**1AC Habeas**

**Contention one is Habeas:**

**Al Maqaleh was the end of the line for habeas**

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For all the reasons he identifies, I think [Ben is quite right](http://www.lawfareblog.com/2012/10/comments-on-maqaleh-and-hamidullah/) that these rulings represent “the end of the line for the possibility of Bagram habeas jurisdiction.” At the same time (and, I suspect, contra Ben), **Judge Bates’s application of the D.C. Circuit’s decision in Al-Maqaleh**nicely (and helpfully) illuminates what to me are the three interrelated (and fundamental) flaws underlying the Court of Appeals’ reasoning–and the three reasons why, inasmuch as **these rulings are “the end of the line” for habeas at Bagram (and perhaps anywhere else outside the U**nited **S**tates **besides Guantanamo), they shouldn’t be**.

Flaw #1: Boumediene‘s Factors Should Not be Applied Formalistically

The first thing that jumps out from Judge Bates’ opinions in Al-Maqaleh II is his obeisance to the “three-factor test” that Boumediene purportedly articulated to assess whether the Suspension Clause should apply to the extraterritorial detention of non-citizens, i.e.:

(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner’s entitlement to the writ.

Critically, Justice Kennedy introduced these three factors (which he divined from the Court’s prior decisions) by emphasizing that “at least three factors are relevant in determining the reach of the Suspension Clause.” (emphasis added).  Nowhere did he suggest that these factors are either exclusive or dispositive, and Justice Kennedy was elsewhere at pains to emphasize that “the cases before us lack any precise historical parallel,” and that formal tests for jurisdiction, such as the de jure sovereignty-based theory advanced by the government, “raise[] troubling separation-of-powers concerns as well.” Whatever else one can say about Part IV of Justice Kennedy’s opinion for the Boumediene Court, I’m hard-pressed to see in it a demand that lower courts hew formally to the three relevant–but non-conclusive–factors going to the applicability vel non of the Suspension Clause.

Flaw #2: The “**Vast Differences” Between Guantanamo and Bagram**

**The reason why formalistic application of the three Boumediene factors denudes Boumediene of much of its force is because it fails to appreciate the extent to which functional considerations thoroughly influenced** Justice **Kennedy’s analysis** and application of those factors. For example, consider **the second factor, i.e., “the nature of the sites where apprehension and then detention took place**.” In applying this factor in Boumediene, Justice Kennedy wrote as follows:

[T]he detainees here are similarly situated to the Eisentrager petitioners in that the sites of their apprehension and detention are technically outside the sovereign territory of the United States. As noted earlier, this is a factor that weighs against finding they have rights under the Suspension Clause. But there are critical differences between Landsberg Prison, circa 1950, and the United States Naval Station at Guantanamo Bay in 2008. Unlike its present control over the naval station, the United States’ control over the prison in Germany was neither absolute nor indefinite. . . . The United States was therefore answerable to its Allies for all activities occurring there. The Allies had not planned a long-term occupation of Germany, nor did they intend to displace all German institutions even during the period of occupation.

As Judge Bates rightly summarizes in Al-Maqaleh II, “In this case, **the D.C. Circuit placed great weight on the fact that the United States’s control over the base at Bagram Airfield was less absolute than its control over Guantanamo Bay.” Because the Afghan government had more of an interest (and more directly participated) in the detentions at Bagram, the D.C. Circuit held that Boumediene could be distinguished**.

The problem with **this reasoning** is that it **elides the critical distinction between Afghanistan’s involvement in the detentions of Afghan citizens at Bagram, and its apparent lack of involvement in (if not outright opposition to) the detentions of non-Afghan citizen**s picked up outside Afghanistan (such as the petitioners in Al-Maqaleh II) there. Indeed, the petitioners made this very point in their [supplemental briefing](http://www.lawfareblog.com/wp-content/uploads/2012/09/Bakri_-RK-decl_-092412.pdf) in Al-Maqaleh II, along with the related argument that such an understanding is only further reinforced by the fact that the U.S. government has transferred control over countless Afghan detainees to the government of Afghanistan, without transferring such control over non-Afghan detainees. To this, Judge Bates replied simply that “the capacity the Afghan government is building to house and prosecute Afghan detainees may make it more likely that non-Afghan detainees can eventually be transferred to the Afghan government, if not to other countries.”

Even if that logic follows (and I don’t think it does), it’s beside the point. Functionally, **the driving principle behind the second factor in Boumediene is whether habeas is necessary to serve as a check on U.S. government decisionmaking, or whether the meaningful involvement and participation of foreign sovereigns necessarily serves the same purpose. To the extent that the United States is simply not “answerable” to the government of Afghanistan for the detentions of non-Afghans at Bagram (and the related extent to which the government of Afghanistan has no incentive to play such a role for non-Afghans captured outside of Afghanistan), the second Boumediene factor should militate in favor of habeas, not against it.**

Flaw #3: The Centrality of Practical Obstacles (of the Government’s Own Making)

Finally, and **driving home the** structural significance of the flawed formalistic approach, Judge **Bates revisited the petitioners’ claim that they were being held at Bagram solely to avoid the habeas jurisdiction of the federal courts. As Judge Bates wrote, “Even if this is true, it is unclear whether such purposeful evasion of habeas jurisdiction would affect the jurisdictional analysis. Executive manipulation is not an explicit factor in three-part Boumediene test**.” To be fair, Judge Bates nevertheless allowed for the possibility that such manipulation might be relevant, only to conclude that “the Court simply sees no way to accept petitioners’ argument under the framework laid out by the D.C. Circuit.”

That **the “framework laid out by the D.C. Circuit” requires the detainee to prove “potential executive manipulation** of habeas jurisdiction” again misses Boumediene‘s point. Yes, Justice Kennedy expressly suggested that, “if the detention facility were located in an active theater of war, arguments that issuing the writ would be ‘impracticable or anomalous’ would have more weight.” But he also emphasized that “The test for determining the scope of [the Suspension Clause] must not be subject to manipulation by those whose power it is designed to restrain.” Kennedy’s point, in short, was not that a detainee should have to prove executive manipulation of habeas jurisdiction; it was that the government should not be allowed–intentionally or not–to manipulate the factors that courts should apply in determining the existence of jurisdiction. Although the same certainly could not be said for individuals picked up in Afghanistan (and Afghan citizens arrested elsewhere), a conscious decision by the U.S. government to move non-Afghan detainees captured outside Afghanistan into a zone of active combat operations certainly at least appears to open the door to the very manipulation Justice Kennedy expressly decried in Boumediene. At the very least, one would think proper respect for Boumediene would make this a much closer call…

**Absent extraterritorial habeas rule of law and legitimacy will be eviscerated**

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(Dawinder, SHADOWING THE FLAG: EXTENDING THE HABEAS WRIT BEYOND GUANTÁNAMO, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1597&context=wmborj)

**There is nothing in these foundational principles to indicate that the responsibility of the judiciary to check the Executive and thereby safeguard individual liberty is restricted by geography**. Nor is there any sense from them that the potential for the Executive to detain someone unlawfully—which provides the factual predicate necessitating the judiciary’s involvement—does not exist outside the territorial bounds of the United States. And **there is nothing that may be reasonably extracted from them that suggests that the Executive may act anywhere in the world, but that the supervisory need for the courts is confined to the borders of the United States. The remainder— or difference between the unbounded reach of executive power and the enclosed power of the courts—offers ample room for executive conduct to devolve into tyranny because the courts are unable to measure such conduct against the rule of law**. To fulfill the full promise of the writ of habeas corpus and identify arbitrary and wrongful imprisonments**, the judicial writ must shadow executive conduct. If the Executive summons the powers of its office and the government that it heads to imprison an individual in any part of the world, it subjects the detainee to the authority of the United States, including the oversight of the judicial branch of its federal government**. In other words, **the courts are awakened or agitated, by necessity, by the Executive to sanitize governmental conduct by way of law**. The proposition is quite simple: **where the Executive may act, so the courts may follow—otherwise, we condone a situation, intolerable to the Framers, in which Law is King inside the four corners of the U**nited **S**tates, **but where the American King is Law outside of it.** This understanding of the scope of the habeas writ is supported not only by the historical purposes of the writ and the constitutional tripartite checking scheme, but also by several ancillary arguments The first points to the common law. Even before the formation of an independent United States, the writ, which the American legal system imported from the AngloSaxon tradition, ran extraterritorially. As Sir William Blackstone explained with respect to the writ, “the king is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted.”159 Moreover, at common law “[e]ven those designated enemy aliens,” like the petitioners in al Maqaleh, “retained habeas corpus rights to challenge their enemy designation.”160 The second is a textual argument that the Suspension Clause—which “protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account”161 and, unless formally suspended, enables the judiciary to serve “as an important judicial check on the Executive’s discretion in the realm of detentions”162—is not restricted by territory by the Constitution’s own terms. Because “[t]he Suspension Clause contains no territorial limitation with respect to its scope,” argues Richard A. Epstein, “it’s a perfectly natural reading to say wherever the United States exerts power, there habeas corpus will run.”163 The third relates to the transcendence already of territorial barriers concerning the issuance of the writ. While the Supreme Court in Ahrens required district courts to issue the statutory habeas writ only if the petitioner was within its territorial jurisdiction,164 the Court subsequently departed from this restrictive view of jurisdiction to hold that habeas “petitioners’ absence from the district does not present a jurisdictional obstacle to the consideration of the claim.”165 The Court rejected the contention that a petitioner’s “presence within the territorial confines of the district is an invariable prerequisite” to the statutory habeas writ.166 The fourth identifies the proper focus of the writ. The focal point of the habeas petition is not the petitioner himself, but rather the government official holding him, namely the custodian. “The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,” the Court has explained.167 Accordingly, “[s]o long as the custodian can be reached by service of process, the court can issue a writ . . . even if the prisoner himself is confined outside the court’s territorial jurisdiction.”168 The emphasis on the jailer, rather than the petitioner, for purposes of habeas jurisdiction is in lockstep with the view, advanced thus far in this Article, that because the habeas writ is a means for the courts to check the Executive, and, specifically, to ensure that it detains an individual only in conformance with the law, the writ has the potential to run wherever the Executive is detaining an individual. Indeed, there can be little doubt that the custodian is but an agent of or proxy for the Executive itself169—the Executive makes the legal decision; the jailer holds the key.170 The fifth argument recognizes the trend of an increasingly broadening interpretation of habeas jurisdiction. “[T]he general spirit and genius of our institutions has tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States,” according to the Court.171 An expansive view of the courts’ jurisdiction to hear habeas petitions, where geography and sovereignty are without preclusive effect on such jurisdiction, is consistent with this observation. The sixth enumerates an essential characteristic of the writ: its flexibility. The writ is an “inherently elastic concept”172 disentangled from formal restrictions.173 The seventh takes notice of the globalized world in which we live and within which the Executive may detain an individual. A rule by which habeas can follow the Executive wherever it acts comports with the realities of an increasingly globalized and technologically advanced world in which the Executive can detain—and has detained, as the post–9/11 campaigns demonstrate—individuals thousands of miles from the shores of the United States. **Nations will act outside of their territorial borders with greater regularity, frequency, and ease as the world becomes “smaller”—**confining judicial review to borders that are readily pierced leaves the rule of law in an outdated and stationary state while the Executive frolics both inside and outside his land and whisks away detainees at his whim. The relevance of the globalized world, marked by technology, is particularly salient today after 9/11. It should render less persuasive any suggestion that habeas be understood only as it was in 1789 or in Eisentrager, when technology and resources did not allow for the transnational, global activities that are commonplace today and thus call for evolving and more practically applicable meanings of habeas.177 “It must never be forgotten,” the Supreme Court wrote in 1939, “that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired.”178 In short, geography and sovereignty should not impair the otherwise critical and constitutionally vital purposes of the habeas writ. C. Limiting Principles This framework contemplates a “worldwide writ,” one that is not necessarily held back by territorial borders or considerations of formal sovereignty. The concept of a “worldwide writ” was worrisome to the panel in al Maqaleh. In Judge David S. Tatel’s exchange with the petitioners’ counsel, for example, he remarked that, “you can extend habeas to Bagram, [but] I don’t see any limiting principle in your view.”179 Once you have extended it in this fashion, he continued, “you’ve extended it to every military base . . . in the world.”180 In its eventual opinion, the D.C. Circuit admitted that they were uncomfortable with the prospect of conferring habeas on “noncitizens held in any United States military facility in the world, and perhaps to an undeterminable number of other United States–leased facilities as well.”181 The court complained that petitioners’ counsel failed to soothe the court’s anxiety by providing any meaningful “limiting principle that would distinguish Bagram from any other military installation.” **My proposed framework posits that the habeas writ is assumed to run wherever the United States exerts power, to the extent that it restrains the liberty of another. Therefore, at least theoretically, under this framework, the writ may reach all military bases**. Given the possible number of applicable American facilities and the possibility that the writ has the potential to cover the globe, one can appreciate the concerns expressed by Judge Tatel and his brethren. But meditating on the purposes of the writ and the potential for individuals to be detained unlawfully throughout the world, among other ancillary considerations, should soften those concerns. This is not to say that all aliens apprehended or detained by the United States are automatically entitled to the writ. The assumption that they are so entitled may not be appropriate in light of the specific circumstances of a particular case. To wit: a detainee may not be entitled to the writ where the detainee has already received adequate process, such that the risk of erroneous detention is sufficiently mitigated. The statutory writ, for example, has been said to be open only to those prisoners to whom “adequate relief cannot be obtained in any other form or from any other court.” If a detainee has received an objective finding by a neutral body that the detention decision is supported by the facts and applicable law, and if the detainee has had a meaningful opportunity to contest the factual predicate for the status determination and the resulting legal conclusions, it generally may be fairly said that adequate process exists. To be sure, adequate process need not be monolithic or robust in all circumstances. Battlefield exigencies, in particular, may call for curtailed process. Apprehending purported enemies is “[a]n important incident to the conduct of war”186 and a reality of modern warfare. Accordingly, as noted in Hamdi v. Rumsfeld, when a detainee is captured on the battlefield, the subsequent proceedings “may be tailored to alleviate their uncommon potential to burden the Executive at a time of ongoing military conflict.”187 In other words, battlefield captures may allow for only minimal process.188 It should be noted, however, that the limited procedures tied to battlefield exigencies may no longer be sufficient as time marches on; military and Executive claims to battlefield exigencies lose their force as those exigencies either pass with time or as time bestows on the military and the Executive an expanding and workable window within which to manage and prepare for more demanding process.189 This enhanced opportunity may give rise to traditional circumstances and thereby standard process. Process aside, but relatedly, the recognition of habeas rights may not be proper where practical obstacles do not permit the basic administration of habeas proceedings. Not all practical obstacles should have a preclusive effect on habeas proceedings. In this respect, the practical problems identified in Eisentrager may be divided into three categories. First, whether the military arm of the government would be drawn away from its critical functions in order to participate in the legal process, whether a safe space exists for the process, and whether the application of habeas to a particular petition would engender conflict with the host country are among the practical considerations that courts generally may find relevant in determining whether a habeas action is appropriate. Second, the Eisentrager Court was troubled by the other practical issues were habeas to run, including “allocation of shipping space, guarding personnel, billeting and rations,” and “transportation for whatever witnesses the prisoners desired to call as well as transportation for those necessary to defend legality of the sentence.”193 These burdens—however seemingly costly and onerous at the time—should have less resonance in today’s world, in light of the considerable resources available to the United States and the technological achievements that enable individuals and materials to be transferred from one end of the globe to the other with relative ease and swiftness. A third category of practical concerns is based on notions that our enemies and others will gain morally or optically from habeas actions. “Such trials,” it was said in Eisentrager, “would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals.” The resulting “conflict between judicial and military opinion,” the argument went, would be “highly comforting to enemies of the United States.” With due respect to the Eisentrager Court, statements relating to whether habeas proceedings would bring “comfort” to the enemy and others appear to be pure speculation; there does not seem to be any evidence to support such guesswork as to our enemies’ feelings. Moreover, to the extent that the United States **demonstrates fidelity to** **its first principles and** **an unflinching belief in the rule of law even during times of war**, a compelling argument can be made that **doing so enhances America’s “soft power” and furthers progress in the battle for hearts and minds**. In either case, deciding whether the judicial action of recognizing habeas rights may affect the foreign policy interests of the United States may be a political question beyond the purview of the courts. In assessing the weight of these practical barriers, the courts should be mindful of the overarching fact that the habeas writ is malleable and must adapt to given circumstances in order for its fundamental purposes to be carried out. “The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected,” the Court has noted. It is true that these limiting principles, or variations thereof, were suggested by the petitioners’ counsel to the D.C. Circuit in al Maqaleh. 199 The petitioners’ counsel’s proffers seemed to have at least some appeal to the panel,200 and the court ultimately was not persuaded that these limiting principles were sufficient to guard against the “worldwide writ” concerns that Judge Tatel and his colleagues had.201 Perhaps the panel felt it was unable to adopt the limiting principles without clear direction from the Supreme Court.202 If al Maqaleh is reviewed by the Supreme Court, or a similar case involving the extraterritorial reach of the writ “goes up” instead, the Justices will have the opportunity to consider and (hopefully) bless these limiting principles as to the scope of habeas rights. **This discussion yields the following standard: an individual detained by, and pursuant to the power of, the** United States **is assumed to possess the ability to challenge the legality of the detention by way of the writ of habeas corpus**, unless an individualized determination is made that either adequate process within which to make this challenge, commensurate with the circumstances, exists, or practical difficulties preclude the administration of necessary proceedings. The writ may be issued by a district court with jurisdiction over the custodian who may produce the petitioner.

**The judiciary must clarify a meaningful right to habeas to preserve legitimacy**

**Knowles 9** [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

The Bush Administration's detainee policy made clear that - due to America's power - the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But **in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation** - the United States. n412 **As an institution of that same government, the courts are well-positioned to understand and interpret international law that has been incorporated into U.S. law.** Because the courts have the capacity to track international legal norms, **there was no longer a justification for exceptional deference to the Administration's interpretation of the Geneva Conventions as applied to the detainees.** Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions. n413 But the Guantanamo litigation demonstrated that American hegemony has altered this classic assumption as well. **The** [\*154] **transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it.** The Kuwaiti government hired American attorneys to represent their citizens held at Guantanamo. n414 **In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees**. n415 Other nations learned about the treatment of their citizens through the information obtained by attorneys. n416 Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly - and Congress, in fact, acted twice to limit detainees' access to the courts n417 - this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically-charged issues. n418 Even "rogue states" such as Myanmar have their lobbyists in Washington. n419 In addition, **foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels.** n420 **The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America's strategic interests.** n421 In the Guantanamo litigation, **the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations. The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on**, among other things, **predictability**. n422 G. John **Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability**." n423 **Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States**. At the same time, **the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states**." n424 **The Bush Administration's detainee policy**, for all of its virtues and faults, **was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy**. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 **Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law.** n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, **one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law.** Indeed, **the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable**, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, **the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.** The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 **Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view**. In contrast, **the President's** (and Congress's) **responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage,** even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "**treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest.**" n438 At the same time, **the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy.** n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 **The enemy combatant litigation** also **underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head.** In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But **in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play.** Rather than hobbling the exercise of foreign policy, **the courts are a key form of "soft power."** n442 As Justice Kennedy's majority opinion observed in Boumediene, **courts can bestow external legitimacy on the acts of the political branches**. n443 **Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world."** n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 **Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch** in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 **In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity**. n447 **The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony.** In fact, **the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights.** n449

**Only a court ruling solves cooperation**

**Knowles 9** [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

**American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable** because other nations, seeking to protect their own security, form alliances to counter-balance the leading state. n322 But **no nation or group of nations has yet attempted to challenge America's military predominance**. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, **the United States is geographically isolated from other potential rivals**, who are located near one another in Eurasia. n327 **This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another**. n328 Second, **the U.S. far exceeds the capabilities of all other states in every aspect of power** - military, economic, technological, and in terms of what is known as "soft power." **This advantage "is larger now than any analogous gap in the history of the modern state system."** n329 Third, **unipolarity is entrenched as the status quo** for the first time since the seventeenth century, **multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing**. n330 Finally, **the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening**. A war between great powers in today's world is very unlikely. n331 **These factors make the current system much more stable, peaceful and durable** than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. **The lack of balancing means that the U**nited **S**tates, **and by extension the executive branch, faces much weaker external constraints on its exercise of power** than in the past. n332 Therefore, **the internal processes of the U.S. matter now more than any other nations' have in history**. n333 And it is these internal processes, as much as external developments, **that will determine the durability of American unipolarity**. As one realist scholar has argued, **the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate**. n334 **Hegemonic orders take on hierarchical characteristics**, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 **Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization** among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, **the preeminent state has "the power to shape the rules of international politics according to its own interests."** n337 **The hegemon**, in return, **provides public goods for the system as a whole**. n338 **The hegemon possesses** not only superior command of military and economic resources but "**soft" power, the ability to guide other states' preferences and interests**. n339 **The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate**. n340 [\*142] **The** **U**nited **S**tates **qualifies as a global hegemon**. In many ways, **the U.S. acts as a world government**. n341 **It provides public goods for the world**, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, **the United States provides a public good through its efforts to combat terrorism** and confront - even through regime change - rogue states. n345 **The** **U**nited **S**tates also **provides a public good through its** **promulgation and enforcement of international norms.** **It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale**. n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347 Moreover, **controlling international norms are** [\*143] sometimes **embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law.** For example, **whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants**." n348 **These public goods provided by the United States** **stabilize the system by legitimizing it and decreasing resistance to it**. **The transnational** political and economic **institutions created by the** **U**nited **S**tates **provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon**" with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 **The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government**. **The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively** in foreign affairs **is counter-balanced by the benefits it provides** **in permitting foreigners multiple points of access to the government**. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 **The courts**, too, **are** **accessible to foreign nations and non-citizens**. **The Alien Tort Statute is emerging as an** [\*144] **important vehicle for adjudicating tort claims among non-citizens in U.S. courts.** n355 Empires are more complex than unipolar or hegemonic systems. **Empires consist of a "rimless-hub-and-spoke structure,"** with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 **The success of imperial governance depends on the lack of a "rim**." n359 **Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery** by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But **the management of empire is increasingly difficult in the era of globalizatio**n. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. **The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause."** n368 **The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy.** B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. **The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners**. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "**World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington**." n370 **These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs.** [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, **America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political** - if not as much as in the past - but **it is American politics that matters most.** If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, **the management of hegemony or unipolarity requires a different set of competences.** Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. **If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a greater risk of major war**. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that **American hegemony is unusually stable and durable**. n380 As noted above, **other nations have many incentives to continue to tolerate the current order**. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, **the U.S. will remain dominant in most measures of capability for decades.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 **The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature.** n384 [\*148] Third, **the hegemonic model assumes that preservation of American hegemony depends** **not just on power, but legitimacy**. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that **legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control.** n386 **Legitimacy as a method of maintaining predominance is far more efficient.** The hegemonic model generally values courts' institutional competences more than the anarchic realist model. **The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy.** This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. **The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap**. And **the dilemma caused by the need to weigh different functional considerations** - liberty, accountability, and effectiveness - **against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.**

**Legitimacy solves global peace — the alternative is great power transition wars**

**Kromah 9** [February 2009, Masters in IR, Lamii Moivi Kromah at the Department of International Relations

University of the Witwatersrand, “The Institutional Nature of U.S. Hegemony: Post 9/11”, http://wiredspace.wits.ac.za/bitstream/handle/10539/7301/MARR%2009.pdf?sequence=1]

**A final major gain to the U**nited **S**tates **from the benevolent hegemony has** perhaps **been** less widely appreciated. It nevertheless proved of great significance in the short as well as in the long term: **the pervasive cultural influence of the U**nited **S**tates.39 This dimension of power base is often neglected. **After World War II the authoritarian political cultures of Europe and Japan were utterly discredited, and the liberal democratic elements of those cultures revivified.** The revival was most extensive and deliberate in the occupied powers of the Axis, where **it was nurtured by drafting democratic constitutions, building democratic institutions, curbing the power of industrial trusts** by decartelization and the rebuilding of trade unions, **and imprisoning** or discrediting **much of the wartime leadership.** **American liberal ideas largely filled the cultural void.** The effect was not so dramatic in the "victor" states whose regimes were reaffirmed (Britain, the Low and Scandinavian countries), but even there the United States and its culture was widely admired. The upper classes may often have thought it too "commercial," but in many respects American mass consumption culture was the most pervasive part of America's impact. American styles, tastes, and middle-class consumption patterns were widely imitated, in a process that' has come to bear the label "coca-colonization."40 **After WWII policy makers in the USA set about remaking a world to facilitate peace.** **The hegemonic project involves using political and economic advantages gained in world war to restructure the operation of the world market and interstate system in the hegemon's own image. The interests of the leader are projected on a universal plane: What is good for the hegemon is good for the world.** **The hegemonic state is successful to the degree that other states emulate it**. **Emulation is the basis of the consent** that lies at the heart of the hegemo nic project.41 Since wealth depended on peace **the U.S set about creating institutions and regimes that promoted free trade, and peaceful conflict resolution. U.S. benevolent hegemony is what has kept the peace since the end of WWII.** The upshot is that **U.S. hegemony and liberalism have produced the most stable and durable political order that the world has seen** since the fall of the Roman Empire. It is not as formally or highly integrated as the European Union, but it is just as profound and robust as a political order, **Kant’s Perpetual Peace requires that the system be diverse and not monolithic because then tyranny will be the outcome. As long as the system allows for democratic states to press claims and resolve conflicts, the system will perpetuate itself peacefully. A state such as the United States that has achieved international primacy has every reason to attempt to maintain that primacy through peaceful means so as to preclude the need of having to fight a war** to maintain it.42 **This view of the post-hegemonic Western world does not put a great deal of emphasis on U.S. leadership in the traditional sense. U.S. leadership takes the form of providing the venues and mechanisms for articulating demands and resolving disputes** not unlike the character of politics within domestic pluralistic systems.43 **America as a big and powerful state has an incentive to organize and manage a political order that is considered legitimate by the other states**. **It is not in a hegemonic leader's interest to preside over a global order that requires constant use of material capabilities to get other states to go along. Legitimacy exists when** political order is based on reciprocal consent. It emerges when **secondary states buy into rules and norms of the political order as a matter of principle**, and not simply because they are forced into it. But **if a hegemonic power wants to encourage the emergence of a legitimate political order, it must articulate principles and norms**, and engage in negotiations and compromises that have very little to do with the exercise of power.44 So should this hegemonic power be called leadership, or domination? Well, it would tend toward the latter. Hierarchy has not gone away from this system. Core states have peripheral areas: colonial empires and neo-colonial backyards. Hegemony, in other words, involves a structure in which there is a hegemonic core power. The problem with calling this hegemonic power "leadership" is that leadership is a wonderful thing-everyone needs leadership. But sometimes I have notice that leadership is also an ideology that legitimates domination and exploitation. In fact, this is often the case. But this is a different kind of domination than in earlier systems. Its difference can be seen in a related question: is it progressive? Is it evolutionary in the sense of being better for most people in the system? I think it actually is a little bit better. The trickle down effect is bigger-it is not very big, but it is bigger.45 It is to this theory, Hegemonic Stability that the glass slipper properly belongs, because both U.S. security and economic strategies fit the expectations of hegemonic stability theory more comfortably than they do other realist theories. We must first discuss the three pillars that U.S. hegemony rests on structural, institutional, and situational. (1) Structural leadership refers to the underlying distribution of material capabilities that gives some states the ability to direct the overall shape of world political order. Natural resources, capital, technology, military force, and economic size are the characteristics that shape state power, which in turn determine the capacities for leadership and hegemony. If leadership is rooted in the distribution of power, there is reason to worry about the present and future. The relative decline of the United States has not been matched by the rise of another hegemonic leader. At its hegemonic zenith after World War II, the United States commanded roughly forty five percent of world production. It had a remarkable array of natural resource, financial, agricultural, industrial, and technological assets. America in 1945 or 1950 was not just hegemonic because it had a big economy or a huge military; it had an unusually wide range of resources and capabilities. This situation may never occur again. As far as one looks into the next century, it is impossible to see the emergence of a country with a similarly commanding power position. (2) Institutional leadership refers to the rules and practices that states agree to that set in place principles and procedures that guide their relations. It is not power capabilities as such or the interventions of specific states that facilitate concerted action, but the rules and mutual expectations that are established as institutions. Institutions are, in a sense, self-imposed constraints that states create to assure continuity in their relations and to facilitate the realization of mutual interests. A common theme of recent discussions of the management of the world economy is that institutions will need to play a greater role in the future in providing leadership in the absence of American hegemony. Bergsten argues, for example, that "institutions themselves will need to play a much more important role.46 Institutional management is important and can generate results that are internationally greater than the sum of their national parts. The argument is not that international institutions impose outcomes on states, but that institutions shape and constrain how states conceive and pursue their interests and policy goals. They provide channels and mechanisms to reach agreements. They set standards and mutual expectations concerning how states should act. They "bias" politics in internationalist directions just as, presumably, American hegemonic leadership does. (3) Situational leadership refers to the actions and initiatives of states that induce cooperation quite apart from the distribution of power or the array of institutions. It is more cleverness or the ability to see specific opportunities to build or reorient international political order, rather than the power capacities of the state, that makes a difference. In this sense, leadership really is expressed in a specific individual-in a president or foreign minister-as he or she sees a new opening, a previously unidentified passage forward, a new way to define state interests, and thereby transforms existing relations. Hegemonic stability theorists argue that international politics is characterized by a succession of hegemonies in which a single powerful state dominates the system as a result of its victory in the last hegemonic war.47 Especially after the cold war America can be described as trying to keep its position at the top but also integrating others more thoroughly in the international system that it dominates. It is assumed that the differential growth of power in a state system would undermine the status quo and lead to hegemonic war between declining and rising powers48, but I see a different pattern: the U.S. hegemonic stability promoting liberal institutionalism, the events following 9/11 are a brief abnormality from this path, but the general trend will be toward institutional liberalism. **Hegemonic states are the crucial components in military alliances that turn back the major threats to mutual sovereignties and hence political domination of the system.** Instead of being territorially aggressive and eliminating other states, hegemons respect other's territory. They aspire to be leaders and hence are upholders of inter-stateness and inter-territoriality.49 **The nature of the institutions** themselves must, however, be examined. They **were shaped in the years immediately after World War II by the United States. The American willingness to establish institutions**, the World Bank **to deal with finance and trade**, United Nations **to resolve global conflict**, NATO **to provide security** for Western Europe, **is explained in terms of the theory of collective goods**. It is commonplace in the regimes literature that the United States, in so doing, was providing not only private goods for its own benefit but also (and perhaps especially) collective goods desired by, and for the benefit of, other capitalist states and members of the international system in general. (Particular care is needed here about equating state interest with "national" interest.) Not only was the United States protecting its own territory and commercial enterprises, it was providing military protection for some fifty allies and almost as many neutrals. Not only was it ensuring a liberal, open, near-global economy for its own prosperity, it was providing the basis for the prosperity of all capitalist states and even for some states organized on noncapitalist principles (those willing to abide by the basic rules established to govern international trade and finance). While such behaviour was not exactly selfless or altruistic, certainly the benefits-however distributed by class, state, or region-did accrue to many others, not just to Americans.50 For the truth about U.S. dominant role in the world is known to most clear-eyed international observers. And the truth is that **the benevolent hegemony exercised by the United States is good for a vast portion of the world's population. It is certainly a better international arrangement than all realistic alternatives.** To undermine it would cost many others around the world far more than it would cost Americans-and far sooner. As Samuel Huntington wrote five years ago, before he joined the plethora of scholars disturbed by the "arrogance" of American hegemony; "**A world without U.S. primacy will be a world with more violence and disorder and less democracy and economic growth than a world where the United States continues to have more influence than any other country** shaping global affairs”. 51 I argue that **the overall American-shaped system is still in place. It is this macro political system**-a legacy of American power and its liberal polity **that remains and serves to foster agreement and consensus. This is precisely what people want when they look for U.S. leadership and hegemony**.52 If the U.S. retreats from its hegemonic role, who would supplant it, not Europe, not China, not the Muslim world –and certainly not the United Nations. Unfortunately, **the alternative to a single superpower is not a multilateral utopia, but the anarchic nightmare of a New Dark Age**. Moreover, **the alternative to unipolarity would not be multipolarity at all. It would be ‘apolarity’ –a global vacuum of power**.53 Since the end of WWII **the United States** has been the clear and dominant leader politically, economically and military. But its **leadership as been unique; it has not been tyrannical, its leadership and hegemony has focused on relative gains and has forgone absolute gains**. **The difference lies in the exercise of power**. **The strength acquired by the United States in the aftermath of World War II was far greater than any single nation** had ever possessed, at least since the Roman Empire. America's share of the world economy, the overwhelming superiority of its military capacity-augmented for a time by a monopoly of nuclear weapons and the capacity to deliver them--gave it the choice of pursuing any number of global ambitions. That the American people "might have set the crown of world empire on their brows," as one British statesman put it in 1951, but chose not to, was a decision of singular importance in world history and recognized as such.54 Leadership is really an elegant word for power. **To exercise leadership is to get others to do things that they would not otherwise do. It involves the ability to shape, directly or indirectly, the interests or actions of others. Leadership may involve the ability to not just "twist arms" but also to get other states to conceive of their interests and policy goals in new ways**. This suggests a second element of leadership, which involves not just the marshalling of power capabilities and material resources. **It** also **involves the ability to project a set of political ideas or principles about the proper or effective ordering of po1itics. It suggests the ability to produce concerted or collaborative actions by several states or other actors. Leadership is the use of power to orchestrate the actions of a group toward a collective end.**55 By validating regimes and norms of international behaviour **the U.S. has given incentives for actors**, small and large, in the international arena **to behave peacefully. The uni-polar U.S. dominated order has led to a stable international system**. Woodrow Wilson’s zoo of managed relations among states as supposed to his jungle method of constant conflict. The U.S. through various international treaties and organizations as become a quasi world government; It resolves the problem of provision by imposing itself as a centralized authority able to extract the equivalent of taxes. The focus of the theory thus shifts from the ability to provide a public good to the ability to coerce other states. A benign hegemon in this sense coercion should be understood as benign and not tyrannical. If significant continuity in the ability of the United States to get what it wants is accepted, then it must be explained. The explanation starts with our noting that the institutions for political and economic cooperation have themselves been maintained. Keohane rightly stresses the role of institutions as "arrangements permitting communication and therefore facilitating the exchange of information. By providing reliable information and reducing the costs of transactions, **institutions can permit cooperation to continue even after a hegemon's influence has eroded.** **Institutions provide opportunities for commitment and for observing whether others keep their commitments. Such opportunities are virtually essential to cooperation in non-zero-sum situations,** as gaming experiments demonstrate. **Declining hegemony and stagnant** (but not decaying) **institutions may therefore be consistent with a stable provision of desired outcomes, although the ability to promote new levels of cooperation to deal with new problems** (e.g., energy supplies, environmental protection) **is more problematic**. Institutions nevertheless provide a part of the necessary explanation.56 In restructuring the world after WWII it was America that was the prime motivator in creating and supporting the various international organizations in the economic and conflict resolution field. An example of this is NATO’s making Western Europe secure for the unification of Europe. It was through NATO institutionalism that the countries in Europe where able to start the unification process. The U.S. working through NATO provided the security and impetus for a conflict prone region to unite and benefit from greater cooperation. Since the United States emerged as a great power, the identification of the interests of others with its own has been the most striking quality of American foreign and defence policy. Americans seem to have internalized and made second nature a conviction held only since World War II: Namely, that their own wellbeing depends fundamentally on the well-being of others; that American prosperity cannot occur in the absence of global prosperity; that American freedom depends on the survival and spread of freedom elsewhere; that aggression anywhere threatens the danger of aggression everywhere; and that American national security is impossible without a broad measure of international security. 57 **I see a multi-polar world as one being filled with instability and higher chances of great power conflict**. **The Great Power jostling and British hegemonic decline that led to WWI is an example of how multi polar systems are prone to great power wars.** I further posit that **U.S. hegemony is significantly different from the past British hegemony because of its reliance on consent and its mutilaterist nature**. The most significant would be the UN and its various branches financial, developmental, and conflict resolution**. It is common for the international system to go through cataclysmic changes with the fall of a great power.** I feel that American hegemony is so different especially with its reliance on liberal institutionalism and complex interdependence that U.S. hegemonic order and governance will be maintained by others, if states vary in size, then cooperation between the largest of the former free riders (and including the declining hegemonic power) may suffice to preserve the cooperative outcome. Thus we need to amend the assumption that collective action is impossible and incorporate it into a fuller specification of the circumstances under which international cooperation can be preserved even as a hegemonic power declines.58 **If hegemony means the ability to foster cooperation and commonalty of social purpose among states, U.S. leadership and its institutional creations will long outlast the decline of its post war position of military and economic dominance; and it will outlast the foreign policy stumbling of particular administrations.**59 U.S. hegemony will continue providing the public good that the world is associated with despite the rise of other powers in the system “**cooperation may persist after hegemonic decline because of the inertia of existing regimes.** Institutional factors and different logics of regime creation and maintenance have been invoked to explain the failure of the current economic regime to disintegrate rapidly in response to the decline of American predominance in world affairs.”60 **Since the end of WWII the majority of the states** that are represented in the core **have come to depend on the security that U.S. hegemony has provided,** so although they have their own national interest, **they forgo short term gains to maintain U.S. hegemony**. Why would other states forgo a leadership role to a foreign hegemon because it is in their interests; one particularly ambitious application is Gilpin's analysis of war and hegemonic stability. He argues that **the presence of a hegemonic power is central to the preservation of stability and peace** in the international system. Much of Gilpin's argument resembles his own and Krasner's earlier thesis that hegemonic states provide an international order that furthers their own self-interest. Gilpin now elaborates the thesis with the claim that **international order is a public good, benefiting subordinate states**. This is, of course, the essence of the theory of hegemonic stability. But Gilpin adds a novel twist: the dominant power not only provides the good, it is capable of extracting contributions toward the good from subordinate states. In effect, the hegemonic power constitutes a quasigovernment by providing public goods and taxing other states to pay for them. Subordinate states will be reluctant to be taxed but, because of the hegemonic state's preponderant power, will succumb. Indeed, **if they receive net benefits** (i.e., a surplus of public good benefits over the contribution extracted from them), **they may recognize hegemonic leadership as legitimate and so reinforce its performance and position**. During the 19th century several countries benefited from British hegemony particularly its rule of the seas, since WWII the **U.S. has also provided a similar stability and security that as made smaller powers thrive in the international system**. The model presumes that the (military) dominance of the hegemonic state, which gives it the capacity to enforce an international order, also gives it an interest in providing a generally beneficial order so as to lower the costs of maintaining that order and perhaps to facilitate its ability to extract contributions from other members of the system.

**Only judicial review affirms habeas**

**Sidhu 11**, JD George Washington

(Dawinder, SHADOWING THE FLAG: EXTENDING THE HABEAS WRIT BEYOND GUANTÁNAMO, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1597&context=wmborj)

**An appreciation for the writ, the separation of powers scheme,** and relevant Supreme Court pronouncements in this field **command that the rule of law** initially **attend any executive action that restrains individual liberty.** It so attends because the executive action may be made arbitrarily or in error. It so attends because the Executive may seek to oppress. **Any distance between the rule of law and executive action permits a misjudgment to lapse into a miscarriage of justice, and allows singular moments of oppression to degenerate into an** **unabated contagion of tyranny. To avert the specter of governmental abuse, courts must assume—**according to the Eisenstrager Court— **that the rule of law attaches to the executive decision to detain another, territory notwithstanding.** This assumption may not be appropriate in all circumstances. Courts must be mindful of special considerations that inhere in the wartime context. The law adjusts in times of war—it may speak with a “different voice,” but it is not silent. Battlefield exigencies may, for example, call for diminished, though legally sufficient process in assessing whether an individual has been properly detained. In addition, practical diffculties may preclude the administration of habeas proceedings. In other words, the assumption that an enemy prisoner has habeas rights may be rebutted by the presence of adequate substitute process or by realities on the ground. **The D.C. Circuit in al Maqaleh was unfaithful to the established and my proposed understanding of the scope of the habeas writ.** Worse than the legal errors is the practical consequence of the ruling—that is, **the D.C. Circuit placed Bagram** **beyond judicial review and consequently created** **room between the rule of law and the Executive for abuse to fester**, **the very abuse that the Framers feared and the very room that the writ was designed to occupy.**

**Strong judicial model prevents Russian loose nukes**

**Nagle**, Independent Research Consultant Specializing in the Soviet Union, 19**94** (Chad. “What America needs to do to help Russia avoid chaos” Washington Times, August 1, Lexis Nexis)

As things stand right now, **there is indeed potential for danger and instability in Russia**, as Mr. Criner notes. But this is not because America has failed to act as a "moral compass" in the marketplace. Rather, **Russia's inherent instability at present stems from the fact that** in all of its 1,000-year history**, it never had a strong, independent judiciary to act as a check on political power.** The overwhelming, monolithic power of the executive, whether czar or Communist Party, has always been the main guarantor of law and order. **Now, as a fragile multiparty democracy, Russia has no more than an embryo of a judiciary.** The useless Constitutional Court is gone, the Ministry of Justice is weak, and the court system is chaotic and ineffective. Hence, the executive determined the best safeguard against the recurrence of popular unrest, the kind that occurred in October 1993, to be the concentration of as much power as possible in its hands at the expense of a troublemaking parliament. Under a sane and benign president, Russia with a "super presidency" represents the best alternative for America and the West. The danger lies in something happening to cause Mr. Yeltsin's untimely removal from office. If Russia is ever to develop a respected legal system, it will need the protracted rule of a non-tyrannical head of state. In the meantime, **the United States can provide a model to Russia of a system in which the judiciary functions magnificently.** **America, the world's only remaining superpower, can provide advice and technical expertise to the Russians as they try to develop a law-based society.** We can also send clear signals to the new Russia instead of the mixed ones emanating from the Clinton administration**.** Now is the time for America to forge ahead with the "new world order," by promoting the alliance of the industrialized democracies of the Northern Hemisphere on American terms, not Russian. This constitutes the real "historical moment" to which Mr. Criner refers. Russia is not in a position to make threats to or demands of the United States any more so than when it ruled a totalitarian empire. It should learn to play by new rules as a first lesson in joining the family of nations. Coddling an aggressive Russia and giving it unconditional economic aid (as Alexander Rutskoi has called for) would be counterproductive, and might even encourage Russia to "manufacture" crises whenever it wanted another handout**. Russia is indeed a dangerous and unstable place. The prospect of ordinary Third World political chaos in an economically marginal country with a huge stockpile of intercontinental ballistic missiles is a nightmare.** However, Mr. Yeltsin is busily consolidating power, and the presidential apparatus is growing quickly. With his new team of gray, non-ideological figures intent on establishing order in the face of economic decline and opposition from demagogues (e.g. Vladimir Zhirinovsky and Mr. Rutskoi), Mr. Yeltsin is already showing signs of success. **Under such circumstances, the best America can do is stand firm, extend the hand of friendship** and pray for Mr. Yeltsin's continued good health.

**Extinction**

**Helfand and Pastore 9** [Ira Helfand, M.D., and John O. Pastore, M.D., are past presidents of Physicians for Social Responsibility.

March 31, 2009, “U.S.-Russia nuclear war still a threat”, <http://www.projo.com/opinion/contributors/content/CT_pastoreline_03-31-09_EODSCAO_v15.bbdf23.html>]

\*GREEN

President Obama and Russian President Dimitri Medvedev are scheduled to Wednesday in London during the G-20 summit. They must not let the current economic crisis keep them from focusing on one of **the greatest threats confronting humanity: the danger of nuclear war.** Since the end of the Cold War, many have acted as though the danger of nuclear war has ended. It has not. **There remain** in the world more than 20,000 nuclear weapons. Alarmingly, **more than 2,000 of these weapons in the U.S. and Russian arsenals remain on ready-alert status**, commonly known as hair-trigger alert. **They can be fired within five minutes and reach targets in** the other country **30 minutes** later.  **Just one** of these weapons **can destroy a city**. A war involving **a substantial number would cause devastation on a scale unprecedented in human history.** A study conducted by Physicians for Social Responsibility in 2002 showed that if only 500 of the Russian weapons on high alert exploded over our cities, **100 million Americans would die in the first 30 minutes.**  An attack of **this** magnitude also **would destroy the entire economic,** communications and transportation **infrastructure on which we all depend. Those who survived the initial attack would inhabit a nightmare landscape** with huge swaths of the country **blanketed with radioactive fallout and epidemic diseases rampant.** They would have no food, no fuel, no electricity, no medicine, and certainly no organized health care. In the following months it is likely the vast majority of the U.S. population would die. Recent studies by the eminent climatologists Toon and Robock have shown that such a war would have a huge and immediate impact on climate world wide. **If all of the warheads in the U.S. and Russian strategic arsenals were drawn into the conflict, the firestorms** they caused **would loft** 180 million **tons of soot and debris into the upper atmosphere — blotting out the sun. Temperatures across the globe would fall** an average of 18 degrees Fahrenheit **to levels not seen on earth since** the depth of **the last ice age,** 18,000 years ago. **Agriculture would stop, eco-systems would collapse, and many species, including perhaps our own, would become extinct.**  It is common to discuss nuclear war as a low-probabillity event. But is this true? **We know of five occcasions during the last 30 years when either the U.S. or Russia believed it was under attack and prepared a counter-attack.** The most recent of these near misses occurred after the end of the Cold War on Jan. 25, 1995, when the Russians mistook a U.S. weather rocket launched from Norway for a possible attack.  Jan. 25, 1995, was an ordinary day with no major crisis involving the U.S. and Russia. But, unknown to almost every inhabitant on the planet, a misunderstanding led to the potential for a nuclear war. The ready alert status of nuclear weapons that existed in 1995 remains in place today.

**1AC Afghanistan**

**Contention Two is Afghanistan:**

**Detention at Bagram will shatter the alliance and cause U.S. kickout – only a credible right to habeas solves**

**Rogers 11/14**, Christopher Rogers is a program officer for the Regional Policy Initiative on Afghanistan & Pakistan at Open Society Foundations. He focuses on conflict-related detentions and civilian protection, including research and reports on U.S. detentions at Bagram, Afghan national security detentions, and drone strikes in Pakistan. Prior to joining the Open Society Foundations, Rogers was the research fellow in Pakistan for the Campaign for Innocent Victims in Conflict (CIVIC), investigating civilian casualties from military operations, terrorism, and drone strikes and advocating for victim assistance programs. In law school he worked with UNHCR in Jordan on Iraqi refugee protection and the Palestinian Center for Human Rights in Gaza. He received a JD from Harvard Law School, MPhil from Oxford University, and BA from the University of Pennsylvania.

Afghanistan Post 2014: Closing Bagram, <http://justsecurity.org/2013/11/14/guest-post-afghanistan-post-2014-closing-bagram/>

**With the U.S. combat role in Afghanistan coming to an end**, and the Bilateral Security Agreement now [under review](http://www.theguardian.com/world/2013/oct/19/afghanistan-loya-jirga-us-troops-2014), **officials are under pressure to do something many observers may believe was already done: end U.S. detentions at the Detention Facility in Parwan** (DFIP), or Bagram. **Though the** U.S. **government**[**recently handed over**](http://www.bbc.co.uk/news/world-asia-21922047)**3,000 Afghan detainees, more than 60 third country nationals, or TCNs, remain in U.S. custod**y. U.S. officials have stated that resolving their cases is their goal, and that December 2014 is the deadline. But right now the United States will likely fail to do so, possibly leaving detainees in indefinite limbo, and **raising serious legal and political concerns for the U.S. presence in Afghanistan post-2014**.

Over the years, **many** have **criticized** U.S. **detentions as**[**inconsistent with applicable i**nternational **h**uman **r**ights **l**aw](http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/06/HRC23-Item4GD-Guantanamo.pdf)**and for failing to provide the**[**requisite level of due process**](http://www.humanrightsfirst.org/wp-content/uploads/pdf/Detained-Denied-in-Afghanistan.pdf)**—all of which will take on new urgency as the U**nited **S**tates **brings an end to** its **combat mission in 2014. So too will concern over** the **legality of** U.S. **detentions under Afghan law**, which has thus far received too little attention. **Such differences reflect deeper disagreement over post-2014 U.S. engagement**.

**Just last week, U.S. officials**[**criticized**](http://www.washingtonpost.com/world/national-security/afghan-review-panel-to-release-80-percent-of-high-security-detainees-pentagon-says/2013/11/08/eea5b498-48c8-11e3-bf0c-cebf37c6f484_story.html)**the Afghan government’s recommendation to release many transferred detainees because of lack of evidence to prosecute or continue their detention under Afghan law**. As outlined in a [report](http://www.opensocietyfoundations.org/reports/remaking-bagram-creation-afghan-internment-regime-and-divide-over-us-detention-power) last year by Open Society Foundations, an Afghan internment regime modeled on the U.S. system was initially proposed as part of the DFIP transfer, but appeared to violate several Afghan constitutional guarantees. The **dispute over the legality of the detention regime under Afghan law eventually led to**[**a suspension of the Bagram handover**](http://bigstory.ap.org/article/us-hands-over-bagram-prison-afghans)**and the Afghan government deciding against formally adopting such a regime**.

In consenting to U.S. detentions at the DFIP, the Afghan government has already been in violation of its own legal obligations under Afghan domestic law and constitution as well international human rights law. **With the U**nited **St**ates **bringing an end to its combat operations, and an Afghan presidential election on the horizon, Afghan leaders will likely view ongoing U.S. detentions as legally untenable and a political liability, which could jeopardize U.S.-Afghan relations at a critical time**.

**The BSA is on the brink --- cancellation causes Taliban surge, economic collapse, warlordism, and civil war**

**Saboory 11/5**, Hamid M. Saboory is a former employee of the Afghan National Security Council. Currently he teaches International Law at Kardan University. Mr. Saboory is a founding member of the Afghanistan Analysis and Awareness (A3), a Kabul-based think tank, <http://www.huffingtonpost.com/hamid-m-saboory/karzai-bilateral-security-agreement_b_4220151.html>

Additionally, **it has immense psychological impact on the public mindset particularly on economic activities**. Local private **investors are living in a limbo thinking that security condition may deteriorate** in the absence of international forces. **A recent Word Bank report predicts a**[**10 percent decrease**](http://www.reuters.com/article/2013/10/11/us-afghanistan-economy-idUSBRE99A0X120131011)**in economic growth** (Economic growth is expected to reach 3.1 percent this year and 3.5 percent in 2014, down sharply from 14.4 percent in 2012) in 2013 **because of waning security** conditions and withdrawal of international forces. **There are already signs of an economic downturn. This year, Afghan property markets are down, people are losing jobs and local investors are holding to their cash since all eyes are fixed on the status of the BSA**. It is seen as insurance for all kind of investments both political and economic. Interestingly, Afghan businessmen are not worried that Taliban may return, but rather scared that **if international forces fully withdraw, Afghan warlords would strip them off their properties and cash.**

**Sealing BSA is extensively linked to President Karzai's post 2014 legacy. BSA is widely perceived as the single reason preventing Afghanistan from relapse into** yet another **civil war**, and is **the physiological guarantor of peaceful political transition** in 2014 through democratic processes, elections. Although many notorious Afghan warlords are potential Presidential or Vice-President hopefuls, however, they can go rough and undermine the legitimacy and outcomes of the presidential elections in the absence of international forces, "President **Karzai can't allow another chaotic civil war** on his watch, and he is, undoubtedly, convinced that **he needs full support of international forces to make things rights for Afghanistan next year,"** said a close member of President Karzia's inner circle with the condition of anonymity. Qayum Karzai -- a potential presidential candidate and President Karzai's brother -- in an interview with a local TV channel [explicitly stressed on the importance of BSA](http://tolonews.com/en/afghanistan/12448-qayoum-karzai-stresses-kabul-washington-security-relationship), its economic benefits and importance to combat terrorism and bringing security for Afghanistan and the region.

**That causes multiple nuclear wars**

**Cronin 13** (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72 <http://dx.doi.org/10.1080/0163660X.2013.751650>)

**With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it.** Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. **As the U**nited **S**tates **draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position**, and pursue conflicting national interests **without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years except this time the outcome could be not just terrorism but** **nuclear war**.

**Independently, Taliban take-over causes nuclear war**

**Downer 10**—Alexander Downer, Former Australian Foreign Affairs Minister, 7/19/10 (Advertiser "We can't leave yet", lexis)
Afghanistan is now the longest war in which the United States has participated. I find that a quite chilling statistic. Many more may have died in World War II, the Vietnam War, the Korean War and in earlier conflicts, but none has gone on as long as this. What is more, there seems to be no end in sight and this makes people wonder whether the sacrifice of our and our allies' soldiers in Afghanistan is worthwhile. When making an assessment of war, we are always struck by the obvious: War is ugly and our people are dying, therefore we must stop fighting. But remember, **the quickest way to end a war is to lose it**. So before leaping to the conclusion that surrendering to the Taliban is the least bad option, think through the consequences of defeat. Think what would happen to Afghanistan, to its neighbourhood and well beyond. First, **the Taliban would seize control** of most of Afghanistan fairly **quickly. I doubt very much that** the government of President Hamid **Karzai would last long**. The President himself has been a disappointment. He is relatively weak and he has appointed many poor-quality governors and other leaders throughout the country. **This** hasn't helped his cause. The relatively benign Karzai regime would be replaced by militant extremists. SECOND, **the Taliban would once more allow Afghanistan to become a base for international Islamic extremist operations**. It would certainly become both an administrative and training base for al-Qaida but it would become more than that: **It would become the global focal point for Islamic extremism**. Islamic **fundamentalists would, in effect, have their own sovereign state from which they could launch operations anywhere in the world. Third, the collapse of the moderate Karzai administration in Afghanistan and its replacement by the Taliban would be a serious threat to the stability of Pakistan. Remember, the Taliban was established by the Pakistani intelligence services during the time of the Soviet occupation of Afghanistan**. There are still very close links between the Taliban and some elements of the Pakistani intelligence agency, ISI. It is possible that the Taliban and other **Islamic extremists could seize control of the government of Pakistan which, you will recall, has nuclear weapons**. It is not certain this would happen but it could. If it did, then **tensions between Pakistan and India would rise overnight, perhaps dangerously so. For the Indians, a combination of Islamic extremists and nuclear weapons on their border would be a potent mix**. Fourth, this would constitute a massive and unexpected victory for Islamic extremists. For all the pain we have been through over the past nine years since 9/11, there is no doubt that Islamic extremism is very much on the retreat outside Afghanistan. There has been no terrorist attack on American soil since then - although there have been attempts - nor has there been in this country. Al-Qaida networks have been broken up throughout the Western world and in the Middle East and South-East Asia. In Europe, governments are also having much greater success now in dealing with terrorism. A Taliban victory and takeover in Afghanistan would reverse all this. We would be back where we were in 2001. And if Pakistan were taken over by Islamic extremists, we would be a good deal worse off. Globally, Islamic extremism would be energised, its morale revitalised and its activities intensified. All this explains why it is not possible to abandon the struggle against the Taliban in Afghanistan. The war itself is bad, there is no doubt about that. No victory appears to be in sight any time soon, that is true. But the alternative is a great deal worse. The challenge in Afghanistan is not to try to control the country ourselves but to strengthen the capacity of the government in Kabul to control it. This means emphasising training and recruitment in the army, effective aid programs to give Afghanistan a reasonable economic base and encouraging President Karzai to appoint better-quality public administrators.

**1AC Rendition**

**Contention Three is Rendition:**

**First, it fails and backfires**

**Patel 13**, Khadija Patel is a staff writer at The Maverick which is South Africa’s fastest growing newspaper, 2/8/13, ‘Extraordinary Renditions’, aka How To Flout International Law With Impunity, <http://www.dailymaverick.co.za/article/2013-02-08-extraordinary-renditions-aka-how-to-flout-international-law-with-impunity/#.UnfpLfmkqvQ>

Known as “**extraordinary rendition**,” the practice **entails taking detainees to and from US custody without a legal process and often involves handing them over to countries that practice torture. The Open Society Foundation found 136 people had gone through the process of “extraordinary rendition**” and 54 countries were complicit in it, South Africa among them.

“However, to date, the **full** scale and **scope** of foreign government participation—as well as the number of victims—**remains unknown, largely because of the extreme secrecy maintained by the U**nited **S**tates and its partner governments,” Open Society Foundation investigator Amrit Singh wrote in the report.

The official use of rendition to combat terrorism began in June 1995. Former US President Bill Clinton responded to the 1993 terrorist bombing of the World Trade Centre by signing Presidential Decision Directive 39, which authorised rendition for the capture terrorists.

From August 1995 to September 2001, eight suspected terrorists were rendered to American custody. Among the eight were three men wanted for the 1998 bombing of the American Embassies in Kenya and Tanzania, where 224 people were killed and 4,500 were injured. One of the three Embassy bombers was captured here in South Africa; the other two were captured from undisclosed locations. All of them ended up in New York City, where they were held until they stood trial.

The war on terror, however, employs “extraordinary rendition”.

Theresa Blackledge, writing in [Global Review](http://sirgo.org/sites/default/files/GlobalReview_VolumeOne.pdf#page=7) in 2011, explains that previously, rendition was used to transfer an individual from one jurisdiction to another for the purpose of adjudicating criminal offences. But since 9/11, extraordinary rendition has been used primarily by the United States to capture individuals in one jurisdiction and render them to a third jurisdiction. Extraordinary rendition has been employed by the US to gain custody of individuals when there is no legal mechanism available, and for the purpose of detaining the individual for intelligence gathering purposes.

“Typically,” Blackledge says, “the U.S. renders the individual to a third party nation that is well known for committing human rights abuses, such as Jordan, Syria or Egypt. The third party nation accepts custody of the detainee and employs ‘enhanced interrogation’ methods to obtain intelligence.”

Bob Baer, an ex-undercover agent who worked for the CIA in the Middle East, put it like this: “If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured you send them to Syria. If you want someone to disappear – never to see them again – you send them to Egypt.”

More than one commentator has remarked at the irony of the US now demanding Syrian Bashar Al-Assad step down, when just a few years ago his inclination towards human rights abuses was actually exploited by US officials. Syria tortured terror suspects on behalf of the United States. The most famous case involves Maher Arar, a Canadian citizen snatched in 2002 by the U.S. at John F. Kennedy International Airport, before the CIA sent him to Syria under the mistaken impression he was a terrorist. In Syrian custody, Arar was “imprisoned for more than ten months in a tiny grave-like cell, beaten with cables, and threatened with electric shocks by the Syrian government,” Singh writes.

After ten months in prison, the Canadian government intervened on behalf of Arar, and he was finally freed without being charged with any crimes. In September 2006, a Canadian investigation cleared Arar of all charges. Canada’s Prime Minister apologised for the acts committed by American officials and ordered Arar be paid $9.7 million in restitution.

The Indian author Arundhati Roy, in her book The Ordinary Person’s Guide to Empire, says about this canny exploitation of human rights violators:

“[Former US] Attorney General John Ashcroft has declared that US freedoms are ‘not the grant of any government or document, but … our endowment from God’. So, basically, we’re confronted with a country armed with a mandate from heaven. Perhaps this explains **why the U.S. government  refuses to judge itself by the same moral standards by which it judges others.”**

Singh says,” “**The U.S. government violated domestic and international law, thereby** **diminishing its moral standing and eroding support for its counterterrorism efforts** **worldwide as these abuses came to light.”**

Supporters of extraordinary rendition believe that it has been an effective ploy in efforts to fight terrorism. They point out that the US has successfully repelled a terror attack on American soil since 9/11. But those opposed to the programme point out that the technique of “**enhanced interrogation” has** **had dubious results**.

They point out the case of Ibn al Sheikh Al Libi, an Al Qaeda leader responsible for running terrorist training camps in Afghanistan. He was captured on the Afghan and Pakistan border in 2001 and immediately rendered to Cairo for a dose of enhanced interrogation. Initially, Al Libi did not give the interrogators the information they sought, so the pressure was “enhanced” until finally Al Libi established the link between Al Qaeda and Saddam Hussein he believed the interrogators wanted. This link was used by former U.S. President George W. Bush to justify the 2003 war against Iraq. His Secretary of State Colin Powell even included that snippet of intelligence in his report when he addressed the United Nations in February 2003.

We all know how that turned out.

Al Libi is said to have later recanted his statements, claiming the false intelligence was extracted under torture and it was provided to halt the interrogations.

High-ranking officials from the Bush administration have escaped responsibility for authorising human rights violations associated with secret detention and extraordinary rendition, and “the impunity that they have enjoyed to date remains a matter of significant concern,” Singh says in the report.

But Open Society notes as well that the US is not the only government in the world that must reveal the full extent of its complicity in extraordinary renditions. The report says, “[R]esponsibility for these violations does not end with the United States. Secret detention and extraordinary rendition operations, designed to be conducted outside the United States under cover of secrecy, could not have been implemented without the active participation of foreign governments. These governments too must be held accountable.”

One such government is our own.

Of the 136 cases of extraordinary renditions, two involve South Africa. The report notes that South Africa was implicated in the March 2003 extraordinary rendition of Saud Memon, a Pakistani national and suspect in the murder of Wall Street Journal journalist Daniel Pearl, who was beheaded on camera.

“In light of the secrecy associated with the abduction and the lack of any record in South Africa of his deportation or extradition, it appears that South Africa gave US intelligence agencies carte blanche to pursue his abduction and rendition from South Africa,” the report said.

“Investigators at Human Rights Watch believed he was held in CIA custody and then transferred to Pakistani intelligence agents.

“He was ultimately released in April 2007 in Pakistan in poor physical health and died within several weeks of his release.”

The other case documented in the report is the well-known case of Khalid Rashid, another Pakistani national. While it is still suspected that Rashid may have been handed over to U.S. agents, the report notes that it is not clear that the CIA was involved in this case. After a high-profile court case, in 2005, the South African Department of Home Affairs admitted to transferring Rashid to Pakistani authorities who travelled to South Africa to receive him.

“The South African minister of home affairs claimed that Rashid was arrested and deported because he resided in the country illegally.

“Rashid was flown from South Africa in a Gulfstream II owned by AVE, a company registered in Kyrgyzstan; the charter was arranged by the government of Pakistan.”

The report notes that, in 2009, South Africa’s Supreme Court of Appeal found that Rashid’s detention at the Cullinan police station without a warrant, his removal from that facility without a warrant and his deportation to Pakistan were unlawful.

Rashid was said to have been released in December 2007.

The Open Society report explains unequivocally that such practices of extraordinary rendition pervert the tenets of international law. “There can be no doubt that in today’s world, intergovernmental cooperation is necessary for combating terrorism. But such cooperation must be effected in a manner that is consistent with the rule of law,” the report says.

And yet in the cloud of secrecy around the extraordinary renditions programme and South Africa’s policy towards it, it is unknown how many other cases of extraordinary renditions occurred on South African soil. Indeed the extent of South Africa’s co-operation with this programme is entirely unknown.

What is clear from the Open Society report is that extraordinary renditions pose a serious threat to basic human rights: life, liberty, and the security of the person. And more worryingly, **the report is not** entirely **confident that the programme was halted by the Obama administration.**

**Although Obama issued an executive order** in 2009 **to halt** the **detention** of suspected terrorists without trial, **the order “did not apply to facilities used for short-term, transitory detention.” These short-term facilities are reported to still be flourishing in, among other places, Somalia. The Obama administration says it won’t transfer detainees to countries without a pledge from a host government not to torture them — but as Wired points out, Syria’s Assad made exactly that pledge to the U.S. before torturing Maher Arar**.

And as horrific as Arar’s experience was, he is perhaps lucky to have emerged from it alive and been compensated for his difficulties. Others have not been so lucky.

In December 2003, German citizen Khalid al Masri went on vacation to Macedonia and disappeared for five months. Al Masri was captured by CIA agents and rendered to a prison in Afghanistan where he claims he was interrogated, beaten, and placed in solitary confinement.

**The CIA’s capture of al Masri was a case of mistaken identity. The American Civil Liberties Union filed a lawsuit against the CIA and the Director of Central Intelligence George Tenet on behalf of al Masri. In October 2007, al Masri’s hopes for restitution were flouted when his case was refused by the US Supreme Court on the basis of protecting state secrets.**

**The practice of** outsourcing torture, meanwhile, continues – and few can be certain of its extent.

**Failure to apply the writ extraterritorially allows it – this erodes international law – only external court accountability solves**

**Satterthwaite 6**, Margaret Satterthwaite is Assistant Professor of Clinical Law at NYU School of Law and Faculty Director of the Center for Human Rights and Global Research, <http://jurist.law.pitt.edu/forumy/2006/03/rendered-meaningless-rule-of-law-in-us.php>

Since 9/11, the U.S. government has used the discourse and authorizing rules of the laws of war while simultaneously flouting the limiting and protective rules of that regime, labeling them “quaint” and inapplicable. At the same time, the Administration insists that human rights law is not applicable to this new “war,” arguing alternatively that the relevant norms do not apply to extraterritorial conduct, that there is no relevant implementing legislation requiring the U.S. to abide by its international obligations, and that human rights law does not apply in situations of armed conflict. As to those standards it does concede applicability – such as the prohibition on torture – the Administration has largely defined away the practice. The effect is to take U.S. actions in the “War on Terror” outside of both frameworks, **dealing a blow to** the **rule of law**. Among U.S. strategies **are practices aimed at avoiding the due process rules included both in the Geneva Conventions and in human rights treaties to which the U.S. is a party. Through extraordinary renditions and secret detentions, the U.S. attempts to avoid norms concerning due process by avoiding any process at all. Instead, it opts for procedures in which individuals are unilaterally and secretly determined to be a danger to the U.S.** On the basis of this determination, the U.S. sends individuals to be interrogated under torture by other governments, places them in secret detention, or ships them to Bagram air base, **where it presumably believes** U.S. **courts may not exercise jurisdiction**. In the process, **our government is rejecting not only the human rights norms against prolonged incommunicado detention, non-refoulement, and the prohibition on torture; it is also rejecting the framework of international justice that insists on accountability and the rule of law**. With the Council of Europe, the European Union and a variety of their Member States now focusing attention on these practices, the Administration may be heading into trouble. At the beginning of March, the Secretary-General of the Council of Europe, Terry Davis, reported publicly on the responses his office had received from 45 of the 46 States Parties to the European Convention on Human Rights concerning extraordinary rendition and secret detention. Under a mandatory procedure, the Council asked States to answer a short list of questions aimed not only at assessing each Member’s potential involvement in the practices, but also – more crucially – their procedures for ensuring that intelligence services stay within the bounds of human rights law. As the “war on terror” becomes the “long war,” this is one discussion that the legal community should focus on with diligence. “Extraordinary rendition” is not a legal term; it describes the perverted form of a practice already defined by its informality. Used by the U.S. since the Reagan era, rendition involves the extra-legal transfer of an individual from one state to another. While originally used to bring suspected terrorists into the United States so they could stand trial before federal courts, it morphed during the Clinton presidency into a procedure through which the U.S. would effect the transfer of suspects from one country to another where they were expected to stand trial. After 9/11, the process apparently took on a new purpose: intelligence-gathering. Instead of focusing on suspects with pending charges, the U.S. sent detainees to States known to “employ interrogation techniques that will enable them to obtain the requisite information,” as one alarmed F.B.I. agent explained. These were States that the U.S. had itself accused of widespread and systematic torture, including Syria, Egypt, and Morocco. Rendition to justice had become rendition to torture, or extraordinary rendition. Unlike extraordinary rendition, secret detention does not have clear predecessors in U.S. intelligence history. Instead, it appears to be a new practice for the U.S., in which individuals are held in “black sites” run entirely off the radar of normal civilian or military procedures. Such detentions are not monitored by the International Committee of the Red Cross, and they apparently involve transfers of prisoners from site to site to evade detection. Thus far, no one has argued that unacknowledged incommunicado detention by U.S. agents was authorized by presidents of a bygone era, or that the practice has long been an essential tool in the fight against terrorism. This is not surprising – clear norms exist to proscribe secret detentions under international human rights law. In the European, Inter-American, and United Nations human rights systems, a deep jurisprudence has developed against this practice – based on the lessons of Latin America’s “dirty war” – a practice more properly called enforced disappearance. Neither extraordinary rendition nor secret detention can be carried out without the cooperation of allied governments. This cooperation may range from involvement through intelligence-gathering or detainee handover to passive cooperation in the form of a blind eye turned to the real reason behind CIA flights or a no-questions-asked policy toward the use of military installations that could house detainees in secret. Suspicions that the latter two forms of acquiescence were being practiced by the Member States of the Council of Europe led to the Secretary-General’s inquiry initiated in November 2005. With a striking uniformity, States from across the many spectrums of the enlarged Europe appear to have inadequate safeguards for ensuring that intelligence services abide by the human rights obligations of their home States or the countries where they operate. As Terry Davis explained, “We need an appropriate regulatory framework providing for effective safeguards against abuse, democratic oversight by national Parliaments and judicial control in cases of alleged human rights violations.” Without such mechanisms, governments can answer, sometimes honestly, that they were not aware of the activities of their own agencies, or that they could not be held responsible for the actions of the U.S. CIA for missions conducted on their territory. **If core rights, such as due process and the right to be free from torture, are to have any real meaning, they must apply to the actions of those we have often thought of as operating “outside” the law**. Intelligence services have been asked to take on new and expanded roles in this untraditional “war”: they are detectives, investigating crimes and collecting evidence, and they are jailers, holding keys to a realm that we hear about only in shadowy bits, leaked information or the testimony of a former “disappeared” or rendered person like Khaled El-Masri or Maher Arar. **If democracies like ours do not exercise oversight and regulate these activities through enforceable laws, intelligence agencies will become judge and jury as well. At that point, the rule of law will have been rendered meaningless**.

**This destroys the entire framework for international justice**

**Malinowski 7**, Tom Malinowski, Washington Advocacy Director, Human Rights Watch, Washington, DC, Congressional Testimony, <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg40379/html/CHRG-110shrg40379.htm>

Or, just for the sake of argument, imagine if the President of Russia declared that his country was engaged in a global war on terror, and that anyone with any connection to any group that supported separatist elements in places like Chechnya was a combatant in that war who could be detained or shot or poisoned wherever he was found, whether in Moscow or Berlin or just for the sake of argument, London. Clearly, we live in a world in which such things are possible. But do we want to live in a world where they are considered legitimate? That is **what is at stake** here. **Whether we will preserve the legal and moral rules we have struggled to develop over generations to limit what governments**--and here I mean not just the United States but all governments--**can** and can't **do** to people in their power. **And whether the United States will have the credibility to be the world's preeminent champion of those rules.** Now, it is important to note that nothing the administration has done can compare in its scale to what happens every day to victims of cruel dictatorship around the world. The United States is not Sudan or Cuba or North Korea. The United States is an open, democratic country with strong institutions--its Congress, its courts, its professional military leadership--which are striving to undo these mistakes and uphold the rule of law. But **the U**nited **S**tates **is** also **the most influential country on the face of the earth. The U**nited **S**tates **is a standard setter in everything it does, for better or for worse**. When Saddam Hussein tortures a thousand people in a dark dungeon, when Kim Jong Il throws a hundred thousand people in a prison camp without any judicial process, **no one says**: ``Hey, **if those dictators can do that, it's legitimate, and therefore so can we.'' But when the U**nited **S**tates **bends the rules to torture or to secretly and unlawfully detain even one person, when the country that is supposed to be the world's leading protector of human rights begins to do--and to justify--such things, then all bets are off. The entire framework upon which we depend to protect human rights--from the Geneva Conventions and treaties against torture--begins to fall apart**.

**Reversing Al Maqaleh solves – self-restraint isn’t trusted**

**Ghosh 12**, JD at Stanford Law, Boumediene Applied Badly: The Extraterritorial Constitution after Al Maqaleh v. Gates, <http://www.stanfordlawreview.org/sites/default/files/Ghosh-64-Stan-L-Rev-507.pdf>

Although Boumediene contemplated placing greater weight on the practical arguments against habeas review in active theaters of war, it also emphasized avoiding bright-line rules that could invite executive manipulation. **The Supreme Court noted that a “formal sovereignty-based test” for determining when the writ should apply raised “troubling separation-of-powers concerns**.”82 Based on these concerns, **Boumediene explicitly rejected the government’s suggestion that habeas extended only to those territories where the United States exercises formal (de jure) sovereignty**, since **such a rule would allow the government to deny noncitizens habeas simply by surrendering formal sovereignty over territory to a third party while retaining complete control over it.83 This danger, however, applies with equal force in Al Maqaleh. A bright-line rule declaring all combat zones to be habeas-free poses as much danger of executive abuse as a bright-line rule limiting the availability of habeas to de jure sovereign territory**. Both rules share a common problem: **when the President can identify an area of U.S.-controlled territory where habeas cannot reach, he is incentivized to move enemy combatants to that location and thereby avoid habeas review. Whether or not the President actually engages in such manipulation, the mere ability to do so is sufficient to raise serious concerns. Animated by a separation of powers concern**84 that the clear **demarcation of habeas-free zones would invite abuse**, Boumediene adopted a functional, pragmatic approach.85 The district court in Al Maqaleh followed that approach well, recognizing the separation of powers concerns behind it. Although it recognized that practical obstacles would accompany the extension of the writ into active combat theaters, the district court did not find these obstacles insurmountable and observed that judicial process had been provided in active theaters before.86 More importantly, the district court rightly concluded that refusing to extend the writ into active combat theaters would establish a precedent more dangerous than the risks attending its extension.87 **Even assuming that the President—in choosing to transfer the Al Maqaleh petitioners to Bagram—was not in this case motivated by the desire to avoid habeas review, the district court wisely recognized that creating habeas-free zones around all active theaters of combat would invite future executive abuse.88 This possibility is particularly troubling because each of the Al Maqaleh petitioners was captured outside of Afghanistan and brought into the theater of combat**. While detaining an enemy combatant captured within the Afghan theater at Bagram might make sense because of its proximity, these petitioners had been apprehended as far away as Dubai and Thailand. **The executive decision to transport the petitioners to a place where greater practical obstacles existed suggests the need for judicial scrutiny, not deference**. Although cognizant of this separation of powers problem, the D.C. Circuit marginalized it and never legitimately considered whether the practical obstacles could be overcome.89 Instead, **the circuit hastily deferred to the executive determination** that further judicial review would endanger military prerogatives and imperil relations with the Afghan government.90 **The D.C. Circuit failed to address the alarming plight of future detainees, who could similarly be captured beyond—but hauled into—active theaters of war91 to be deprived of access to the writ.92 Taking Al Maqaleh as guidance, a future President could order an alien captured anywhere outside the United States to be brought into an active theater of combat, declared an enemy combatant—in a nonadversarial proceeding not held before a neutral arbiter—and detained indefinitely.93 The judiciary would essentially have no means to evaluate the legality of the combatant’s detention, presenting a separation of powers problem just as compelling as that identified in Boumediene**. In conclusion, **the district court in Al Maqaleh correctly applied the Boumediene factors and arrived at the appropriate ruling—that the Suspension Clause should apply extraterritorially to the detainees held at Bagram—while the D.C. Circuit’s poor framing of the key issues unfortunately reversed that ruling.**

**And judicial review re-invigorates credibility**

Oona A. **Hathaway**, Counsel of Record, Brief of International Law Experts as Amici Curiae in Support of the Petitions, Jamal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—**9**, p. 35-38.

THE **U**NITED **S**TATES **SHOULD LIVE UP TO THE STANDARDS OF INTERNATIONAL LAW TO WHICH IT HAS HELD OTHER COUNTRIES BY PROVIDING EFFECTIVE JUDICIAL REVIEW OF UNLAWFUL DETENTION Since the mid-1970s, the United States has compiled annual reports on the human rights practices of other countries**. By law, the reports reflect the Secretary of State’s assessment of the “status of internationally recognized human rights” in the states under review.23 These **reports have consistently criticized foreign countries for failing to provide effective judicial review of detention**. They have further made clear that the United States considers courts’ capacity to order release essential to effective judicial review. They therefore provide powerful evidence of the importance of the shared international norm requiring release upon a finding that a detention is unlawful. **If the U**nited **S**tates now **fails to live up to this shared norm, it will not only breed resentment but will also undermine its ability to encourage other countries to follow basic principles of international law** in the future. In evaluating other countries’ human rights practices, the United States has considered whether habeas corpus review is not simply available but is effective. The United States has criticized the Philippines for providing formal habeas corpus review but not making that process “effectively available to persons detained by the regime. . . .” See 1 Dep’t of State, Country Reports on Human Rights Practices 261 (1978). It has similarly criticized Cuba for “theoretically provid[ing] a safeguard against unlawful detention” but failing to provide any effective remedy. See 13 Dep’t of State, Country Reports on Human Rights Practices for 1988, at 520 (1989). The United States has criticized many other countries for providing ineffective habeas review, including Paraguay, 9 Dep’t of State, Country Reports on Human Rights Practices for 1984, at 637 (1985) (“the right of habeas corpus . . . can be ignored by government officials.”), Ethiopia, id. at 110 (“A writ of habeas corpus on [Ethiopia]’s statutes has not been successfully invoked in any known case.”), Ghana 8 Dep’t of State, Country Reports on Human Rights Practices for 1984, at 150 (1984) (“There has been no instance of the successful exercise of the right of habeas corpus.”), Afghanistan, 10 Dep’t of State, Country Report on Human Rights Practices for 1985, at 1166 (1986) (“nor is the right of habeas corpus respected”), and Bolivia, 4 Dep’t of State, Country Reports on Human Rights Practices for 1980, at 351 (1981) (“The Garcia Meza regime routinely violates constitutional provisions for habeas corpus.”). And the United States regularly criticizes countries for failing to provide effective judicial review for all detainees. See, e.g., 27 Dep’t of State, Country Reports on Human Rights Practices for 2002, at 345-46 (2003) (noting Liberia had incarcerated “an unknown number of persons . . . during [a] state of emergency as ‘illegal combatants,’ . . . and denied habeas corpus”); 13-A Dep’t of State, Country Reports on Human Rights Practices for 1988, at 844 (1989) (“[H]abeas corpus . . . does not apply to those [in South Korea] charged with violating the National Security Law.”). The United States’ criticisms of other countries further makes clear that it regards the power of the courts to order release as essential to effective judicial review. The United States criticized Ghana for responding to writs of habeas corpus by imposing “ex post facto preventive custody orders barring their release.” 10 Dep’t of State, supra, at 129. The United States similarly criticized Nepal for failing to release a prisoner after the Supreme Court issued a writ of habeas corpus. 27-B Dep’t of State, Country Reports on Human Rights Practices for 2002, at 2284 (2003). In discussing Zambia’s detention policies, the United States noted that “[h]abeas corpus is, in principle, available to persons detained under presidential order, but the Government is not obliged to accept the recommendation of the review tribunal.” 10 Dep’t of State, supra, at 383 (1986). The United States criticized Gambia when its “[p]olice ignored a December 31 court-ordered writ of habeas corpus to release [Gambian National Assembly Majority Leader Baba] Jobe and his co-detainees.” 28 Dep’t of State, Country Reports on Human Rights Practices for 2003, at 241 (2004). The United States has held other countries to account for their failure to live up to “internationally recognized human rights” including effective judicial review of detention. In reviewing the practices of other states, the United States has not regarded as sufficient a formal process allowing detainees to challenge their detention in court. The courts reviewing detention must also have the capacity to order release. The United States should now live up to its own high standards – standards it successfully fought to codify in international law and that it has long sought to encourage the rest of the world to follow.

**International law’s inevitable but U.S. compliance is necessary for effectiveness – that solves global peace**

**Avasarkar 12**, Dr. Daniel Ringuet (PhD) is currently a Sessional Lecturer at Griffith University Australia. The Relevance of **International Law** in **Promoting Global Peace** and Security , <http://www.preservearticles.com/2012071033180/the-relevance-of-international-law-in-promoting-global-peace-and-security.html>

International Law involves the **codification of rules by actors in the international system in a way that sets precedents and normative expectations.**

That is, it is a rule-based regime which aims at building order within the global community. It is asserted that the post-ontological era of mature and complex **international law (IL) provides a sound rationale for normative behaviour and therefore is of** **paramount relevance to achieving global peace and security**. The example of the United States' intervention in Iraq will be used to demonstrate the salience of this point.

It must first be acknowledged that IL is not always viewed so positively. This is largely due to the perception/reality gap which obscures the fact that military activity is the exception rather than the rule in international affairs.

In reality, **most of the time the majority of interactions occur peacefully and efficiently. IL is a key facilitator** of such.

Generally **speaking a number of factors demonstrate the move towards IL. These include the data collected in UN Treaty archives, the powerful influence of global economic regimes such as the World Trade Organisation, the sociology of the transnational legal process itself, and the growing importance of international institutions** and non-government organisations.

**Indeed, the USA is itself party to more than 10,000 treaties**. Additionally, the scope of IL is increasingly broad, covering things as diverse as arms control, the use of force, drug trafficking, immigration, human rights, environmental problems, trade and finance, and intellectual property.

**The USA** **has been chosen to demonstrate the extreme relevance of IL to the international security environment precisely because it often defies** or contravenes IL. This is based on the notion that if a principle of law withstands breaches - even by the USA - then its validity and potential longevity is reinforced. The USA has been highly contemptuous of IL at times, for example in its refusal to sign the Kyoto Protocol, its abandonment of the Anti-Ballistic Missile Treaty, its refusal to join the International Criminal Court (ICC), and its increasingly unilateral and hegemonic behaviours.

This emerging character appears to be founded on the presumption that a strong state such as the USA only needs IL as a 'club' to keep weaker states in line. However, as former Soviet Union leader Gorbachev would testify, even superpowers come and go. Consequently, it is argued that **the USA's situation demonstrates that respect for the burgeoning IL regime would likely allow the USA to achieve objectives that even its supreme power is incapable of realising. This indicates the paramount relevance of IL to global security.**

At the most fundamental level, the decision to go to war in Iraq, demonstrates IL's importance. This is in part due to the principle of 'stigmatisation'. **If you are an actor that is routinely perceived to be breaching IL, norms and standards in pursuit of national self-interest, then it is likely that stigmatisation will be of significant impact. This is because it makes justification and rationalisation necessary by raising issues of legitimacy and identity**.

Accordingly, states often go to great lengths to avoid stigmatisation. The USA demonstrates this clearly; George Bush Jr has regularly attempted to justify intervention in Iraq on the basis of Weapons of Mass Destructions (WMDs), the threat of the capacity to produce WMDs, human rights issues and the involvement of global terrorist networks. This indicates that the **stigmatisation related to breaches of IL affects even the most powerful of states. Clearly, this principle serves to place IL at the very centre of global security relations.**

The relevance of IL is also made apparent by the USA's difficulty in engendering support. For example, in 2003 the USA requested that other countries commit more troops to Iraq. However, even those states most likely to do so - France, Germany and India - refused their support unless a UN Security Council Resolution was obtained. That is, they required legal validations. The USA's difficulty in inviting support for its actions, or indeed winning the peace, depicts the importance of international legitimacy in achieving objectives.

In theory, only the most powerful of states who do not believe they will ever be weak choose to routinely abuse the principles of IL. In a setting where its strength is superior to any other states' across almost any measure of power, the USA should not be surprised that lesser states cling to the protection and predictability offerred by IL.

The importance of IL in global affairs is also demonstrated by the USA's ability (or inability) to engage and cooperate with other international actors. For example, large USA oil companies argued that they could not afford to continue investing heavily in Iraq, toward the goal of restarting the country's oil productions. They reasoned that this was due to the lack of legitimate political authority in Iraq and their fear that contracts signed would not carry the force of law.

Similarly, the **USA's refusal to abide by IL has greatly hampered relations and cooperation with the UN and its respective bodies.** **With UN support, the USA would have likely had more success with reconstruction and its 'peace-making' activities would have assumed a greater sense of legitimacy.** Clearly, accordance with **IL aids diplomacy**. It is asserted that if - it had the force of IL behind it - **the USA would have had far greater success in achieving the goals which even its supreme power is incapable of bringing within grasp**.

**Otherwise extinction is inevitable**

**Weeramantry 5**, Judge, International Law and Peace: A Peace Lesson, <http://lcnp.org/global/Law_and_Peace.pdf>

**International law is an essential tool for the abolition of war.** War has been a part of the human condition for thousands of years, but its abolition is now a necessity. **With w**eapons of **m**ass **d**estruction **becoming ever more readily available to state and non-state actors, the threat to a peaceful world being dragged into catastrophic conflict is so great that civilization itself is in peril. Misunderstanding and cross cultural ignorance are** among the **root causes of war. While global forces demolish geographical barriers and move the world toward a unified economy, clashes among cultures can have damaging impact on peace. International law draws upon** the **principles of peace** expressed by great peacemakers and embodied in ancient writings, religions, and disciplines, **and places them in the social and political context of today to dissipate the clouds of prejudice, ignorance and vested interests that stand in the way of world peace and harmony**.

**1AC Plan**

**The United States federal judiciary should restrict military detention without the ability to challenge the legality of detention by way of the writ of habeas corpus.**

**1AC Solvency**

**2,000 years of history prove unipolar systems are comparatively more stable—status based competition is inevitable**

**Wolforth et. al11** (William is the Daniel Webster Professor at Dartmouth College, where he teaches in the Department of Government. Edited by Michael Mastanduno, Professor of Government and Dean of Faculty at Dartmouth College, and G. John Ikenberry, Professor of Politics and International Affairs at Princeton University, “Unipolarity, status competition, and great power war” *International Relations Theory and the Consequences of Unipolarity* pg. 48-49) BW

General patterns of evidence

Despite increasingly compelling findings concerning the importance of status seeking in human behavior, research on its connection to war waned some three decades ago. Yet empirical studies of the relationship between both systemic and dyadic capabilities distributions and war have continued to cumulate. If the relationships implied by the status theory run afoul of well-established patterns or general historical findings, then there is little reason to continue investigation them. The clearest empirical implication of the theory is that status competition is unlikely to cause great power military conflict in unipolar systems. IF status competition is an important contributory cause of great power war, then, *ceteris paribus*, unipolar systems should be markedly less war-prone than bipolar and multipolar systems. And this appears to be the case. As Daniel Geller notes in a review of the empirical literature “the only polar structure that appears to influence conflict probability is unipolarity.” In addition, a larger number of studies at the dyadic level support the related expectation that narrow capabilities gaps and ambiguous or unstable capabilities hierarchies increase the probability of war. These studies are based entirely on post-sixteenth-century European history, and most are limited to the post-1815 period covered by the standard data sets. Through the systems coded as unipolar, near-unipolar, and hegemonic are all marked by a high concentration of capabilities in a single state, these studies operationalize unipolarity in a variety of ways, often very differently from the definition adopted here. An ongoing collaborative project looking at ancient interstate systems over the course of 2,000 years suggests that historical systems that come closest to the definition of unipolarity used here exhibit precisely the behavioral properties implied by the theory. As David C. Kang’s research shows, the East Asian system between 1300 and 1900 was an unusually stratified unipolar structure, with an economically and military dominant China interacting with a small number of geographically proximate, clearly weaker East Asian states. Status politics existed, but actors were channeled by elaborate cultural understandings and interstate practices into clearly recognized ranks. Warfare was exceedingly rare, and the major outbreaks occurred precisely when the theory would predict: when China’s capabilities waned, reducing the clarity of the underlying material hierarchy and increasing status dissonance for the lesser powers. Much more research is needed, but initial exploration of other arguably unipolar systems – for example Rome, Assyria, the Amarna system – appears consistent with the hypothesis.

**Our data is free from theoretical and ideological bias — there’s causation and correlation between declining political deaths and hegemony — it facilitates cooperation**

**Owen 11** [John Owen, Associate professor in the University of Virginia's Department of Politics, recipient of fellowships from the Olin Institute for Strategic Studies at Harvard, and the Center for International Security and Cooperation at Stanford, and the Center of International Studies at Princeton, PhD in international relations from Harvard, February 11, 2011, “Don’t Discount Hegemony, [www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/](http://www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/)]

Andrew Mack and his colleagues at the Human Security Report Project are to be congratulated. Not only do they present a study with a striking conclusion, driven by data, free of theoretical or ideological bias, but they also do something quite unfashionable: they bear good news. Social scientists really are not supposed to do that. Our job is, if not to be Malthusians, then at least to point out disturbing trends, looming catastrophes, and the imbecility and mendacity of policy makers. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us? Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. I shall challenge neither the data nor the general conclusion that violent conflict around the world has been decreasing in fits and starts since the Second World War. When it comes to violent conflict among and within countries, things have been getting better. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological. Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the data. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A. But the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; and (2) we can safely assume that nuclear-armed states are rational. It follows that states with a second-strike capability will not fight one another. Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear states are not deterred from fighting nuclear states is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now. Regarding the downward trend in international war, Professor Mack is friendlier to more palatable theories such as the “democratic peace” (democracies do not fight one another, and the proportion of democracies has increased, hence less war); the interdependence or “commercial peace” (states with extensive economic ties find it irrational to fight one another, and interdependence has increased, hence less war); and the notion that people around the world are more anti-war than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries). These are all plausible mechanisms for peace. What is more, none of them excludes any other; all could be working toward the same end. That would be somewhat puzzling, however. Is the world just lucky these days? How is it that an array of peace-inducing factors happens to be working coincidentally in our time, when such a magical array was absent in the past? The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars. We would still need to explain how this charmed circle of causes got started, however. And here let me raise another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically American hegemony. A theory that many regard as discredited, but that refuses to go away, is called hegemonic stability theory. The theory emerged in the 1970s in the realm of international political economy. It asserts that for the global economy to remain open—for countries to keep barriers to trade and investment low—one powerful country must take the lead. Depending on the theorist we consult, “taking the lead” entails paying for global public goods (keeping the sea lanes open, providing liquidity to the international economy), coercion (threatening to raise trade barriers or withdraw military protection from countries that cheat on the rules), or both. The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon. The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant. There is no obvious reason why hegemonic stability theory could not apply to other areas of international cooperation, including in security affairs, human rights, international law, peacekeeping (UN or otherwise), and so on. What I want to suggest here—suggest, not test—is that American hegemony might just be a deep cause of the steady decline of political deaths in the world. How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history. The answer is that U.S. hegemony might just be a deeper cause of the proximate causes outlined by Professor Mack. Consider economic growth and openness to foreign trade and investment, which (so say some theories) render violence irrational. American power and policies may be responsible for these in two related ways. First, at least since the 1940s Washington has prodded other countries to embrace the market capitalism that entails economic openness and produces sustainable economic growth. The United States promotes capitalism for selfish reasons, of course: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth. Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development—communism and import-substituting industrialization being the two leading ones—and left market capitalism the best model. The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (It also, as Professor Mack notes, eliminated the superpowers’ incentives to feed civil violence in the Third World.) What we call globalization is caused in part by the emergence of the United States as the global hegemon. The same case can be made, with somewhat more difficulty, concerning the spread of democracy. Washington has supported democracy only under certain conditions—the chief one being the absence of a popular anti-American movement in the target state—but those conditions have become much more widespread following the collapse of communism. Thus in the 1980s the Reagan administration—the most anti-communist government America ever had—began to dump America’s old dictator friends, starting in the Philippines. Today Islamists tend to be anti-American, and so the Obama administration is skittish about democracy in Egypt and other authoritarian Muslim countries. But general U.S. material and moral support for liberal democracy remains strong.

## 2AC XO

**Congress blocks**

**Rosenberg 12** (Carol, 1-9-12, "Congress, rules keep Obama from closing Guantanamo Bay" The Miami Herald) www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UjXQNcasiSo

**The last two prisoners to leave the U.S. detention center at Guantánamo Bay were dead.** On February 1, Awal Gul, a 48-year-old Afghan, collapsed in the shower and died of an apparent heart attack after working out on an exercise machine. Then, at dawn one morning in May, Haji Nassim, a 37-year-old man also from Afghanistan, was found hanging from bed linen in a prison camp recreation yard. In both cases, the Pentagon conducted swift autopsies and the U.S. military sent the bodies back to Afghanistan for traditional Muslim burials. These voyages were something the Pentagon had not planned for either man: Each was an “indefinite detainee,” categorized by the Obama administration’s 2009 Guantánamo Review Task Force as someone against whom the United States had no evidence to convict of a war crime but had concluded was too dangerous to let go. Today, this category of detainees makes up 46 of the last 171 captives held at Guantánamo. **The only guaranteed route out of Guantánamo these days for a detainee, it seems, is in a body bag. The responsibility lies** not so much with the White House but **with Congress, which has thwarted** President Barack **Obama’s plans to close the detention center**, which the Bush administration opened on Jan. 11, 2002, with 20 captives. **Congress has used its spending oversight authority both to forbid the White House from financing trials of Guantánamo captives on U.S. soil and to block the acquisition of a state prison in Illinois** to hold captives currently held in Cuba who would not be put on trial — a sort of Guantánamo North. The latest defense bill adopted by Congress moved to mandate military detention for most future al Qaida cases. The White House withdrew a veto threat on the eve of passage, and then Obama signed it into law with a “signing statement” that suggested he could lawfully ignore it. On paper, at least, the Obama administration would be set to release almost half the current captives at Guantánamo. The 2009 Task Force Review concluded that about 80 of the 171 detainees now held at Guantánamo could be let go if their home country was stable enough to help resettle them or if a foreign country could safely give them a new start. But **Congress has made it nearly impossible to transfer captives anywhere. Legislation passed since Obama took office has created a series of roadblocks that mean that only a federal court order** or a national security waiver issued by Secretary of Defense Leon Panetta **could trump Congress and permit the release of a detainee to another country.**

**Gets rolled back and can’t create norms**

**Swanson 9**, Chair of accountability and prosecution working group of United for Peace and Justice

(David, 1/25, Dangerous Executive Orders, www.opednews.com/articles/Dangerous-Executive-Orders-by-David-Swanson-090125-670.html)

The Center for Constitutional Rights has expressed concern that President Obama's executive order banning torture may contain a loophole. But **no president has any right to declare torture legal or illegal,** with or without loopholes. And **if we accept that presidents have such powers, even if our new president does good with them, then loopholes will be the least of our worries**. Torture is, and has long been, illegal in every case, without exception. It is banned by our Bill of Rights, the Universal Declaration of Human Rights, the Geneva Convention relative to the Treatment of Prisoners of War, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and Title 18, U.S. Code, Section 2340A. Nothing any president can do can change this or unchange it, weaken it or strengthen it in any way. Preventing torture does not require new legislation from Congress or new orders from a new president. It requires enforcing existing laws. In fact, adherence to the Convention Against Torture, which under Article VI of our Constitution is the supreme law of the land, requires the criminal prosecution of torturers and anyone complicit in torture. Most of the seemingly noble steps taken by Congress in recent years and by President Obama in his first week have served to disguise the fact that torture always was, still is, and shall continue to be illegal. In 2005, John McCain championed the McCain Detainee Amendment to the Defense Appropriations bill for 2005, which passed the Congress and was signed into law by President Bush. This was yet another law banning torture. It was not needed, but no harm done, right? Wrong. Passing laws like this serves to create the illusion that torture was previously legal. And that allows the new laws to create exceptions. In fact, McCain allowed a major loophole for the CIA. And that would have been bad enough. But President Bush tacked on a "signing statement" throwing out the entire ban on torture. So, with Congress trying to ban torture, and the president eliminating the ban, people could hardly be blamed for believing torture was legal. President **Bush** also **signed executive orders and ordered the creation of legal opinions claiming that torture was legal.** President **Obama's new order revokes one of Bush's. But Obama has no more right to undo the legalization of torture than Bush had to legalize it in the first place.** Only Congress has or should have the power to legislate. Obama's new order requires adherence to laws, rather than claiming the right to violate them, and yet there is a wide gap between publishing an order requiring adherence to the laws and actually enforcing the laws by indicting violators**. The same order that President Obama uses to ban torture also orders the closure of all CIA detention facilities**. Congress never authorized the creation of such things in the first place. Ordering their closure is the right thing to do. **But if a president can give the order to close them, what is to prevent another president giving the order to reopen them?** The answer should be all of the laws and treaties violated. Obama's executive order largely orders the government to cease violating various laws. But in so doing, **rather than strengthening the laws, the new president weakens them almost to the point of nonexistence**. For, what power does a law have to control behavior if it is never enforced? What deterrent value can be found in a law the violation of which results merely in a formal order to begin obeying it? And what status are we supposed to give all the other violated laws for which no such formal orders have been given?

**Links to politics**

**DeYoung 12/17**, Karen DeYoung is associate editor and senior national security correspondent for the Washington Post. In more than three decades at the paper, she has served as bureau chief in Latin America and London and correspondent covering the the White House, U.S. foreign policy and the intelligence community, as well as assistant managing editor for national news, national editor and foreign editor. She has won numerous awards for national and international reporting and is the author of “Soldier,” a biography of Colin Powell, and Goldman,

<http://www.washingtonpost.com/world/national-security/foreign-detainees-from-afghanistan-are-being-considered-for-military-trial-in-us/2013/12/17/d38f9254-6723-11e3-a0b9-249bbb34602c_story.html>

But **Schiff**, who said he had no specific knowledge of the administration’s plans, **warned of significant political fallout if Obama attempted an end run around Congress**.

“I think **the political reality is that there is so much resistance to bringing Guantanamo detainees here to be tried, we would face the same kind of resistance to bringing third-country nationals here from Afghanistan**,” he said.

**2AC AT: Constitutional Amendment CP**

**This is a voter — it steals the aff, causes stale process debates about something that never happens, and is multi-actor fiat — that’s not reciprocal or real-world**

**Sullivan 95** (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

**Our Constitution is extraordinarily difficult to amend. Article V** of the Constitution **provides** two routes, but both both require **large supermajorities**. First, Congress may propose amendments by a two-thirds vote of both houses. Second, the legislatures of two-thirds of the states may request that Congress call a constitutional convention. **Amendments** proposed **by either route become valid only when ratified by three-fourths** of the states. Once an amendment clears these hurdles into the Constitution, it is equally difficult to remove. The amendment that imposed Prohibition is the only one in our history ever to be repealed. **The Constitution** thus **remains a remarkably pristine document. More than 11,000 amendments have been proposed, but only 33 have received the necessary congressional supermajorities** and only 27 have been ratified by the states. **Half** of these **amendments were** enacted **under extraordinary circumstances.**

**They don’t send a stable signal**

**Sullivan 95** (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

For **there are strong structural reasons for amending the Constitution only** reluctantly and **as a last resort**. This strong presumption against constitutional amendment has been bedrock in our constitutional history, and there is no good reason for overturning it now. Proponents of the current wave of amendments suggest that it simply represents the appropriate product of a mobilized citizenry exercising popular sovereignty. We the People created the Constitution and, they imply, We the People are free to rewrite it as We please. Amendment advocates could, if they wished, cite Thomas Jefferson in their cause. Jefferson wrote in an 1816 letter, "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment." But, he urged, one should not "believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs." As Jefferson had put it years earlier in a letter to James Madison, "I hold that a little rebellion now and then is a good thing." Constitutional idolatry, of course, is not an attractive organizing principle. But Jefferson's position lost out in our constitutional history for good reasons that do not depend on fetishizing the Constitution or treating it as mystically sacred. **Stability is a key virtue of a Constitution** 1. Stability. James Madison, one of the principal architects of Article V, disagreed with Jefferson. In Madison's view, "a little rebellion now and then" is to be avoided. To be sure, Madison acknowledged in Federalist No. 43 that "useful alterations will be suggested by experience," and that amending the Constitution must not be made so difficult as to "perpetuate its discovered faults." But **Madison cautioned too "against that extreme facility" of constitutional amendment "which would render the Constitution too mutable." Implicit in this caution is the view that stability is a key virtue of a Constitution, and that excessive "mutability" would thus undercut the whole point of having a Constitution in the first place**. As Chief Justice John **Marshall put the point similarly in McCulloch v. Maryland, the Constitution is "intended to endure for ages to come.**" Keeping amendment relatively infrequent **thus preserves public confidence in the stability of the basic constitutional structure.**  While the Framers had to take the argument from stability on faith, **the argument looks stronger two centuries later. The relative success of the American constitutional regime**, one bloody civil war excepted, **supports** arguments along the lines of "**if it ain't broke don't fix it." Our spare Constitution has withstood the test of time. Anyone with** a Burkean trust in the **collective wisdom** embodied in custom and tradition **ought to be wary of a sudden shift to rapid constitutional revision.  Prohibition, the only modern amendment to enact a social policy, is also the only modern amendment to have been repealed.**

**Can’t solve China — it’s premised on judicial exchanges**

**Causes massive delays**

**Duggin 5** (Sarah, Professor of Law – Catholic University of America, and Mary Collins, Law Clerk, Boston University Law Review, February, 85 B.U.L. Rev. 53, Lexis)

**The process of amending the Constitution is often a lengthy one – the Twenty-seventh Amendment was adopted more than two hundred years after it was first proposed**. 513 **Recent Congresses have generally provided self-executing, seven-year sunset provisions in the resolutions proposing constitutional amendments, 514 but even an amendment on the fast track is likely to take several years to become part of the Constitution.** Preparations for Presidential elections begin long before the actual events, and the threat of a national crisis is all too immediate. Congress should take interim measures to decrease the impact of the uncertainty created by the natural born citizenship proviso over the eligibility of Congressional leaders and cabinet members to assume the office of Acting President.

**Decks court cred — means they solve none of the aff**

**Schaffner 5** (Joan, Associate Professor of Law – George Washington University Law School, “The Federal Marriage Amendment: To Protect the Sanctity of Marriage or Destroy Constitutional Democracy?”, American University Law Review , August, 54 Am. U.L. Rev. 1487, August, Lexis)

 [\*1525] Through amendment, the legislative branch has the power to enact laws that establish societal standards only so long as the laws enacted do not violate the constitutional rights of individuals. 222 **The legislature is not empowered to draft laws to enshrine illegitimate prejudices of the majority. Allowing the legislature,** with the endorsement of the executive, **to amend the Constitution to expressly overrule a decision of the judiciary**, which acted consistently with democratic principles by protecting the rights of a minority of the people, **destroys the delicate balance of power among the branches**.

**The counter plan destroys democracy and ability to respond to every impact**

**Dixon 11**, Prof at U Chicago Law School, Rosalind Dixon, Constitutional Amendment Rules: A Comparative Perspective, May

2011, <http://www.law.uchicago.edu/files/file/347-rd-comparative.pdf>

What reasons do we have to fear excessive constitutional mutability? **Existing comparative constitutional scholarship points to** two **broad reasons** why **constitutional stability may be valuable: first**, its **capacity to promote processes of democratic self-government** (see e.g. Holmes 1995; Eisgruber 2001; Issacharoff 2003); **and** second, its **capacity to facilitate** certain **valuable forms of constitutional pre-commitment, particularly** those **having to do with minor- ity rights and inclusion** (see e.g. Elster 2003; Ferejohn and Sager 2003; Sager 2001). When it comes to processes of democratic self-government, Stephen **Holmes likens constitu- tional amendment rules to rules of grammar in relation to processes of linguistic communication or exchange. ‘Far from simply handcuffing people’, Holmes suggests, ‘linguistic rules allow interlocutors to do many things they would not otherwise have been able to do or even thought of doing’**, and constitutions perform much the same function (Holmes 1995). As Christopher Eisgruber notes, **they ‘define pathways for action’** in a democracy, **without which a polity may be ‘unable to formulate policy about foreign affairs, the economy, the environment’ and all manner of other critically important issues of social and economic policy** (Eisgruber 2001: 13). **From this perspective**, the **danger of overly flexible processes of constitutional amendment is** that **they may lead to ‘a polity [to be] consumed with endless debates about how to structure its basic political institutions’ in a way that undermines** the **ability of a democracy to engage in** this kind of **collective action** (Eisgruber 2001: 13; Elster 2003: 1759). This is particularly so when one considers that, if constitutional amendments are sufficiently frequent, **this tends to suggest not only frequent debate about specific constitutional issues, but also** a **greater likelihood of whole- scale constitutional replacement** (see Lutz 1995; Elkins et al. 2009). **For most constitutional scholars, the idea of constitutional democracy** also **entails** some **basic level of political competition among political parties,** or at least political elites (see Schumpeter 1962), and from this perspective, **another danger of overly flexible constitutional amendment processes is that they may allow a temporary political majority to insulate itself against future political competition** (Elster 2003: 1776–9). Indeed, for many, ‘[t]he **fixing of** the **structural rules by which governance occurs, and** the **assurance** that **these will not be “gamed” by momentary majorities attempting to lock themselves in power is one of the hall- marks of constitutionalism**’ (Issacharoff 2003).

## China

**Causes Asian war**

**Davis 8,** division director and professor of liberal arts and international studies at Colorado School of Mines, Dr. Elizabeth Van Wie, 2008, "Uyghur Muslim Ethnic Separatism in Xinjiang, China," Asian Affairs: An American Review, 2008, Vol. 35, Issue 1, pg. 15-30, ebsco

Alternative Futures¶ The scenario most worrisome to the Chinese would be the Uyghur Muslim movement in Xinjiang externally joining with international Muslim movements throughout Asia and the Middle East, bringing an influx of Islamic extremism and a desire to challenge the central government. The Chinese also fear the Uyghur movement could internally radicalize other minorities, whether the ethnic Tibetans or the Muslim Hui. Beijing is currently successfully managing the separatist movements in China, but the possibility of increased difficulty is linked partly to elements outside Chinese control, such as political instability or increased Islamic extremism in neighboring Pakistan, Afghanistan, Tajikistan, Kyrgyzstan, and Kazakhstan. Chinese policies and reactions, however, will largely determine the progress of separatist movements in China. If “strike hard” campaigns are seen to discriminate against nonviolent Uyghurs and if the perception that economic development in Xinjiang aids Han Chinese at the expense of Uyghurs, the separatist movements will be fueled.¶ The whole region has concerns about growing Uyghur violence. Central Asian countries, especially those with sizable Uyghur minorities, already worry about Uyghur violence and agitation. Many of the regional governments, especially secular authoritarian governments in South Asia and Central Asia, are worried about the contagion of increasing Muslim radicalization. The governments of Southeast Asia are also worried about growing radical networks and training camps, but they also fear the idea of a fragmenting China. Political instability in China would impact all of Asia.

**No econ impact**

**Zakaria** Editor Newsweek **‘9**

(Fareed-, Dec. 12, Newsweek, “The Secrets of Stability”, http://www.newsweek.com/id/226425/page/1; Jacob)

One year ago, the world seemed as if it might be coming apart. The global financial system, which had fueled a great expansion of capitalism and trade across the world, was crumbling. All the certainties of the age of globalization—about the virtues of free markets, trade, and technology—were being called into question. Faith in the American model had collapsed. The financial industry had crumbled. Once-roaring emerging markets like China, India, and Brazil were sinking. Worldwide trade was shrinking to a degree not seen since the 1930s.

Pundits whose bearishness had been vindicated predicted we were doomed to a long, painful bust, with cascading failures in sector after sector, country after country. In a widely cited essay that appeared in The Atlantic this May, Simon Johnson, former chief economist of the International Monetary Fund, wrote: "The conventional wisdom among the elite is still that the current slump 'cannot be as bad as the Great Depression.' This view is wrong. What we face now could, in fact, be worse than the Great Depression."

Others predicted that these economic shocks would lead to political instability and violence in the worst-hit countries. At his confirmation hearing in February, the new U.S. director of national intelligence, Adm. Dennis Blair, cautioned the Senate that "the financial crisis and global recession are likely to produce a wave of economic crises in emerging-market nations over the next year." Hillary Clinton endorsed this grim view. And she was hardly alone. Foreign Policy ran a cover story predicting serious unrest in several emerging markets.

Of one thing everyone was sure: nothing would ever be the same again. Not the financial industry, not capitalism, not globalization.

One year later, how much has the world really changed? Well, Wall Street is home to two fewer investment banks (three, if you count Merrill Lynch). Some regional banks have gone bust. There was some turmoil in Moldova and (entirely unrelated to the financial crisis) in Iran. Severe problems remain, like high unemployment in the West, and we face new problems caused by responses to the crisis—soaring debt and fears of inflation. But overall, things look nothing like they did in the 1930s. The predictions of economic and political collapse have not materialized at all.

A key measure of fear and fragility is the ability of poor and unstable countries to borrow money on the debt markets. So consider this: the sovereign bonds of tottering Pakistan have returned 168 percent so far this year. All this doesn't add up to a recovery yet, but it does reflect a return to some level of normalcy. And that rebound has been so rapid that even the shrewdest observers remain puzzled. "The question I have at the back of my head is 'Is that it?' " says Charles Kaye, the co-head of Warburg Pincus. "We had this huge crisis, and now we're back to business as usual?"

This revival did not happen because markets managed to stabilize themselves on their own. Rather, governments, having learned the lessons of the Great Depression, were determined not to repeat the same mistakes once this crisis hit. By massively expanding state support for the economy—through central banks and national treasuries—they buffered the worst of the damage. (Whether they made new mistakes in the process remains to be seen.) The extensive social safety nets that have been established across the industrialized world also cushioned the pain felt by many. Times are still tough, but things are nowhere near as bad as in the 1930s, when governments played a tiny role in national economies.

It's true that the massive state interventions of the past year may be fueling some new bubbles: the cheap cash and government guarantees provided to banks, companies, and consumers have fueled some irrational exuberance in stock and bond markets. Yet these rallies also demonstrate the return of confidence, and confidence is a very powerful economic force. When John Maynard Keynes described his own prescriptions for economic growth, he believed government action could provide only a temporary fix until the real motor of the economy started cranking again—the animal spirits of investors, consumers, and companies seeking risk and profit.

Beyond all this, though, I believe there's a fundamental reason why we have not faced global collapse in the last year. It is the same reason that we weathered the stock-market crash of 1987, the recession of 1992, the Asian crisis of 1997, the Russian default of 1998, and the tech-bubble collapse of 2000. The current global economic system is inherently more resilient than we think. The world today is characterized by three major forces for stability, each reinforcing the other and each historical in nature.

The first is the spread of great-power peace. Since the end of the Cold War, the world's major powers have not competed with each other in geomilitary terms. There have been some political tensions, but measured by historical standards the globe today is stunningly free of friction between the mightiest nations. This lack of conflict is extremely rare in history. You would have to go back at least 175 years, if not 400, to find any prolonged period like the one we are living in. The number of people who have died as a result of wars, civil conflicts, and terrorism over the last 30 years has declined sharply (despite what you might think on the basis of overhyped fears about terrorism). And no wonder—three decades ago, the Soviet Union was still funding militias, governments, and guerrillas in dozens of countries around the world. And the United States was backing the other side in every one of those places. That clash of superpower proxies caused enormous bloodshed and instability: recall that 3 million people died in Indochina alone during the 1970s. Nothing like that is happening today.

Peace is like oxygen, Harvard's Joseph Nye has written. When you don't have it, it's all you can think about, but when you do, you don't appreciate your good fortune. Peace allows for the possibility of a stable economic life and trade. The peace that flowed from the end of the Cold War had a much larger effect because it was accompanied by the discrediting of socialism. The world was left with a sole superpower but also a single workable economic model—capitalism—albeit with many variants from Sweden to Hong Kong.

This consensus enabled the expansion of the global economy; in fact, it created for the first time a single world economy in which almost all countries across the globe were participants. That means everyone is invested in the same system. Today, while the nations of Eastern Europe might face an economic crisis, no one is suggesting that they abandon free-market capitalism and return to communism. In fact, around the world you see the opposite: even in the midst of this downturn, there have been few successful electoral appeals for a turn to socialism or a rejection of the current framework of political economy. Center-right parties have instead prospered in recent elections throughout the West.

The second force for stability is the victory—after a decades-long struggle—over the cancer of inflation. Thirty-five years ago, much of the world was plagued by high inflation, with deep social and political consequences. Severe inflation can be far more disruptive than a recession, because while recessions rob you of better jobs and wages that you might have had in the future, inflation robs you of what you have now by destroying your savings. In many countries in the 1970s, hyperinflation led to the destruction of the middle class, which was the background condition for many of the political dramas of the era—coups in Latin America, the suspension of democracy in India, the overthrow of the shah in Iran. But then in 1979, the tide began to turn when Paul Volcker took over the U.S. Federal Reserve and waged war against inflation. Over two decades, central banks managed to decisively beat down the beast. At this point, only one country in the world suffers from -hyperinflation: Zimbabwe. Low inflation allows people, businesses, and governments to plan for the future, a key precondition for stability.

Political and economic stability have each reinforced the other. And the third force that has underpinned the resilience of the global system is technological connectivity. Globalization has always existed in a sense in the modern world, but until recently its contours were mostly limited to trade: countries made goods and sold them abroad. Today the information revolution has created a much more deeply connected global system.

Managers in Arkansas can work with suppliers in Beijing on a real-time basis. The production of almost every complex manufactured product now involves input from a dozen countries in a tight global supply chain. And the consequences of connectivity go well beyond economics. Women in rural India have learned through satellite television about the independence of women in more modern countries. Citizens in Iran have used cell phones and the Internet to connect to their well-wishers beyond their borders. Globalization today is fundamentally about knowledge being dispersed across our world.

This diffusion of knowledge may actually be the most important reason for the stability of the current system. The majority of the world's nations have learned some basic lessons about political well-being and wealth creation. They have taken advantage of the opportunities provided by peace, low inflation, and technology to plug in to the global system. And they have seen the indisputable results. Despite all the turmoil of the past year, it's important to remember that more people have been lifted out of poverty over the last two decades than in the preceding 10. Clear-thinking citizens around the world are determined not to lose these gains by falling for some ideological chimera, or searching for a worker's utopia. They are even cautious about the appeals of hypernationalism and war. Most have been there, done that. And they know the price.

**CCP blocks reform**

David **McKenzie and** KJ **Kwon** – 8/15/**13**, CNN, China's push to reform its maligned court system met with skepticism, http://www.cnn.com/2013/08/14/world/asia/china-judicial-system/

**In the wake of a series of court scandals, an influential Communist Party legal commission issued new guidelines** this week asking **for** fairer due process in **China's much maligned court system.** The guidelines, released by the Commission for Politics and Laws, call for interrogations to be recorded to prevent torture, defendants to have access to their attorneys, and judges, prosecutors and police to have a "lifetime responsibility" for their roles on each case. "China has been full of scandals about wrongful convictions of innocent people," says Nicholas Bequelin, a senior researcher at Human Rights Watch. "I think this is a response by the government and party that knows its citizens hold its judiciary in pretty low regard." On Tuesday, a man who served 17 years of a life sentence for murdering his wife was freed after a Higher People's Court in Anhui ruled that the "facts about the alleged homicide were unclear and the evidence inadequate," state news agency Xinhua reported. This and many similar cases have draw outrage on social media in China. "Court cases in the past often deviate from regulations and were influenced by external causes, even though there has been clear regulations to guarantee defendants' right," says Professor Zhang Qianfan of Peking University. Zhang, a noted champion of legal reform, says courts don't always follow regulations and the key test of reform will be implementation. Many of the guidelines are not new. China's legislative body unveiled a new Criminal Procedure Act in 2012 that aimed to give defendants more rights, but was criticized for increasing police power. Rights groups regularly accuse Chinese security organs of torture and forced confessions in criminal cases. A landmark study (Criminal Justice in China: An Empirical Inquiry) completed in 2011 found that 95% of those accused in China confess to their crimes. **The announcement of legal reforms appears to be part of a broader effort by President Xi Jinping's government.** During a decade in power, China's previous president Hu Jintao put the brakes on legal reform seen in the years after the chaos of the Cultural Revolution and in the wake of the Tiananmen Square massacre in 1989. Several prominent legal minds in China were ostracized or sidelined. But for a ruling party whose chief aim is holding onto power, popular anger at the legal system may have reached a threshold. Many Chinese, who see a legal system beset with corruption and frequently influenced by the powerful, will often turn to petitioning and protest. **"There is clearly hope at the moment for momentum in legal reform," says Bequelin**. "The leadership should understand that it's in everyone's best interest that the judiciary not only has a functional role, but is trusted by the people." **But for the ruling party, there are lines in the sand. "If you recognize the rule of law as the fundamental guiding principle and the constitution as the abiding rule in China, then what does that mean for party control?" says** Carl **Minzer, a China expert at Fordham Law School. Minzer believes there is little chance the party will loosen its grip over the courts through fundamental reforms. "It would be a slippery slope towards greater and greater change that they may not be comfortable with," he says. Party members, numbering more than 80 million, are essentially above the law**. If suspected of crimes, they are dealt with the party disciplinary committees first before going through criminal procedures, if at all, experts say. "There is a big discrepancy between the way China works on paper and how it works in practice," says Minzer. Left out of the new guidelines altogether are the way the party deals with perceived political threats. Bequelin says that in sensitive cases where the party feels threatened, torture, ill treatment and extracted confessions are the norm. He doesn't expect that to change. "China has the toolbox to deal with people properly, but every single political case that I have worked on in a decade has been marked by extensive violations of procedure."

**Chinese judiciary can’t check the military**

Nicholas C. **Howson** – **2010**, Michigan Law School Professor, China’s Judicial System and Judicial Reform, http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1002&context=other

**The critiques leveled against China’s judicial institutions** both in China and from abroad **are many. These criticisms include: lack of technical competence; constrained political independence and the burden of Party Committees;** funding of local level courts—and thus direct political control—by local level government (and Party) institutions; direction from adjudication committees; the inability to act against local government (Party) power to enforce civil rights and interests (not to mention central law or policy); **relative powerlessness against the police, secret police and military; understaffing and over-stretched resources; procedural irregularities and confusion** (including endless appeals and “black holes,” and failure to deliver resolution, compensation or any idea of “justice”); unrestrained and judgment-determining ex parte contacts; the continuing failure to hold public proceedings; **corruption**; lower courts seeking guidance from bureaucratically higher-level courts prior to decision; court officials working towards bureaucratic quota of “case handling” (case disposition) rather than substantive case-specific adjudication; **refusal to accept cases that involve a large number of parties** (triggering “social stability” [shehui wending] concerns); the drafting of opinions prior to submission of briefs or trial, or by court officials who have not attended case proceedings; enforcement “chaos” or impotence, etc. **These specific concerns have only been augmented after 2007 by concern, again both Chinese and foreign, about a seeming shift in the rhetoric emanating from the Supreme People’s Court favoring a “democratic” (“masses”-friendly) judiciary, and attacking a “professional”** (and “mystifying”) **judicial apparatus.**

**No lashout**

**Gilley 4** [Bruce, former contributing editor at the Far Eastern Economic Review, M.A. Oxford, 2004, China’s Democratic Future, p. 114]

Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logis¬tical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use of nuclear weapons against Japan or the U.S.47 At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside countries.48 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

## 2AC AT: Deference

**Deference is dead**

**Skinner 8/23**, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising **in the context of foreign or military affairs**. Rather, lower federal **courts should adjudicate these claims on their merits by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine”** as a nonjusticiability doctrinein cases involving individual rights – even those arising **in a foreign policy context. In fact, a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the so-called “political question doctrine**” as a true nonjusticiable doctrine **to dismiss individual rights claims** (and arguably, not to any claims at all), **even those arising in the context of foreign or military affairs**. This includes the seminal “political question” case of Marbury v. Madison. Rather, **the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs**. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, **the post-9/11 Supreme Court cases of Hamdi** v. Rumsfeld, **Rasul** v. Bush, **and** Bush v. **Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss** individual rights claims as nonjusticiable**, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine**” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. **In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs** rather than finding the claim nonjusticiable.

**We’re not a judicial expansion, just re-claiming old powers**

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(Samuel, THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS, www.cjicl.com/uploads/2/9/5/9/2959791/cjicl\_19.3\_chow\_note.pdf)

Additionally, there are ever-present concerns surrounding separation of powers. The degree to which the Court is concerning itself with foreign relations issues is unprecedented, which means any application of a balancing test would be usurping powers of the political branches that were traditionally exercised without the possibility of judicial participation. **There is a general hesitation in potentially augmenting the courts authority in terrorist detentions. Yet, separation-of-powers concerns must be reconciled with the opposing, though equally compelling, counter-part—our government's system of checks and balances. Since the ideal of our tripartite government system is one where areas of authority are clearly defined, an augmentation of jurisdiction by the courts may seem suspicious.** However, the idea of an unchecked Executive with the authority to indefinitely detain individuals (who the government itself has determined have no legal basis for detention) is equally, if not more so, disquieting. Moreover, **the historical role of habeas courts as the final arbiter of a detention's legality provides a legitimate counter-argument that it is in fact the Executive that is intruding upon the judiciary's traditional authority. It does so by appropriating itself as the sole source of a functional remedy, thereby interfering with the courts habeas authority**.

**No spillover**

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(Ashley E., SOME HOLDS BARRED: EXTENDING EXECUTIVE DETENTION HABEAS LAW BEYOND GUANTANAMO BAY, www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SIEGEL\_000.pdf)

This Note explores the novel area of law extending habeas rights to war-on terror detainees, the past precedents that may suggest what direction the jurisprudence will take, and how the jurisprudence should resolve the case of a foreign detainee held by a foreign government at the behest of the United States. Part I reviews habeas law from its historical roots to its modern application in executive detention cases brought about by the United States’ detention of aliens at Guantanamo Bay. Part II examines alien detention abroad apart from the habeas context. Part III explores the likelihood and appropriateness of extending the Boumediene line of cases to scenarios of alien detainees held abroad by foreign governments at the behest of the United States. **The Supreme Court has recently demonstrated a greater willingness to exert its power in the national security realm, no longer giving broad deference to the Executive’s wartime powers. The Supreme Court in this realm appears to take a functionalist, case-by-case approach that leaves open the possibility that the Court will exert itself in different executive detention contexts**. Given the vital, fundamental individual rights implicated by executive detention, the Supreme Court should continue to actively review the actions of the legislative and executive branches. Further, based on the reasoning supporting its past precedents, the Court should extend jurisdiction to detainees held by foreign nations at the behest of the U.S. government.

**No progress on climate cooperation – equity disagreements.**

**Express Tribune, 12/18/**2013, http://tribune.com.pk/story/646813/can-india-and-pakistan-cooperate-over-climate-change/

Last week, an India-Pakistan dialogue on energy and climate change was held to discuss this very topic, hosted by the Heinrich Boll Foundation and the Sustainable Development Policy Institute in Islamabad. Experts from India and Pakistan came together to explore ways in which they could jointly hold their governments accountable to what needs to be done about climate change. **According to** sustainable development expert, Dr Tariq **Banuri,** who currently teaches at the University of Utah, “the science has become more certain and climate change is more certain now… the massive floods of 2010 were not part of our history; there are changes in weather patterns. Yet, **climate policy is paralysed — people just don’t want to act.” There is a leadership vacuum at the global level, where climate change talks have stalled over the principle of equity.** **Rich countries don’t want to take responsibility for their historical carbon emissions and want to shift the burden to emerging economies like China and India, who are resisting this. “The future outlook is bleak** … but we as a region need to come together and advance issues at the global level,” pointed out Dr Banuri. “We need to protect our people against loss and damage and we also need to share information, undertake joint research and establish joint programmes at the national level; we need to build capacity and come up with renewable energy options for the world of the future.” Loss and damage has been pushed forward in international negotiations by developing countries reeling from climate-related disasters, like hurricanes, floods and droughts. They are telling rich countries: we just cannot cope with climate-related disasters anymore and you will have to help us deal with extreme weather events and sea level rise. According to the IPCC, extreme weather events are to become the “new normal”. **It is an uphill struggle**, however. “Developed countries want new agreements in which responsibility will not figure,” pointed out retired Indian ambassador, Chandrashekar Dasgupta, who now works for The Energy and Resources Institute (TERI) in Delhi. Pakistan and India share common interests when it comes to climate change because they both recognise the principle of ‘common but differentiated responsibility’, which is at the heart of the UN Framework Convention on Climate Change. The developed world is now trying to abandon this principle. “Shifting the burden onto our shoulders will affect poverty alleviation, which will be a major setback for us,” explained the former ambassador. “Let us continue to cooperate closely in international negotiations.”

**Warsaw proves- no real progress possible – every country in the world is holding up the process.**

Wolfgang **Sterk** et al, December **2013**, Wuppertal Institute for Climate, Environment and Energy, “Warsaw Groundhog Days,” http://wupperinst.org/uploads/tx\_wupperinst/warsaw-report.pdf

**In what has become normal procedure at the international climate negotiations, the annual United Nations climate conference** (the nineteenth Conference of the Parties (COP 19) to the United Nations Framework Convention on Climate Change (UNFCCC) and the ninth Conference of Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 9)) this year **once again seemed on the brink of collapse and concluded more than one day behind schedule**, in the evening of Saturday 23 November. However, **on most of the key issues it yielded little to show as result of the overtime work. Little was expected**: The process that was launched in 2011 in Durban to develop a new comprehensive climate agreement is to conclude only in 2015, so the main “big picture” issue was to agree on a roadmap for the next two years. **However, even here countries managed to disappoint expectations and agreed only on the bare minimum needed to move the process forward**. As last year, the start of the conference saw the Philippines being shattered by a super typhoon of unprecedented proportions. In September, the first part of the new assessment report by the Intergovernmental Panel on Climate Change (IPCC) posited that it is 95% certain that human influence is the dominant cause of global warming and that its impacts will likely be worse than previously thought.1 Notwithstanding the increasingly dire warnings by climate science and actual climate impacts, **the climate negotiations continue to be bereft of any sense of urgency. To the contrary, the conference’s host Poland deemed it fit to organise a coal summit in parallel to the climate conference and Japan apparently thought that a climate conference was a good occasion to announce a substantial downgrade of its 2020 emission target**, from -25% to about +3% compared to 1990 levels. **Other industrialised countries had little more to brag about. The newly elected conservative Australian government is moving to dismantle the climate legislation put in place by the previous Labour government and the EU is incapable of increasing its 20% target for 2020 even though it has already been achieved**. Taking into account offsets surrendered in the EU ETS, the EU in 2012 in fact accounted for emission reductions of 27% below 1990 levels.2 If it does not increase its target, the EU can thus be expected to amass a substantial surplus of emission units. **This lack of industrialised country leadership made it easy for some emerging economy countries to dig in their heels on the substantive issues of the 2015 agreement**.

**Developing countries, lax regulation, and profit maximization means warming is inevitable**

**Porter 2013** - writes the Economic Scene column for the Wednesday Business section (March 19, Eduardo, “A Model for Reducing Emissions” <http://www.nytimes.com/2013/03/20/business/us-example-offers-hope-for-cutting-carbon-emissions.html?_r=1&>)

**Even if every American coal-fired power plant were to close**, t**hat would not make up for the coal-based generators being built in developing countries** like India and China. “**Since 2000, the growth in coal has been 10 times that of renewables**,” said Daniel Yergin, chairman of IHS Cambridge Energy Research Associates.¶ Fatih Birol, chief economist of the International Energy Agency in Paris, points out that **if civilization is to avoid catastrophic climate change, only about one third of the** 3,000 gigatons of **CO2** contained **in** the world’s **known reserves of oil, gas and coal can be released into the atmosphere**.¶ But **the** world **economy does not work as if this were the case** — not governments, nor businesses, nor consumers.¶ “**In all my experience as an oil company manager, not a single oil company took into the picture the problem of CO2,” said** Leonardo Ma**ugeri, an energy expert at Harvard** who until 2010 was head of strategy and development for Italy’s state-owned oil company, Eni. “**They are all totally devoted to replacing the reserves they consume every year.**”