. 2, June2002, Wiley)

Abstract Postmodernism cannot or will not tell the difference between truth and falsehood, reality and simulacra, principle and dogma, or right and wrong. As a corollary, it is unable or unwilling to make any ‘veritable’ difference to the nature or order of things. Indeed, there is no escape from, nor anything outside of, the ‘panopticon of language’. Accordingly, there is no significant probative difference between the practice and experience of genocide, and talking or writing about it. All one can do is be sceptical about discourses, even those concerned with ethnic cleansing and the like. As ludicrous as this sounds, it has not prevented postmodernism from monopolising discourses about significant aesthetic, cultural, economic, intellectual, political and social practices and sensibilities. Postmodernism manifests itself in a host of disciplines, and its presence is being increasingly felt in human services education and practice. If, as I shall argue, postmodernism is such a thoroughly baseless, reductive and inert doctrine, then why persist with it? The poverty of postmodernism prompts a timely return to the rich legacy of Marxism. The lure of postmodernism What is it about postmodernism that could attract the interest and support of erstwhile human service educators and practitioners, especially those on the political left? Judging from the literature on the subject there appear to be several main attractions. One of these is that there is no longer any need to be overly concerned about objective, material reality, or struggle with Realpolitik since neither exist in a definitive sense (Wood, 1997). Jean Baudrillard (1988) is cited as an ‘authority?’ on this exorbitant thesis. It is Baudrillard’s (1991) contention that we have arrived at an epoch of purely fictive or illusory appearances; that ‘reality’ is nowadays largely predefined by media-hype; and that henceforth we had better adjust to a life of virtual reality, rather than cling to the illusion that anything has veridical force. There are simply no ontological or epistemological grounds for distinguishing the difference between ‘simulacra’ or image and substance. Thus, Baudrillard (1991) was able to assure readers of The Guardian that the Gulf War would never happen because ‘talk’ of war had now become a substitute for the real event, and even if war broke out spectators would be unable to wrest fact from fiction since they would never have unmediated access to events. Thanks to Baudrillard, human services educators and practitioners will never again mistake the ‘hyperreality’ of immiseration for the real thing. Equally attractive is the notion of a ‘decentred subject.’ The thinking, feeling, willing, speaking and acting ‘liberal humanist’ self or ‘subject’ is now non-essential. This particular subject was the cause of so much depravity and violence that its departure is both expedient and a welcomed relief. Without it, human service workers need not contend with all the hard questions over which they had once agonised such as freedom, justice, equality, solidarity and the like. It is enough to theorise about how the subject is an effect of language or product of discourse, devoid of free will, agency and reflective grasp and fragmented by power, desire, convention or the dictates of various interpretative communities, than actually do anything about it. Another of the main attractions is postmodernism’s hostility towards the tyranny of ‘totality’ (Wood, 1997). All totalities, that is attempts to fashion and/or share something in common, be it a cause, culture, gender, language, race, ethnicity, humanity or whatever are, or have the potential to be, totalitarian. Thus, the disciples of postmodernism have acquired the virtues of being (absolutely?) sceptical towards universals and respectful of differences, except, that is, of different totalities. These are virtues which Jean François Lyotard (1988) has done much to establish and exemplify. When asked whether he condoned terrorism and war, Lyotard’s and Thébaud (1986) unqualified allegiance to these particular virtues obliged him to remain completely indiscriminate about the differences between the two. He was even unable to offer a reason for considering either of them just or unjust. As Lyotard (1985) blithely admitted: if you ask me why I am on that side, I think that I would answer that I do not have an answer to the question ‘why’? and that is in the order of transcendence. When I say ‘transcendence,’ it means: I do not know who is sending me the prescription in question. (p. 69). Lyotard claims that he is not in a position to know for sure the exact source of the discourse, he cannot judge its authority, intent or institutional warrant. True to his own postmodernist lights, Lyotard is content to remain in doubt rather than find out. The task for human services, then, is not to seek change, or even to articulate the political aspirations of a particular oppressed group, but to suspect all meta-narratives and preserve without judgement any difference, or differend in Lyotard’s (1988) terms. Finally, subscribers to postmodernism are not bound nor animated by a belief in ‘progress’ (Wood, 1997). This enables them to avoid the ‘naturalistic fallacy,’ which holds that it is possible to get from bad to better times. There is, therefore, absolutely nothing about the past, present or future that could be regarded as an advance – including, for instance, a capitalist-free Jurassic period, a 20th century devoid of dinosaurs, or more particularly, any notion of progressive human services. The age of enlightenment, according to postmodernists, has been a particularly egregious period. Belief in enlightenment has been the ultimate cause of peoples’ inhumanity to each other. Death camps, death squads, civil, cold and world wars, ethnic cleansing, Hiroshima, Nagasaki, the Cuban missile crisis and the persistent threat of nuclear annihilation, to mention only a few of the major events included in a large and growing inventory, attest to the brutal and oppressive logic of so-called ‘enlightened’ thought (Harvey, 1990). Postmodernists are adamant that serious doubt must be cast upon any appeal made to so-called enlightened ideals (reason, truth, knowledge, freedom and so on) in order to avoid more unmitigated disaster. The human services owe a large debt to Michel Foucault (1963, 1967, 1977) in particular for revealing the depth of their complicity in making things which they purport to remedy worse. Their knowledge has given them the power to help incriminate and incarcerate, pathologise and hospitalise, discipline and render docile individuals. Foucault annuls the difference between historical fact and ideological fiction, and hence, spares workers the arduous and risky task of exposing and challenging institutionalised lies and hypocrisies. A crucial question is what will become of the critical and progressive ethos of human services education and practice in the wake of postmodernism? Against postmodernism The retreat from frontline activism to the barricades of abstraction is, as Perry Anderson (1977) argued, a typical response to disillusionment. However, what is surprising is the failure of deserters to realise or acknowledge the extent to which they contribute to their own confinement in the backwaters of mainstream political life. The immodest and largely uncritical embrace of postmodernism must surely rank as one of the most self defeating and untimely gestures that could be made in response to the exigencies human service professions now face. It promotes a deep suspicion of anything that attempts to oppose fiction with facts, falsehood with truth and simulacrum with reality. According to postmodern luminaries, it is no longer possible –‘realistically’ possible – to believe in the value of reason, truth, freedom, progress and the emancipating power of enlightened critique. It would seem to be far better to abandon these values than be taken for a downright teleologically essentialistic universalist humanist fool for trusting in them. Of course, it is important to keep these values under close scrutiny. However, there is nothing to be gained by subscribing to total(ising) disbelief, unless of course one is willing to agree with Michel Foucault (1980) that ignorance is bliss. Nor is there any point engaging in iconoclasm of the postmodern variety if its denouement is to justify the claim to have reached the limits of what is ‘realistically’ possible, and closes off opportunities for direct, far-reaching political action.

## 2AC: DA

#### Complexity makes collapse inevitable – economic collapse causes a mindset shift to sustainability.

Speth 8 – Rhodes Scholar @ Oxford University, Chairman of Council on Environmental Quality for Executive Office, Founder of World Recourses Institute (Think-Tank), Led the Western Hemisphere Dialogue on Environment and Development, Administrator of United Nations Development Program, Dean of Yale School of Forestry and Environmental Studies, Leader of the President’s Task Force on Global Recourses and the Environment, Holds multiple awards—National Wildlife Federation’s Recourse Defense Award and Lifetime Achievement Award of Environmental Law Institute, and Blue Planet Prize, James, “The Bridge at the Edge of the World”, p 211-5

Forces for Change The very practical and very difficult question is what might spur human sensibilities in these directions? When one considers our world today, with its widespread ethnic hatreds, intrastate warfare, and immense violence, militarism, and terrorism, not to mention the dysfunctional values already addressed, the task can seem hopelessly idealistic. In truth, it is precisely because of these calamities, which are linked in many ways, that one must search for answers and hope desperately to ﬁnd them. There is a vast literature on cultural change and evolution. In what spirit, then, should we take up the question of spurring change? The goal must be forging cultural change, not waiting on it. Here, the in- sight of Daniel Patrick Moynihan is helpful: “The central conservative truth is that culture, not politics, determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself .”2' Historian Harvey Nelsen has asked the right question: “How . . . can politics save a culture from itself?” “There is only one way,” he answers, “through the development of new consciousness?” People have conversion experiences and epiphanies. Can an entire society have a conversion experience? Unfortunately, the **surest path to widespread cultural change is a cataclysmic event that** profoundly affects shared values and **delegitimizes the status quo** and existing leadership. The Great **Depression is a** classic **example**. I believe that both 9/11 and Hurricane Katrina could have led to real cultural change in the United States, both for the better, but America lacked the inspired leadership needed. The most thorough look at this issue from the perspective here is Thomas Homer-Dixon’s The Upside of Down. He argues “that our **circumstances** today **are** surprisingly **like Rome’s** in key ways. Our **societies are** also **becoming** steadily **more complex and** often more **rigid**. This is happening partly because we ’re trying to manage—often with limited success—stresses building inside our societies, including stresses arising from our gargantuan appetite for energy. . . . **Eventually**, as occurred in Rome, the **stresses** may **become too extreme, and** our **societies too inﬂexible to respond, and** some kind of economic or political **breakdown will occur.** . . . “People often use the words ‘breakdown’ and ‘collapse ’ synony- mously. But in my view, although both breakdown and collapse pro- duce a radical simplification of a system, they differ in their long-term consequences. Breakdown may be serious, but it’s not catastrophic. Something can be salvaged after breakdown occurs and perhaps rebuilt better than before. Collapse, on the other hand, is far more harmful. . . . “In coming years, I believe, foreshocks are likely to become larger and more frequent. Some could take the form of threshold events—like climate ﬂips, large jumps in energy prices, boundary-crossing out- breaks of new infectious disease, or international ﬁnancial crises. ”” I-Iomer-Dixon argues that foreshocks and breakdowns can lead to positive change if the ground is prepared. “We need to prepare to turn breakdown to our advantage when it happens—because it will,” he says.“ Homer-Dixon’s point is critically important. Breakdowns, of course, do not necessarily lead to positive outcomes; authoritarian ones and Fortress World are also possibilities. Turning a breakdown to advantage will require both inspired leadership and a new story that articulates a positive vision grounded in what is best in the society's values and history. A congressman is said to have told a citizens’ group, “If you will lead, your leaders will follow.” But it doesn’t have to be that way. Harvard ’s Howard Gardner stresses this potential of true leadership in his book Changing Minds: “Whether they are heads of a nation or senior ofﬁcials of the United Nations, leaders of large, disparate populations have enormous potential to change minds . . . and in the process they can change the course of history. “I have suggested one way to capture the attention of a disparate population: by creating a compelling story, embodying that story in one ’s own life, and presenting the story in many different formats so that it can eventually topple the counterstories in one ’s culture. . . . [T] he story must be simple, easy to identify with, emotionally resonant, and evocative of positive experiences?” There is evidence that **Americans are ready for another story**. As noted, **large majorities** of Americans, **when polled, express disenchantment with today ’s lifestyles and** offer **support** for **values similar to those discussed here**.“ But these values are held along with other strongly felt and often conﬂicting values, and we are all pinned down by old habits, fears, insecurities, social pressures, and in other ways. **A new story** that helps people find their way out of this confusion and dissonance **could** help **lead to real change**. Gardner’s stress on story and narrative is thus important. Bill Moy- ers, a powerful force for good in our country, has written that “America needs a different story. . . . Everywhere you turn you’ll ﬁnd people who believe they have been written out of the story. Everywhere you turn there ’s a sense of insecurity grounded in a gnawing fear that freedom in America has come to mean the freedom of the rich to get richer even as millions of Americans are dumped from the Dream. So let me say what I think up front: The leaders and thinkers and activists who honestly tell that story and speak passionately of the moral and religious values it puts in play will be the first political generation since the New Deal to win power back for the people. . . . Here, in the ﬁrst decade of the 21 st century, the story that becomes America’s dominant narrative will shape our collective imagination and hence our politics.”” If Moyers addresses the social aspects of our need for a new nar- rative, many other authors have begun to develop new stories of our relationship with nature—'I‘homas Berry in T/ze Dream of the Eart/z, Carolyn Merchant in Reinventing Eden, Evan Eisenberg in T/ze Ecology ofEden, Bill McKibben in Deep Ecology, and others.” One story that needs to be told is about a people who set out on a journey—a journey through time—to build a better world for themselves and their chil- dren. High-minded and full of hope as they began, they accomplished much in their quest. But they became so enamored of their successes, indeed captured by them, that they failed to see the signs that pointed in new directions, and they became lost. Now they must find their way back to the right path.” Another source of value change is social movements. Social move- ments are all about raising consciousness and, if successful, can usher in a new consciousness. We speak casually about the environmen- tal movement. We need a real one. One can hear echoes of Reich in Curtis White ’s book The Spirit of Disobidience. “Although the sixties counterculture has been much maligned and discredited, it attempted to provide what we still desperately need: a spirited culture of refusal, a counterlife to the reigning corporate culture of death. We don’t need to return to that counterculture, but we do need to take up its challenge again. If the work we do produces mostly bad, ugly, and destructive things, those things in turn will tend to recreate us in their image. “If we’re concerned about the kind of human future we are creat- ing, we must also be concerned with how we are living in the present. Unhappily, how we live is presently the near exclusive concern of cor- porations and media conglomerates which have, together, turned every Main Street into the same street and made the inside of every American head echo with the same vacuous music and movie/ TV scenarios. This is the arena in which a spiritualized disobedience means most.”’° Another way forward to a new consciousness should lie in the world’s religions. Mary Evelyn Tucker has noted that “no other group of institutions can wield the particular moral authority of the religions” and that “the environmental crisis calls the religions of the world to respond by ﬁnding their voice within the larger Earth community. In so doing, the religions are now entering their ecological phase and ﬁnd- ing their planetary expression.”3' The **potential of faith** communities **is enormous**. About **85 percent of the world’s people belong to** one of the ten thousand or so **religions**, and about two-thirds of the global population is Christian, muslim or hindu. Religions played key roles in ending slavery, the in the civil rights movement, and in overcoming apartheid in South Africa, **and they are** now **turning attention with increasing strength to the environment.**

#### Growth causes eco-collapse and extinction – only collapse now ensures civilization can survive the inevitable transition.

Barry 8 – Glen, PhD in Land Resources from UW-Madison and President and Founder of Ecological Internet, “Economic Collapse and Global Ecology,” Counter-Currents, Jan. 14, http://www.countercurrents.org/barry140108.htm

Humanity and the Earth are faced with an enormous conundrum -- sufficient climate policies enjoy political support only in times of rapid economic growth. Yet this growth is the primary factor driving greenhouse gas emissions and other environmental ills. The **growth** machine has **pushed the planet** well **beyond** its ecological **carrying capacity, and** unless constrained, can only **lead to** human extinction and an **end to complex life.** With every economic downturn, like the one now looming in the United States, it becomes more difficult and less likely that policy sufficient to ensure global ecological sustainability will be embraced. This essay explores the possibility that from a biocentric viewpoint of needs for long-term global ecological, economic and social sustainability; it would be better for the economic collapse to come now rather than later. Economic growth is a deadly disease upon the Earth, with capitalism as its most virulent strain. **Throw-away consumption and explosive population growth are made possible by using up fossil fuels and destroying ecosystems.** Holiday shopping numbers are covered by media in the same breath as Arctic ice melt, ignoring their deep connection. Exponential economic growth destroys ecosystems and pushes the biosphere closer to failure. Humanity has proven itself unwilling and unable to address climate change and other environmental threats with necessary haste and ambition. Action on coal, forests, population, renewable energy and emission reductions could be taken now at net benefit to the economy. Yet, the losers -- primarily fossil fuel industries and their bought oligarchy -- successfully resist futures not dependent upon their deadly products. Perpetual economic growth, and necessary climate and other ecological policies, are fundamentally incompatible. Global ecological **sustainability depends** critically **upon establishing a steady state economy, where**by **production is right-sized** to not diminish natural capital. Whole industries like coal and natural forest logging will be eliminated even as new opportunities emerge in solar energy and environmental restoration. This critical transition to both economic and ecological sustainability is simply not happening on any scale. The challenge is how to carry out necessary environmental policies even as economic growth ends and consumption plunges. The natural response is going to be liquidation of even more life-giving ecosystems, and jettisoning of climate policies, to vainly try to maintain high growth and personal consumption. We know that humanity must reduce greenhouse gas emissions by at least 80% over coming decades. How will this and other necessary climate mitigation strategies be maintained during years of economic downturns, resource wars, reasonable demands for equitable consumption, and frankly, the weather being more pleasant in some places? If efforts to reduce emissions and move to a steady state economy fail; the collapse of ecological, economic and social systems is assured. Bright greens take the continued existence of a habitable Earth with viable, sustainable populations of all species including humans as the ultimate truth and the meaning of life. **Whether this is possible in** a time of **economic collapse is** crucially **dependent upon whether enough ecosystems** and resources **remain** post collapse **to allow humanity to** recover and **reconstitute sustainable,** relocalized **societies.** It may be **better** for the Earth and humanity's future that economic **collapse** comes **sooner** rather **than later, while** **more ecosystems** and opportunities to return to nature's fold **exist**. Economic **collapse will be** deeply **wrenching** -- part Great Depression, part African famine. There will be starvation and civil strife, and a long period of suffering and turmoil. Many will be killed as balance returns to the Earth. Most people have forgotten how to grow food and that their identity is more than what they own. Yet there is some justice, in that **those who** have **lived most lightly** upon the land **will have** **an easier time** of it, **even as** those **super-consumers** living in massive cities finally **learn** where their food comes from and that **ecology is** the **meaning of life.** Economic collapse now means humanity and the Earth ultimately survive to prosper again. Human suffering -- already the norm for many, but hitting the currently materially affluent -- is inevitable given the degree to which the planet's carrying capacity has been exceeded. We are a couple decades at most away from societal strife of a much greater magnitude as the Earth's biosphere fails. Humanity can take the bitter medicine now, and recover while emerging better for it; or our total collapse can be a final, fatal death swoon. A successful revolutionary response to imminent global ecosystem collapse would focus upon bringing down the Earth's industrial economy now. As society continues to fail miserably to implement necessary changes to allow creation to continue, maybe **the best strategy** to achieve global ecological sustainability **is economic sabotage to hasten the day**. It is more fragile than it looks.

#### Collapse of society is inevitable—it’s better to have it now than to have a catastrophic one in the future

MacKenzie 8 (Debora, Are We Doomed, New Scientist, Vol. 197 Issue 2650, p32-35, 4p, 4 May 2005, EBSCO, AMiles)

DOOMSDAY. The end of civilisation. Literature and film abound with tales of plague, famine and wars which ravage the planet, leaving a few survivors scratching out a primitive existence amid the ruins. Every civilisation in history has collapsed, after all. Why should ours be any different? Doomsday scenarios typically feature a knockout blow: a massive asteroid, all-out nuclear war or a catastrophic pandemic. Yet there is another chilling possibility: what if the very nature of civilisation means that ours, like all the others, is destined to collapse sooner or later? A few researchers have been making such claims for years. Disturbingly, recent insights from fields such as complexity theory suggest that they are right. It appears that once a society develops beyond a certain level of complexity it becomes increasingly fragile. Eventually, it reaches a point at which even a relatively minor disturbance can bring everything crashing down. Some say we have already reached this point, and that it is time to start thinking about how we might manage collapse. Others insist it is not yet too late, and that we can - we must - act now to keep disaster at bay. History is not on our side. Think of Sumeria, of ancient Egypt and of the Maya. In his 2005 best-seller, Jared Diamond of the University of California, Los Angeles, blamed environmental mismanagement for the fall of the Mayan civilisation and others, and warned that we might be heading the same way unless we choose to stop destroying our environmental support systems. Lester Brown of the Earth Policy Institute in Washington DC agrees. He has that governments must pay more attention to vital environmental resources. "It's not about saving the planet. It's about saving civilisation," he says. Others think our problems run deeper. From the moment our ancestors started to settle down and build cities, we have had to find solutions to the problems that success brings. "For the past 10,000 years, problem solving has produced increasing complexity in human societies," says Joseph Tainter, an archaeologist at the University of Utah, Salt Lake City, and author of the 1988 book The Collapse of Complex Societies. If crops fail because rain is patchy, build irrigation canals. When they silt up, organise dredging crews. When the bigger crop yields lead to a bigger population, build more canals. When there are too many for ad hoc repairs, install a management bureaucracy, and tax people to pay for it. When they complain, invent tax inspectors and a system to record the sums paid. That much the Sumerians knew. Diminishing returns There is, however, a price to be paid. Every extra layer of organisation imposes a cost in terms of energy, the common currency of all human efforts, from building canals to educating scribes. And increasing complexity, Tainter realised, produces diminishing returns. The extra food produced by each extra hour of labour - or joule of energy invested per farmed hectare - diminishes as that investment mounts. We see the same thing today in a declining number of patents per dollar invested in research as that research investment mounts. This law of diminishing returns appears everywhere, Tainter says. To keep growing, societies must keep solving problems as they arise. Yet each problem solved means more complexity. Success generates a larger population, more kinds of specialists, more resources to manage, more information to juggle - and, ultimately, less bang for your buck. Eventually, says Tainter, the point is reached when all the energy and resources available to a society are required just to maintain its existing level of complexity. Then when the climate changes or barbarians invade, overstretched institutions break down and civil order collapses. What emerges is a less complex society, which is organised on a smaller scale or has been taken over by another group. Tainter sees diminishing returns as the underlying reason for the collapse of all ancient civilisations, from the early Chinese dynasties to the Greek city state of Mycenae. These civilisations relied on the solar energy that could be harvested from food, fodder and wood, and from wind. When this had been stretched to its limit, things fell apart. Western industrial civilisation has become bigger and more complex than any before it by exploiting new sources of energy, notably coal and oil, but these are limited. There are increasing signs of diminishing returns: the energy required to get is mounting and although global is still increasing, constant innovation is needed to cope with environmental degradation and evolving - the yield boosts per unit of investment in innovation are shrinking. "Since problems are inevitable," Tainter warns, "this process is in part ineluctable." Is Tainter right? An analysis of complex systems has led Yaneer Bar-Yam, head of the New England Complex Systems Institute in Cambridge, Massachusetts, to the same conclusion that Tainter reached from studying history. Social organisations become steadily more complex as they are required to deal both with environmental problems and with challenges from neighbouring societies that are also becoming more complex, Bar-Yam says. This eventually leads to a fundamental shift in the way the society is organised. "To run a hierarchy, managers cannot be less complex than the system they are managing," Bar-Yam says. As complexity increases, societies add ever more layers of management but, ultimately in a hierarchy, one individual has to try and get their head around the whole thing, and this starts to become impossible. At that point, hierarchies give way to networks in which decision-making is distributed. We are at this point. This shift to decentralised networks has led to a widespread belief that modern society is more resilient than the old hierarchical systems. "I don't foresee a collapse in society because of increased complexity," says futurologist and industry consultant Ray Hammond. "Our strength is in our highly distributed decision making." This, he says, makes modern western societies more resilient than those like the old Soviet Union, in which decision making was centralised. Things are not that simple, says Thomas Homer-Dixon, a political scientist at the University of Toronto, Canada, and author of the 2006 book The Upside of Down. "Initially, increasing connectedness and diversity helps: if one village has a crop failure, it can get food from another village that didn't." As connections increase, though, networked systems become increasingly tightly coupled. This means the impacts of failures can propagate: the more closely those two villages come to depend on each other, the more both will suffer if either has a problem. "Complexity leads to higher vulnerability in some ways," says Bar-Yam. "This is not widely understood." The reason is that as networks become ever tighter, they start to transmit shocks rather than absorb them. "The intricate networks that tightly connect us together - and move people, materials, information, money and energy - amplify and transmit any shock," says Homer-Dixon. "A financial crisis, a terrorist attack or a disease outbreak has almost instant destabilising effects, from one side of the world to the other." For instance, in 2003 large areas of North America and Europe suffered when apparently insignificant nodes of their respective electricity grids failed. And this year China suffered a similar blackout after heavy snow hit power lines. Tightly coupled networks like these create the potential for propagating failure across many critical industries, says Charles Perrow of Yale University, a leading authority on industrial accidents and disasters. Credit crunch Perrow says interconnectedness in the global production system has now reached the point where "a breakdown anywhere increasingly means a breakdown everywhere". This is especially true of the world's financial systems, where the coupling is very tight. "Now we have a debt crisis with the biggest player, the US. The consequences could be enormous." "A networked society behaves like a multicellular organism," says Bar-Yam, "random damage is like lopping a chunk off a sheep." Whether or not the sheep survives depends on which chunk is lost. And while we are pretty sure which chunks a sheep needs, it isn't clear - it may not even be predictable - which chunks of our densely networked civilisation are critical, until it's too late. "When we do the analysis, almost any part is critical if you lose enough of it," says Bar-Yam. "Now that we can ask questions of such systems in more sophisticated ways, we are discovering that they can be very vulnerable. That means civilisation is very vulnerable." So what can we do? "The key issue is really whether we respond successfully in the face of the new vulnerabilities we have," Bar-Yam says. That means making sure our "global sheep" does not get injured in the first place - something that may be hard to guarantee as the climate shifts and the world's fuel and mineral resources dwindle. Scientists in other fields are also warning that complex systems are prone to collapse. Similar ideas have emerged from the study of natural cycles in ecosystems, based on the work of ecologist Buzz Holling, now at the University of Florida, Gainesville. Some ecosystems become steadily more complex over time: as a patch of new forest grows and matures, specialist species may replace more generalist species, biomass builds up and the trees, beetles and bacteria form an increasingly rigid and ever more tightly coupled system. "It becomes an extremely efficient system for remaining constant in the face of the normal range of conditions," says Homer-Dixon. But unusual conditions - an insect outbreak, fire or drought - can trigger dramatic changes as the impact cascades through the system. The end result may be the collapse of the old ecosystem and its replacement by a newer, simpler one. Globalisation is resulting in the same tight coupling and fine-tuning of our systems to a narrow range of conditions, he says. Redundancy is being systematically eliminated as companies maximise profits. Some products are produced by only one factory worldwide. Financially, it makes sense, as mass production maximises efficiency. Unfortunately, it also minimises resilience. "We need to be more selective about increasing the connectivity and speed of our critical systems," says Homer-Dixon. "Sometimes the costs outweigh the benefits." Is there an alternative? Could we heed these warnings and start carefully climbing back down the complexity ladder? Tainter knows of only one civilisation that managed to decline but not fall. "After the Byzantine empire lost most of its territory to the Arabs, they simplified their entire society. Cities mostly disappeared, literacy and numeracy declined, their economy became less monetised, and they switched from professional army to peasant militia." Pulling off the same trick will be harder for our more advanced society. Nevertheless, Homer-Dixon thinks we should be taking action now. "First, we need to encourage distributed and decentralised production of vital goods like energy and food," he says. "Second, we need to remember that slack isn't always waste. A manufacturing company with a large inventory may lose some money on warehousing, but it can keep running even if its suppliers are temporarily out of action." The electricity industry in the US has already started identifying hubs in the grid with no redundancy available and is putting some back in, Homer-Dixon points out. Governments could encourage other sectors to follow suit. The trouble is that in a world of fierce competition, private companies will always increase efficiency unless governments subsidise inefficiency in the public interest. Homer-Dixon doubts we can stave off collapse completely. He points to what he calls "tectonic" stresses that will shove our rigid, tightly coupled system outside the range of conditions it is becoming ever more finely tuned to. These include population growth, the growing divide between the world's rich and poor, financial instability, weapons proliferation, disappearing forests and fisheries, and climate change. In imposing new complex solutions we will run into the problem of diminishing returns - just as we are running out of cheap and plentiful energy. "This is the fundamental challenge humankind faces. We need to allow for the healthy breakdown in natural function in our societies in a way that doesn't produce catastrophic collapse, but instead leads to healthy renewal," Homer-Dixon says. This is what happens in forests, which are a patchy mix of old growth and newer areas created by disease or fire. If the ecosystem in one patch collapses, it is recolonised and renewed by younger forest elsewhere. We must allow partial breakdown here and there, followed by renewal, he says, rather than trying so hard to avert breakdown by increasing complexity that any resulting crisis is actually worse. Lester Brown thinks we are fast running out of time. "The world can no longer afford to waste a day. We need a Great Mobilisation, as we had in wartime," he says. "There has been tremendous progress in just the past few years. For the first time, I am starting to see how an alternative economy might emerge. But it's now a race between tipping points - which will come first, a switch to sustainable technology, or collapse?" Tainter is not convinced that even new technology will save civilisation in the long run. "I sometimes think of this as a 'faith-based' approach to the future," he says. Even a society reinvigorated by cheap new energy sources will eventually face the problem of diminishing returns once more. Innovation itself might be subject to diminishing returns, or perhaps absolute limits. Studies of the way by Luis Bettencourt of the Los Alamos National Laboratory, New Mexico, support this idea. His team's work suggests that an ever-faster rate of innovation is required to keep cities growing and prevent stagnation or collapse, and in the long run this cannot be sustainable.

#### Growth makes eco-collapse inevitable

Speth, law prof, 8—Served as President Jimmy Carter’s White House environmental adviser and as head of the United Nations’ largest agency for international development Prof at Vermont law school. Former dean of the Yale School of Forestry and Environmental Studies at Yale University . Former Professor of Law at Georgetown University Law Center, teaching environmental and constitutional law. .Former Chairman of the Council on Environmental Quality in the Executive Office of the President. Co-founder of the Natural Resources Defense Council. Was law clerk to U.S. Supreme Court Justice Hugo L. Black JD, Yale. (James Gustave, The Bridge at the Edge of the World: Capitalism, the Environment, and Crossing from Crisis to Sustainability, Gigapedia, 6-9, AMiles)

But the much larger and more threatening impacts stem from the economic activity of those of us participating in the modern, increasingly prosperous world economy. This activity is consuming vast quantities of resources from the environment and returning to the environment vast quantities of waste products. The damages are already huge and are on a path to be ruinous in the future. So, a fundamental 7 facing societies today—perhaps the fundamental question—is how can the operating instructions for the modern world economy be changed so that economic activity both protects and restores the natural world? With increasingly few exceptions, modern capitalism is the operating system of the world economy. I use “modern capitalism” here in a broad sense as an actual, existing system of political economy, not as an idealized model. Capitalism as we know it today encompasses the core economic concept of private employers hiring workers to produce products and services that the employers own and then sell with the intention of making a profi t. But it also includes competitive markets, the price mechanism, the modern corporation as its principal institution, the consumer society and the materialistic values that sustain it, and the administrative state actively promoting economic strength and growth for a variety of reasons. Inherent in the dynamics of capitalism is a powerful drive to earn profi ts, invest them, innovate, and thus grow the economy, typically at exponential rates, with the result that the capitalist era has in fact been characterized by a remarkable exponential expansion of the world economy. The capitalist operating system, whatever its shortcomings, is very good at generating growth. These features of capitalism, as they are constituted today, work together to produce an economic and political reality that is highly destructive of the environment. An unquestioning society-wide commitment to economic growth at almost any cost; enormous investment in technologies designed with little regard for the environment; powerful corporate interests whose overriding objective is to grow by generating profit, including profi t from avoiding the environmental costs they create; markets that systematically fail to recognize environmental costs unless corrected by government; government that is subservient to corporate interests and the growth imperative; rampant consumerism spurred by a worshipping of novelty and by sophisticated advertising; economic activity so large in scale that its impacts alters the fundamental biophysical operations of the planet—all combine to deliver an ever-growing world economy that is undermining the planet’s ability to sustain life. The fundamental question thus becomes one of transforming capitalism as we know it: Can it be done? If so, how? And if not, what then? It is to these questions that this book is addressed. The larger part of the book proposes a variety of prescriptions to take economy and environment off collision course. Many of these prescriptions range beyond the traditional environmental agenda. In Part I of the book, Chapters 1–3, I lay the foundation by elaborating the fundamental challenge just described. Among the key conclusions, summarized here with some oversimplifi cation, are: • The vast expansion of economic activity that occurred in the twentieth century and continues today is the predominant (but not sole) cause of the environmental decline that has occurred to date. Yet the world economy, now increasingly integrated and globalized, is poised for unprecedented growth. The engine of this growth is modern capitalism or, better, a variety of capitalisms. • A mutually reinforcing set of forces associated with today’s capitalism combines to yield economic activity inimical to environmental sustainability. This result is partly the consequence of an ongoing political default—a failed politics—that not only perpetuates widespread market failure—all the nonmarket environmental costs that no one is paying—but exacerbates this market failure with deep and environmentally perverse subsidies. The result is that our market economy is operating on wildly wrong market signals, lacks other correcting mechanisms, and is thus out of control environmentally. • The upshot is that societies now face environmental threats of unprecedented scope and severity, with the possibility of various catastrophes, breakdowns, and collapses looming as distinct possibilities, especially as environmental issues link with social inequities and tensions, resource scarcity, and other issues. 9 • Today’s mainstream environmentalism—aptly characterized as incremental and pragmatic “problem solving”—has proven insufficient to deal with current challenges and is not up to coping with the larger challenges ahead. Yet the approaches of modern-day environmentalism, despite their limitations, remain essential: right now, they are the tools at hand with which to address many very pressing problems. • The momentum of the current system—fi fty-fi ve trillion dollars in output in 2004, growing fast, and headed toward environmental disaster— is so great that only powerful forces will alter the trajectory. Potent measures are needed that address the root causes of today’s destructive growth and transform economic activity into something environmentally benign and restorative. In short, my conclusion, after much searching and considerable reluctance, is that most environmental deterioration is a result of systemic failures of the capitalism that we have today and that long-term solutions must seek transformative change in the key features of this contemporary capitalism. In Part II, I address these basic features of modern capitalism, in each case seeking to identify the transformative changes needed.

#### Extinction

Chen 2k—Professor of Law and Vance K. Opperman Research Scholar, University of Minnesota Law School (Jim, Globalization and Its Losers, Winter 2000, 9 Minn. J. Global Trade 157, Lexis, AMiles)

Ellipses in original

Conscious decisions to allow the extinction of a species or the destruction of an entire ecosystem epitomize the "irreversible and irretrievable commitments of resources" that NEPA is designed to retard. 312 The original Endangered Species Act gave such decisions no quarter whatsoever; 313 since 1979, such decisions have rested in the hands of a solemnly convened "God Squad." 314 In its permanence and gravity, natural extinction provides the baseline by which all other types of extinction should be judged. The Endangered Species Act explicitly acknowledges the "esthetic, ecological, educational, historical, recreational, and scientific value" of endangered species and the biodiversity they represent. 315 Allied bodies of international law confirm this view: 316 global biological diversity is part of the commonly owned heritage of all humanity and deserves full legal protection. 317 Rather remarkably, these broad assertions understate the value of biodiversity and the urgency of its protection. A Sand County Almanac, the eloquent bible of the modern environmental movement, contains only two demonstrable biological errors. It opens with one and closes with another. We can forgive Aldo Leopold's decision to close with that elegant but erroneous epigram, "ontogeny repeats phylogeny." 318 What concerns [\*208] us is his opening gambit: "There are some who can live without wild things, and some who cannot." 319 Not quite. None of us can live without wild things. Insects are so essential to life as we know it that if they "and other land-dwelling anthropods ... were to disappear, humanity probably could not last more than a few months." 320 "Most of the amphibians, reptiles, birds, and mammals," along with "the bulk of the flowering plants and ... the physical structure of most forests and other terrestrial habitats" would disappear in turn. 321 "The land would return to" something resembling its Cambrian condition, "covered by mats of recumbent wind-pollinated vegetation, sprinkled with clumps of small trees and bushes here and there, largely devoid of animal life." 322 From this perspective, the mere thought of valuing biodiversity is absurd, much as any attempt to quantify all of earth's planetary amenities as some trillions of dollars per year is absurd. But the frustration inherent in enforcing the Convention on International Trade in Endangered Species (CITES) has shown that conservation cannot work without appeasing Homo economicus, the profit-seeking ape. Efforts to ban the international ivory trade through CITES have failed to stem the slaughter of African elephants. 323 The preservation of biodiversity must therefore begin with a cold, calculating inventory of its benefits. Fortunately, defending biodiversity preservation in humanity's self-interest is an easy task. As yet unexploited species might give a hungry world a larger larder than the storehouse of twenty plant species that provide nine-tenths of humanity's current food supply. 324 "Waiting in the wings are tens of thousands of unused plant species, many demonstrably superior to those in favor." 325 As genetic warehouses, many plants enhance the productivity of crops already in use. In the United States alone, the [\*209] genes of wild plants have accounted for much of "the explosive growth in farm production since the 1930s." 326 The contribution is worth $ 1 billion each year. 327 Nature's pharmacy demonstrates even more dramatic gains than nature's farm. 328 Aspirin and penicillin, our star analgesic and antibiotic, had humble origins in the meadowsweet plant and in cheese mold. 329 Leeches, vampire bats, and pit vipers all contribute anticoagulant drugs that reduce blood pressure, prevent heart attacks, and facilitate skin transplants. 330 Merck & Co., the multinational pharmaceutical company, is helping Costa Rica assay its rich biota. 331 A single commercially viable product derived "from, say, any one species among ... 12,000 plants and 300,000 insects ... could handsomely repay Merck's entire investment" of $ 1 million in 1991 dollars. 332 Wild animals, plants, and microorganisms also provide ecological services. 333 The Supreme Court has lauded the pesticidal talents of migratory birds. 334 Numerous organisms process the air we breathe, the water we drink, the ground we stroll. 335 Other species serve as sentries. Just as canaries warned coal miners of lethal gases, the decline or disappearance of indicator species provides advance warning against deeper [\*210] environmental threats. 336 Species conservation yields the greatest environmental amenity of all: ecosystem protection. Saving discrete species indirectly protects the ecosystems in which they live. 337 Some larger animals may not carry great utilitarian value in themselves, but the human urge to protect these charismatic "flagship species" helps protect their ecosystems. 338 Indeed, to save any species, we must protect their ecosystems. 339 Defenders of biodiversity can measure the "tangible economic value" of the pleasure derived from "visiting, photographing, painting, and just looking at wildlife." 340 In the United States alone, wildlife observation and feeding in 1991 generated $ 18.1 billion in consumer spending, $ 3 billion in tax revenues, and 766,000 jobs. 341 Ecotourism gives tropical countries, home to most of the world's species, a valuable alternative to subsistence agriculture. Costa Rican rainforests preserved for ecotourism "have become many times more profitable per hectare than land cleared for pastures and fields," while the endangered gorilla has turned ecotourism into "the third most important source of income in Rwanda." 342 In a globalized economy where commodities can be cultivated almost anywhere, environmentally [\*211] sensitive locales can maximize their wealth by exploiting the "boutique" uses of their natural bounty. The value of endangered species and the biodiversity they embody is "literally ... incalculable." 343 What, if anything, should the law do to preserve it? There are those that invoke the story of Noah's Ark as a moral basis for biodiversity preservation. 344 Others regard the entire Judeo-Christian tradition, especially the biblical stories of Creation and the Flood, as the root of the West's deplorable environmental record. 345 To avoid getting bogged down in an environmental exegesis of Judeo-Christian "myth and legend," we should let Charles Darwin and evolutionary biology determine the imperatives of our moment in natural "history." 346 The loss of biological diversity is quite arguably the gravest problem facing humanity. If we cast the question as the contemporary phenomenon that "our descendants [will] most regret," the "loss of genetic and species diversity by the destruction of natural habitats" is worse than even "energy depletion, economic collapse, limited nuclear war, or conquest by a totalitarian government." 347 Natural evolution may in due course renew the earth with a diversity of species approximating that of a world unspoiled by Homo sapiens -- in ten million years, perhaps a hundred million. 348

#### Dedev key to solve warming

Siegel 9 (Lee, Is Global Warming Unstoppable? Theory Also Says Energy Conservation Doesn't Help, 22 November 2009, http://www.unews.utah.edu/p/?r=112009-1, AMiles)

 In a provocative new study, a University of Utah scientist argues that rising carbon dioxide emissions - the major cause of global warming - cannot be stabilized unless the world's economy collapses or society builds the equivalent of one new nuclear power plant each day. "It looks unlikely that there will be any substantial near-term departure from recently observed acceleration in carbon dioxide emission rates," says the new paper by Tim Garrett, an associate professor of atmospheric sciences. Garrett's study was panned by some economists and rejected by several journals before acceptance by Climatic Change, a journal edited by renowned Stanford University climate scientist Stephen Schneider. The study will be published online this week. The study - which is based on the concept that physics can be used to characterize the evolution of civilization - indicates: •Energy conservation or efficiency doesn't really save energy, but instead spurs economic growth and accelerated energy consumption. •Throughout history, a simple physical "constant" - an unchanging mathematical value - links global energy use to the world's accumulated economic productivity, adjusted for inflation. So it isn't necessary to consider population growth and standard of living in predicting society's future energy consumption and resulting carbon dioxide emissions. •"Stabilization of carbon dioxide emissions at current rates will require approximately 300 gigawatts of new non-carbon-dioxide-emitting power production capacity annually - approximately one new nuclear power plant (or equivalent) per day," Garrett says. "Physically, there are no other options without killing the economy." Getting Heat for Viewing Civilization as a "Heat Engine" Garrett says colleagues generally support his theory, while some economists are critical. One economist, who reviewed the study, wrote: "I am afraid the author will need to study harder before he can contribute." "I'm not an economist, and I am approaching the economy as a physics problem," Garrett says. "I end up with a global economic growth model different than they have." Garrett treats civilization like a "heat engine" that "consumes energy and does 'work' in the form of economic production, which then spurs it to consume more energy," he says. "If society consumed no energy, civilization would be worthless," he adds. "It is only by consuming energy that civilization is able to maintain the activities that give it economic value. This means that if we ever start to run out of energy, then the value of civilization is going to fall and even collapse absent discovery of new energy sources." Garrett says his study's key finding "is that accumulated economic production over the course of history has been tied to the rate of energy consumption at a global level through a constant factor." That "constant" is 9.7 (plus or minus 0.3) milliwatts per inflation-adjusted 1990 dollar. So if you look at economic and energy production at any specific time in history, "each inflation-adjusted 1990 dollar would be supported by 9.7 milliwatts of primary energy consumption," Garrett says. Garrett tested his theory and found this constant relationship between energy use and economic production at any given time by using United Nations statistics for global GDP (gross domestic product), U.S. Department of Energy data on global energy consumption during1970-2005, and previous studies that estimated global economic production as long as 2,000 years ago. Then he investigated the implications for carbon dioxide emissions. "Economists think you need population and standard of living to estimate productivity," he says. "In my model, all you need to know is how fast energy consumption is rising. The reason why is because there is this link between the economy and rates of energy consumption, and it's just a constant factor." Garrett adds: "By finding this constant factor, the problem of [forecasting] global economic growth is dramatically simpler. There is no need to consider population growth and changes in standard of living because they are marching to the tune of the availability of energy supplies." To Garrett, that means the acceleration of carbon dioxide emissions is unlikely to change soon because our energy use today is tied to society's past economic productivity. "Viewed from this perspective, civilization evolves in a spontaneous feedback loop maintained only by energy consumption and incorporation of environmental matter," Garrett says. It is like a child that "grows by consuming food, and when the child grows, it is able to consume more food, which enables it to grow more." Is Meaningful Energy Conservation Impossible? Perhaps the most provocative implication of Garrett's theory is that conserving energy doesn't reduce energy use, but spurs economic growth and more energy use. "Making civilization more energy efficient simply allows it to grow faster and consume more energy," says Garrett. He says the idea that resource conservation accelerates resource consumption - known as Jevons paradox - was proposed in the 1865 book "The Coal Question" by William Stanley Jevons, who noted that coal prices fell and coal consumption soared after improvements in steam engine efficiency. So is Garrett arguing that conserving energy doesn't matter? "I'm just saying it's not really possible to conserve energy in a meaningful way because the current rate of energy consumption is determined by the unchangeable past of economic production. If it feels good to conserve energy, that is fine, but there shouldn't be any pretense that it will make a difference." Yet, Garrett says his findings contradict his own previously held beliefs about conservation, and he continues to ride a bike or bus to work, line dry family clothing and use a push lawnmower. An Inevitable Future for Carbon Dioxide Emissions? Garrett says often-discussed strategies for slowing carbon dioxide emissions and global warming include mention increased energy efficiency, reduced population growth and a switch to power sources that don't emit carbon dioxide, including nuclear, wind and solar energy and underground storage of carbon dioxide from fossil fuel burning. Another strategy is rarely mentioned: a decreased standard of living, which would occur if energy supplies ran short and the economy collapsed, he adds. "Fundamentally, I believe the system is deterministic," says Garrett. "Changes in population and standard of living are only a function of the current energy efficiency. That leaves only switching to a non-carbon-dioxide-emitting power source as an available option." "The problem is that, in order to stabilize emissions, not even reduce them, we have to switch to non-carbonized energy sources at a rate about 2.1 percent per year. That comes out to almost one new nuclear power plant per day." "If society invests sufficient resources into alternative and new, non-carbon energy supplies, then perhaps it can continue growing without increasing global warming," Garrett says. Does Garrett fear global warming deniers will use his work to justify inaction? "No," he says. "Ultimately, it's not clear that policy decisions have the capacity to change the future course of civilization."

#### Growth causes water wars and scarcity

Speth, law prof, 8—Served as President Jimmy Carter’s White House environmental adviser and as head of the United Nations’ largest agency for international development Prof at Vermont law school. Former dean of the Yale School of Forestry and Environmental Studies at Yale University . Former Professor of Law at Georgetown University Law Center, teaching environmental and constitutional law. .Former Chairman of the Council on Environmental Quality in the Executive Office of the President. Co-founder of the Natural Resources Defense Council. Was law clerk to U.S. Supreme Court Justice Hugo L. Black JD, Yale. (James Gustave, The Bridge at the Edge of the World: Capitalism, the Environment, and Crossing from Crisis to Sustainability, Gigapedia, 32-34, AMiles)

 First, there is the crisis of natural watercourses and their attendant wetlands. No natural areas have been as degraded by human activities as freshwater systems. Natural water courses and the vibrant life associated with them have been extensively affected by dams, dikes, diversions, stream channelization, wetland filling and other modifications, and, of course, pollution. Sixty percent of the world’s major river basins have been severely or moderately fragmented by dams or other construction. Since 1950 the number of large dams has increased from 5,700 worldwide to more than 41,000. Much of this activity is done to secure access to the water, but power production, fl ood control, navigation, and land reclamation have also been important factors. As freshwater is diverted from natural sources, ecosystems dependent on that water suff er, including aquatic systems, wetlands, and forests. About half the world’s wetlands have been lost, and more than a fi fth of known freshwater species have already been driven to extinction.41 The second crisis is the crisis of freshwater supply. Human demand for water climbed sixfold in the twentieth century, and the trend continues today. Humanity now withdraws slightly over half of accessible freshwater, and water withdrawals could climb to 70 percent by 2025.42 Meeting the world’s demands for freshwater is proving problematic. About 40 percent of the world’s people already live in countries that are classified as “water stressed,” meaning that already 20 to 40 percent of the available freshwater is being used by human societies. Projections indicate that the percentage of people living in water-stressed countries could rise to 65 percent by 2025.43 A large portion of freshwater withdrawals, about 70 percent, goes to agriculture. Since 1960, acreage under irrigation has more than doubled. A special problem is occurring in India, China, and elsewhere in Asia where tens of millions of tubewells are depleting “fossil” groundwaters. The New Scientist reports that “hundreds of millions of Indians may see their land turned to desert.”44 Overall, according to a study by top water specialists from around the world, world demand for water could double by 2050.45 “At the worst,” the New York Times reported, “a deepening water crisis would fuel violent conflicts, dry up rivers and increase groundwater pollution. . . . It would also force the rural poor to clear ever-more grasslands and forests to grow food and leave many more people hungry.”46 Last, there is the crisis of pollution. Pollutants of all types are discharged into the world’s waters in enormous quantities, reducing the capacities of bodies of water to support life in the water and to support human communities. Contamination denies a large portion of the world’s population access to clean water supplies. About a billion people, a fi fth of the world’s population, lack clean drinking water; 40 percent lack sanitary services. The World Health Organization calculates that each year about 1.6 million children die from diseases caused by unsafe drinking water and lack of water for sanitation and hygiene.47 Water supply issues will become increasingly prevalent in the United States. Freshwater withdrawals per capita from surface and groundwaters in the United States are twice that of the OECD (Organisation for Economic Co-operation and Development) as a whole. The Environmental Protection Agency estimates that if current American water use remains constant at a hundred gallons per person per day, thirtysix states will face water shortages by 2013. As a result, humanity’s “fi rst need” will soon be privatized. Investors are moving into a water related market that is estimated to be worth at least $150 billion in the United States by 2010. “Water is a growth driver for as long and as far as the eye can see,” a Goldman Sachs water analyst told the New York Times in 2006.48

#### Extinction

Barlow 8—National chairperson of The Council of Canadians. Co-founder of the Blue Planet Project. Chairs the board of Washington-based Food & Water Watch and is also an executive member of the San Francisco–based International Forum on Globalization and a Councillor with the Hamburg-based World Future Council. She is the recipient of eight honorary doctorates. Served as Senior Advisor on Water to the 63rd President of the United Nations General Assembly (Maude, The Global Water Crisis and the Coming Battle for the Right to Water, 25 February 2008, http://www.fpif.org/articles/the\_global\_water\_crisis\_and\_the\_coming\_battle\_for\_the\_right\_to\_water, AMiles)

 The three water crises – dwindling freshwater supplies, inequitable access to water and the corporate control of water – pose the greatest threat of our time to the planet and to our survival. Together with impending climate change from fossil fuel emissions, the water crises impose some life-or-death decisions on us all. Unless we collectively change our behavior, we are heading toward a world of deepening conflict and potential wars over the dwindling supplies of freshwater – between nations, between rich and poor, between the public and the private interest, between rural and urban populations, and between the competing needs of the natural world and industrialized humans. Water Is Becoming a Growing Source of Conflict Between Countries Around the world, more that 215 major rivers and 300 groundwater basins and aquifers are shared by two or more countries, creating tensions over ownership and use of the precious waters they contain. Growing shortages and unequal distribution of water are causing disagreements, sometimes violent, and becoming a security risk in many regions. Britain’s former defense secretary, John Reid, warns of coming “water wars.” In a public statement on the eve of a 2006 summit on climate change, Reid predicted that violence and political conflict would become more likely as watersheds turn to deserts, glaciers melt and water supplies are poisoned. He went so far as to say that the global water crisis was becoming a global security issue and that Britain’s armed forces should be prepared to tackle conflicts, including warfare, over dwindling water sources. “Such changes make the emergence of violent conflict more, rather than less, likely,” former British prime minister Tony Blair told The Independent. “The blunt truth is that the lack of water and agricultural land is a significant contributory factor to the tragic conflict we see unfolding in Darfur. We should see this as a warning sign.” The Independent gave several other examples of regions of potential conflict. These include Israel, Jordan and Palestine, who all rely on the Jordan River, which is controlled by Israel; Turkey and Syria, where Turkish plans to build dams on the Euphrates River brought the country to the brink of war with Syria in 1998, and where Syria now accuses Turkey of deliberately meddling with its water supply; China and India, where the Brahmaputra River has caused tension between the two countries in the past, and where China’s proposal to divert the river is re-igniting the divisions; Angola, Botswana and Namibia, where disputes over the Okavango water basin that have flared in the past are now threatening to re-ignite as Namibia is proposing to build a threehundred- kilometer pipeline that will drain the delta; Ethiopia and Egypt, where population growth is threatening conflict along the Nile; and Bangladesh and India, where flooding in the Ganges caused by melting glaciers in the Himalayas is wreaking havoc in Bangladesh, leading to a rise in illegal, and unpopular, migration to India.

Growth is unsustainable – it’s a subsystem of the limited biosphere

Daly, 2005 (Herman E., Professor in the School of Public Policy at the University of Maryland, “Economics in a fully world,” Scientific American, Volume 293, Issue 3, September)

The global economy is now so large that society can no longer safely pretend it operates within a limitless ecosystem. Developing an economy that can be sustained within the finite biosphere requires new ways of thinking Growth is widely thought to be the panacea for all the major economic ills of the modern world. Poverty? Just grow the economy (that is, increase the production of goods and services and spur consumer spending) and watch wealth trickle down. Don't try to redistribute wealth from rich to poor, because that slows growth. Unemployment? Increase demand for goods and services by lowering interest rates on loans and stimulating investment, which leads to more jobs as well as growth. Overpopulation? Just push economic growth and rely on the resulting demographic transition to reduce birth rates, as it did in the industrial nations during the 20th century. Environmental degradation? Trust in the environmental Kuznets curve, an empirical relation purporting to show that with ongoing growth in gross domestic product (GDP), pollution at first increases but then reaches a maximum and declines. Relying on growth in this way might be fine if the global economy existed in a void, but it does not. Rather the **economy** **is** a **subsystem of the finite biosphere** that supports it. **When the economy's expansion encroaches** too much **on** its surrounding **ecosystem**, **we** will begin to **sacrifice** natural capital (such as **fish, minerals and fossil** **fuels**) that is worth more than the man-made capital (such as roads, factories and appliances) added by the growth. We will then have what I call uneconomic growth, producing "bads" faster than goods--making us poorer, not richer. Once we pass the optimal scale, **growth becomes** stupid in the short run and **impossible to** **maintain in the long run.** Evidence suggests that the U.S. may already have entered the uneconomic growth phase. Recognizing and avoiding uneconomic growth are not easy. One problem is that some people benefit from uneconomic growth and thus have no incentive for change. In addition, our national accounts do not register the costs of growth for all to see. Humankind must make the transition to a sustainable economy--one that takes heed of the inherent biophysical limits of the global ecosystem so that it can continue to operate long into the future. If we do not make that transition, we may be cursed not just with uneconomic growth but with an ecological catastrophe that would sharply lower living standards. [The Finite Biosphere](http://web.ebscohost.com.libproxy.trinity.edu/ehost/detail?vid=1&hid=11&sid=3c5be8d1-f429-445f-a919-a219a6411003%40sessionmgr13&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d" \l "toc" \o "The Finite Biosphere  )  MOST CONTEMPORARY economists do not agree that the U.S. economy and others are heading into uneconomic growth. They largely ignore the issue of sustainability and trust that because we have come so far with growth, we can keep on going ad infinitum. Yet concern for sustainability has a long history, dating back to 1848 and John Stuart Mill's famous chapter "Of the Stationary State," a situation that Mill, unlike other classical economists, welcomed. The modern-day approach stems from work in the 1960s and 1970s by Kenneth Boulding, Ernst Schumacher and Nicholas Georgescu-Roegen. This tradition is carried on by those known as ecological economists, such as myself, and to some extent by the subdivisions of mainstream economics called resource and environmental economics. Overall, however, mainstream (also known as neoclassical) economists consider sustainability to be a fad and are overwhelmingly committed to growth. But the facts are plain and uncontestable: the biosphere is finite, nongrowing, closed (except for the constant input of solar energy), and **constrained by the laws of thermodynamics**. Any subsystem, such as the economy, must at some point cease growing and adapt itself to a dynamic equilibrium, something like a steady state. Birth rates must equal death rates, and production rates of commodities must equal depreciation rates. In my lifetime (67 years) the **human population** has **tripled**, and the number of human artifacts, or things people have produced, has on average increased by much more. "**Ecological** **footprint" studies show** that the total **energy and materials needed to maintain** and replace our **artifacts has** also **vastly increased**. As the world becomes full of us and our stuff, it becomes empty of what was here before. To deal with this new pattern of scarcity, scientists need to develop a "full world" economics to replace our traditional "empty world" economics. In the study of microeconomics, the branch of economics that involves the careful measuring and balancing of costs and benefits of particular activities, individuals and businesses get a clear signal of when to stop expanding an activity. When any activity expands, it eventually displaces some other enterprise and that displacement is counted as a cost. People stop at the point where the marginal cost equals the marginal benefit. That is, it is not worth spending another dollar on ice cream when it gives us less satisfaction than a dollar's worth of something else. Conventional macroeconomics, the study of the economy as a whole, has no analogous "when to stop" rule. Because establishing and maintaining sustainable economy entails an enormous change of mind and heart by economists, politicians and voters, one night well be tempted to declare that such a project would be impossible. But the alternative to a sustainable economy, in ever growing economy, is biophysically impossible. In choosing between tackling a political impossibility and a biophysical impossibility, I would judge the latter to be the more impossible and take my chances with the former.

Growth is unsustainable—scarcity

Thompson, 2010 (Clive, “Nothing grows forever. Why do we keep pretending the economy will?” Mother Jones, Vol. 35, Issue 3, May/June)

The next major challenge to the pro-growth orthodoxy didn't emerge until the early 1960s and publication of Rachel Carson's Silent Spring. The first major book to examine the effects of pollution, it became a bestseller, awakening the mainstream to the idea that relentless economic activity might Wreck the natural world. Alarmed by this notion, the Club of Rome--an international group of industrialists, scholars, diplomats, and professionals--asked a team of **MIT scientists** led by systems-management expert Dennis Meadows to **determine what would happen if** human **society continued** **to grow at its current pace.** The scientists built a **computer model** that looked at the main components of world growth--including population increases and breakthroughs that make workers more productive. Crucially, they also **calculated**-as best they could-the **effects of pollution and** the extent of the planet's natural **resources**, and put those in the model, too. Then they hit "enter." The results were bleak. If society didn't change tack, the scientists determined, global prosperity would rise until some time during this century, as growth made the good life cheaper and more widely available. But then the cycle would start to shift disastrously into reverse. **Resources would** **become** so **scarce** thattheywould **skyrocket in price, driving** the **cost of** almost **everything up**ward. Global **living standards** would **collapse**. Meadows and his team published their conclusions in a book titled The Limits to Growth, and it quickly became a global best-seller, with 12 million copies sold. Soon, governments and NGOS were organizing nervous conferences wondering if growth would kill us all. Traditional economists went berserk. In the months following the book's publication, they counterattacked: One labeled Limits "alarmist." Another called it "less than' pseudoscience and little more than polemical fiction." An influential essay in Foreign Affairs derided it as "The Computer That Printed Out Wolf." A big problem, according to the critics, was that the model didn't include a pricing mechanism that mimicked Adam Smith's invisible hand; if basic resources ever became seriously scarce, they insisted, companies would simply switch materials--or make themselves more efficient, using fewer materials to deliver the same prosperity payload. As economies mature, the economists noted, technology "decouples" economic prosperity from physical stuff: Jobs become more about providing services, which use fewer raw materials. This, they argued, was precisely what kept America's GDP growing during the 1980s and 1990s, even as our industrial base eroded. The Limits dispute wasn't merely scholarly squabbling; it was an ideological battle, too. Economists had based entire disciplines and careers on the primacy of growth--not to mention that, in the Cold War era, suggestions that capitalism was seeding its own ecological collapse seemed sulfurously Marxist. Some critics distorted the book's message--saying the authors had predicted that oil would run out by 1992. (The book had made the more nuanced point that we only had enough known reserves to last that long, given how fast we were using it.) A more valid criticism lay in the fact that the team's model--like many economic models--was simplistic, and based on some pretty big assumptions. (In a 2008 blog post, Paul Krugman derided the approach as "garbage-in-garbage-out.") The counterattacks worked. No-growth economics returned to the fringes. The idea didn't die, though. Herman Daly, who served for six years as a senior economist at the World Bank beginning in the late '80s, was among the researchers inspired by Silent Spring. He remembers the Carter administration having "some openness" to no-growth thinking. "But then come the Reagan years, and oh man, forget it," he recalls. Only a few key thinkers--Daly being the most prominent--continued to beaver away at no-growth theory, coming to new and powerful conclusions. Daly thought **the idea of a** "decoupled" **economy**--one **that continued to grow** while **using** relatively **fewer raw materials--was a chimera.** From his vantage point, it seemed obvious that **when nations** virtualized, **shift**ing **to service economies**, they didn't stop gobbling natural resources or even, really, curb their appetites. **They** merely **outsourced the problem to Asia, Africa, and South** **America** or found cheap new sources at home. As Daly points out, the Internet economy, supposedly a great leap into the dematerialization of consumption, depends on energy and computer components. And making those components requires exotic metals, some of which are now in such short supply that they're fueling blood-diamond-style conflicts. The growth of greenhouse gas emissions likewise demonstrates that the free market alone cannot deal with planet-threatening pollution. Indeed, the low price of coal-fired electricity encourages companies to keep spewing excessive amounts of Carbon dioxide rather than pursue cleaner energy sources. "This whole idea that we could have a constantly growing economy that doesn't use natural resources is just crazy, and the last couple of decades have basically proven it," Daly says.

#### Hold their sustainability claims to an extremely high threshold – they have to prove that we can reduce consumption 90 times over

Trainer, 01 – Visiting Fellow in the Faculty of Arts at the University of NSW (Ted, “Natural Capitalism – Cannot Overcome Resource Limits”, Minnesotans For Sustainability)

Firstly, in view of the evidence of alarming depletion of many resources and ecological systems, especially petroleum, forests, fisheries, the atmosphere, biodiversity, agricultural land and water, it would seem that the **present aggregate global resource and environmental impacts and costs**

**must be reduced dramatically** before they become sustainable. Let us assume that only a factor three reduction is needed. (The above **greenhouse and petroleum considerations indicate that factor 10 reductions are** more likely to be **require**d.) In energy terms this would mean world energy use would have to be cut to 2 billion tonnes of oil equivalent, and in view of the foregoing discussion even this would be a highly problematic goal. However at the second level we have to deal with the fact of extreme inequality in the global distribution of wealth and resources. About 1 billion people in the rich countries are taking about 3/4 of the resources produced each year, such as petroleum. The rich world per capita average is about 5 times the world average. In other words those **who think technical fixes can make the present** affluent-consumer-lifestyles of the rich countries **possible** for all people, in sustainable ways, **are assuming that an overall 3x5 or factor 15 reduction in resource and ecological impact per unit of output can be made**. In energy terms sharing the 2 billion tonnes of oil equivalent among 6 billion people would provide about .3 tonnes per person, which is 1/15 of the amount per capita consumed in rich countries today. But, at the third level we realise that world **population is likely to multiply by 1.5, to reach 9-10 billion**. To provide this number with the present rich world living standard in sustainable ways would therefore require a factor reduction of 3x5x1.5 or 22.5, i.e., to .22 tonnes of oil equivalent per person. At the fourth level we have to deal with the implications of economic growth. If we were to add a mere 3% economic growth to the above considerations, then by 2023 when output had doubled we would have to achieve a factor 45 reduction, and by 2046 a factor 90 reduction, and we would have to go on doubling the figure every 23 years thereafter. Hawken, Lovins and Lovins believe 3% growth can continue for 70 years, given that they state that an 8-fold increase in economic output is possible. As has been explained, rich world "living standards" would then be 8 times as great as they are now. If 9 billion were to share those "living standards" world economic output would be about 60 times as great as it is now. Unless Hawken, Lovins and Lovins are only concerned with guaranteeing high living standards to the few who now have them, they are obliged to show how an approximately 180 factor improvement (3x5x1.5x8) in overall resource use and environmental impact per unit of output is possible by around 2070. It would seem clear therefore that the future for a socio-economic system based on determination to retain high material "living standards", increase them over time, and spread them to all people cannot be enabled by a mere factor 4 or factor 10 improvement in the efficiency of resource and energy use. Many analyses have drawn attention to the savage implications of such multiples which come with the assumption of growth. They are central in the extensive limits to growth case that t**here is no possibility of all people ever rising to the "living standards" now characteristic of the rich countries**, that such countries are on a grossly unsustainable path, and that the basic causal problem here is the commitment to an economy which must have constant and limitless growth in production and consumption. (Trainer, 1995a, 1998, 1999.)

#### Statistics and mathematics overwhelmingly conclude growth is unsustainable

Trainer, 01 – Visiting Fellow in the Faculty of Arts at the University of NSW (Ted, “Natural Capitalism – Cannot Overcome Resource Limits”, Minnesotans For Sustainability)

Indeed it is claimed that better technology can actually cut greenhouse gas emissions by 33% to 90% while the economy grows by 500% to 700% (p. 244.), i.e., up to a factor 70 improvement. There is now a detailed and persuasive case that **industrial-affluent-consumer society is grossly unsustainable** being well beyond levels of resource consumption and ecological impact that can be kept up for very long, or extended to all people. (Trainer, 1999.) Yet the fundamental commitment within this society is to increasing production, consumption and the GDP, constantly and without end. The task Hawken, Lovins and Lovins have set themselves rapidly escalates when economic growth is assumed. **If 3%** p.a. **growth in output is assumed** then the annual level of production **and consumption will be twice as great every 23 years. If all the world's expected 9-10 billion people were to rise to the per capita "living standards" the rich nations would have by 2070** given 3% growth, **total world economic output would be more than 60 times as large as it is today**. For a 4% p.a. growth rate the multiple is more than 120. These are the sorts of considerations which lead those within the "limits to growth" school to conclude that **there is no realistic possibility of sustaining industrial consumer societies committed to economic growth**. (Trainer, 1999.)

# 1AR

#### Warming reps = good

Their antiscientism

Latour 4 - Philosopher, leading founder of Science Studies (Bruno, Why Has Critique Run out of Steam? From Matters of Fact to Matters of Concern, Published by: The University of Chicago Press Article DOI: 10.1086/421123 Stable URL: http://www.jstor.org/stable/10.1086/421123, Critical Inquiry > Vol. 30, No. 2, Winter 2004)

In these most depressing of times, these are some of the issues I want to press, not to depress the reader but to press ahead, to redirect our meager capacities as fast as possible. To prove my point, I have, not exactly facts, but rather tiny cues, nagging doubts, disturbing telltale signs. What has become of critique, I wonder, when an editorial in the New York Times contains the following quote? Most scientists believe that [global] warming is caused largely by manmade pollutants that require strict regulation. Mr. Luntz [a Republican strategist] seems to acknowledge as much when he says that “the scientific debate is closing against us.” His advice, however, is to emphasize that the evidence is not complete. “Should the public come to believe that the scientific issues are settled,” he writes, “their views about global warming will change accordingly. Therefore, you need to continue to make the lack of scientific certainty a primary issue.”2 Fancy that? An artificially maintained scientific controversy to favor a “brownlash,” as Paul and Anne Ehrlich would say.3 Do you see why I am worried? I myself have spent some time in the past trying to show “‘the lack of scientific certainty’” inherent in the construction of facts. I too made it a “‘primary issue.’” But I did not exactly aim at fooling the public by obscuring the certainty of a closed argument—or did I? After all, I have been accused of just that sin. Still, I’d like to believe that, on the contrary, I intended to emancipate the public from prematurely naturalized objectified facts. Was I foolishly mistaken? Have things changed so fast? In which case the danger would no longer be coming from an excessive confidence in ideological arguments posturing as matters of fact—as we have learned to combat so efficiently in the past—but from an excessive distrust of good matters of fact disguised as bad ideological biases! While we spent years trying to detect the real prejudices hidden behind the appearance of objective statements, do we now have to reveal the real objective and incontrovertible facts hidden behind the illusion of prejudices? And yet entire Ph.D. programs are still running to make sure that good American kids are learning the hard way that facts are made up, that there is no such thing as natural, unmediated, unbiased access to truth, that we are always prisoners of language, that we always speak from a particular standpoint, and so on, while dangerous extremists are using the very same argument of social construction to destroy hard‐won evidence that could save our lives. Was I wrong to participate in the invention of this field known as science studies? Is it enough to say that we did not really mean what we said? Why does it burn my tongue to say that global warming is a fact whether you like it or not? Why can’t I simply say that the argument is closed for good? Should I reassure myself by simply saying that bad guys can use any weapon at hand, naturalized facts when it suits them and social construction when it suits them? Should we apologize for having been wrong all along? Or should we rather bring the sword of criticism to criticism itself and do a bit of soul‐searching here: what were we really after when we were so intent on showing the social construction of scientific facts? Nothing guarantees, after all, that we should be right all the time. There is no sure ground even for criticism.4 Isn’t this what criticism intended to say: that there is no sure ground anywhere? But what does it mean when this lack of sure ground is taken away from us by the worst possible fellows as an argument against the things we cherish?

#### Framing as existential threat key to action

Manaugh, ’12 [Thomas Manaugh, PhD env science, in the guest comment of Lake Country News, 3/4/12,

http://www.lakeconews.com/index.php?option=com\_content&view=article&id=23954:climate-new-study-will-help-protect-vulnerable-birds-from-impacts-of-climate-change&catid=1:latest&Itemid=197 ]

Clearly, protection for coastal environments is becoming a concern because of rise in sea level from global warming. If events continue to point to global warming as an existential threat to all species, including humans, public opinion will come to demand solutions. The west slope of Antarctica is ground zero for concern about significant, rapid sea level rises because melting of the polar ice cap. I offer a very ambitious and action-oriented proposal at http://dolphinblueinc.wordpres...ntarctica/ for how melting of ice in Antarctica could be slowed. Absent a slow-down or halt in a rise in sea level of an estimated one meter by 2100, upwards of 500 million people will be displaced and coastal areas and huge swaths of low-lying land areas will be inundated and made unproductive. The solution I propose would be extraordinarily costly, but the costs would be smaller than the ultimate price of inaction. If every nation in the world would accept global warming as an existential threat, solutions could be implemented that are commensurate with the threat. A budget of $2 trillion per year (approximately what is spent on wars and military preparedness) would do the job

## S

Level of collapse

Djordjevic 98. BA Global Economics, John, Paper in Global Sustainability at UC, Irvine. “Sustainability,” Senior Seminar for Instructor: Peter A. Bowler, http://www.dbc.uci.edu/~sustain/global/sensem/djordj98.html.

Despite all the gloomy facts and sad stories, there is a solution, **to create** a **sustainable society**. Rather than being greedy and only thinking about the self, each individual must realize the impacts of his/her selfish tendencies, and disregard their former view of the world. One must come into harmony with what is really needed to survive, and drawn a strict distinction between what is necessity and what is luxury. Not every family needs three cars, or five meals a day or four telephones and two refrigerators.Countries do not need to strive for increasing growth, less materials could be imported/exported and international tension could be greatly reduced. The major problems seem not to step from the determination of what a sustainable society is, but on how to get people to change their values. This task is not an easy one. **People must be forced to realize** the harmful and **catastrophic** **consequences** lie **in their meaningless wants** and greed. The problem of cognitive dissonance is hard to overcome, but it is not impossible. The **solution** to this dilemma **lies in catastrophe. The only event that changes people's minds is** social **trauma** or harm. The analogy is that a person who refuses to wear a seat belt and one day gets thrown through his/her windshield will remember to wear the seat belt after the accident. The logic behind this argument is both simple and feasible. So the question of dissonance is answered in part, but to change a whole society obviously takes a bigger and more traumatic event to occur. An **economic collapse** or ice age **would trigger a new consciousness leading to** a **sustainable society**.

Transition creates a durable mindset shift.

Speth 9 - dean of Yale University’s School of Forestry and Environmental Studies and a co-founder of the Natural Resources Defense Council, James, Q & A: Economics and the Environment, NYT, 4-7

The credit crunch has seriously impaired consumer spending, and the trade balance with China has changed dramatically. **When the** **economy recovers, how do we ensure** that **we don’t revert to** the kind of **consumption problems** you describe? My hope is that **people will be forced by lack of resources, but come to appreciate a shift away from** debt-driven, **endless spending,** and focusing a lot more on what’s really important in life. Positive psychologists tell us there’s a strong correlation between materialism and unhappiness. Consumerism was never as strong in Japan as it has been here, and Japanese consumerism never got back to what it was before the lost decade of slow growth. So maybe **we will** **“grow up,”** in effect, **out of this crisis.** It’s one of the possible silver linings.

#### Even the elites will change their minds after the global economic system collapses.

Kasiola, 03 – Dean of the College of Behavioral and Social Sciences at San Francisco State University (Joel Jay, "Questions to Ponder in Understanding the Modern Predicament," Explorations in Environmental Political Theory: Thinking About What We Value, edited by Joel Jay Kassiola, Published by M.E. Sharpe, p.186-187)

The unhappy experience and knowledge of increasing environmental degradation with threats to all planetary life should move **the industrial rich** to recognize the self-defeating and unsatisfactory nature of modern values and social practices. They **may** come to **accept** the **necessity of a new,** postmodern **social order,** one **not** so **characterized by** the ideologies of capitalism, **industrialism**, and Hobbesianism. **In this new order citizens**—including the rich—**can have more leisure time** to experience and contemplate the nonmaterial and more fulfilling aspects of the human condition, like nature. Nature’s value to humans, as Goodin tells us, lies in directing humans to something “outside themselves,” something “larger than themselves,” that “locates the self.”16 Of course, extensive social learning will have to occur if such a radical change is to occur, but it is precisely such a type of change that is needed to realize sustainability and justice. The crucial role of such social learning to societal transformation is emphasized by both Milbrath’s and Pirages’s contributions. An urgent question remains: What specific agent can transform modern society to an environmentally consistent, moral, and satisfying social order? Several contributors note the role of disappointment, or tragedy (in Oscar Wilde’s sense of “emptiness after success”) on the recognition of mistaken goals. We experience alienation as we work harder and longer “getting and spending” yet increase our anguish and dissatisfaction with life. Some of our authors have remarked about the Wildean tragedy, or irony, of the most materially successful society in world history having success be its downfall. However, just as Zimmerman admonishes us to preserve what is positive about modernity (for example, freedom from the shackles of feudalism and increased productivity to meet human biological needs), I feel compelled to remind the reader of Paehlke’s discussion of globalization, especially as it pertains to the global industrial elites and the effective spread of their ideology of growthmania and endless consumption. These elites control the global mass media of communications and direct the expanding reach of increasingly large and powerful transnational corporations. The dynamics of how the current hegemonic rule of the industrial corporate behemoths will be undermined has yet to be written, posing a significant challenge to all environmental political theorists, environmental researchers and activists (similar to Zimmerman’s unforeseen “caterpillar [end page 186] into a butterfly” transformation analogy). As Paehlke fears, we merely may be moving forward between cars on a train as it moves backward without changing its direction! But **even the** **most destination-minded** train engineer **will** stop, **change direction**, and reassess her/his stated objective **when they run out of fuel, see disastrous circumstances ahead, and realize the** train’s projected **destination does not exist!**

De Lucia 13 - Doctoral Research Fellow at the Faculty of Law, University of Tromsø, Norway. (Vito, 5th August 2013, http://criticallegalthinking.com/2013/08/05/law-as-insurgent-critique-the-perspective-of-the-commons-in-italy/)

The financial crisis and the subsequent series of austerity measures have prompted fierce resistance in the streets and squares across Southern Europe. As the crisis exploded, shattering the illusion of a social Europe, a veil was lifted, fully uncovering Europe’s neoliberal face: downsizing, lay-​offs, skyrocketing unemployment, erosion of an already ailing welfare system, the pushing of millions into poverty — all while protecting the interests of European financial capitalism. The crisis however is not only economic. It is also political and legal, as is clear from the deep legitimacy crisis of representative democracy, and the expulsion of politics from both governments (with so-​called “technical governments”) and parliaments (with both ordinary and constitutional rule-​making delegated to national and supranational technical bureaucracies). In this state of exception and of suspension of the most basic democratic and institutional mechanics, law presents itself as a form of domination. By renouncing any pretense of legitimation grounded in social and political dynamics and by breaking any link to any form of popular mandate or public interest, law increasingly appears as pure command and as a form of violence. However, or perhaps because of this situation, law is also re-​emerging as a form of critique and as plural insurgent practices. An important example of this is the movement for the beni comuni (the commons) in Italy. Both in theory and through practices the commons is being articulated as a counter-​hegemonic framework and as a philosophical, social and juridical critique of property, sovereignty, representative democracy and the monopoly of power on the production of law. Ambiguously and strategically oscillating between legal and (formally) illegal practices and spaces (yet within the broader space of the juridical as jus, in opposition to the legal as lex), the commons re-​grounds law in the actions and practices of bodies and communities. Law itself is re-​organized conceptually and practically around the concept and practices of the commons, which im/​poses itself as a deconstructive force against the hegemonic architecture of legal modernity, premised on the mutually re-​enforcing binary private/​public. Such archetypes of legal modernity, which take the form of private property and the State — and refer respectively to the individual owner and the public Sovereign — are frequently presented as radically conflicting; instead they stand in a relationship that is symbiotic. Their mutual opposition is “fabricated” and is a “precise ideological choice of the individualistic tradition as both are inserted into a fundamental structure: the rule of a subject (an individual, a company, the government) over an object (a private good, an organization, a territory)”. (Mattei 2011) In this sense, the perspective of the commons is incommensurable with the modern articulation of property in terms of the artificial dialectic between private and public, as the commons are of necessity — investing things and processes functionally destined to the satisfaction of basic and fundamental needs — excluded from the processes of circulation of commodities. Furthermore, the commons is a “qualitative category based on inclusion and access, whereas property and State sovereignty are rather economical-​quantitative categories based on exclusion (produced scarcity) and violent concentration of power”. (Mattei 2011) In this light, the perspective of the commons represents an insurrection in the Foucauldian sense — of knowledges, practices and juridical forms — insofar as it has always been present in the reality of social practices and social and juridical relations, albeit compressed and delegitimized. The insurrections are most importantly insurrections against the centralization effects which follow the processes of institutionalization that organize knowledge, including law, as both a form of power and as a form of technical knowledge (Foucault 2003). The commons further implies a radical reclamation of the constituent power of embodied communities, capable and legitimated to produce living law, and to resist the hegemonic configuration of law as the most classic of the instrumenta regni. Locating the commons As legal scholar Ugo Mattei — one of the crucial actors in the Italian commons movement — emphasizes, the commons rejects any essentialism and it cannot be framed as something already there. In this sense, the commons cannot be then reduced only to the traditional “natural commons”, which is only one of its dimensions (albeit an important one, genealogically and legally!). It is, instead, an open category: the commons is discovered, affirmed and re/​produced through social practices and struggles, and is contingent upon the continued practices which affirm and re-​claim it. Moreover, the commons is radically social, but not identitarian, as it is organized around common projects, with collective subjectivities being formed through their practices rather than being already there. The commons is furthermore organized along the functional category of use, rather than in accordance with the formal category of title. This is because its central feature is the linkage established between utilities and basic needs and fundamental rights. Its mode of governance is necessarily participative, as already anticipated in the etymology of the word “common” (cum + munis), where participation in the formation of and care for the commons is required to guarantee access to the utilities generated by the commons. Participation is, in other words, an intrinsic aspect of the practices of “commoning”, which identify, assert, re-​claim, and govern the commons. Law as insurgent practice The practices of the commons, as noted, oscillate between a) legal and institutional practices and b) illegal forms of reclamations. a) Critical legal scholars are retrieving the category of the commons and re-​deploying it in such a way as to reclaim the principles enshrined in the Constitution. A central element of this process has been the work of a commission of jurists chaired by Stefano Rodotà established in 2007 to formulate a legislative proposal for the amendment of the Civil Code. The commission, which was to reform the category of “public goods”, proposed introducing the commons as a separate and distinct category. In this vision, the commons is an expression of social and economic utilities directly functional to the exercise and realization of fundamental rights and is framed within an intergenerational perspective. The category of the commons thus inverts the relationship between formal title and legal régime: it is the objective qualities of a thing as a source of constitutionally relevant collective utilities (its function) which decide the applicable legal régime. This proposal remained unheard by Parliament, but it has recently acquired a new life in the form of an ambulant commission called the “Constituent for the Commons”, which aims at discussing with citizens and communities a number of social and legal issues in the loci of struggle shaping the practices of the commons. This is an innovative encounter between jurists and social movements, equally participating in the formation of “living law” through itinerant public debates held in the very commons that citizens and communities are occupying and reclaiming on the ground, be it theatres (http://​www​.teatro​valleoc​cu​p​ato​.it/), cinemas (http://​www​.nuo​vo​cinemap​alazzo​.it/) or industrial sites (http://​www​.rebel​dia​.net/). b) The legal system is also being challenged through formally illegal practices, such as the aforementioned occupations and through the reclamation of formally public or private properties in the name of the commons and their social function. The experience of the roman theatre Teatro Valle is perhaps the most emblematic. Teatro Valle has been occupied since 2011 by a group of artists and cultural workers with the aim of preventing its alienation and in order to provide the community with access to culture, understood as a fundamental right. This participatory and self-​organized experience has, over time, become both a symbol and a catalyst for the commons movement. Its Statute is being developed through participatory mechanisms — a draft-​comment-​and-​discuss process modulated through its website, public assemblies and working groups. In its current draft, the Statute frames the constitution of the Foundation as an autonomous and direct implementation of the Constitution, hence legitimating the constituent power of its underlying collective practices. By challenging the legal system (occupations of immovable property are sanctioned, for example, by article 633 of the criminal code) while at the same time claiming to manifest a wider legality directly linked to fundamental constitutional rights and to the articulation of the commons by critical legal scholarship and other institutional legal practices (notably, a decision of the Supreme Court – Corte di Cassazione — recognizing the category of the commons, with implicit reference to the definition offered by the mentioned Rodotà commission), occupiers are in fact “performing law” as an embodied insurgent practice. The occupation of the theatre is a manifestation of the “constituent power” of collective social practices, whose aim is the re-​injection into the community of those commons which the public institutions are unable to protect. In this manner, such practices are framed as safeguards of public interests and as instruments for the realization of the fundamental rights of a community against both public neglect and private profiteering. Law, through the participatory practices of the commons and its articulations in legal language, becomes insurrection, and operates as both theoretical and embodied critique.