### Plan

Text: The United States federal judiciary should rule that individuals in military detention who have won their habeas corpus hearing cannot be detained.

### Contention 1 – Judicial Globalism

#### The Kiyemba court ruled the right to habeas doesn’t give the power to release a detainee or stop transfer

Milko 12

[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

After the Boumediene and Munaf cases, it was clear that the United States district courts have habeas jurisdiction over detainee cases, and the District of Columbia Circuit has taken center stage in Guantanamo cases. n58 While many felt that Boumediene granted federal judges considerable control over the legal fate of detainees, the D.C. Circuit Court of Appeals used the Supreme Court's warning not to "second-guess" the Executive as its mantra in detainee cases. Though the district court ruled in several cases that a remedy, including actual release, was proper, the D.C. Circuit Court of Appeals has never approved such a release and has struck down district court orders seeking to control the fate of detainees. n59 1.Kiyemba I and Kiyemba III-Petitions for Release into the United States Following the Boumediene decision and after a determination by the Government that they were no longer "enemy combatants," seventeen Uighurs n60 detained at Guantanamo Bay for over seven years petitioned for the opportunity to challenge their detention as unlawful and requested to be released into the United States. n61 [\*182] Because they were no longer classified as "enemy combatants," the issue presented to the district court was "whether the Government had the authority to 'wind up' the petitioners' detention" or if the court could authorize the release of the Uighurs. n62 The district court decided that the Government's authority to "wind-up" the detentions ceased when "(1) detention becomes effectively indefinite; (2) there is a reasonable certainty that the petitioner will not return to the battlefield to fight against the United States; and (3) an alternative legal justification has not been provided for continued detention. Once these elements are met, further detention is unconstitutional." n63 Under this framework, the court decided that the time for wind-up authority had ended, and looked to the remedies the judiciary could utilize under its habeas jurisdiction. n64 The court concluded that based on separation of powers, the courts had authority to protect individual liberty, especially when the Executive Branch brought the person into the court's jurisdiction and then undermined the efforts of release. n65 Noting that the Executive could not have the power to limit the scope of habeas by merely assuring the court that it was using its best efforts to release the detainees, the court held that under the system of checks and balances and the importance of separation of powers to the protection of liberty, the motion for release was granted. n66 In the case renamed Kiyemba v. Obama on appeal, and commonly referred to as Kiyemba I, the D.C. Circuit Court of Appeals reversed, framing the issue as whether the courts had authority to issue release into the United States. n67 Because there was the potential that the Petitioners would be harmed if returned to their native China, the Government asserted that they had been undergoing extensive efforts to relocate the detainees in suitable third countries. n68 The court based its reversal on case law that held that the power to exclude aliens from the country was an inherent Executive power, and not one with which the courts should inter [\*183] fere. n69 Though Petitioners claimed that release was within the court's habeas power, the court of appeals noted that the Petitioners sought more than a "simple release"-they sought to be released into the United States, and habeas could not interfere with the Executive's power to control the borders. n70 The Supreme Court granted the Petitioner's writ of certiorari in which they argued that the courts had the authority to issue release of unlawfully detained prisoners under its habeas power and to hold otherwise constituted a conflict with Boumediene. n71 By the time the case reached the High Court for determination on the merits, all of the detainee-Petitioners received resettlement offers, and only five had rejected these offers. n72 Due to the possibility of a factual difference based on this new information, the Supreme Court remanded the case to the D.C. Circuit Court of Appeals. n73 The remanded case became known as Kiyemba III. n74 The court of appeals reinstated its former opinion from Kiyemba I. n75 The D.C. Circuit Court of Appeals noted that just prior to the Kiyemba I decision, the government filed information under seal which indicated that all seventeen Petitioners had received a resettlement offer, and this influenced the court's conclusion that the Government was engaging in diplomatic efforts to relocate the detainees when it decided Kiyemba I. n76 Even if the Petitioners had a valid reason to decline these offers, it did not change the underlying notion that habeas afforded no remedy to be released into the United States. n77 Additionally, the court determined that the Petitioners had no privilege to have the courts review the determinations made by the Executive regarding the locations of resettlement, as this was a foreign policy issue for the political branches to handle. n78 The five remaining petitioners filed a second petition for certiorari on December 8, 2010, asking the Supreme Court to decide [\*184] whether the courts had the power to release unlawfully detained aliens under its habeas jurisdiction. n79 2.Kiyemba II and Petitions Requesting Notice of Transfer Prior to Release While the Kiyemba I and Kiyemba III litigation was occurring, a separate Uighur petition was moving through the D.C. Circuit. Nine Uighurs petitioned the district court for a writ of habeas, and asked the court to require the government to provide 30 days' advance notice of any transfer from Guantanamo based on fear of torture, and the district court granted the petition. n80 The cases were consolidated on appeal and renamed Kiyemba v. Obama, which is referred to as Kiyemba II. The Kiyemba II case has been the source of much debate over both the proper allocation of power in the tripartite system and the D.C. Circuit Court of Appeals' use of Supreme Court precedent in detainee cases. The D.C. Court of Appeals analogized the Uighurs' claims in the Kiyemba II case to the 2008 Supreme Court decision Munaf v. Geren, which held that habeas corpus did not prevent the transfer of an American citizen in captivity in Iraq to face prosecution in a sovereign state. n81 The court of appeals analyzed the Uughurs' claims by comparing them to the Munaf petitioners. First, the court found that the Uighurs and the petitioners in Munaf sought an order of the district court to enjoin their transfer based on fear of torture in the recipient country. n82 As in Munaf, the court decided that if the United States Government had asserted that it was against its policy to transfer detainees to a location where they may face torture, the Judiciary could not question that determination. n83 In reaching that conclusion, the Kiyemba II court cited to the Munaf language that the Judiciary should not "second-guess" the Executive in matters of foreign policy. n84 [\*185] Just as the court rejected the fear of torture argument, the Petitioners' claims that transfer should be enjoined to prevent continued detention or prosecution in the recipient country was also denied based on Munaf. n85 As Munaf reasoned, detainees could not use habeas as a means to hide from prosecution in a sovereign country, and any judicial investigation into a recipient country's laws and procedures would violate international comity and the Executive Branch's role as the sole voice on foreign policy. n86 Additionally, because the 30 days' notice requirements were seen as an attempt by the courts to enjoin the transfer of a detainee, they, too, were impermissible remedies. n87 Judge Griffith, concurring and dissenting in part, opined that Munaf did not require total deference to the political branches in detainee matters, that privileges of detainees outlined in Boumediene required advance notice of any transfer from Guantanamo, and the opportunity to challenge the Government's determination that transfer to the recipient country would not result in torture or additional detainment. n88 The Judge distinguished Munaf from the present situation because in the former, the petitioners knew they were going to be transferred to Iraqi custody and had an opportunity to bring habeas petitions to challenge that transfer. n89 In closing, Judge Griffith believed that "the constitutional habeas protections extended to these petitioners by Boumediene would be greatly diminished, if not eliminated, without an opportunity to challenge the government's assurances that their transfers will not result in continued detention on behalf of the United States." n90 Following this reversal, the Petitioners filed a motion for rehearing and suggested a rehearing en banc, as well as a stay of the mandate of the D.C. Circuit Court of Appeals. n91 Both of these motions were denied, and the Petitioners filed a writ for a petition of certiorari on November 10, 2009. n92 The Supreme Court denied the writ on March 22, 2010. n93 [\*186]

#### US action determines the global separation of powers—status quo trends towards executive authority get modeled and expand global executive power—a strong judicial assertion is critical to check

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[2011, Martin S. Flaherty is a Leitner Professor of International Law, Fordham Law School; Visiting Professor, Woodrow Wilson School of Public and International Affairs, Princeton University, “Judicial Foreign Relations Authority After 9/11”, 56 N.Y.L. Sch. L. Rev. 119]

That "old-time" separation of powers should be enough to turn back any trend toward deference. The balance of this essay, however, offers one more interpretation, which is at once more original and potentially the most powerful. Call this separation of powers in a global context--or "global separation of powers" for short. The premise is straightforward. It assumes, first, that globalization generally has resulted in a net gain in power not for judiciaries, but for the "political" branches--and above all, for executives--within domestic legal systems. In other words, the growth of globalized transnational government networks has yielded an imbalance among the three (to four) major branches of government in terms of separation of powers. Such an imbalance, among other things, poses a significant and growing threat for the protection of individual rights by domestic courts, whether on the basis of international or national norms. [\*139] Yet if separation of powers analysis helps identify the problem, it also suggests the solution. If globalization has comparatively empowered executives in particular, it follows that fostering, rather than prohibiting, judicial globalization provides a parallel approach to help restore the balance. In this way, judicial separation of powers justifies judicial borrowing on both non-democratic and democratic grounds. From a non democratic perspective, transnational judicial dialogue with reference to international law and parallel comparative questions gives national judiciaries a unique expertise on aspects of foreign affairs, and so is a further exception to the usual presumption that the judiciary is the least qualified branch of government for the purposes of foreign affairs. More importantly, from a democratic point of view, restoring the balance that separation of powers seeks has the effect of promoting self-government to the extent that separation of powers is itself seen as a predicate for any well-ordered form of democratic self-government. A. Globalization and Imbalance Globalization, and the corollary erosion of sovereignty, may not yet be cliches, but they are hardly news. As any human rights lawyer would be quick to point out, the post-World War II emergence of international human rights law represents one of the most profound assaults on the notion that state sovereigns are the irreducible, impermeable building blocks of foreign affairs. n123 But the nation-state model has been eroding no less profoundly in less formal ways. Central, here, is the insight that governments today no longer simply interact state to state, through heads of state, foreign ministers, ambassadors, and consuls. Increasingly, if not already predominantly, there is interaction through global networks in which subunits of governments deal directly with one another. In separation of powers terms, executive branches at all levels interact less as the sole representative of the nation, than as partners in education ministries, intelligence agencies, or health and education initiatives. Likewise, though lagging, legislators and committees from different jurisdictions meet to share approaches and discuss common ways forward. Last, and least powerful if not least dangerous, judges from different nations share approaches in conference, teaching abroad programs, and of course, formally citing to one another in their opinions. Only recently has pioneering work by Anne-Marie Slaughter, among others, given a comprehensive picture of this facet of globalization. n124 That work, in turn, suggests that among the results of this process has been a net shift of domestic power in any given state toward the executive and away from the judiciary and the protection of fundamental rights. [\*140] 1. Executive Globalization Where international human rights lawyers seek to directly pierce the veil of state sovereignty, international relations experts have chronicled the no less significant desegregation of state sovereignty through the emergence of sub-governmental networks. Nowhere has this process been more greatly marked than with regard to the interaction of various levels of regulators within the executive branches--in parliamentary systems, the "governments" n125--of individual nations. Starting with pioneering work by Robert Koehane and Joseph Nye, n126 and more recently enhanced and consolidated by Slaughter, current scholarship offers a multifaceted picture of what may be termed "executive globalization." That said, much work remains to be done on how the "Global War on Terror" post-9/11 has accelerated this process with regard to security agencies. Nor, on a more general level, has significant work been done as to what the net effects of executive networking have been in separation of powers terms. The following reviews what has been done and suggests the likely answers to the questions that arise. Slaughter, somewhat consciously overstating, terms government regulators who associate with their counterparts abroad "the new diplomats." n127 This characterization immediately raises the question of who they are and in what contexts they operate. Perhaps ironically, desegregation begins at the top when presidents, prime ministers, and heads of state gather in settings such as the G-8, not only as the representatives of their states but as chief executives with common problems, which may include dealing with other branches of their respective governments. Moving down the ladder come an array of different specialists who meet across borders with one another both formally and informally: central bankers, finance ministers, environmental regulators, health officials, government educators, prosecutors, and--today perhaps most importantly--military, security, and intelligence officials. The frameworks in which these horizontal groups associate are various. One type of setting might be transnational organizations under the aegis of the United Nations, the European Union, NATO, or the WTO. Another framework can be networks that meet within the structure of executive agreements, such as the Transatlantic Economic Partnership of 1998. Other groups meet outside governmental frameworks, at least to begin with, with examples ranging from the Basel Committee to the Financial Crime Enforcement Network. n128 As important as which executive officials currently cross borders is what they actually do. The activities that make up executive transgovernmentalism may be sliced in various ways. n129 One breakdown divides the phenomenon into: (a) [\*141] information networks; (b) harmonization networks; and (c) enforcement networks. n130 An obvious yet vital activity, many government regulatory networks interact simply to exchange relevant information and expertise. Such exchanges include brainstorming on common problems, sharing information on identified challenges, banding together to collect new information, and reviewing how one another's agencies perform. n131 Harmonization networks, which usually arise in settings such as the European Union or the North American Free Trade Agreement (NAFTA), entail relevant administrators working together to fulfill the mandate of common regulations pursuant to the relevant international instrument. n132 For present purposes, however, enforcement networks most greatly implicate separation of powers concerns precisely because they involve police and security agencies sharing intelligence in specific cases, and, more generally, in capacity building and training. In the context of Northern Ireland, the Royal Ulster Constabulary (RUC) maintained "numerous links with other police services, particularly with those in Britain, but also with North American agencies and others elsewhere in the world . . . [including] the Federal Bureau of Investigation . . . ." n133 In a relatively benign vein, the Independent Police Commission charged with reforming the RUC recommended further international contact, in part because "the globalisation of crime requires police services around the world to collaborate with each other more effectively and also because the exchange of best practice ideas between police services will help the effectiveness of domestic policing." n134 It is exactly at this point, moreover, that 9/11-era concerns render the enforcement aspect of executive globalization ever more salient, and often more ominous. To take one example, consider the shadowy practice of "extraordinary renditions," that is, when the security forces of one country capture a person and send him or her to another country where rough interrogation practices are likely to take place--all outside the usual mechanisms of extradition. n135 To this extent, transnational executive cooperation moves from general, mutual bolstering to the expansion of one another's jurisdiction in the most direct and concrete fashion possible. All this, in turn, suggests a profound shift in power to the executives in any given nation state. At least in the United States, the conventional wisdom holds that the executive branch has grown in power relative to Congress or the courts, not even [\*142] counting the rise of administrative and regulatory agencies, even in purely domestic terms. n136 Add to the specter of enlarged executives worldwide who are enhancing one another's power, through information and enforcement networks in particular, and the conclusion becomes presumptive. Add further the cooperation of executives in light of 9/11, and the pro-executive implications of government globalization become more troubling still. 2. Legislative Globalization This pro-executive conclusion becomes even harder to resist given the slowness with which national legislators have been interacting with their counterparts. Several factors account for the slower pace of legislative globalization. Membership in a legislature almost by definition entails not just representation but representation keyed to national and subnational units. The turnover among legislators typically outpaces either executive officials or, for that matter, judges. In further contrast to legislators, regulators need to be specialists, and specialization facilitates cross-border interaction if only because it is easier to identify counterparts and focus upon common challenges. n137 Transnational legislative networks exist nonetheless and are growing. To take one example, national legislators have begun to work with one another in the context of such international organizations as NATO, the Organization for Security and Co-operation in Europe (OSCE), and the Association of Southeast Asian Nations (ASEAN). To take another example, independent legislative networks have begun to emerge, such as the Inter-Parliamentary Union and Parliamentarians for Global Action. n138 Yet even were national legislators to "catch up" to their executive counterparts in any meaningful way, the result would not necessarily be more robust or adequate protection of fundamental rights in times of perceived danger or the protection of minority rights at any time. Human rights organizations around the world are all too familiar with the democratic pathology of draconian statutes hastily enacted in response to actual attacks or perceived threats, including the Prevention of Terrorism Act in the United Kingdom, the USA PATRIOT Act in the United States, and the Internal Security Act in Malaysia. n139 It is for this reason that the essential player in the matter of rights protection must remain the courts. [\*143]

#### New democratic states are forming now—judicial influence determines the state of their transitions

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The Court is certainly the best institution to explain to scholars, governments, lawyers and lay people alike the enduring legal values of the US, why they have been chosen and how they contribute to the development of a stable and democratic society. A return to the mentality that one of America's most important exports is its legal traditions would certainly benefit the US and stands to benefit nations building and developing their own legal traditions, and our relations with them. Furthermore, it stands to increase the influence and higher the profile of the bench. The Court already engages in the exercise of dispensing justice and interpreting the Constitution, and to deliver its opinions with an eye toward their diplomatic value would take only minimal effort and has the potential for high returns. While the Court is indeed the best body to conduct legal diplomacy, it has been falling short in doing so in recent sessions. We are at a critical moment in world history. People in the Middle East and North Africa are asserting discontent with their governments. Many nations in Africa, Asia, and Eurasia are grappling with new technologies, repressive regimes and economic despair. With the development of new countries, such as South Sudan, the formation of new governments, as is occurring in Egypt, and the development of new constitutions, as is occurring in Nepal, it is important that the US welcome and engage in legal diplomacy and informative two-way dialogue. As a nation with lasting and sustainable legal values and traditions, the Supreme Court should be at the forefront of public legal diplomacy. With each decision, the Supreme Court has the opportunity to better define, explain and defend key legal concepts. This is an opportunity that should not be wasted.

#### Promoting a strong judiciary is necessary to make those transitions stable and democratic—detention policies specifically allow for global authoritarianism

CJA 3, Center for Justice and Accountability

[OCTOBER 2003, The Center for Justice & Accountability (“CJA”) seeks, by use of the legal systems, to deter torture and other human rights abuses around the world., “BRIEF OF the CENTER FOR JUSTICE AND ACCOUNTABILITY, the INTERNATIONAL LEAGUE FOR HUMAN RIGHTS, and INDIVIDUAL ADVOCATES for the INDEPENDENCE of the JUDICIARY in EMERGING DEMOCRACIES as AMICI CURIAE IN SUPPORT OF PETITIONERS”, http://www.cja.org/downloads/Al-Odah\_Odah\_v\_US\_\_\_Rasul\_v\_Bush\_CJA\_Amicus\_SCOTUS.pdf]

A STRONG, INDEPENDENT JUDICIARY IS ESSENTIAL TO THE PROTECTION OF INDIVIDUAL FREEDOMS AND THE ESTABLISHMENT OF STABLE GOVERNANCE IN EMERGING DEMOCRACIES AROUND THE WORLD. A. Individual Nations Have Accepted and Are Seeking to Implement Judicial Review By A Strong, Independent Judiciary. Many of the newly independent governments that have proliferated over the past five decades have adopted these ideals. They have emerged from a variety of less-than-free contexts, including the end of European colonial rule in the 1950's and 1960's, the end of the Cold War and the breakup of the former Soviet Union in the late 1980's and 1990's, the disintegration of Yugoslavia, and the continuing turmoil in parts of Africa, Latin America and southern Asia. Some countries have successfully transitioned to stable and democratic forms of government that protect individual freedoms and human rights by means of judicial review by a strong and independent judiciary. Others have suffered the rise of tyrannical and oppressive rulers who consolidated their hold on power in part by diminishing or abolishing the role of the judiciary. And still others hang in the balance, struggling against the onslaught of tyrants to establish stable, democratic governments. In their attempts to shed their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries. See Ran Hirschl, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions, 25 Law & Soc. Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”) Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. See Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) (describing the judicial branch as having "a uniquely important role" in transitional countries, not only to "mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; see also Daniel C. Prefontaine and Joanne Lee, The Rule of Law and the Independence of the Judiciary, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) ("There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law."), available at http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw. pdf (last visited Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, The New Commonwealth Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 (2001). This phenomenon became most notable worldwide after World War II when certain countries, such as Germany, Italy, and Japan, embraced independent judiciaries following their bitter experiences under totalitarian regimes. See id. at 714- 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (“Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice. See generally Mauro Cappelletti, The Judicial Process in Comparative Perspective (Oxford: Clarendon Press, 1989).”). It is a trend that continues to this day. It bears mention that the United States has consistently affirmed and encouraged the establishment of independent judiciaries in emerging democracies. In September 2000, President Clinton observed that "[w]ithout the rule of law, elections simply offer a choice of dictators. . . . America's experience should be put to use to advance the rule of law, where democracy's roots are looking for room and strength to grow." Remarks at Georgetown University Law School, 36 Weekly Comp. Pres. Doc. 2218 (September 26, 2000), available at http://clinton6.nara.gov/2000/09/2000-09-26- remarks-by-president-at-georgetown-international-lawcenter.html. The United States acts on these principles in part through the assistance it provides to developing nations. For example, the United States requires that any country seeking assistance through the Millenium Challenge Account, a development assistance program instituted in 2002, must demonstrate, among other criteria, an "adherence to the rule of law." The White House noted that the rule of law is one of the "essential conditions for successful development" of these countries. See http://www.whitehouse.gov/infocus/developingnations (last visited Jan. 8, 2004).12 A few examples illustrate the influence of the United States model. On November 28, 1998, Albania adopted a new constitution, representing the culmination of eight years of democratic reform after the communist rule collapsed. In addition to protecting fundamental individual rights, the Albanian Constitution provides for an independent judiciary consisting of a Constitutional Court with final authority to determine the constitutional rights of individuals. Albanian Constitution, Article 125, Item 1 and Article 128; see also Darian Pavli, "A Brief 'Constitutional History' of Albania" available at http://www.ipls.org/services/others/chist.html (last visited Janaury 8, 2004); Jean-Marie Henckaerts & Stefaan Van der Jeught, Human Rights Protection Under the New Constitutions of Central Europe, 20 Loy. L.A. Int’l & Comp. L.J. 475 (Mar. 1998). In South Africa, the new constitutional judiciary plays a similarly important role, following generations of an oppressive apartheid regime. South Africa adopted a new constitution in 1996. Constitution of the Republic of South Africa, Explanatory Memorandum. It establishes a Constitutional Court which “makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional.” Id. at Chapter 8, Section 167, Item (5), available at http://www.polity.org.za/html/govdocs/constitution/saconst.html?r ebookmark=1 (last visited January 8, 2004); see also Justice Tholakele H. Madala, Rule Under Apartheid and the Fledgling Democracy in Post-Apartheid South Africa: The Role of the Judiciary, 26 N.C. J. Int’l L. & Com. Reg. 743 (Summer 2001). Afghanistan is perhaps the most recent example of a country struggling to develop a more democratic form of government. Adoption by the Loya Jirga of Afghanistan's new constitution on January 4, 2004 has been hailed as a milestone. See http://www.cbsnews.com/stories/2004/01/02/world/main59111 6.shtml (Jan 7, 2004). The proposed constitution creates a judiciary that, at least on paper, is "an independent organ of the state," with a Supreme Court empowered to review the constitutionality of laws at the request of the Government and/or the Courts. Afghan Const. Art. 116, 121 (unofficial English translation), available at http://www.hazara.net/jirga/AfghanConstitution-Final.pdf (last visited January 8, 2004). See also Ron Synowitz, Afghanistan: Constitutional Commission Chairman Presents Karzai with Long-Delayed Draft Constitution (November 3, 2003), available at http://www.rferl.org/nca/features/2003/11/03112003164239.as p (last visited Jan. 8, 2004). B. Other Nations Have Curtailed Judicial Review During Times Of Crisis, Often Citing the United States' Example, And Individual Freedoms Have Diminished As A Result. While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of against [non-state combatants], the rulers that go down that road justify their actions on the basis of national security and the fight and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at http://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695&lang=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09:34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security, and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world. CONCLUSION Much of the world models itself after this country’s two hundred year old traditions — and still more on its day to day implementation and expression of those traditions. To say that a refusal to exercise jurisdiction in this case will have global implications is not mere rhetoric. Resting on this Court’s decision is not only the necessary role this Court has historically played in this country. Also at stake are the freedoms that many in emerging democracies around the globe seek to ensure for their peoples.

#### That makes war impossible—liberal democratic norms through judicial globalization cause global peace

Kersch 6, Assistant Professor of Politics

[2006, Ken I. Kersch, Assistant Professor of Politics, Princeton University. B.A., Williams; J.D., Northwestern; Ph.D., Cornell. Thanks to the Social Philosophy and Policy Center at Bowling Green State University, where I was a visiting research scholar in the fall of 2005, and to the organizers of, and my fellow participants in, the Albany Law School Symposium, Albany Law School, “The Supreme Court and international relations theory.”, http://www.thefreelibrary.com/The+Supreme+Court+and+international+relations+theory.-a0151714294]

Liberal theories of international relations hold that international peace and prosperity are advanced to the degree that the world’s sovereign states converge on the model of government anchored in the twin commitment to democracy and the rule of law.52 Liberal “democratic peace” theorists hold that liberal democratic states anchored in rule of law commitments are less aggressive and more transparent than other types of states.53 When compared with non-liberal states, they are thus much better at cooperating with one another in the international arena.54 Because they share a market-oriented economic model, moreover, international relations liberals believe that liberal states hewing to the rule of law will become increasingly interdependent economically.55 As they do so, they will come to share a common set of interests and ideas, which also enhances the likelihood of cooperation.56 Many foreign policy liberals—sometimes referred to as “liberal internationalists”—emphasize the role that effective multilateral institutions, designed by a club or community of liberal-democratic states, play in facilitating that cooperation and in anchoring a peaceful and prosperous liberal world order.57 The liberal foreign policy outlook is moralized, evolutionary, and progressive. Unlike realists, who make no real distinctions between democratic and non-democratic states in their analysis of international affairs, liberals take a clear normative position in favor of democracy and the rule of law.58 Liberals envisage the spread of liberal democracy around the world, and they seek to advance the world down that path.59 Part of advancing the cause of liberal peace and prosperity involves encouraging the spread of liberal democratic institutions within nations where they are currently absent or weak.60 Furthermore, although not all liberals are institutionalists, most liberals believe that effective multilateral institutions play an important role in encouraging those developments.61 To be sure, problems of inequities in power between stronger and weaker states will exist, inevitably, within a liberal framework.62 “But international institutions can nonetheless help coordinate outcomes that are in the long-term mutual interest of both the hegemon and the weaker states.”63 Many foreign policy liberals have emphasized the importance of the judiciary in helping to bring about an increasingly liberal world order. To be sure, the importance of an independent judiciary to the establishment of the rule of law within sovereign states has long been at the core of liberal theory.64 Foreign policy liberalism, however, commonly emphasizes the role that judicial globalization can play in promoting democratic rule of law values throughout the world.65 Post-communist and post-colonial developing states commonly have weak commitments to and little experience with liberal democracy, and with living according to the rule of law, as enforced by a (relatively) apolitical, independent judiciary.66 In these emerging liberal democracies, judges are often subjected to intense political pressures.67 International and transnational support can be a life-line for these judges. It can encourage their professionalization, enhance their prestige and reputations, and draw unfavorable attention to efforts to challenge their independence.68 In some cases, support from foreign and international sources may represent the most important hope that these judges can maintain any sort of institutional power—a power essential to the establishment within the developing sovereign state of a liberal democratic regime, the establishment of which liberal theorists assume to be in the best interests of both that state and the wider world community.69 Looked at from this liberal international relations perspective, judicial globalization seems an unalloyed good. To many, it will appear to be an imperative.70 When judges from well-established, advanced western democracies enter into conversations with their counterparts in emerging liberal democracies, they help enhance the status and prestige of judges from these countries. This is not, from the perspective of either side, an affront to the sovereignty of the developing nation, or to the independence of its judiciary. It is a win-win situation which actually strengthens the authority of the judiciary in the developing state.71 In doing so, it works to strengthen the authority of the liberal constitutional state itself. Viewed in this way, judicial globalization is a way of strengthening national sovereignty, not limiting it: it is part of a state-building initiative in a broader, liberal international order.72 A liberal foreign policy outlook will look favorably on travel by domestic judges to conferences abroad (and here in the United States) where judges from around the world can meet and talk.73 It will not view these conferences as “junkets” or pointless “hobnobbing.” These meetings may very well encourage judges from around the world to increasingly cite foreign precedent in arriving at their decisions. Judges in emerging democracies will use these foreign precedents to help shore up their domestic status and independence. They will also avail themselves of these precedents to lend authority to basic, liberal rule-of-law values for which, given their relative youth, there is little useful history to appeal to within their domestic constitutional systems. Judges in established democracies, on the other hand, can do their part to enhance the status and authority of independent judiciaries in these emerging liberal democratic states by showing, in their own rulings, that they read and respect the rulings of these fledgling foreign judges and their courts (even if they do not follow those rulings as binding precedent).74 They can do so by according these judges and courts some form of co-equal status in transnational “court to court” conversations.75 It is worth noting that mainstream liberal international relations scholars are increasingly referring to the liberal democratic international order (both as it is moving today, and indeed, as read backward to the post-War order embodied in the international institutions and arrangements of NATO, Bretton Woods, the International Monetary Fund, the World Bank, and others) as a “constitutional order,” and, in some cases, as a “world constitution.”76 No less a figure than Justice Breyer—in a classic articulation of a liberal foreign policy vision—has suggested that one of the primary questions for American judges in the future will involve precisely the question of how to integrate the domestic constitutional order with the emerging international one.77 If they look at judicial globalization from within a liberal foreign policy framework (whether or not they have read any actual academic articles on liberal theories of foreign policy), criticisms of “foreign influences” on these judges, and of their “globe-trotting” will fall on deaf ears. They will be heard as empty ranting by those who don’t really understand the role of the judge in the post-1989 world. These judges will not understand themselves to be undermining American sovereignty domestically by alluding to foreign practices and precedents. And they will not understand themselves as (in other than a relatively small-time and benign way) as undermining the sovereignty of other nations. They will see the pay-off-to-benefit ratio of simply talking to other judges across borders, and to citing and alluding to foreign preferences (when appropriate, and in non-binding ways) as high. They will, moreover, see themselves as making a small and modest contribution to progress around the world, with progress defined in a way that is thoroughly consistent with the core commitments of American values and American constitutionalism. And they will be spurred on by a sense that the progress they are witnessing (and, they hope, participating in) will prove of epochal historical significance. Even if they are criticized for it in the short-term, these liberal internationalist judges will have a vision of the future which suggests that, ultimately, their actions will be vindicated by history. The liberal foreign policy outlook will thus fortify them against contemporary criticism.

#### The plan solves—making habeas meaningful is a critical avenue for the judiciary to reassert its role

Vaughn and Williams, Professors of Law, 13

[2013, Katherine L. Vaughns B.A. (Political Science), J.D., University of California at Berkeley. Professor of Law, University of Maryland Francis King Carey School of Law, and Heather L. Williams, B.A. (French), B.A. (Political Science), University of Rochester, J.D., cum laude, University of Maryland Francis King Carey School of Law, “OF CIVIL WRONGS AND RIGHTS: 1 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, Vol. 20, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2148404]

Just as significant as what Boumediene does do, is what it does not. The case does not address the Executive’s authority to detain the Guantanamo Bay detainees, nor does it hold that the writ must issue as to these particular detainees.86 Instead, the case holds only that the detainees are entitled to access to the writ; the contours of when, if at all, the writ must issue, or the appropriate remedy for the writ upon issuance are not addressed. In the Court’s words, “[t]hese and other questions regarding the legality of the detention,” and presumably, the appropriate remedy if the detention is found unlawful, “are to be resolved in the first instance” by the trial court. Thus, in the years immediately following 9/11, the Supreme Court took deliberate, if not measured, steps in the direction of affirmatively asserting its role as a guarantor of individual rights in the context of the War on Terror. However, Boumediene—which was decided more than three years ago—remains the Court’s last word. In 2010, eight petitions for certiorari related to the continued detention of various prisoners at Guantanamo Bay were presented to the Supreme Court.87 Certiorari was denied as to seven of the eight petitions; the eighth petition was rendered moot.88 The Supreme Court’s recent silence in this arena is deafening. As we discuss throughout this article, Kiyemba presented the Court with an opportunity to break its silence—to make clear rulings on specific remedial issues related to the habeas rights of the Guantanamo detainees and to reassert the judiciary’s ongoing role in securing individual rights in the War on Terror. The Supreme Court missed this opportunity, leaving many significant rulings—including the D.C. Circuit’s reinstated ruling in Kiyemba—to stand as governing, if not fully challenged, law. Justice O’Connor’s 2004 plurality opinion in Hamdi offers perhaps one of the strongest assertions of the continued, and undiminished, role of the judiciary in the War on Terror: She rejects “the Government’s assertion that separation of powers principles mandate a heavily circumscribed role for the courts” in this context, stating that such an assertion “serves only to condense power into a single branch of government.”89 Such condensation of power is contrary to established principles, Justice O’Connor states, as the Court has long “made clear that a state of war is not a blank check for the President when it comes to [individual] rights.”90 Indeed, “[w]hatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake.”91 We couldn’t agree more. And this is precisely why Kiyemba represents a missed opportunity. The case also presents a missed opportunity because, in the wake of Boumediene, the lower federal courts, and particularly the courts located in the District of Columbia, have tended (with some significant exceptions), not to delicately balance the competing interests of national security and civil liberties, but to tip the scales in near-absolute deference to the government’s security agenda. In an important 2005 article, Cass Sunstein termed this phenomenon “National Security Fundamentalism.”

#### Judicial action is critical to resolve the Kiyemba decisions and establish legitimate habeas laws

Milko 12

[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

In light of the compelling arguments on both sides, several important issues have ambiguous answer, and the Supreme Court has, thus far, not chosen to shine light on the situation. Following the 2010 October Term and the Supreme Court's denial of all Guantanamo detainee petitions, the High Court has sent a message that it does not want to review the D.C. Circuit's interpretation of the procedural and substantive issues which that Circuit has implemented. The Supreme Court has not ruled on any cases relating to Guantanamo detainees since its 2008 decision in Boumediene v. Bush. While the Court settled the issue of whether detainees had the privilege of habeas corpus in that case, the Court left the intricacies of the writ and its scope for the lower courts to define. Though leaving this authority in the hands of the lower courts may have been a been appropriate at the time Boumediene was decided, the number of habeas petitions and the subsequent petitions for certiorari to the Supreme Court indicate that there are important issues that must be clarified, and the Supreme Court [\*194] should grant certiorari to be the final voice on these issues for several reasons. First, the stakes in these habeas petitions are high. The detainees at Guantanamo have already been assured the right to petition the courts for habeas corpus to challenge their detention as unlawful. The scope of the courts' authority to provide a remedy is a critical for those individuals on a personal level as well as for the nation as whole. This country was created with a tripartite system and checks and balances for a reason: the Founding Fathers implemented a governmental structure that would serve to limit the three individual branches in order to protect individual liberty. n142 The writ of habeas corpus has an extensive history and is considered to play an integral role in the protection of individual liberty. n143 Habeas corpus is the Judiciary's tool to check the power of the Executive, and has traditionally allowed courts to provide a remedy to reign in the unbridled power of the Executive. The Court in Boumediene asserted that habeas gave the prisoner a meaningful opportunity to challenge his confinement as unlawful, and "the habeas court must have the power to order conditional release of an individual unlawfully detained - though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." n144 While the importance of the writ for the preservation of the individual liberty and as a check on Executive power is one aspect of the tripartite system, the Executive's interest in maintaining a unified voice in the realm of foreign policy is another key concern. By allowing the courts to order release of a detainee or to order advance notice of transfer so that the petitioner may present evidence that he would be harmed in a recipient country, the Judiciary would be forced to make determinations about foreign affairs that its judges may not be competent to make. In a time of chaos and intricate foreign relations, the sensitivity and difficulty of forging meaningful diplomatic relations with other nations at this time in history is a key concern of the Executive, and properly within that Branch's authority under the Constitution. Permitting the Judiciary to make determinations from the bench about the appropriateness of human rights or other similar determinations in a judicial proceeding could very well damage the diplo [\*195] matic relations that the Executive is attempting to form with recipient nations. This separation of powers dilemma facing the High Court has no easy solution, but the critical role that the proper allocation of authority plays in the separation of powers system and the lack of substantive guidance on Guantanamo issues since Boumediene in 2008 demands attention from the Supreme Court. Additionally, because the Guantanamo cases have been litigated in the D.C. Circuit, no other appellate courts have had the opportunity to review these issues. n145 Without the opportunity for an opposing view in another judicial circuit and with no final determination by the Supreme Court, the D.C. Circuit Court of Appeals has been free to shape the law of Guantanamo habeas cases as it wishes. Adding to the concern of the lack of a "check" on the D.C. Circuit Court of Appeals is the fact that the trend within the Circuit itself has been inconsistent as the district courts have assumed a greater role for the judiciary, only to be chastised on appeal for failure to defer to the political branches in these cases. With the D.C. Circuit serving as the sole authority on the scope of the courts' habeas power in Guantanamo cases, petitioners' claims that this court has been improperly applying Supreme Court precedent is another concern that the High Court should address. In both release and transfer cases, the petitioners have argued that while Boumediene assures the privilege of habeas corpus, the Kiyemba cases have foreclosed the courts from fashioning a remedy in contradiction to Boumediene. n146 Instead, the D. C. Circuit Court of Appeals has refused to interfere, based on the Munaf proposition that the determinations of the Executive should not be second-guessed, and has accepted the assurances of the Executive Branch that they are working secure release or that they will not send detainees to countries where it is more likely than not that they will face torture. Raising suspicions that the use of Munaf in the Guantanamo habeas cases was perhaps improper, three Supreme Court Justices questioned the role of that decision and the questions it raised. Petitioners have alleged that the circumstances of that case are markedly different than the facts in the Guantanamo cases, and that Munaf should not be read to bar detainees in habeas petitions [\*196] the opportunity to challenge their transfer or the court to enjoin such a transfer. The nature of these Guantanamo issues presents a complex situation that makes the separation of powers issue more difficult. If the courts do traditionally have the power to require notice or order release under its habeas authority, the manner in which that remedy would require inquiry into the Executive Branch's policy decisions may cross the line into a political question. Because of the nature of diplomacy and foreign affairs in contemporary society, the thought may be that it is easier to reduce the rights of the individual in order to provide for the national security of the country as a whole. IV. Conclusion There are valid arguments on both sides in this issue and the nature of the cases and the times in which we live complicate the situation. The Supreme Court is in a difficult situation-if the Court grants certiorari to review the D.C. Circuit Court of Appeals' jurisprudence of the Guantanamo cases, it must settle an issue of vast importance. Separation of powers and the roles of the Executive and Judiciary in the context of Guantanamo litigation impact the individual liberty of the petitioners and the sensitive nature of foreign affairs and the war on terrorism. Because of significance of these issues, the D.C. Circuit should not be the sole voice addressing them. It should be the responsibility of the nation's Highest Court to settle the debate and determine the appropriate balance of power. Without this supreme guidance, the petitioners will continue to present the same issues and questions to the courts, and these cases will continue to be litigated according to the trend that has dominated the D.C. Circuit over the past several years. With a new Supreme Court Term beginning and new Guantanamo cases bearing old issues appearing before the Court again, the Supreme Court should grant certiorari to review the delicate balance between the power of the courts and the authority of the political branches. The Court left the scope of habeas power undefined after Boumediene and has refused to substantively address the issues created in its aftermath. Since that decision, the D.C. Circuit has given great deference to the Executive Branch. Without any supreme guidance, the D.C. Circuit has been free to fashion the law as it sees fit with no further checks and balances on that interpretation as this Circuit is the sole decision-maker re [\*197] garding these habeas petitions. If the current system stays in place, appeals and petitions regarding the same issues for Guantanamo detainees will continue to cycle through the D.C. Circuit. With so many petitions to the High Court on the same subject, it seems only logical that the Supreme Court should finish what it started nearly six years ago and decide whether the courts have a role to play in the release and transfer of detainees. More Guantanamo petitions for certiorari have been filed in the 2011 Term, and one has raised a familiar issue yet again: whether the Guantanamo detainees have the right to challenge transfer to a recipient nation on fear of torture. n147 The Founding Fathers envisioned a system of checks and balances in order to protect the People from oppression and to prevent any one person or entity from hoarding too much power. The struggle for power between the branches of our government is something that will never fade away entirely, and there are times when it is proper for one branch to defer to the judgment of another, but when an issue arises that has raised so many questions and has been the foundation for numerous appeals and petitions to the Supreme Court for clarification, the People deserve at least some guidance on such an unsettled area of the law. As of now, the D.C. Circuit has been trustworthy of the Executive Branch, and, while in the end, such deference in this area may be appropriate, the very nature of habeas corpus is a strong tool in the hands of the judiciary which should be considered by the Supreme Court. The Court should analyze whether allowing deference strips the Judiciary of the important check of habeas corpus because granting the right of habeas corpus to prisoners without giving the courts the subsequent power to remedy the problem has the potential of making this important right just a phrase with no underlying force.

### Contention 2 – Solvency

#### Institutions determine how IR operates now—reforming them through democratic ideals is critical

Shaw, Professor of International Relations and Politics at the University of Sussex, ’99 (Martin, November 9, “The unfinished global revolution: Intellectuals and the new politics of international relations”

The new politics of international relations require us, therefore, to go beyond the antiimperialism of the intellectual left as well as of the semi-anarchist traditions of the academic discipline. We need to recognise three fundamental truths: First, in the twenty-first century people struggling for democratic liberties across the non-Western world are likely to make constant demands on our solidarity. Courageous academics, students and other intellectuals will be in the forefront of these movements. They deserve the unstinting support of intellectuals in the West. Second, the old international thinking in which democratic movements are seen as purely internal to states no longer carries conviction – despite the lingering nostalgia for it on both the American right and the anti-American left. The idea that global principles can and should be enforced worldwide is firmly established in the minds of hundreds of millions of people. This consciousness will a powerful force in the coming decades. Third, global state-formation is a fact. International institutions are being extended, and they have a symbiotic relation with the major centre of state power, the increasingly internationalised Western conglomerate. The success of the global-democratic revolutionary wave depends first on how well it is consolidated in each national context – but second, on how thoroughly it is embedded in international networks of power, at the centre of which, inescapably, is the West. From these political fundamentals, strategic propositions can be derived. First, democratic movements cannot regard non-governmental organisations and civil society as ends in themselves. They must aim to civilise local states, rendering them open, accountable and pluralistic, and curtail the arbitrary and violent exercise of power. Second, democratising local states is not a separate task from integrating them into global and often Western-centred networks. Reproducing isolated local centres of power carries with it classic dangers of states as centres of war. Embedding global norms and integrating new state centres with global institutional frameworks are essential to the control of violence. (To put this another way, the proliferation of purely national democracies is not a recipe for peace.) Third, while the global revolution cannot do without the West and the UN, neither can it rely on them unconditionally. We need these power networks, but we need to tame them, too, to make their messy bureaucracies enormously more accountable and sensitive to the needs of society worldwide. This will involve the kind of ‘cosmopolitan democracy’ argued for by David Held80 and campaigned for by the new Charter 9981. It will also require us to advance a global social-democratic agenda, to address the literally catastrophic scale of world social inequalities. Fourth, if we need the global-Western state, if we want to democratise it and make its institutions friendlier to global peace and justice, we cannot be indifferent to its strategic debates. It matters to develop robust peacekeeping as a strategic alternative to bombing our way through zones of crisis. It matters that international intervention supports pluralist structures, rather than ratifying Bosnia-style apartheid. Likewise, the internal politics of Western elites matter. It makes a difference to halt the regression to isolationist nationalism in American politics. It matters that the European Union should develop into a democratic polity with a globally responsible direction. It matters that the British state, still a pivot of the Western system of power, stays in the hands of outward-looking new social democrats rather than inward-looking old conservatives. As political intellectuals in the West, we need to have our eyes on the ball at our feet, but we also need to raise them to the horizon. We need to grasp the historic drama that is transforming worldwide relationships between people and state, as well as between state and state. We need to think about how the turbulence of the global revolution can be consolidated in democratic, pluralist, international networks of both social relations and state authority. We cannot be simply optimistic about this prospect. Sadly, it will require repeated violent political crises to push Western governments towards the required restructuring of world institutions.82 What I have outlined tonight is a huge challenge; but the alternative is to see the global revolution splutter into defeat, degenerate into new genocidal wars, perhaps even nuclear conflicts. The practical challenge for all concerned citizens, and the theoretical and analytical challenges for students of international relations and politics, are intertwined.

#### Discussion of our policy is good because it cultivates us to make better decisions in our lives

Wight – Professor of IR @ University of Sydney – 6

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

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

#### A focus on policy is necessary to learn the pragmatic details of powerful institutions – acting without this knowledge is doomed to fail in the face of policy pros who know what they’re talking about

McClean 01 SOCIETY FOR THE ADVANCEMENT OF AMERICAN PHILOSOPHY – GRADUATE AND PHILOSOPHER – NYU, “THE CULTURAL LEFT AND THE LIMITS OF SOCIAL HOPE”, http://www.american-philosophy.org/archives/2001%20Conference/Discussion%20papers/david\_mcclean.htm]

Leftist American culture critics might put their considerable talents to better use if they bury some of their cynicism about America's social and political prospects and help forge public and political possibilities in a spirit of determination to, indeed, achieve our country - the country of Jefferson and King; the country of John Dewey and Malcom X; the country of Franklin Roosevelt and Bayard Rustin, and of the later George Wallace and the later Barry Goldwater. To invoke the words of King, and with reference to the American society, the time is always ripe to seize the opportunity to help create the "beloved community," one woven with the thread of agape into a conceptually single yet diverse tapestry that shoots for nothing less than a true intra-American cosmopolitan ethos, one wherein both same sex unions and faith-based initiatives will be able to be part of the same social reality, one wherein business interests and the university are not seen as belonging to two separate galaxies but as part of the same answer to the threat of social and ethical nihilism. We who fancy ourselves philosophers would do well to create from within ourselves and from within our ranks a new kind of public intellectual who has both a hungry theoretical mind and who is yet capable of seeing the need to move past high theory to other important questions that are less bedazzling and "interesting" but more important to the prospect of our flourishing - questions such as "How is it possible to develop a citizenry that cherishes a certain hexis, one which prizes the character of the Samaritan on the road to Jericho almost more than any other?" or "How can we square the political dogma that undergirds the fantasy of a missile defense system with the need to treat America as but one member in a community of nations under a "law of peoples?"The new public philosopher might seek to understand labor law and military and trade theory and doctrine as much as theories of surplus value; the logic of international markets and trade agreements as much as critiques of commodification, and the politics of complexity as much as the politics of power (all of which can still be done from our arm chairs.) This means going down deep into the guts of our quotidian social institutions, into the grimy pragmatic details where intellectuals are loathe to dwell but where the officers and bureaucrats of those institutions take difficult and often unpleasant, imperfect decisions that affect other peoples' lives, and it means making honest attempts to truly understand how those institutions actually function in the actual world before howling for their overthrow commences. This might help keep us from being slapped down in debates by true policy pros who actually know what they are talking about but who lack awareness of the dogmatic assumptions from which they proceed, and who have not yet found a good reason to listen to jargon-riddled lectures from philosophers and culture critics with their snobish disrespect for the so-called "managerial class."

### Case

#### Their arguments are wrong – liberal democracy key launching point for new forms of politics.

Lee Corbett, University of New South Wales, July 28, 2003, The Drawing Board: Australian Review of Public Affairs , http://www.australianreview.net/digest/2003/07/corbett.html

If you asked me a few years ago ‘what is postcolonial liberalism?’, I’d have said ‘an oxymoron’. As an undergraduate, I thought liberalism was a dirty word. The idea that it could accommodate the aspirations of those who would challenge colonial authority, authority that called itself liberal, seemed naïve. As I have begun researching indigenous political movements, and their responses to democratic theory, I have been surprised to discover that people who call themselves liberals have been some of those most responsive to the challenges these movements pose. Aside from confronting my prejudices about liberalism as a political doctrine, my research has brought to my attention the importance of democratic participation in organising just societies. I am becoming more convinced that democracy, rather than equality or freedom, should be the watchword of progressive politics. Of course democracy presupposes a measure of equality and freedom, but it is more than either of these taken alone.

Studies are on our side – consensus upholds both the dyadic and monadic peace theories.

MacMillan, Senior Lecturer in International Relations at Keele University, 2003 (John, Journal of Peace Research, Vol 40 No 2, pp.234-235)

The first tenet of separate peace theory – that democracies tend not to fight each other – remains robust. It has withstood a critical debate with realists and statistical challenges (see Chan, 1997; but also Lemke & Reed, 1996; Gartzke, 1998; Russett & Oneal, 2001: 228–237; Henderson, 2002) and has recently been deepened to include the claim that ‘pairs of democracies are much less likely than other pairs of states to fight or to threaten each other in militarized disputes less violent than war’ (Russett & Oneal, 2001: 46).2 But the second tenet – that liberal states are peace prone only in relations with other liberal states – is increasingly challenged. The significance attached to the ‘frequency’ of war involvement has diminished as studies have turned to other aspects and indicators of war proneness. The balance of empirical research increasingly supports the view that liberal states are more generally peace prone. Indeed, two literature reviews of the mid-1990s (Ray, 1995: 11–21, 33; Elman, 1997: 15–18; see also Russett & Starr, 2000) find that ‘much of the aggregate data on the democratic peace phenomenon suggest that democracies are less war prone in general, and that it is not only in their relations with each other that the pacifying effects of democracy emerge’ (Elman, 1997: 16).

#### Pragmatic approaches to limit violence are good — the alt causes war even if it isn’t a total renunciation of violence

**Narveson 12**, Professor Emeritus at University of Waterloo, Canada, Pacifism—Fifty Years Later, <http://link.springer.com/content/pdf/10.1007%2Fs11406-013-9461-2.pdf>

Is this reasonable? I think not. We should, of course, be reasonable, and that includes refraining from violence—except when the violence is necessary to counter the aggressive violence of others. For we reason, on practical matters, in terms of benefits and costs. Agents, especially political agents, can, alas, benefit from violence where that violence is unilateral. Thus it is rational to see to it that it won’t be unilateral. And when it is not unilateral, then the balance is in favor—strongly in favor—of peace. It remains that we must, alas, be able to make war in the possible case that we can’t have peace. When everybody shares the preference for peace, then we can scale down and hopefully even eliminate war-making capability. (Contemporary nations have already scaled down considerably—there have been few wars in the classic sense of military exchanges between states as such in recent times.) But until the scaling down is universal and includes a genuine renunciation of the use of warlike methods to achieve ends other than genuine self-defense, what most of us think of as “pacifism” is a non-option in the near run.

#### Drone killing is more personal than conventional attacks – can see the results

Leo 2013 (July 11, Sarah, “Former drone operator: “I lost that respect for life”” <http://aoav.org.uk/2013/interview-former-drone-operator/>)

In a rare first-person account, former Air Force drone operator Brandon Bryant describes in painful detail how he watched the bloody results of his actions. How his targets lost limbs. How they bled out. And how the thermal images showed their bodies turn as cold as the ground they died on. “People say that drone strikes are like mortar attacks,” Bryant said. “Well, artillery doesn’t see this. Artillery doesn’t see the results of their actions. It’s really more intimate for us, because we see everything.” During his time guiding unmanned drones over Iraq and Afghanistan from 2006 to 2007, more than 1,600 people died at the hands of Bryant and his team. He remembers being told this fact in a memo that he was given. Upon leaving his post, Bryant descended into the abyss – swallowed up with self-hatred. He now suffers from PTSD. This has “manifested itself as anger, sleeplessness and blackout drinking”. But what we know is that Bryant’s story cannot be unique. There must be others out there suffering the same demons. In Pakistan alone, at least 371 drones strikes have been reported since 2004. They have caused the deaths of at least 2,564 people, a large share of whom are civilians. These numbers, collected by the Bureau of Investigative Journalism, reveal the shocking extent of the American drone war. In addition to strikes on Afghanistan, Iraq and Pakistan, the Bureau also recorded further US led covert attacks in Somalia and Yemen. These were attacks that, by definition, were unmanned. But attacks that all had an operator working on a glowing screen in an American city thousands of miles away. Brandon Bryant’s admission should serve as a wake-up call. They should ram home the point that, even though executed via an system that might seem more video game than weapon, the act of killing is not even remotely virtual.

#### The status quo is structurally improving

Indur Goklany 10, policy analyst for the Department of the Interior – phd from MSU, “Population, Consumption, Carbon Emissions, and Human Well-Being in the Age of Industrialization (Part III — Have Higher US Population, Consumption, and Newer Technologies Reduced Well-Being?)”, April 24, <http://www.masterresource.org/2010/04/population-consumption-carbon-emissions-and-human-well-being-in-the-age-of-industrialization-part-iii-have-higher-us-population-consumption-and-newer-technologies-reduced-well-being/#more-9194>

In my previous post I showed that, notwithstanding the Neo-Malthusian worldview, human well-being has advanced globally since the start of industrialization more than two centuries ago, despite massive increases in population, consumption, affluence, and carbon dioxide emissions. In this post, I will focus on long-term trends in the U.S. for these and other indicators. Figure 1 shows that despite several-fold increases in the use of metals and synthetic organic chemicals, and emissions of CO2 stoked by increasing populations and affluence, life expectancy, the single best measure of human well-being, increased from 1900 to 2006 for the US. Figure 1 reiterates this point with respect to materials use. These figures indicate that since 1900, U.S. population has quadrupled, affluence has septupled, their product (GDP) has increased 30-fold, synthetic organic chemical use has increased 85-fold, metals use 14-fold, material use 25-fold, and CO2 emissions 8-fold. Yet life expectancy advanced from 47 to 78 years. Figure 2 shows that during the same period, 1900–2006, emissions of air pollution, represented by sulfur dioxide, waxed and waned. Food and water got safer, as indicated by the virtual elimination of deaths from gastrointestinal (GI) diseases between 1900 and 1970. Cropland, a measure of habitat converted to human uses — the single most important pressure on species, ecosystems, and biodiversity — was more or less unchanged from 1910 onward despite the increase in food demand. For the most part, life expectancy grew more or less steadily for the U.S., except for a brief plunge at the end of the First World War accentuated by the 1918-20 Spanish flu epidemic. As in the rest of the world, today’s U.S. population not only lives longer, it is also healthier. The disability rate for seniors declined 28 percent between 1982 and 2004/2005 and, despite quantum improvements in diagnostic tools, major diseases (e.g., cancer, and heart and respiratory diseases) now occur 8–11 years later than a century ago. Consistent with this, data for New York City indicate that — despite a population increase from 80,000 in 1800 to 3.4 million in 1900 and 8.0 million in 2000 and any associated increases in economic product, and chemical, fossil fuel and material use that, no doubt, occurred —crude mortality rates have declined more or less steadily since the 1860s (again except for the flu epidemic). Figures 3 and 4 show, once again, that whatever health-related problems accompanied economic development, technological change, material, chemical and fossil fuel consumption, and population growth, they were overwhelmed by the health-related benefits associated with industrialization and modern economic growth. This does not mean that fossil fuel, chemical and material consumption have zero impact, but it means that overall benefits have markedly outweighed costs. The reductions in rates of deaths and diseases since at least 1900 in the US, despite increased population, energy, and material and chemical use, belie the Neo-Malthusian worldview. The improvements in the human condition can be ascribed to broad dissemination (through education, public health systems, trade and commerce) of numerous new and improved technologies in agriculture, health and medicine supplemented through various ingenious advances in communications, information technology and other energy powered technologies (see here for additional details). The continual increase in life expectancy accompanied by the decline in disease during this period (as shown by Figure 2) indicates that the new technologies reduced risks by a greater amount than any risks that they may have created or exacerbated due to pollutants associated with greater consumption of materials, chemicals and energy, And this is one reason why the Neo-Malthusian vision comes up short. It dwells on the increases in risk that new technologies may create or aggravate but overlooks the larger — and usually more certain — risks that they would also eliminate or reduce. In other words, it focuses on the pixels, but misses the larger picture, despite pretensions to a holistic worldview.

### Baudrillard

#### Prefer our method –

#### A – An existence mediated by some simulation is inevitable – the critical thinking and research skills policy debate provides are precisely the kinds of tools that can effectively combat information overload and create more authentic forms of political/social community [This is kind of long…]

#### Kellner – Philosophy Prof @ UCLA – 2k (Douglas, Revolutionary Pedagogies, p. 216-217)

Certainly there is no doubt that the cyberspace of computer worlds contains as much banality and stupidity as real life, and one can waste much time in useless activity. But compared to the bleak and violent urban worlds portrayed in rap music and youth films like Kids (1995), the technological worlds are havens of information, entertainment, interaction, and connection where youth can gain valuable skills, knowledge, and power necessary to survive the postmodern adventure. Youth can create new, more multiple and flexible selves in cyberspace, as well as new subcultures and communities. Indeed, it is exciting to cruise the Internet and to discover how many interesting Web sites young people and others have established, often containing valuable educational and political material. There is, of course, the danger that corporate and commercial interests will come to colonize the Internet, but it is likely that there will continue to be spaces where individuals can empower themselves and create their own communities and identities. A main challenge for youth (and others) is to learn to use the Internet for positive cultural and political projects, rather than just for entertainment and passive consumption. Reflecting on the growing social importance of computers and new technologies makes it clear that it is of essential importance for youth today to gain various kinds of literacy to empower themselves for the emerging new cybersociety (this is true of teachers and adults as well). To survive in a postmodern world, individuals of all ages need to gain skills of media and computer literacy to enable ourselves to negotiate the overload of media images and spectacles; we all need to learn technological skills to use the new media and computer technologies to subsist in the new hightech economy and to form our own cultures and communities; and youth especially need street smarts and survival skills to cope with the drugs, violence, and uncertainty in today's predatory' culture, as well as new forms of multiple literacy.

#### B – Only those skills allow us to engage in meaningful critical analysis of technologically mediated societies

Kellner, Philosophy Prof @ UCLA 01– 01 Rhonda Hammer, Research scholar with the Center for the Study of Women at UCLA and Douglas Kellner, Philosophy Prof @ UCLA – ‘1 (Multimedia Pedagogy and Multicultural Education for the New Millennium, http://www.readingonline.org/newliteracies/hammer/index.html)

This is not to suggest that the instructional use of media and computer technology is inherently superior and without limitations. Indeed, we believe that print literacy and the fundamentals of education are more necessary than ever in today’s “high-tech” information age (Kellner, 2000). **In a world of information overload, it is increasingly important to teach students the skills of critical reading and analysis**, and clear and concise writing. Moreover, a good classroom teacher can provide context, appropriate application of course material to students’ situations, and a place for discussion and interaction that computers cannot provide. But we also believe that it is the responsibility of educators to make use of all available technologies for educational purposes. The relationship between print media and multimedia technology, as well as between classroom teaching and computerized teaching tools, is not an either-or situation, but rather inclusive -- a sort of “both-and.” In this conception, multimedia and print supplement each other, as do computers and classroom teaching. We owe it to our students to help them develop the skills and acquire the tools necessary to participate in new labor markets, to access new forms of information and entertainment, and to become active citizens in new technologically mediated societies. Yet traditional educators persist in blaming media and technology for declining test scores and in defending problematic tools like Internet filtering software and the television V chip that enable censorship of material deemed objectionable by some third party. It would seem more productive to teach students how to access and appreciate worthwhile educational and cultural media and to engage in critical analysis. Often censoring material makes it more appealing and seductive, so we recommend critical engagement with media materials rather than simple prohibition.

#### Ethic of consequences solves- leads to a deeper form of reflexivity

Michael Williams, '5 [Senior Lecturer in International Politics at the University of Wales. The Realist Tradition and the Limits of International Relations, p. 174-176]

A useful place to begin re-examining an ethic of consequences is to return to a brief consideration of the figure most often invoked in the context of an ethic of responsibility: Max Weber. For all that Weber’s famous distinction between an ethic of responsibility and an ethic of conviction has been cited in support of dichotomous presentations of ethical alternatives in International Relations, it is precisely in his com- mitment to a more complex understanding of objectivity, consequen- tialism, and the ethic of responsibility that part of his more profound ‘Realist’ legacy can be found. For Weber, consequential analysis can- not in itself generate responsibility. But it can be a strategy which fosters reflection on responsibility. Consequentialism is not a blind attachment to existing structures. Nor should it be understood as restricted to a calculation of the likely outcomes of alternative courses of action – though Weber clearly sees this as essential. More substantially, the con- sequentialist aspect of the ethic of responsibility can be understood as an attempt to demonstrate how a consequential evaluation of particular actions can foster a sense of responsible self-reflection in the actor who undertakes them. This goal could scarcely be better evoked than it is by Weber himself; as he phrases it in his famous discussion of ‘Science as a Vocation’ and the goals of social analysis: if we are competent in our pursuit (which must be presupposed here) we can force the individual, or at least we can help him, to give an account of the ultimate meaning of ~~his~~ own conduct. This appears to me as not so trifling a thing to do, even for one’s personal life. Again, I am tempted to say of a teacher who succeeds in this: he stands in the service of ‘moral’ forces; he fulfills the duty of bringing about self-clarification and a sense of responsibility.4 A commitment to an ethic of consequences reflects a deeper ethic of criticism, of ‘self-clarification’, and thus of reflection upon the values adopted by an individual or a collectivity. It is part of an attempt to make critical evaluation an intrinsic element of responsibility. Responsibility to this more fundamental ethic gives the ethic of consequences meaning.5 Consequentialism and responsibility are here drawn into what Schluchter, in terms that will be familiar to anyone conversant with constructivism in International Relations, has called a ‘reflexive principle’.6 In the wilful Realist vision, scepticism and consequential- ism are linked in an attempt to construct not just a more substantial vision of political responsibility, but also the kinds of actors who might adopt it, and the kinds of social structures that might support it. A con- sequentialist ethic is not simply a choice adopted by actors: it is a means of trying to foster particular kinds of self-critical individuals and soci- eties, and in so doing to encourage a means by which one can justify and foster a politics of responsibility. The ethic of responsibility in wilful Realism thus involves a commitment to both autonomy and limitation, to freedom and restraint, to an acceptance of limits and the criticism of limits. Responsibility clearly involves prudence and an accounting for current structures and their historical evolution; but it is not limited to this, for it seeks ultimately the creation of responsible subjects within a philosophy of limits. Seen in this light, the Realist commitment to objectivity appears quite differently. Objectivity in terms of consequentialist analysis does not simply take the actor or action as given, it is a political practice – an attempt to foster a responsible self, undertaken by an analyst with a commitment to objectivity which is itself based in a desire to foster a politics of responsibility. Objectivity in the sense of coming to terms with the ‘reality’ of contextual conditions and likely outcomes of action is not only necessary for success, it is vital for self-reflection, for sus- tained engagement with the practical and ethical adequacy of one’s views. The blithe, self-serving, and uncritical stances of abstract moralism or rationalist objectivism avoid self-criticism by refusing to engage with the intractability of the world ‘as it is’. Reducing the world to an expression of their theoretical models, political platforms, or ideolog- ical programmes, they fail to engage with this reality, and thus avoid the process of self-reflection at the heart of responsibility. By contrast, Realist objectivity takes an engagement with this intractable ‘object’ that is not reducible to one’s wishes or will as a necessary condition of ethical engagement, self-reflection, and self-creation.7 Objectivity is not a naıve naturalism in the sense of scientific laws or rationalist calculation; it is a necessary engagement with a world that eludes one’s will. A recog- nition of the limits imposed by ‘reality’ is a condition for a recognition of one’s own limits – that the world is not simply an extension of one’s own will. But it is also a challenge to use that intractability as a source of possibility, as providing

#### The alt is overly pessimistic and inadvertently sustains the status quo

Noys, 2k7 (Benjamin, Lecturer in English at The University of Chichester, “Crimes of the Near Future: Baudrillard / Ballard” Ballardian March 21, http://www.ballardian.com/crimes-of-the-near-future-baudrillard-ballard)

In the terminology of Alain Badiou, we might locate Baudrillard as part of the dissident tradition of ‘anti-philosophy’ (see Hallward, 2003: 20-23). According to Badiou this ‘tradition’ poses an ineffable transcendent meaning against philosophy, and often does so in fragmentary anti-systematic forms. Although he does not deign to mention Baudrillard his list of anti-philosophers includes most of the figures mentioned above. Identifying unequivocally with philosophy, in a new rationalist form, Badiou argues that the fundamental orientation of anti-philosophy is theological. Lurking behind the transcendent meaning or figure of radical alterity is God. From this point of view Baudrillard’s ‘criminal thought’ would be **another attenuated religiosity**, searching for an ever-receding mystical intuition of the ‘Object’. Now Baudrillard himself, in Simulacra and Simulation, realised the danger of the ‘anti-’position of simply being opposed to an existing form or discourse (1994: 19). In precisely the terms I have been discussing the ‘anti-’ position is one of simulated alterity, by means of which dead forms sustain themselves. Instead of destroying what it opposes, the pose of opposition **supports and sustains it.** The irony is that Baudrillard and Ballard’s invocation of the extreme crime might all too easily sustain the system of simulation they are subjecting to hypercriticism. Rather than out-bidding and accelerating simulated alterity the danger is providing a new form of simulated alterity. They are both transfixed by the possibility of a truly authentic criminal act always just out of reach. This is made even more ironic by the media fascination with ‘true crime’ – from CCTV footage of criminal acts to the fascinated horror of accounts of the activities of serial killers. Therefore I am suggesting that Baudrillard’s ‘criminal and inhumane kind of thought’ is not criminal and inhumane enough. Isn’t the problem that this criticism simply leaves us in the position, so often made by critics of Baudrillard, **of an absolute pessimism in** the face of inescapable systems? ‘Criminal thought’ is a failure and so we have no escape from the reign of simulated alterity, other than a quite literal faith in the Other.

#### No impact – one can find authentic existence and meaning in hyper-reality

Brey – Philosophy, University of Twente – 05 (Philip, Evaluating the Social and Cultural Implications of the Internet, ACM SIGCAS Computers and Society

Volume 35 Issue 3, September 2005)

11. Loss of the sense of reality. It has been claimed that the Internet helps eradicate the distinction between reality and representation, and creates a constant confusion about this distinction, leading to insecurities, disagreements, and a loss of meaning (Baudrillard, 1995; Borgmann, 1999). 12. Loss of privacy and private-public boundaries. It has been argued that there is little privacy on the Internet, and that it is difficult to maintain clear boundaries between public and private spaces on the Internet, with resulting insecurities about the privacy conditions under which users operate. 4. Analyzing and Evaluating Beliefs about the Internet's Benefits and Harms How could statements about harms or benefits of the Internet be assessed for their validity? I will argue that such assessments are only possible to an extent. It is possible to analyze statements and critique them, but it is not possible to validate or refute them conclusively, because they rest in part on (subjective) values. A distinction can be made between descriptive analysis and critical analysis . Descriptive analysis merely tries to understand statements by analyzing their meaning and presuppositions. Such an analysis would consider the context in which the statement is made and then analyze the values and empirical claims presupposed in the statement. In addition, it would analyze the meaning of the concepts used in the statement, since concepts may be used with different meanings. Descriptive analysis would thus involve four steps: (1) clarification of the meanings of concepts in the statement; (2) identification of presupposed values; (3) identification of implied empirical claims; (4) examination of the evidence for implied empirical claims. A critical analysis goes beyond a descriptive analysis in that it would also proceed to examine the empirical evidence for these empirical claims and, optionally, would critique the values on which the statement rests and the soundness and clarity of the concepts used in the statement. Critical analysis would thus involve an additional fifth step: (5) critical assessment of values and concepts. To see how a critical analysis of statements about the Internet could proceed, let us consider Albert Borgmann's belief that cyberspace presents an escape into an alternative reality that is illusory because it presents us with trivialized and glamorized substitute realities that lack context (Borgmann, 1999, p. 191-2). Taking this statement's context into account, this statement can be seen to imply the following four claims: (1) When people are in cyberspace, they are in an alternative reality. (2) People visit this alternative reality to escape from their everyday reality. (3) This alternative reality is not as good as everyday reality: it is trivial and glamorized and lacks context. (4) It therefore does not constitute an adequate escape from everyday reality. Claim 1 is mostly a conceptual claim, as it explains aspects of the meaning of the concept of 'cyberspace'. Claim 2 is an empirical claim about the reasons people have for visiting cyberspace, that can be investigated empirically by studying whether people actually have these reasons. Claim 3 is a normative claim (a claim which makes a value judgment), as it evaluates the quality of cyberspace relative to some normative standard. Claim 4, finally, is a logical inference from the preceding claims. Further analysis of claim 3 must be undertaken to tease out the precise values presupposed in it. Such an analysis yields that Borgmann values authenticity and contextuality and believes that these values are not represented in cyberspace. We may then reformulate (3) to consist of the following two statements: (3') Authenticity and contextuality are highly valuable aspects of any reality. (3'') Authenticity and contextuality are not present in cyberspace. Statement 3' is a normative statement, and statement 3'' an empirical statement. A critical analysis of the two empirical claims (claims 2 and 3'') can next be undertaken. Such analysis requires qualitative or quantitative empirical research (or, minimally, anecdotal evidence). Consideration of empirical evidence is likely to show that both these claims are too sweeping. Contra claim 2, many people seem to use the Internet not to escape reality but to acquire information or to interact with people or organizations that are also part of their everyday reality (Castells, 2001). At best, it can be said that the Internet is also used to escape from everyday reality, but this is only one of the reasons why it is used. Claim 3'' seems to be too sweeping as well. If authentic means being sincere and serious and inclusive of real things and events rather than simulated ones, then there are many aspects of the Internet that are authentic. For instance, social interaction in cyberspace is often authentic in that it is often sincere and involves earnest interaction between real people. Context often seems to be present on the Internet as well. Both conversations and information on the Internet are often accompanied by a context that makes them intelligible to Internet users. Just as one can analyze and critique empirical claims concerning the Internet's benefits and harms, one can do this for normative and conceptual claims. For example, the values of authenticity and contextuality may be subjected to a critical analysis, in which it is investigated what the reasons are why these values should be held dear. As for conceptual criticism, it may be criticized whether the term 'cyberspace' has a clear meaning and whether digital realities are properly analyzed as having spatial features. In this way, then, Borgmann's statement may be critically analyzed regarding the validity of its empirical, normative and conceptual claims. Although the preceding analysis is only meant to be suggestive, I hope to have shown that it is possible in general to systematically analyze and assess claims about the benefits and harms of the Internet. The uncertain factor in such assessments lies in the analysis of values, since there is no objective way in which to validate or refute values that underlie normative statements.

#### We do, in fact, know the difference between simulation and reality—the media plays a healthy role in the public sphere.

March 95 (James Marsh, Professor of Philosophy, Fordham University, 95, Critique, Action, and Liberation, pp. 292-293)

Such an account, however, is as one-sided or perhaps even more one-sided than that of naive modernism. We note a residual idealism that does not take into account socioeconomic realities already pointed out such as the corporate nature of media, their role in achieving and legitimating profit, and their function of manufacturing consent. In such a postmodernist account is a reduction of everything to image or symbol that misses the relationship of these to realities such as corporations seeking profit, impoverished workers in these corporations, or peasants in Third-World countries trying to conduct elections. Postmodernism does not adequately distinguish here between a reduction of reality to image and a mediation of reality by image. A media idealism exists rooted in the influence of structuralism and poststructuralism and doing insufficient justice to concrete human experience, judgment, and free interaction in the world.4 It is also paradoxical or contradictory to say it really is true that nothing is really true, that everything is illusory or imaginary. Postmodemism makes judgments that implicitly deny the reduction of reality to image. For example, Poster and Baudrillard do want to say that we really are in a new age that is informational and postindustrial. Again, to say that everything is imploded into media images is akin logically to the Cartesian claim that everything is or might be a dream. What happens is that dream or image is absolutized or generalized to the point that its original meaning lying in its contrast to natural, human, and social reality is lost. We can discuss Disneyland as reprehensible because we know the difference between Disneyland and the larger, enveloping reality of Southern California and the United States.5 We can note also that postmodernism misses the reality of the accumulation-legitimation tension in late capitalism in general and in communicative media in particular. This tension takes different forms in different times. In the United States in the 1960s and 1970s, for example, social, economic, and political reality occasionally manifested itself in the media in such a way that the electorate responded critically to corporate and political policies. Coverage of the Vietnam war, for example, did help turn people against the war. In the 1980s, by contrast, the emphasis shifted more toward accumulation in the decade dominated by the “great communicator.” Even here, however, the majority remained opposed to Reagan’s policies while voting for Reagan. Human and social reality, while being influenced by and represented by the media, transcended them and remained resistant to them.6 To the extent that postmodernists are critical of the role media play, we can ask the question about the normative adequacy of such a critique. Why, in the absence of normative conceptions of rationality and freedom, should media dominance be taken as bad rather than good? Also, the most relevant contrasting, normatively structured alternative to the media is that of the “public sphere,” in which the imperatives of free, democratic, nonmanipulable communicative action are institutionalized. Such a public sphere has been present in western democracies since the nineteenth century but has suffered erosion in the twentieth century as capitalism has more and more taken over the media and commercialized them. Even now the public sphere remains normatively binding and really operative through institutionalizing the ideals of free, full, public expression and discussion; ideal, legal requirements taking such forms as public service programs, public broadcasting, and provision for alternative media; and social movements acting and discoursing in and outside of universities in print, in demonstrations and forms of resistance, and on media such as movies, television, and radio.7

#### We can talk about why democracy is bad and still accept that it has implications for peace

Ozane 95 (JULIE L. OZANNE Virginia Polytechnic Institute and State University, Blacksburg JEFF B.MURRAY University of Arkansas - ’95 Uniting Critical Theory and Public Policy to Create the Reflexively Defiant Consumer, AMERICAN BEHAVIORAL SCIENTIST, Vol. 38 No. 4, February 1995 516-525)

In a postmodern society, people maneuver through an information-rich environment in which their relationships with other people are increasingly being mediated by forces such as television, VCRs, computers, and information highways. This hyperreality creates new cultural spaces that shape our understanding of ourselves and our environment, and may require different adaptive skills (Kincheloe & McLaren, 1994). The marketplace is one example of the changing cultural spaces that we face. The explosion of information technology means that the late-20th-century consumer can shop from their televisions, scan their bank checking cards at grocery stores, and order merchandise at home using their computers. As consumers make choices in this mediascape, information technology facilitates the tracking, recording, and storing of information about their behavior at unprecedented levels. What are the implications of this new marketplace^—and how should consumers respond in face of these new cultural forms? A more insurgent consumer may be needed to challenge and contest the role of the postmodern marketplace in fulfilling and defining their needs. The purpose of this article is to suggest a point of convergence between critical theory and public policy. This convergence suggests a different type of consumer, one that is empowered to reflect on his or her social conditions to decide how to live. This decision may result in informed participation in the consumer culture, the reflexive defiance of this lifestyle, or a creative combination of these two strategies. Critical theory is the term that is often used to describe the work of the group of researchers who coalesced around the Frankfurt Institute beginning in the early 1920s (Held, 1980). The early theorists, who included Max Horkheimer, Theodor Adorno, Leo Lowenthal, Herbert Marcuse, and Friedrich Pollack, wanted to use interdisciplinary approaches to study the link between the individual and society. Contemporary social theorists have extended and revitalized the ideas of the Frankfurt School. These extensions make critical theory relevant to a postmodern marketplace that is characterized by an explosion of information and increasingly abstract symbolism. For example, Habermas expresses the emancipatory interest in terms of a theory of communication; Baudrillard takes the Frankfurt School's theory of one-dimensional society to a higher level by using the semiologi-cal theory of the sign to describe the world of commodities (Kellner, 1989). These theorists seek to systematically critique society to help people envision new forms of social organization (Adorno, 1973; Baudrillard, 1981; Habermas, 1971; Horkheimer, 1972; Jay, 1973). Thus both critical theorists and public policy analysts share the common goal of trying to improve the quality of people's lives that are shaped by social structures such as laws and public policy (Forester, 1985b; Murray & Ozanne, 1991). Although critical theory and public policy both emphasize theory-directed social change in the public interest, their research traditions have stressed different parts of this theory-practice equation. Public policy research generally emphasizes the practice side of this equations (e.g., studying the impact of deregulation on marketing and consumer welfare, changing perspectives at the Federal Trade Commission and the Food and Drug Administration, consumption of alcohol and cigarettes, advertising practices, consumer education, etc.). Critical theorists, on the other hand, emphasize the theory side of this equation. These researchers live in an abstract world of ideas such as materialism (as a proposed solution to Cartesian interactive dualism), immanent critique (as a proposed solution to problems associated with foundationalism), functional ethical relativism, dialectics, ideal speech situations . . . (Murray & Ozanne, 1991). Because the two traditions emphasize different elements of the same theory-practice equation, or what the critical theorists would refer to as praxis, they each have something to offer the other. For example, critical theory's longstanding commitment to creating forms of social organization that make possible freedom, justice, and reason could usefully guide the making of public policy. Similarly, the policy analysts' focus on concrete policies could help with critical theory's ongoing struggle to translate theory into meaningful action (Forester, 1985b).