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#### Current Supreme Court silence on detention authority creates a troubling precedent judicial abstention on national security issues – That drives militarism

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.

#### To break this judicial silence, we propose:

#### The United States federal judiciary should apply a clear statement principle to the indefinite detention war power authority of President of the United States on the grounds that executive indefinite detention violates the Suspension Clause.

The plan gives a clear source of judicial review in military decisions – Breaks current precedent and means the president no longer has carte blanche to use his War Powers in ways that continue militarism

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 relationship between the Suspension Clause and the Due Process Clause has sweeping implications for the detention of suspected terrorists and military engagements in multiple countries after September 11, 2001. In Boumediene v. Bush, the Supreme Court for the first time clearly gave the Suspension Clause independent force as an affirmative source of judicial power to adjudicate habeas petitions and as a source of meaningful process to prisoners in custody.15 As a consequence of this decision, Congress now cannot enact jurisdictions tripping legislation to deny executive detainees access to judicial review of the type that it has twice tried and failed to do in the past decade.16 A noncitizen detained as a national security threat may now have procedural rights to contest the detention.17 Even as the Executive has crafted nuanced positions on power and procedure for detaining persons for national security reasons, and even as Congress has adopted new detention-authorizing legislation,18 the judiciary continues to play a central role, though sometimes unwillingly and deferentially, in detention review.19 Apart from these specific developments, I argue that the reinvigorated Suspension Clause jurisprudence will continue to have ripple effects across all areas regulated by habeas corpus. What process must the government use to ensure that it detains the correct people? The traditional assumption was that the Due Process Clause provided the answers. Judges and scholars described a functional relationship in which due process supplied the rights while habeas provided the procedural means to vindicate them. Justice Antonin Scalia expressed this view in its starkest form in his INS v. St. Cyr dissent, arguing that the Suspension Clause “does not guarantee any content to (or even the existence of) the writ of habeas corpus.”20 Judges and scholars have long assumed that due process offers more protections than habeas corpus, or that the substance of habeas is coextensive with the Due Process Clause.21 Others have suggested that the Suspension Clause has a “structural” role, entwined with other individual rights guarantees.22 The U.S. government, in the wake of the September 11, 2001 attacks, adopted the view that noncitizens captured and detained abroad had no due process rights and thus no habeas remedy, and the D.C. Circuit agreed.23 In two cases that reshaped habeas jurisprudence, Hamdi v. Rumsfeld, decided in 2004,24 and Boumediene, decided in 2008,25 the Court connected the Suspension Clause and the Due Process Clause in a new way. Hamdi seemed to indicate that the Due Process Clause approach had triumphed. The Hamdi plurality applied the cost-benefit due process test from Mathews v. Eldridge26 to outline the procedural rights of citizens who challenge their detention.27 Following Hamdi, the precise scope of what due process required seemed the “looming question” for the future of executive detention.28 In response, the government hastily implemented administrative screening procedures for detainees, ostensibly to comply with the bare minimum that due process appeared to require.29 In Boumediene, the Court chose a different constitutional path. The Court did not discuss whether Guant´anamo detainees had due process rights, but instead held that the Suspension Clause independently supplies process to ensure review of executive detention.30 The Court put to rest the notion that the Suspension Clause is an empty vessel and regulates only the conditions for congressional suspension of the writ. Instead, the Court held that the Suspension Clause itself extended “the fundamental procedural protections of habeas corpus.”31 The Court’s view complements recent scholarship examining the common law origins of habeas corpus.32 However, while an- swering the Suspension Clause question, the ruling created another puzzle. The Court held that a prisoner should have a “meaningful opportunity” to demonstrate unlawful confinement, but it did not specify what process the Suspension Clause ensures, nor to what degree due process concerns influence the analysis.33 Lower court rulings elaborating on the process for reviewing detainee petitions have displayed confusion as to which sources to rely on.34 This Article tries to untangle this important knot.

#### This mode of thinking creates a kill to save mentality that justifies the worst atrocities complying with this will lead to extinction. Only a nonviolent approach can solve

Santos 3, (Boaventura, Direct of Social Studies @ the University of Coimbra 2003,"Collective Suicide"<http://www.ces.uc.pt/opiniao/bss/072en.php>) CM

According to Franz Hinkelammert, **the West has repeatedly been under the illusion that it should try to save humanity by destroying part of it. This is a salvific and sacrificial destruction, committed in the name of the need to radically materialize all the possibilities opened up by a given social and political reality over which it is supposed to have total power. This is how it was in colonialism**, with the genocide of indigenous peoples, and the African slaves. This is how it was in the period of **imperialist struggles**, which caused millions of deaths in two world wars and many other colonial wars. This is how it was in Stalinism, with **the Gulag and in Nazism, with the holocaust**. And now today, this is how it is in neoliberalism, with the collective sacrifice of the periphery and even the semiperiphery of the world system. With the war against Iraq, it is fitting to ask whether what is in progress is **a new genocidal and sacrificial illusion**, and what its scope might be. It is above all appropriate to ask if **the new illusion will not herald the radicalization and the ultimate perversion of the western illusion: destroying all of humanity in the illusion of saving it.**Sacrificial **genocide arises from a totalitarian illusion that is manifested in the belief that there are no alternatives to the present-day reality** and that the problems and difficulties confronting it arise from failing to take its logic of development to its ultimate consequences. If there is unemployment, hunger and death in the Third World, thi**s is not the result of market failures; instead, it is the outcome of the market laws not having been fully applied. If there is terrorism, this is not due to the violence of the conditions that generate it; it is due, rather, to the fact that total violence has not been employed to physically eradicate all terrorists and potential terrorists.This political logic is based on the supposition of total power and knowledge, and on the radical rejection of alternatives; it is ultra-conservative in that it aims to infinitely reproduce the status quo.** Inherent to it is the notion of the end of history. During the last hundred years, the West has experienced three versions of this logic, and, therefore, seen three versions of the end of history: Stalinism, with its logic of insuperable efficiency of the plan; Nazism, with its logic of racial superiority; and neoliberalism, with its logic of insuperable efficiency of the market. The first two periods involved the destruction of democracy. The last one trivializes democracy, disarming it in the face of social actors sufficiently powerful to be able to privatize the State and international institutions in their favour. I have described this situation as a combination of political democracy and social fascism. One current manifestation of this combination resides in the fact that intensely strong public opinion, worldwide, against the war is found to be incapable of halting the war machine set in motion by supposedly democratic rulers.
At all these moments, a death drive, a catastrophic heroism, predominates, the idea of a looming collective suicide, only preventable by the massive destruction of the other. Paradoxically, the broader the definition of the other and the efficacy of its destruction, the more likely collective suicide becomes. In its sacrificial genocide version, neoliberalism is a mixture of market radicalization, neoconservatism and Christian fundamentalism. Its death **drive takes a number of forms, from the idea of "discardable populations",** **referring to citizens of the Third World not capable of being exploited as workers and consumers, to the concept of "collateral damage", to refer to the deaths, as a result of war, of thousands of innocent civilians.** The last, catastrophic heroism, is quite clear on two facts: according to reliable calculations by the Non-Governmental Organization MEDACT, in London, between 48 and 260 thousand civilians will die during the war and in the three months after (this is without there being civil war or a nuclear attack); the war will cost 100 billion dollars, enough to pay the health costs of the world's poorest countries for four years.Is it possible to fight this death drive? We must bear in mind that, **historically, sacrificial destruction has always been linked to the economic pillage of natural resources and the labor force, to the imperial design of radically changing the terms of economic, social, political and cultural exchanges** in the face of falling efficiency rates postulated by the maximalist logic of the totalitarian illusion in operation. It is as though **hegemonic powers, both when they are on the rise and when they are in decline, repeatedly go through times of primitive accumulation,** legitimizing the most shameful violence in the name of futures where, by definition, there is no room for what must be destroyed. In today's version, the **period of primitive accumulation consists of combining neoliberal economic globalization with the globalization of war.** The machine of democracy and liberty turns into a machine of horror and destruction.
In opposition to this, **there is the ongoing movement of globalization from below, the global struggle for social justice, led by social movements** and NGOs, of which the World Social Forum (WSF) has been an eloquent manifestation. The WSF has been a remarkable affirmation of life, in its widest and most inclusive sense, embracing human beings and nature. What challenges does it face before the increasingly intimate interpenetration of the globalization of the economy and that of war?
I am convinced that **this new situation forces the globalization from below to re-think itself, and to reshape its priorities**. It is well-known that the WSF, at its second meeting, in 2002, identified the relationship between economic neoliberalism and imperial warmongering, which is why it organized the World Peace Forum, the second edition of which took place in 2003. But this is not enough. I **believe that a strategic shift is required**. Social movements, no matter what their spheres of struggle, must give priority to the fight for peace, as a necessary condition for the success of all the other struggles. This means that they must be in the frontline of the fight for peace, and not simply leave this space to be occupied solely by peace movements. All the movements against neoliberal globalization are, from now on, peace movements. We are now in the midst of the fourth world war (the third being the Cold War) and the spiral of war will go on and on. **The principle of non-violence** that is contained in the WSF Charter of Principles must no longer be a demand made on the movements; now it must be a global demand made by the movements. This emphasis is necessary so that, in current circumstances, the celebration of life can be set against this vertiginous collective suicide. The peace to be fought for is not a mere absence of war or of terrorism. It is rather a peace based upon the elimination of the conditions that foster war and terrorism: global injustice, social exclusion, cultural and political discrimination and oppression and imperialist greed.
**A new, cosmopolitan humanism can be built above and beyond western illuminist abstractions, a humanism of real people based on the concrete resistance to the actual human suffering imposed by the real axis of evil**: neoliberalism plus war

#### Militarism also allows for structural violence and loss of individual responsibility – In order to combat violence, we have to rethinking our understanding of militarism

**Cuomo 96** (Chris J. Professor of Philosophy at the University of Cincinnati, **"**War Is Not Just an Event: Reflections on the Significance of Everyday Violence,” *Hypatia*, Volume 11, Number 4, Fall, Available Online to Subscribing Institutions via JSTOR, p. 30-31)

**Ethical approaches that do not attend to the ways in which warfare and military practices are woven into the very fabric of life in twenty-first century technological states lead to crisis-based politics and analyses**. For any feminism that aims to resist oppression and create alternative social and political options, **crisis-based ethics and politics are problematic because they distract attention from the need for sustained resistance to the enmeshed, omnipresent systems of domination and oppression** that so often function as givens in most people's lives. **Neglecting the omnipresence of militarism allows the false belief that the absence of declared armed conflicts is peace, the polar opposite of war**. It is particularly easy for those whose lives are shaped by the safety of privilege, and who do not regularly encounter the realities of militarism, to maintain this false belief. **The belief that militarism is an ethical, political concern only regarding armed conflict, creates forms of resistance to militarism that are merely exercises in crisis control. Antiwar resistance is then mobilized when the "real" violence finally occurs, or when the stability of privilege is directly threatened,** and at that point it is difficult not to respond in ways that make resisters drop all other political priorities. **Crisis-driven attention to declara\*tions of war might actually keep resisters complacent** about and complicitous in the general presence of global militarism. **Seeing war as necessarily embed\*ded in constant military presence draws attention to the fact that horrific, state-sponsored violence is happening nearly all over**, all of the time, and that it is perpetrated by military institutions and other militaristic agents of the state. Moving away from crisis-driven politics and ontologies concerning war and military violence also enables consideration of relationships among seemingly disparate phenomena, and therefore can shape more nuanced theoretical and practical forms of resistance. For example, investigating the ways in which war is part of a presence allows consideration of the relationships among the events of war and the following: how militarism is a foundational trope in the social and political imagination; how the pervasive presence and symbolism of soldiers/warriors/patriots shape meanings of gender; the **ways in which threats of state-sponsored violence are a sometimes invisible/sometimes bold agent of racism, nationalism, and corporate interests**; the fact that vast numbers of communities, cities, and nations are currently in the midst of excruciatingly violent circumstances. It also provides a lens for considering the relationships among the various kinds of violence that get labeled "war." Given current American obsessions with nationalism, guns, and militias, and growing hunger for the death penalty, prisons, and a more powerful police state, one cannot underestimate the need for philosophical and political attention to connec\*tions among phenomena like the "war on drugs," the "war on crime," and other state-funded militaristic campaigns.

#### AND, to reconcile for the current unrestrained executive – Applying a clear statement principle is key – Vagueness within multiple congressional statutes probe that only Court action is an adequate check on presidential war power

Erickson-Muschko 13 – JD @ Georgetown University Law Center (Sarah, June, “Beyond Individual Status: The Clear Statement Rule and the Scope of the AUMF Detention Authority in the United States” 101 Geo. L.J. 1399, Lexis)

III. EXISTING SCHOLARSHIP ON THE CLEAR STATEMENT RULE: THE FOCUS ON INDIVIDUAL STATUS¶ Many scholars have advanced arguments regarding the application of a clear statement principle to the AUMF. 133 Two specific arguments have been made [\*1419] about the applicability of a clear statement principle in the context of U.S. territory, both of which focus on the status of the individual as the triggering factor. Professors Richard Fallon and Daniel Meltzer argue that a clear statement principle applies when U.S. citizens are detained on U.S. territory. 134 This argument is based on statutory grounds, namely the theory that the Non-Detention Act triggers the clear statement requirement. 135 This argument is perfectly sound in that respect. However, it is incomplete in that it does not address the constitutional grounds for imposing a clear statement rule: the Due Process Clause of the Fifth Amendment, which applies to all persons, including noncitizens. 136 Reading the AUMF and the NDAA 2012 together to allow for the indefinite military detention without trial of individuals arrested on U.S. territory would be inconsistent with the constitutional prohibition on depriving a person of liberty without due process of law. Professors Curtis Bradley and Jack Goldsmith offer the most comprehensive constitutionally based argument for when and how to apply a clear statement principle. Their position is that courts should apply a clear statement requirement "when the President takes actions under the AUMF that restrict the liberty of noncombatants in the United States," but not when such actions only restrict the liberty of combatants. 137 Looking to the three World-War-II-era decisions discussed in Part II, they conclude that Endo and Duncan stand for the proposition that liberty interests trump the President's commander-in-chief authority when the President's actions are unsupported by historical practice in other wars and affect the constitutional rights of U.S. citizens who are not combatants. 138 In this context, "the canon protecting constitutional liberties prevails." 139 In contrast, the authors point to Quirin to show that "the Court did not demand a clear statement before concluding that the U.S. citizen enemy combatant in that case could be subject to a military commission trial in the United States even though neither the authorization to use force nor the authorization for military commissions specifically mentioned U.S. citizens." 140 In such a case, the authors contend that a clear statement requirement protecting civil liberties is not required because "the presidential action involves a traditional wartime function exercised by the President against an acknowledged enemy combatant or enemy [\*1420] nation." 141 In this context, "the President's Article II powers are at their height, and the relevant liberty interests (and thus the need for a liberty-protecting clear statement requirement) are reduced (or nonexistent)." 142 Despite its level of detail, Bradley and Goldsmith's clear statement principle will likely never be of much help to courts construing the AUMF. By basing their clear statement requirement on the distinction between combatants and noncombatants, they fail to resolve the key interpretive question: namely, how to construe the AUMF to avoid grave constitutional concerns where an individual's status as an enemy combatant is in dispute. Their interpretation accommodates a broad reading of Quirin. However, in Quirin, nobody disputed that the detainees were in fact unlawful enemy combatants under long-standing law-of-war principles. In contrast, a court reviewing the classification of an individual as an "enemy combatant" under the AUMF and NDAA 2012 must determine what it means to be "part of" or provide "substantial[] support[]" to al-Qaeda or an "associated force[]" or otherwise to commit a "belligerent act." 143 The question of how to construe these terms lies at the core of detainee litigation, 144 and the provisions in the NDAA 2012 failed to clarify their meaning. Bradley and Goldsmith acknowledge that the AUMF is silent on the point of "what institutions or procedures are appropriate for determining whether a person captured and detained on U.S. soil is in fact an enemy combatant." 145 However, they fail to address how this ambiguity impacts the application of their clear statement principle. Their framework is therefore of no real help to courts that must first determine whether an individual was properly deemed to be an "enemy combatant" before determining whether the clear statement rule applies to the AUMF. The clear statement rule thus fails to fulfill its core purpose of resolving statutory ambiguity in a manner that avoids serious constitutional questions. In addition to failing to resolve the due process questions surrounding the [\*1421] "enemy combatant" determination, Bradley and Goldsmith's argument does not resolve the core separation of powers concern: namely, whether, and if so under what conditions, it is constitutionally permissible for the President to apply martial law in place of the criminal justice system on U.S. territory despite the absence of any compelling need to do so. In short, their argument assumes that such an application of law-of-war principles on U.S. territory, outside of the battlefield context, would be a legitimate exercise of the President's war powers in the context of counterterrorism. This is hard to square with the Milligan Court's powerful statements to the contrary. 146 IV. MOVING BEYOND INDIVIDUAL STATUS: THE CONSTITUTION APPLIES IN THE UNITED STATES This Note argues that the clear statement principle applies to the AUMF detention authority whenever it is invoked to detain individuals arrested within the United States--at least where the enemy combatant question is in dispute. The principal trigger for application of the clear statement principle should not be an individual's status but rather the presumption that constitutional rights and restraints apply on U.S. territory. Courts therefore should dispense with the enemy combatant inquiry under these circumstances. This Note posits that such a construction is required to preserve the constitutionality of the AUMF. This constitutional default rule presumes that Congress has not delegated power to the executive branch to circumvent due process protections wholesale, and that it has not altered the traditional boundaries between military and civilian power on U.S. territory. Any departure from this baseline at least requires a clear manifestation of congressional intent. As evinced by the divisions in Congress over passage of the detention provisions in the NDAA 2012, there is no consensus as to the breadth of the detention power afforded to the executive branch under the AUMF. Courts should therefore not presume that the statute authorizes application of martial law to circumvent otherwise applicable constitutional restraints and due process rights. By making the jurisdictional question--civilian versus military--the trigger for the clear statement principle, the judiciary would properly place the impetus on Congress to clearly define and narrowly circumscribe the conditions under which the executive may use military jurisdiction to detain individuals on U.S. territory. This is the only way to ensure that our nation's political representatives have adequately deliberated and reached a consensus with respect to delegating powers to the executive branch where such delegation would have the consequence of displacing, in a wholesale fashion, constitutional protections. For all its controversy, § 412 of the USA PATRIOT Act of 2001 provides an example of where Congress has provided for executive detention under circumstances that are arguably sufficiently detailed to satisfy a clear statement [\*1422] requirement. 147 Absent this level of clarity, where the President purports to use the AUMF to detain militarily on U.S. territory, courts must presume that constitutional rights and restraints apply and are not displaced by martial law. A. DUE PROCESS CONCERNS One of the most basic rights accorded by the Constitution is the fundamental right to be free from deprivations of liberty absent due process of law. The AUMF must be read with the gravity of this fundamental right in mind. As the Court made clear in Endo, where fundamental due process rights are at stake, ambiguous wartime statutes are to be construed to allow for "the greatest possible accommodation of the liberties of the citizen." 148 Courts "must assume, when asked to find implied powers in a grant of legislative or executive authority, that the law makers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used." 149 This includes statutes that would otherwise "exceed the boundaries between military and civilian power, in which our people have always believed, which responsible military and executive officers had heeded, and which had become part of our political philosophy and institutions . . . ." 150 B. THE SUSPENSION CLAUSE The Suspension Clause lends further constitutional support to applying a clear statement requirement to the AUMF detention authority on U.S. territory. The Suspension Clause gives Congress the emergency power to suspend the writ of habeas corpus "when in Cases of Rebellion or Invasion the public Safety may require it." 151 As Fallon and Meltzer observe, this Clause--and the limited circumstances in which it may be invoked--suggest, or even explicitly affirm, "the presumptive rule that when the civilian courts remain capable of dealing with threats posed by citizens, those courts must be permitted to function." 152 To interpret the AUMF as congressional authorization to displace the civilian system and apply military jurisdiction on U.S. territory would "render that [\*1423] emergency power essentially redundant." 153 The Suspension Clause also underscores that the right to be free from the arbitrary deprivation of physical liberty is one of the most central rights that the Constitution was intended to protect. C. THE LACK OF MILITARY NECESSITY The lack of military necessity for applying law-of-war principles on U.S. territory further supports the construction of the AUMF to avoid displacing civilian law with law of war in the domestic context. The Supreme Court long ago declared that martial law may not be applied on U.S. territory when civilian law is functioning and "the courts are open and their process unobstructed." 154 Instead, "[t]he necessity [for martial law] must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration." 155 In the absence of such necessity, "[w]hen peace prevails, and the authority of the government is undisputed, there is no difficulty of preserving the safeguards of liberty . . . ." 156 The past ten years have shown that there is no need to stretch law-of-war principles in the AUMF to reach U.S. territory. The exigencies associated with an active battlefield, which were critical to the Hamdi plurality's interpretation of the AUMF, 157 are simply not present in the United States. Instead, "American law enforcement agencies . . . continue to operate within the United States. These agencies have a powerful set of legal tools, adapted to the criminal process, to deploy within the United States against . . . suspected [terrorists], and the civilian courts remain open to impose criminal punishment." 158 Indeed, for more than a decade since the 9/11 attacks, domestic law enforcement agencies have carried the responsibility for domestic counterterrorism and have successfully thwarted several terrorism plots. 159 Civilian courts have adjudicated the prosecution of suspected terrorists captured on U.S. territory under [\*1424] federal laws. 160 The experience of the past decade shows that the civilian system is up to the task, and there is no military exigency that justifies curtailing constitutional protections and applying military authority in the domestic context. 161 Accordingly, the circumstances that the Supreme Court found to justify the use of the military authority under the AUMF to capture and indefinitely detain Hamdi, who was found armed on the active battlefield in Afghanistan, do not extend to persons captured on U.S. territory. The manner in which the government handled the Padilla and al-Marri cases further demonstrates the lack of military necessity. In both cases, the government abandoned its position that national security imperatives demanded that they continue to be held in military custody; both were transferred to federal custody and ultimately convicted of federal crimes carrying lengthy prison terms. 162 The Supreme Court's precedent in Quirin neither requires, nor can it be fairly read to justify, a different conclusion. First, the issue of indefinite military detention without trial was not before the Court in that case. Second, the status of the Nazis in Quirin as enemy combatants was undisputed, in contrast to that of individuals who are "part of" or "substantially support" al-Qaeda or "associated forces." 163 Third, the Court in Quirin went "out of its way to say that the Court's holding was extremely limited," encompassing only the precise factual circumstances before it. 164 Finally, Quirin itself is shaky precedent, as evidenced by the Court's own subsequent statements and as elaborated in numerous scholarly commentaries on the case. 165 As Katyal and Tribe observe: Quirin plainly fits the criteria typically offered for judicial confinement or reconsideration: It was a decision rendered under extreme time pressure, with respect to which there are virtually no reliance interests at stake, and where the statute itself has constitutional dimensions suggesting that its construction should be guided by relevant developments in constitutional law. 166 [\*1425] This case therefore should not be read as foreclosing the application of a clear statement principle to the AUMF as applied on U.S. territory where an individual's status as an enemy combatant is in dispute. CONCLUSION The AUMF is ambiguous: it does not specify whether it reaches individuals captured on U.S. territory, and Congress declined to resolve this question when it enacted § 1021 of the NDAA 2012. If a future administration invokes the AUMF as authority to capture and hold persons on U.S. territory in indefinite military detention, it will be left to the courts to determine whether this is constitutional. Courts should resolve this question by applying a clear statement requirement. This Note has argued that the trigger for this clear statement requirement is not the individual's status but rather the presumption that constitutional rights and restraints apply on U.S territory. Courts should apply this default presumption regardless of an individual's citizenship status, and it should apply even where the government claims that the individual is an "enemy combatant," at least where that determination is subject to dispute. This Note has argued that this method of statutory interpretation is constitutionally required. "[B]y extending to all 'persons' within the Constitution's reach such guarantees as . . . due process of law, the Constitution constrains how our government may conduct itself in bringing terrorists to justice." 167 If these constraints are to remain meaningful, these guarantees require, at the very least, that courts presume that constitutional guarantees prevail where congressional intent is unclear. The past ten years have shown that our criminal justice system is capable of thwarting terrorist attacks and bringing terrorists to justice while still preserving the safeguards of liberty that are fundamental to our system of justice. "[T]hese safeguards need, and should receive, the watchful care of those [e]ntrusted with the guardianship of the Constitution and laws." 168

#### Specifically in this debate round – Student-Led Debates are key to the future and breaking down the Cycle of militarism and unrestrained presidential power

Kelly 94 (Petra, founder of the German green party, political activist and writer, Thinking Green p. 56) MW
War. peace and justice are the most critical issue in face today. and they must receive the highest priority. It is important that students debate peace issues and design research projects on how to conclude arms control treaties, how to initiate steps toward unilateral disarmament and how to protect human rights wherever they are violated.
We will not find an instant solution to the nearly half-century of nuclear buildup, so we must make sustained effort to undertake peace research, action research, and analysis,
Peace studies should also touch the spirituality of polities. talking about the problems of poverty, oppression, *and* the *nature* of war, and offering alternatives to war, militarism and deterrence, Peace studies programs can help develop, through action research, practical methods for the nonviolent resolution of conflictincluding civilian based defense and social defense. It should a1so discuss, Third World development, ecological planning human rights, racial movements and grassroots movements. A peace studies program should convey the development of the civil rights and antiwar movement and evaluate the powerful effects of these movements. Students who become involved in looking fornonviolent **solutions to military conflicts are on** the **way to** becoming true peacemaking. **We need many students** to become peacemakers **if *we* want to have hope for the future.**

#### Plan spills over to lower courts and sends a signal – Prerequisite to congressional policy

Garrett 12 – Law Prof @ University of Virginia School of Law (Brandon, 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.

#### Judicial silence on habeas corpus makes indefinite detention inevitable from lower court rulings – 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-of detention 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

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#### Congress enacts “statutory restrictions” the court imposes “judicial restrictions”

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

### CP

Their criticism of democratic institutions is too shallow, democracy isn’t tied to universal rationalities. The use of language games to promote a democratic ethos is key to constructing political institutions that prevent exclusion.

Mouffe 96 (Chantal Mouffe is the Quintin Hogg Senior Research Fellow at the Centre for the Study of Democracy at the University of Westminster and a member of the Collège International de Philosophic in Paris, “Deconstruction, Pragmatism and the Politics of Democracy”, *Deconstruction and Pragmatism*, questia)

Rorty is, I think, most useful when he criticizes the pretensions of Kantian-inspired philosophers like Habermas, who want to find a view-point standing above politics from which one could guarantee the superiority of democracy. Surely he is right to assert: 'We should have to abandon the hopeless task of finding politically neutral premises, premises which can be justified to anybody, from which to infer an obligation to pursue democratic politics.' 2 According to Rorty, we have to acknowledge that our democratic and liberal principles define only one possible language game among others. It is then futile to search for arguments in their favour which would not be 'context-dependent' in order to secure them against other political language games. Against Apel and Habermas, Rorty argues that it is not possible to derive a universalistic moral philosophy from the philosophy of language. There is nothing, for him, in the nature of language that could serve as a basis for justifying to all possible audiences the superiority of liberal democracy. He insists that envisaging democratic advances as if they were linked to progresses in rationality is not helpful, and that we should stop presenting the institutions of liberal Western societies as offering the rational solution to the problem of human coexistence; as the solution that other people will necessarily adopt when they cease being 'irrational'. In his view, what is at stake here has nothing to do with rationality but is a matter of shared beliefs. To call somebody irrational in this context, he states, 'is not to say that she is not making proper use of her mental faculties. It is only to say that she does not seem to share enough beliefs and desires with one to make conversation with her on the disputed point fruitful. So force, rather than persuasion, will have to be used.' 3 Democratic action, in this perspective, does not require a theory of truth and notions like unconditionality and universal validity but rather a variety of practices and pragmatic moves aimed at persuading people to broaden the range of their commitments to others, to build a more inclusive community. For Rorty, it is through sentiment and sympathy, not through rationality and universalistic moral discourse, that democratic advances take place. This is why he considers books like Uncle Tom's Cabin to have played a more important role than philosophical treatises in securing moral progress. This is certainly a more promising way of thinking about democratic politics and I share Rorty's conviction that it is high time to 'peel apart Enlightenment liberalism from Enlightenment rationalism'. 4 It is particularly important in the present conjuncture, characterized as it is by an increasing disaffection towards democracy, to understand how a strong adhesion to democratic values and institutions can be established and that rationalism constitutes an obstacle to such understanding. It is necessary to realize that it is not by offering sophisticated rational arguments nor by making context-transcendent truth claims about the superiority of liberal democracy that democratic values can be fostered. The creation of democratic forms of individuality is a question of identification with democratic values and this is a complex process that takes place through a diversity of practices, discourses and languages games. This is something that Rortyian pragmatism, with the importance it gives to shared vocabularies, can help us to grasp much better than can universalist and rationalist moral theories. By putting an exclusive emphasis on the arguments needed to secure the legitimacy of liberal institutions, recent moral and political philosophy have been asking the wrong question. The real issue is not to find arguments to justify the rationality or universality of liberal democracy that would be acceptable by every rational or reasonable person. Liberal democratic principles can only be defended in a contextualist manner, as being constitutive of our form of life, and we should not try to ground our commitment to them on something supposedly safer. To secure allegiance and adhesion to those principles what is needed is the creation of a democratic ethos. It has to do with the mobilization of passions and sentiments, the multiplication of practices, institutions and languages games that provide the conditions of possibility for democratic subjects and democratic forms of willing. Most liberal theorists are bound to miss the relevance of that kind of reflection because they operate with a metaphysical conception which sees the individual as prior to society, bearer of natural rights, utility maximizer or rational subject-according to the brand of liberalism that they follow-but, in all cases, as abstracted from social and power relations, language, culture and the whole set of practices that make agency possible. Indeed, what is precluded in all those approaches is the crucial question of how is democratic agency possible; what are the conditions of existence of the liberal democratic subject? Against the type of liberalism that searches for universal rational justification and believes that democratic institutions would be more stable if it could be proven that they would be chosen by rational individuals under the veil of ignorance or in a situation of undistorted communication, Rorty's pragmatism reminds us of the limits of the claims of reason. By urging us to think in term of practices, it compels us to confront the real issues that have to be tackled in order to enhance democratic citizenship.

### PTX

Economic collapse inevitable – transition now prevents environmental collapse and nuke war

Barry 8 (Glen, Ph.D. in "Land Resources" from the U of Wisconsin-Madison, Jan 12, [earthmeanders.blogspot.com/2008/01/economic-collapse-and-global-ecology.html] AD: 6-22-11, jam)

Given widespread failure to pursue policies sufficient to reverse deterioration of the biosphere and avoid ecological collapse, the best we can hope for may be that the growth-based economic system crashes sooner rather than later 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, whereby 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.

Collapse now is best – it solves nuclear war and creates a mindset shift

Djordjevic 98 (Johnny, BA Global Econ, Paper in Global Sustainability @ UC, Irvine, March, [www.dbc.uci.edu/sustain/global/sensem/djordj98.html] AD: 6-23-11, jam)

The threat of nuclear war and international conflict rises with countries of all kinds entranced with the logic and idea of materialism. Perhaps the most dangerous and likely chances for a nuclear conflict arise from the competition for dwindling resources by developed countries. Similar events can be seen all across the globe. Major superpowers get themselves involved in domestic matters not concerning them, providing arms and advice to try and obtain the inside track on possible resources. International tension will rise in the competition for resources and so will the "ever-increasing probability of nuclear war"(Trainer, 1985). As developed countries pursue affluence they fail to see the inherent contradiction in this idea; as growth is the quest, the quality of life will decrease. For a healthy community, there exists a list of non-material conditions which must be present, "a sense of purpose, fulfilling work and leisure, supportive social relations, peace of mind, security from theft and violence, and caring and co-operative neighborhoods"(Trainer, 1985). And as developed countries think their citizens are the happiest in the world, "In most affluent societies rates of divorce, drug-taking, crime, mental breakdown, child abuse, alcoholism, vandalism, suicide, stress, depression, and anxiety are increasing"(Trainer, 1985). 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 castastrophe. 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. The power of an idea should never be underestimated. Hitler's idea of the Aryan race lead to the Holocaust, Marx's idea of socialism lead to Stalin's reign and the deaths of over 50 million people. But ideas change be changed, disregarded and adopted. As developed countries find themselves engaging in a greedy philosophy, once that realization is made, the first step to a better society is taken. Our current path will lead to massive suffering all across the world, with extinction a distinct possibility. Global sustainability must be adopted by every person on the planet, (starting in the developed world), otherwise the world will cease to support life.

The timeframe is 2025 – we need to transition before then

Chase-Dunn 99 (Christopher, Director of the Institute for Research on World-Systems, U of California-Riverside, and Volker, prof at the University of Zurich, Switzerland, “The Future of Global Conflict”, Sage Publications, p. 43, jam)

While the onset of a period of hegemonic rivalry is in itself disturbing, the picture becomes even grimmer when the influence of long-term economic cycles is taken into account. As an extensive body of research documents (see especially Van Duijn, 1983), the 50 to 60 year business cycle known as the Kondratieff wave (K-wave) has been in synchronous operation on an international scale for at least the last two centuries. Utilizing data gathering by Levy (1983) on war severity, Goldstein (1988) demonstrates that there is a corresponding 50 to 60 year cycle in the number of battle deaths per year for the period 1495-1975. Beyond merely showing that the K-wave and the war cycle are linked in a systematic fashion, Goldstein’s research suggests that severe core wars are much more likely to occur late in the upswing phase of the K-wave. This finding is interpreted as showing that, while states always desire to go to war, they can afford to do so only when economic growth is providing them with sufficient resources. Modelski and Thompson (1996) present a more complex interpretation of the systemic relationship between economic and war cycles, but it closely resembles Goldstein’s hypothesis. In their analysis, a first economic upswing generates the economic resources required by an ascending core state to make a bid for hegemony; a second period of economic growth follows a period of global war and the establishment of a new period of hegemony. Here, again, specific economic upswings are associated with an increased likelihood of the outbreak of core war. It is widely accepted that the current K-wave, which entered a downturn around 1967-73, is probably now in the process of beginning a new upturn which will reach its apex around 2025. It is also widely accepted that by this period US hegemony, already unravelling, will have been definitively eroded. This convergence of a plateauing economic cycle with a period of political multicentricity within the core should, if history truly does repeat itself, result in the outbreak of full-scale warfare between the declining hegemon and the ascending core powers. Although both Goldstein (1991) and Modelski and Thompson (1996) assert that such a global war can (somehow) be avoided, other theorists consider that the possibility of such a core war is sufficiently high that serious steps should be taken to ensure that such collective suicide does not occur (Chase-Dunn and O’Reilly, 1989; Goldfrank, 1987).

The impact is linear – waiting longer will be disastrous

Barry 10 (Glen, Ph.D. in "Land Resources" from the U of Wisconsin-Madison, Jan 7, [www.australia.to/2010/index.php?option=com\_content&view=article&id=308:resisting-global-ecological-change&catid=69:reports&Itemid=272] 6-23-11, jam)

The human family faces imminent and (Copenhagen would suggest) inevitable collapse of the biosphere – the thin layer of life upon an otherwise lifeless planet – that makes Earth habitable. Marshes and rivers and forests and fish are far more than resources – they and all natural ecosystems are a necessity for humanity’s existence upon Earth. A few centuries of historically unprecedented explosion in human numbers and surging, albeit inequitable, consumption and resultant resource use, ecosystem destruction and pollution; is needlessly destroying being for all living things. Revolutionary action such as ending coal use, reforming industrial agriculture and protecting and restoring old forests and other natural ecosystems, is a requirement for the continuation of shared human being. Earth is threatened by far more than a changing atmosphere causing climate change. Cumulative ecosystem destruction – not only in climate, but also water, forests, oceans, farmland, soils and toxics -- in the name of “progress” and “development” -- threatens each of us, our families and communities, as well as the Earth System in total and all her creatures. Any chance of achieving global ecological sustainability depends urgently upon shifting concerns regarding climate change to more sufficiently transform ourselves and society to more broadly resist global ecological change. Global ecological, social and economic collapse may be inevitable, but its severity, duration and likelihood of recovery are being determined by us now. It does not look good as the environmental movement has been lacking in its overall vision, ambition and implementation. The growing numbers of ecologically literate global citizens must come forward to together start considering ecologically sufficient emergency measures to protect and restore global ecosystems. We need a plan that allows humans and as many other species as possible to survive the coming great ecological collapse, even as we work to soften the collapse, and to restore to the extent practicable the Earth’s ecosystems. This mandates full protection for all remaining large natural ecosystems and working to reconnect and enlarge biologically rich smaller remnants that still exist. It is time for a hard radical turn back to a fully functioning and restored natural Earth which will require again regaining our bond with land (and air, water and oceans), powering down our energy profligacy, and taking whatever measures are necessary to once again bring society into balance with ecosystems. This may mean taking all measures necessary to stop those known to be destroying ecosystems for profit. As governments dither and the elite profit, it has become dreadfully apparent that the political, economic and social structures necessary to stop human ecocide of our and all life’s habitats does not yet exist. The three hundred year old hyper-capitalistic and nationalistic growth machine eating ecosystems is not going to willingly stop growing. But unless it does, human and most or all other life will suffer a slow and excruciating apocalyptic death. Actions can be taken now to soften ecological collapse while maximizing the likelihood that a humane and ecologically whole Earth remains to be renewed.

Finally, de-development is gaining momentum in the status quo – economic collapse finishes the transition

Trainer 8 (Ted, Senior Lecturer in Sociology at the School of Social Work, University of New South Wales, [http://ssis.arts.unsw.edu.au/tsw/] AD: 6-23-11, jam)

Although a minor phenomenon at present, it can be confidently predicted that this paradigm shift will accelerate in coming years given the pace at which the globalisaztion of the economy will make it painfully obvious to more and more people that the old values and systems will not provide well for all. Building new systems. Much more impressive than the evidence of a change in world view is the growth of alternative settlements and systems. As Ife says, "At the grassroots level...increasing numbers of people in different countries are experimenting with community-based alternatives, such as local economic systems, community-based education, housing co-operatives...a community-based strategy based on principles of ecology and social justice is already emerging, as a result of the initiative of ordinary people at grass-roots level, who are turning away from mainstream structures..." (Ife, 1995, p. 99.) According to Norberg-Hodge, "Around the world, people are building communities that attempt to get away from the waste, pollution, competition, and violence of contemporary life. (Norberg-Hodge, 1996, p. 405.) The agency she has founded, the International Society for Ecology and Culture, works in Ladakh to reinforce local economies and its video Local Futures, is an inspiring illustration of what is being done in many parts of the world. The New Economic Foundation in London works to promote local economic development, with a special interest in bujilding local quality of life indicators and in establishing local currencies. Schroyer"s book Towards a World That Works (1997) documents many alternative community initiatives. "Everywhere people are waking up to the realities of their situation in a globalising economy and are beginning to recognise that their economies’ resources and socio-political participations must be regrounded in their local and regional communities." (p. 225) "Everywhere social and economic structures are re-emerging in the midst of the market system that are spontaneously generated social protections to normatively re-embed the market..." "It is no exaggeration to say that local communities everywhere are on the front lines of what might well be characterised as World War III." (p. 229.) "It is a contest between the competing goals of economic growth to maximise profits for absentee owners vs creating healthy communities that are good places for people to live." (p. 230.) "In Britain, over 1.5 million people now take regular part in a rainbow economy of community economic initiatives." (New Internationalist, 1996, p. 27.) Friberg and Hettne (1985) argue that two main groups are behind the emergence of self reliant communities, viz., those holding "post materialist" values, and those who have been marginalised, such as the unemployed and the Third World poor. In Living Lightly Schwarz and Schwarz discuss the many alternative settlements they visited on a recent world tour. They say that these people "...hope that the tiny islands of better living which they inhabit will provide examples which will eventually supplant the norms of unfettered capitalism which rule us today. Their hope is not in revolution but in persuasion by example." ( p. 2.) "What is new is that small groups of Living Lightly people are now part of an articulate and increasingly purposeful global culture which promotes values that run counter to those of the mainstream." (p. 2.) "They think the empire will eventually disintegrate...In anticipation of that collapse islands of refuge must be prepared." (p. 3.) Living Lightly people "...can only hope to prevail through their own example and the gradual erosion of the dominant system through local initiatives that exchange high living standards for a high quality of life." (p. 165.) Living Lightly people "...are in revolt against the emerging global economy and want to set up viable local alternatives." (p. 150.)

### K

#### The aff is a step in the right direction – restricting sovereign concerns over detention practices prevents the development of homo sacer

Tagma 09, Halit Mustafa Tagma, associate professor of political science and international relations at Ipek University, “Homo Sacer v Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, 2009, vol. 34, is. 407

\*\*\*gendered language not endorsed

The prison camps in Guántanamo have accommodated over 800 prisoners from at least 33 countries. The first prisoners were brought to the island on 11 January 2002. Of these 800 prisoners only 80 are awaiting trial, while 420 prisoners have been released.54 An independent analysis based on Department of Defense data shows that 55 percent of the prisoners have not committed any offense against the United States or its allies.55 Those who were fortunate to be released after years of detention owed their luck to having lived in a Western country whose intelligence agencies were able to provide clear recorded evidence of their innocence.56 However, even their Western citizenship did not save them from being apprehended and thrown into Guantánamo Bay. There were other marks of difference inscribed on their bodies that were noticed by an exceptional gaze and logic. Following Agamben, several studies have suggested that the prisons in Guantánamo Bay exemplify the logic of sovereign exceptionalism. The body of a prisoner is likened to a body abandoned by the law that can be killed but not sacrificed—homo sacer.57 The infamous images of shackled prisoners in orange jump suits show how the prisoners have been deprived of their senses that make them human. The pictures showed muffs strapped to the prisoners’ ears, goggles that block their sights and masks that cover their mouths. Stripping subjects from their human senses, results in the blurring of the line between human and animal. We can also discern from the prisoners’ statements that they were reduced to something lower than an animal; after an extensive stay in the camps the prisoners began to ask the tights that pertained to animals: “My cage was right next to a kennel housing of an Alsatian dog. He had a wooden house with air conditioning and green grass to exercise on. I said to the guards, I want his rights,’ and they replied: That dog is a member of the US army.’”58 Furthermore, accidentally “killing an iguana in Guantánamo Bay would mean a $10,000 fine because it goes against the protection of certain species in line with US environmental laws, whereas hitting a prisoner is referred to as ‘mild non-injurious contact’ and there are no consequences.”59Thus in some respects. prisoners of the “war on terror” might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical reevaluation of the (non)space of Guántanamo. If in the classical Foucauldian terminology sovereign power is about “taking or granting life,” and biopower is about ‘letting live and making life,” then what can be said about the power operating in Guántanamo that “forces to live” when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, bare alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such “health benefits” could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interrogation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from committing suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.6’ Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to “defend detainees as you would yourself against a hostile act or intent, death, or serious bodily harm.”62 Therefore it is correct to say that what goes in Guantánamo Bay is neither “letting live” nor “taking life,” but instead “making live,” or even “forcing to live.” Agamben argues that camps are places where sovereign “power confronts nothing but pure life.”63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the reports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.& Whereas Agamben‘s statement on “zones of indistinction” would lead us to think that anything goes in the camp. This is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example. what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on. This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on “exceptional times requiring exceptional measures.” Instead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

#### No alt solvency – you cannot liberal legal practices from the political space

Kohn 05, Margaret Kohn, professor of political science at the University of Toronto, “Bare Life and the Limits of Law,” University of Chicago Press, 2005, pg. 105

Is there an alternative to this nexus of anomie and nomos produced by the state of exception? Agamben invokes genealogy and politics as two interrelated avenues of struggle. According to Agamben, "To show law in its nonrelation to life and life in its nonrelation to law means to open a space between them for human action, which once claimed for itself the name of 'politics'." (88) In a move reminiscent of Foucault, Agamben suggests that breaking the discursive lock on dominant ways of seeing, or more precisely not seeing, sovereign power is the only way to disrupt its hegemonic effects. Agamben clearly hopes that his theoretical analysis could contribute to the political struggle against authoritarianism, yet he only offers tantalizingly abstract hints about how this might work. Beyond the typical academic conceit that theoretical work is a decisive element of political struggle, Agamben seems to embrace a utopianism that provides little guidance for political action. He imagines, "One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good." (64) More troubling is his messianic suggestion that "this studious play" will usher in a form of justice that cannot be made juridical. Agamben might do well to consider Hannah Arendt's warning that the belief in justice unmediated by law was one of the characteristics of totalitarianism.It might seem unfair to focus too much attention on Agamben's fairly brief discussion of alternatives to the sovereignty-exception-law nexus, but it is precisely those sections that reveal the flaws in his analysis. It also brings us back to our original question about how to resist the authoritarian implications of the state of exception without falling into the liberal trap of calling for more law. For Agamben, the problem with the "rule of law" response to the war on terrorism is that it ignores the way that the law is fundamentally implicated in the project of sovereignty with its corollary logic of exception. Yet the solution that he endorses reflects a similar blindness. Writing in his utopian-mystical mode, he insists, "the only truly political action, however, is that which severs the nexus between violence and law."(88) Thus Agamben, in spite of all of his theoretical sophistication, ultimately falls into the trap of hoping that politics can be liberated from law, at least the law tied to violence and the demarcating project of sovereignty. In spite of these limitations, both fans and critics of Agamben's early work will have reasons to appreciate State of Exception. Agamben's numerous acolytes will find that State of Exception provides a more thorough examination of some of the most provocative and interesting ideas introduced in Homo Sacer. For skeptics who find Agamben's writing obtuse and his argumentation apolitical and ahistorical, the book is something of an exception. The discussion of Weimar era legal theory reflects a sensitivity to historical context and the explicit link to the war on terror makes the contemporary political stakes transparent.

#### The alternative is colonialist and static—fails to assume other socio-political contexts that establish legitimacy and sovereignty

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In his attempt to account for the structure of government that has embodied the entire Western political tradition, Agamben could be listed along with those thinkers who anchor the foundations of the West in ancient Greece and Rome. In locating the foundations of sovereignty in ancient Greece, Agamben reifies a particular narrative of the West that is constitutive of itself, without interaction with or reference to the world “outside” of itself. Such a move forecloses the possibility of showing how the West was a cultural and historical construct that carne out of various interactions of different cultures. This is striking, given that Agamben, who wants to build on Foucault, forgets that Foucault himself favored an “anti-Roman history” of sovereignty a reading of history that focuses on local circuits of power and inter actions of discourses. Whereas power for Foucault is always relative and operates locally in circuits, Agamben’s work reveals a structure to the operation of sovereign power. Agamben understands con temporary politics as a continuation of the fundamental biopolitical structure: a binary opposition of bare-life/political existence. To take Agamben’s fundamental structure of politics seriously means to forego contingency historicity and chance in the play of politics, whereas Foucault, as a genealogist, sought to trace power and subjectivity in its transformation, conditions of possibilities and radical ruptures throughout history in order “to introduce discontinuity and the constraints of system into the history of the mind.” In this sense, Agamben betrays Foucault’s understanding of power both methodologically and epistemologically. Furthermore, as Mark Mazower points out, Agamben “is not interested in historical change but in what he sees as the deeper meaning, the potentiality that interpretation may glean from certain historical occurrences.”7° Nor does Agamben seem to take the international order into consideration, even though we learn from the captives in Guántanamo Bay that some states’ citizens are put in indefinite detention, whereas other bodies are given some form of judicial process. What is the role of culture and history that goes into the making of the homo sacer? What is the role of culture and identity in the making of homo sacer? These are questions that Agamben would have to keep at an arm’s length as a result of his neglect of the international dimension that goes into making of the homo sacer. If one brings into consideration the intercultural and international factors, then we get a more nuanced understanding of what goes on in settings like Guántanamo Bay. Practices of exclusion are informed by a cultural background, and those who get excluded from the body politic are those deemed dangerous by a regime of truth in a society The details of these practices become invisible in Agamben’s analysis, which relies on vast generalizations from a broad analysis of Western metaphysics. Moreover, as various postcolonial literatures point out, neither Agamben, nor even Foucault, talk much about the intersubjective construction of the identity of the Vest vis-a-vis its other(s). The disciplinary techniques and regime of modernity did not emerge from Europe itself but from the interactions in the periphery during Europe’s imperial adventures. Gavatri Spivak, for example, has argued that Foucault’s understanding of power is ethnocentric and his subject of power is distinctly Western, made possible “by a certain stage in exploitation, for the vision of geographical discontinuity is geopolitically specific to the First Woi’ld.”71 Methods of discipline in sugarcane fields, schooling in Calcutta. The emergence of nationalism as a source of the (in)secure identity of hybrid Spaniards in the Caribbean: These and many other examples suggest that modern disciplinary societies did not spring sui generis from Europe. They sprang from the interactions of subjects in different settings that resulted in the construction of identities such as “‘Western” and the “peripheral other.72I do not wish to contend that the West grasps what happens in the periphery and brings it back to the metropolis; such an argument would reify the “West—n on-West,” “center—periphery,” and so on. Rather, the very interaction of the imperialist discourse with its other has constructed the identity of the involved parties (that is, the European and the subaltern). Today, racism and remnants of colonialist thought that played a pivotal role in the construction of nation-states are still at work in determining who gets to be counted as a governable subject in a liberal capitalist global order. Homo sacer is not a simple byproduct of a roguish sovereign decision. Homo sacer is the product of historical and cultural forces at play in the formation of what counts as a rational citizen of the polis.73 Postcolonial literature has pointed that the discourse of liberalism, during the emergence of European colonialism, made possible the distinction between autonomous liberal subjects and immature subjects. This liberal discourse created the grounds for the violent subjection of non-Europeans to colonial rule.74 This is especially clear with respect to what forms of life are thrown into zones of indistinction. I should note that although I point out the racial and colonial legacies’ effect on who gets to be regarded as a homo sacer, Ewa Ziarek reminds us that the biopolitics of gender also plays an important role.75