**1AC Habeas**

**Contention one is Habeas:**

**Al Maqaleh was the end of the line for the great writ**

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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**.

**Circumventing the principles of the early 2013 agreement destroys relations, increases recruitment, and collapses the BSA --- habeas is key**

**AAN 13**, Afghan Analysts Network, <http://www.afghanistan-analysts.org/the-other-guantanamo-5-a-new-mou-for-bagram-and-finally-a-handover>

The Pentagon has announced and the Afghan presidential palace confirmed that the US military will hand over its detention facility at Bagram Airbase to the Afghan authorities tomorrow, 25 March 2013. The presidential spokesman, Aimal Faizy, told AAN the two governments have negotiated a new Memorandum of Understanding (MoU), which, unlike the first MoU on Bagram signed a year ago, will not authorise detention without trial. He also said it would not give the US a veto on the release of any detainee and would oblige it to hand over detainees within 96 hours of arrest. Faizy said all detainees will have been transferred ahead of tomorrow’s ceremony, including the 38 individuals considered particularly dangerous by the US which it has held onto because of fears that the Afghans would release them. AAN senior analyst, Kate Clark, who has been closely following the machinations of the handing over of Bagram for the last twelve months, says tomorrow’s deal – if the spokesman is correct concerning its contents – looks like a significant victory for President Karzai. The **detention** centre **on** the **Bagram** air base **has been** like **piece of grit between** President **Karzai and the US, for years, inflaming and exacerbating tensions** in their relationship. Since a MoU on handing over Bagram was signed in March 2012, **we have seen transfers stop and start, deadlines broken and two handovers delayed. Each agreement on transferring the detention facility, hailed as a victory for Afghan sovereignty by President Karzai, has been transformed into a slap in his face after it was derailed or delayed**. The same points of contention have repeatedly arisen: Afghan demands for sovereignty over Afghan prisoners, US fears that dangerous men will slip out of a leaky Afghan justice system back onto the battlefield and an Afghan reluctance to hold its citizens without trial. **This deal**, then, **is crucial as patience has been wearing thin on both sides**. New negotiations were necessary, it seems, because the original MoU signed in March 2013 (see text and analysis [here](http://aan-afghanistan.com/index.asp?id=2619)) has come so badly adrift. It was issued on the last day of an ultimatum delivered by Karzai demanding Bagram be handed over and, along with a second MoU on night operations (see [here](http://aan-afghanistan.com/index.asp?id=2647)), committed the Afghans to use detention without trial also known as internment and administrative detention) on the basis of the 2nd Additional Protocol (APII) of theGeneva Conventions. APII recognises that a state may detain its citizens without trial during war time. (1) APII was referred to, not only in the two MoUs, but also in a secret document, an inter-ministerial agreement on the procedure or the handover which was signed by the most senior Afghan officials – the ministers of defence, interior and justice, the director of the NDS, the chief justice and the attorney general (read the text [here](http://aan-afghanistan.com/index.asp?id=2785)). The Procedure, in turn, referred to an unpublished presidential decree, the contents of which AAN has not been able to see. AAN checked with the president’s legal advisor in March 2012 and he confirmed that Afghans would be using administrative detention at Bagram. However, what is legal under the laws of armed conflict may still be illegal under domestic law and in this case, there appeared to be an inherent clash between the MoU and an Afghan constitutional requirement that anyone who is detained must either be released within 72 hours or handed over to the Attorney General’s Office. Problems with the MoU on the Afghan side began to emerge, but only belatedly. Two months after it was signed, when transfers had already started and the Afghan authorities had started to hold some of its citizens without trial, the president’s spokesman flatly denied they were doing so (see report [here](http://aan-afghanistan.com/index.asp?id=2785)): **… we are against any detention without trial. For us, nobody can be held without trial. Everything has to be in accordance to the Afghan laws.** The agreement on Bagram started to unravel, it seems, because the Afghan president was reluctant to implement what his government had agreed to, ie detention without trial, although some ambiguities in the text had also allowed room for differing interpretations. A handover ceremony did go ahead in September, but by then, the US military had halted transfers and was refusing to hand over the 38 particularly dangerous detainees against whom it only had classified evidence and whom it feared might subsequently be released. **The US has believed all along that detention without trial is the only option for such men. President Karzai has been adamantly opposed to this and was furious at the halt to the transfers**. In January, after Presidents Karzai and Obama met in Washington, it was clear they had sorted out at least the bones of a new deal on Bagram. Karzai said: ‘**Concerning Afghan sovereignty, we agreed on the complete return of detention centres and detainees to Afghan sovereignty, and that this will be implemented soon after my return to Afghanistan**.’(2) (See AAN reporting [here](http://aan-afghanistan.com/index.asp?id=3198)). When AAN spoke to the Afghan director of Bagram, General Farouq Barakzai, in late February, he said transfers were again in full swing and negotiations on a few final issues were underway. He said the transfer of the facility was scheduled for 9 March. Three days before that date, President Karzai announced the handover to Parliament. Then, once again, it was delayed. The trigger for this may well have been Karzai’s own remarks to members of parliaments (as reported [here](http://www.rferl.org/content/us-afghan-prisoner-bagram/24920826.html)) which suggested that he, himself, and not judges or indeed the various panels set out in the MoU, would decide on releases: We know that **many innocents are languishing in this prison.** Despite all the expected criticism, I will order the release of innocents so they can go to their homes… But people who are involved in killing Afghans by shooting them or bombing them will meet their punishment. Given the President’s power to pardon detainees, including in secret (for details, see [here](http://aan-afghanistan.com/index.asp?id=3307)), it is not surprising the US may have backed down from the handover at this point. However, according to Faizy, the delay came from the Afghan side. He said the president had only got to see the text of the new MoU on the 8th - it had been negotiated by the Afghan in charge of Transition, Ashraf Ghani and the head of the National Security Council, Dadfar Spanta – and Karzai objected to the US military continuing to have an effective veto on releases and access to detainees for the purposes of interrogation once they had been handed over. So the negotiators were, once again, set to try to thrash out a final, acceptable text of the MoU. On Monday, in Washington DC, the Pentagon announced an agreement had been reached and the detention facility would be handed over to the ‘sovereign control of Afghanistan on Monday’: The secretary [of state, Chuck Hagel] welcomed President Karzai’s commitment that the transfer will be carried out in a way that assures the safety of the Afghan people and coalition forces by keeping dangerous individuals detained in a secure and humane manner in accordance with Afghan law. It has given no further details and a US military spokesman in Kabul declined to speak about the handover so, it has to be stressed, information about the contents of the MoU is based solely on an interview with Faizy. He gave AAN the following overview: The new MoU does not use administrative detention under APII to deal with detainees, including those the US deems most dangerous. The highest Afghan legal authorities, he said, including the minister of justice and head of the supreme court, had been looking at how to work within appropriate and ‘existing Afghan laws’. They believe existing court powers to order extensions of the period a detainee is held at various stages of the investigation and trial periods could mean, if all were used, an accused person held for a maximum of about 10 months, although he would then have to be convicted or released. He said the legal authorities were also looking into an article in the anti-terrorism law which might well provide a ‘special mechanism’. The text of this clause is vague in the extreme; (4) it allows the attorney general to secretly provide the court with documents and evidence on a terrorist case and ask for ‘temporary provisions’ – something which is left undefined. This looks like a fudge, but one which, it seems, both sides are happy enough with. Human rights activists concerned with due process and fair trials, however, may well have objections. Faizy said the US would not enjoy a veto over the release of any detainees in the future. As for the 38 individuals, it seems the current arrangement in the March 2012 MoU may hold, ie the ‘Joint Committee’, made up of the Afghan Minister of Defence and the Commander of US forces may get to review files together of any whom the Afghan authorities wanted to release. This would be the only joint US-Afghan body operating at Bagram and would have very limited powers. Faizy said all the Afghan detainees (5) held at Bagram would have been transferred by tomorrow: ‘We are committed not to set those 38 free,’ he said, ‘but to detain them in accordance with Afghan laws.’ He said the US military had wanted access to detainees after they had been transferred, but the president vetoed this. Instead, the US would be able to pass on any intelligence to the NDS for investigation and forwarding to the Afghan Review Board. Under the March 2012 MoU and the Inter-Ministerial Procedure and according to interviews with General Barakzai, the Board has operated for much of the last year. It is made up two people each from the Ministries of Interior, Defence and NDS and has the job of investigating, developing and assessing detainees’ cases, with the help of the NDS and Attorney General. At a detainees’ hearing by the Board, he has a defence lawyer and legal advisor and can bring elders or witnesses to vouch for him. The Board, which has been seeing about 7 detainees every day, can recommend their release, trial or administrative detention. The new MoU will take away that last option and it is not yet clear if its role will be changed in any other way.(6) It should be said again that the information for this blog has come from the Afghan government only. On the face of it, however, **it does look like the US has backed down. However, in previous agreements, the US has shown itself adept at appearing to back down, to give the Afghans the language they want, but to work with textual ambiguities to keep doing what it wants to do**. In other words, only when we see the text of the MoU and how it actually works will it become clear where and how far compromises have been made. It has become imperative for the two sides to reach a working agreement on Bagram that satisfies both governments enough so that it will not again be derailed. **Bagram** is important. It **is a symbol of the US military presence, infamous in its early days for torture by US forces** (see reporting [here](http://www.hrw.org/sites/default/files/reports/afghanistan0304.pdf)). Although conditions and due process have improved under US control, **it remains a rallying cry for the Taleban and indeed any Afghan upset with foreigners being in his or her land** (see for example recent comments by the pro-government Ulama Council, reported [here](http://aan-afghanistan.com/index.asp?id=3307) which just stopped short of calling for a jihad against the ‘infidels’). Getting control of it is key to President Karzai’s sense of himself as a sovereign leader. **The detainees there may also become important bargaining chips in any of his dealings with the Taleban. Moreover, if the US and Afghanistan cannot sort out a working deal on Bagram, the *chances of them reaching a Bilateral Security Agreement to govern a US military presence after 2014 must surely be close to zero***.

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

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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**

**Obama complies**

Stephen I. **Vladeck 9**, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch\_bkrev

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to **the potential that the political branches will simply ignore a judicial decision invalidating such a policy**.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief **is based on a series of assumptions that Wittes does not attempt to prove**. First, **he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct** (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 **a lot has changed in the past six-and-a-half decades, to the point where I,** at least, **cannot imagine a contemporary President possessing the political capital to squarely refuse to comply** with a Supreme Court decision. But perhaps I am naïve.184

**Courts create an observer effect – empirically forces Obama to comply**

**Deeks 10/21** (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

While **courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.”** Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that **people act differently when they are aware that someone is watching** them. In the national security context, the “observer effect” can be thought of as the impact on **Executive policy-setting** of pending or probable court consideration of a specific national security policy. The Executive’s **awareness of likely judicial oversight** over particular national security policies—an awareness that ebbs and flows—**plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take,** for example, **U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal** their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus **we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so**.

**2AC Stupid T Arg**

**ID = detaining w/o trial**

**US Legal** – **2013**, Indefinite Detention Law & Legal Definition, (US Legal, Inc Provides legal information in the form of Question & Answers, Definitions, Articles, Blogs and Reporting on various subjects in the United States legal field), http://definitions.uslegal.com/i/indefinite-detention/

**Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial.** It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seema to violate many national and international laws. It also violates human rights laws. Indefinite detention is seen mainly in cases of suspected terrorists who are indefinitely detained. The Law Lords, Britain’s highest court, have held that the indefinite detention of foreign terrorism suspects is incompatible with the Human Rights Act and the European Convention on Human Rights. [Human Rights Watch] In the U.S., indefinite detention has been used to hold terror suspects. The case relating to the indefinite detention of Jose Padilla is one of the most highly publicized cases of indefinite detention in the U.S. In the U.S., indefinite detention is a highly controversial matter and is currently under review. Organizations such as International Red Cross and FIDH are of the opinion that U.S. detention of prisoners at Guantanamo Bay is not based on legal grounds. However, the American Civil Liberties Union is of the view that indefinite detention is permitted pursuant to section 412 of the USA Patriot Act.

**AT: ESR**

**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: Interagency Task Force Mech**

**Interagency task forces empirically fail --- they’re secretive and will be ignored**

**Glaser 13**, Assistant editor at Anti-War.com, cites the Open Society Justice Initiative Report, <http://antiwar.com/blog/2013/02/05/20-facts-about-extraordinary-rendition-torture-and-secret-detention/>

19. President **Obama’s** 2009 **Executive Order** also **established an interagency task force to review interrogation and transfer policies and issue recommendations on “the practices of transferring individuals to other nations.” The** interagency task force **report was issued in 2009, but continues to be withheld from the public.** It appears that **the U.S. intends to continue to rely on anti-torture diplomatic assurances from recipient countries and post-transfer monitoring of detainee treatment, but those methods were not effective safeguards against torture for Maher Arar, who was tortured in Syria, or Ahmed Agiza and Muhammed al-Zery, who were tortured in Egypt**.

**2AC AT: Security**

Social constructions are knowable --- prefer specificity

**Fluck, PhD in International Politics from Aberystwyth, ’10** (Matthew, November, “Truth, Values and the Value of Truth in Critical International Relations Theory” Millennium Journal of International Studies, Vol 39 No 2, SagePub)

Critical Realists arrive at their understanding of truth by inverting the post-positivist attitude; rather than asking what knowledge is like and structuring their account of the world accordingly, they assume that knowledge is possible and ask what the world must be like for that to be the case. 36 This position has its roots in the realist philosophy of science, where it is argued that scientists must assume that the theoretical entities they describe – atoms, gravity, bacteria and so on – are real, that they exist independently of thoughts or discourse. 37 Whereas positivists identify causal laws with recurrent phenomena, realists believe they are real tendencies and mechanisms. They argue that the only plausible explanation for the remarkable success of science is that theories refer to these real entities and mechanisms which exist independently of human experience. 38 Against this background, the Critical Realist philosopher Roy Bhaskar has argued that truth must have a dual aspect. On the one hand, it must refer to epistemic conditions and activities such as ‘reporting judgements’ and ‘assigning values’. On the other hand, it has an inescapably ontic aspect which involves ‘designating the states of affairs expressed and in virtue of which judgements are assigned the value “true’’’. In many respects the epistemic aspect must dominate; we can only identify truth through certain epistemic procedures and from within certain social contexts. Nevertheless, these procedures are oriented towards independent reality. The status of the conclusions they lead us to is not dependent on epistemic factors alone, but also on independently existing states of affairs. For this reason, Bhaskar argues that truth has a ‘genuinely ontological’ use. 39 Post-positivists would, of course, reply that whilst such an understanding of truth might be unproblematic in the natural sciences, in the social sciences the knower is part of the object known. This being the case, there cannot be an ontic aspect to the truths identified. Critical Realists accept that in social science there is interaction between subject and object; social structures involve the actions and ideas of social actors. 40 They add, however, that it does not follow that the structures in question are the creations of social scientists or that they are simply constituted through the ideas shared within society at a given moment. 41 According to Bhaskar, since we are born into a world of structures which precede us, we can ascribe independent existence to social structures on the basis of their pre-existence. We can recognise that they are real on the basis of their causal power – they have a constraining effect on our activity. 42 Critical Realists are happy to agree to an ‘epistemological relativism’ according to which knowledge is a social product created from a pre-existing set of beliefs, 43 but they maintain that the reality of social structures means that our beliefs about them can be more or less accurate – we must distinguish between the way things appear to us and the way they really are. There are procedures which enable us to rationally choose between accounts of reality and thereby arrive at more accurate understandings; epistemological relativism does not preclude judgemental rationalism. 44 It therefore remains possible to pursue the truth about social reality.

**Predictions stop crisis-driven responses and foster empathy**

**Ungar 5,** president – Goucher College, 2005 [Sanford, “compassion fatigue: the next wave?”, winter, www.goucher.edu/x4726.xml]

There is a temptation to worry that before long, we will be hit by one more severe case of what has come to be known as “compassion fatigue”—a deadening of our sensibilities by the unrelenting bombardment of shallow and sensationalist media coverage of disease, famine, death, and war. Susan D. Moeller, a well-traveled observer who now teaches at the University of Maryland, has written tellingly of this phenomenon. “Through a choice of language and images,” she says, “the newest event is represented as more extreme than a similar past situation.” When we use the same extreme words to describe very different events, we undermine our ability to differentiate among them. Our sense of tragedy and cataclysm can be ratcheted only so high before we simply become overwhelmed. Some news organizations try to hold our attention by personalizing the events—pointing out, for example, that U.S. citizens perished in the tsunami, or drawing comparisons between this disaster overseas and others closer to international problems. “Why, to listen to NPR,” he complained, “you would think that there is trouble everywhere. It’s exhausting.” Visitors from across the country—sufferers all from compassion fatigue, I suppose—nodded their heads in agreement. “Well,” I said, as I attempted to confront him later, “there **really is a lot to worry about** in the world, and someone has to call our attention to it.” He was not about to be persuaded, preferring instead to focus on the customary agenda of parochial issues facing Americans. There’s a real danger in that attitude. If we allow our exhaustion to keep us from thinking about global concerns, we risk ignoring some important issues that may deserve a place in our consciousness alongside our domestic debates. By now it should be obvious that events and conditions around the world can have a profound impact on Main Street America. One would think there is plenty of evidence to make the point: the crisis- inspired fluctuation in gasoline prices at the pump; the international shortage of steel and concrete due to the construction boom in China; and the ebb and flow of immigration to the United States on the basis of circumstances in Mexico and Central America, among other places. Not to mention the consequences we have all experienced, in varying ways and to varying degrees, as a result of the Iraq war. The tsunami has ramifications for Americans beyond what might seem immediately apparent. It has been suggested that American generosity toward these countries with large Muslim populations could have an important restorative effect on the United States’ image throughout the Muslim world. It’s a shame it took a catastrophe like this to get us interested in what’s going on there. Perhaps if we **paid closer attention** to the concerns of others over a sustained period of time, we would gain a better understanding of the global disparities that breed problems like terrorism—and, in the process, go a long way toward making the world safer for everyone. In the heat of political battle, in the midst of some of our own legitimate preoccupations, it may have become more difficult to sustain the argument that Americans’ lives are meaningfully affected by poverty, disease, and tragedy in distant, hard-to-pronounce places. But we **must not turn our attention away**, and we must demand that those we entrust to report the news be not only **vigilant, but also responsible**, in their presentation of global events. Otherwise, we will be **doomed to await the tsunamis of history**, literal and figurative, to help us figure out what is really going on.

**---2AC TF**

**We don’t have time for prior questions — we must act to prevent short-term crises**

**Kratochwil 8**, professor of international relations – European University Institute, 2008 (Friedrich, “The Puzzles of Politics,” pg. 200-213)

The lesson seems clear. Even at the danger of “fuzzy boundaries”, when we deal with “practice” ( just as with the “pragmatic turn”), we would be well advised to rely on the use of the term rather than on its reference (pointing to some property of the object under study), in order to draw the bounds of sense and understand the meaning of the concept. My argument for the fruitful character of a pragmatic approach in IR, therefore, does not depend on a comprehensive mapping of the varieties of research in this area, nor on an arbitrary appropriation or exegesis of any specific and self-absorbed theoretical orientation. For this reason, in what follows, I will not provide a rigidly specified definition, nor will I refer exclusively to some prepackaged theoretical approach. Instead, I will sketch out the reasons for which a pragmatic orientation in social analysis seems to hold particular promise. These reasons pertain both to the more general area of knowledge appropriate for praxis and to the more specific types of investigation in the field. The follow- ing ten points are – without a claim to completeness – intended to engender some critical reflection on both areas. Firstly, a pragmatic approach does not begin with objects or “things” **(ontology), or with** reason and method (**epistemology),** but with “**acting**” (prattein), thereby **preventing** some false starts. Since, **as historical beings placed in a specific situations, we do not have the luxury of deferring decisions until we have found the “truth”, we have to act and must do so always under time pressures and in the face of incomplete information.** Pre- cisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear ex ante, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick **diagnostic** and cognitive **shortcuts** informing actors about the relevant features of the situ- ation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter. To that extent, likening practical choices to simple “discoveries” of an already independently existing “reality” which discloses itself to an “observer” – or relying on optimal strategies – is somewhat heroic. These points have been made vividly by “realists” such as Clausewitz in his controversy with von Bülow, in which he criticised the latter’s obsession with a strategic “science” (Paret et al. 1986). While Clausewitz has become an icon for realists, only a few of them (usually dubbed “old” realists) have taken seriously his warnings against the misplaced belief in the reliability and use- fulness of a “scientific” study of strategy. Instead, most of them, especially “neorealists” of various stripes, have embraced the “theory”-building based on the epistemological project as the via regia to the creation of knowledge. A pragmatist orientation would most certainly not endorse such a position. Secondly, since acting in the social world often involves acting “for” someone, special responsibilities arise that aggravate both the incompleteness of knowledge as well as its generality problem. Since we owe special care to those entrusted to us, for example, as teachers, doctors or lawyers, we cannot just rely on what is generally true, **but have to pay** special **attention to the particular case**. Aside from avoiding the foreclosure of options, we cannot refuse to act on the basis of incomplete information or insufficient know- ledge, and the necessary diagnostic will involve typification and comparison, reasoning by analogy rather than generalization or deduction. Leaving out the particularities of a case, be it a legal or medical one, in a mistaken effort to become “scientific” would be a fatal flaw. Moreover, there still remains the crucial element of “timing” – of knowing when to act. Students of crises have always pointed out the importance of this factor but, in attempts at building a general “theory” of international politics analogously to the natural sci- ences, such elements are neglected on the basis of the “continuity of nature” and the “large number” assumptions. Besides, “timing” seems to be quite recalcitrant to analytical treatment.

**PQD**

**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**

**Chow 11**, JD from Cardozo

(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**

**Siegel 12**, Associate at Cleary Gottlieb

(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.

**Deterrence inevitably fails due to human decision-making**

**Chock**, Professor of Political Science at the University of Vienna, **06**

(The Spread of Nuclear Weapons – More May be Worse, www.iuvienna.edu/788\_EN-Documents-PDFs-Spread-of-Nuclear-Weapons-Paper.pdf)

**Walt’s rational deterrence theory suggests three major operational requirements for its stability**: 1. there must not be a preventive war during the transition period when one state has nuclear weapons and the other state is building, but has not yet achieved, a nuclear capability. 2. both states must develop, not just the ability to inflict some level of unacceptable damage to the other side, but also a sufficient degree of “second-strike” survivability so that its forces could retaliate if attacked first, and 3. the nuclear arsenals must not be prone to accidental or unauthorized use. (Waltz and Sagan) Nuclear optimists believe that new nuclear powers will meet these requirements because it is in their interest to do so. Also, it is enough that statesman are very sensitive to the cost which in turn will make this theory work. **Settings for stable nuclear deterrence requirements involve human communications, human assessments, and projected human behavior - none of which can be expected to be perfect**. **As such, we could consider that deterrence is imperfect as those settings mentioned above and will not function rationally as Waltz argues**. As a result, there is number of different risks that face uncertainty of existence of rational deterrence theory. Moreover, **there are several hurdles to overcome** **in attempting to meet settings which make deterrence to work successfully**. First**, people should not be led by belief that others think, behave, or act the way we do**.Every person is individual who has own value and attitude and as such will be completely different than others. Thus, **one has to accomplish objective and broad study of another's behavior and then predict the other behavior without any bias**. However, this is a psychologically impossible task in terms that it is just impossible to predict how one will behave even if we would have all factors in analysis. I say so, because **there will always be some variable factors that change constantly and ones who will make results quite inaccurate**. **A second hurdle to overcome is in thinking critical military decisions are made by one person in isolation**. **It is usually not so, since those decisions involve collectivism and assessments**. If one wants to predict how the group will behave in certain situation, than one should consider all group members which have had influence on decision maker. Even if one misses to asses and interpret behavior of only one group member than total prediction will make no sense. **Therefore, assurance of successful deterrence requires a reasonably accurate prediction.** **A third hurdle is in rejecting the anticipation that the other county** **and its statesmen** **will always be wise, rational, and cautious** **during its decision making process. Such an attitude can** cause belief that deterrence will work which on the other hand might be very dangerous in time of crisis. Moreover, it can **produce catastrophic results when talking about stability of international relations**. It should be expected that **decision making on the brink of nuclear war would be in a high stress**, emotionally-charged **environment not conducive to** cool-headed, **rational thinking**. A fourth hurdle is accepting the fact that the best deterrence will be less than perfect. **Deterrence will always be corrupted because condition 3 above can never be 100% assured**. For example, one never knows how other persons would balance consequences with rewards or would calculate risks. Even worse, the degree of degradation is beyond accurate estimation. Therefore, a nation that chooses to depend on nuclear deterrence should understand that such deterrence is not dependable. Deterrence psychology is not compatible with assured protection. (Whitmore)

**Deterrence fails – logic behind it demands aggression to remain credible**

Marc **Trachtenberg**, Professor of Political Science at UCLA, Fall **2002**, “Waltzing to Armageddon?,” The National Interest, online: <http://findarticles.com/p/articles/mi_m2751/is_2002_Fall/ai_92042431/>

Once we get away from the idea that wars are simply "started" by one side and that the "attacker" can be readily identified, the whole problem appears in an entirely different light. **If war is seen as the outcome of a process in which two sides interact**, it makes no sense to focus simply on the calculations of just one side. Instead, **the calculations of both sides, and especially their calculations about each other, have to be taken into account. Each side may be trying to deter the other**--to get its way without war if it can. Each side might be afraid of escalation, but those fears are balanced by the knowledge that one's adversary is also afraid, and his fears can be exploited. In the case of a conflict between two nuclear powers, if either side believed that Waltz's analysis was correct--**if either side believed that its adversary would give way rather than run any risk of nuclear attack, as long as his vital interests were not threatened--there would be no reason for that country not to take advantage of that situation**. **That side could threaten its adversary** with nuclear attack **if its demands were not met in the firm belief that its opponent was bound to give way**, and that it would therefore not be running any risk itself. **That belief might turn out to be correct, but if it were not**--if its rival was unwilling to allow it to score such an easy victory--**there could be very serious trouble** indeed. And **if both sides were convinced by Waltz's arguments, and both adopted strong deterrent strategies, the situation would be particularly dangerous. Each side would dig in its heels**, convinced that when confronted with the risk of nuclear war, the other side would ultimately back down. **Such a situation could quickly get out of hand**. As Dean Rusk pointed out in 1961, "**one of the quickest ways to have a nuclear war is to have the two sides persuaded that neither will fight**."

This is an extreme case, but it illustrates the problem. In the real world, states will not be so sure that their opponent "will be deterred" by the prospect of nuclear war and that they can therefore go as far as they like in a political dispute--say, in the Cold War case, in a dispute over Cuba or Berlin. Nor will they themselves, in all probability, be absolutely deterred by the threat of nuclear war. **They would be under a certain competitive pressure to play the same game as their rivals; t**heir rivals could not be allowed to profit so easily from a simple threat-making strategy while themselves running no real risk at all. **Each side would be afraid of escalation, but each side would in the final analysis also be willing to run a certain risk**. Each side would know that its adversary was also worried about what would happen if things got out of hand, and that an **unwillingness to run any risk at all would remove that element of restraint and give the adversary too free a hand. Each side would know that its a dversary was probably also willing to run a certain risk for the same reason, which is why each side could not be sure that its opponent would be deterred in a confrontation**.

**AT: LOAC DA**

**2AC AT: LOAC DA**

1. **Saves Geneva – that’s Sattherweite – means we flip the DA**

**ICRC 10**, International Committee on the Red Cross, <http://www.icrc.org/eng/war-and-law/overview-war-and-law.htm>

Armed conflict is as old as humankind itself. There have always been customary practices in war, but only in the last 150 years have **States made international rules to limit the effects of armed conflict** for humanitarian reasons. The **Geneva** Conventions and the Hague Conventions **are** the **main examples. Usually called international humanitarian law (IHL**), it **is** also **known as** the law of war or the **l**aw **o**f **a**rmed **c**onflict.

**International law regimes are complementary – broader I-Law fills in even if they win a link**

**ICRC 10**, International Committee on the Red Cross, IHL and Other Legal Regimes, <http://www.icrc.org/eng/war-and-law/ihl-other-legal-regmies/overview-other-legal-regimes.htm>

**I**nternational **h**umanitarian **l**aw **and other legal regimes are complementary in armed conflicts**. They are, however, distinct and separate, especially "jus in bello" (or **IHL), which regulates the way war is conducted** and "jus ad bellum", which covers the reasons for war. **Human rights and refugee law can overlap with IHL.**

Both international humanitarian law and human rights law aim to protect the life, health and dignity of human beings. **Whereas IHL applies only in times of armed conflict, human rights law applies at all times, in peace and in war.**

**States are required to take action to ensure respect for and application of both bodies of law**. There are certain conditions under which some human rights can be suspended by a State if it faces a serious public threat. States cannot, however, suspend what are called hard-core human rights that are regarded as fundamental.

**No link – their evidence is about POW status – that’s far wider than the right to a habeas trial**

**ICRC 10/29**, International Committee of the Red Cross, Prisoner of War Detainees Protected Under International Humanitarian Law, <http://www.icrc.org/eng/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm>

The rules protecting prisoners of war (POWs) are specific and were first detailed in the 1929 Geneva Convention. They were refined in the third 1949 Geneva Convention, following the lessons of World War II, as well as in Additional Protocol I of 1977.

The status of POW only applies in international armed conflict. POWs are usually members of the armed forces of one of the parties to a conflict who fall into the hands of the adverse party. The third 1949 Geneva Convention also classifies other categories of persons who have the right to POW status or may be treated as POWs.

**POWs cannot be prosecuted** for taking a direct part in hostilities.  Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. **They must be released and repatriated without delay after the end of hostilities**. The detaining power may prosecute them for possible war crimes, but not for acts of violence that are lawful under IHL.

**POWs must be treated humanely in all circumstances**. They are protected against any act of violence, as well as against intimidation, insults, and public curiosity. **IHL** also **defines minimum conditions of detention covering** such issues as **accommodation, food, clothing, hygiene and medical care**.

The fourth 1949 Geneva Convention and Additional Protocol I also provide extensive protection for civilian internees during international armed conflicts. If justified by imperative reasons of security, a party to the conflict may subject civilians to assigned residence or to internment. Therefore, internment is a security measure, and cannot be used as a form of punishment. This means that each interned person must be released as soon as the reasons which necessitated his/her internment no longer exist.

Rules governing the treatment and conditions of detention of civilian internees under IHL are very similar to those applicable to prisoners of war.

In non-international armed conflicts, Article 3 common to the 1949 Geneva Conventions and Additional Protocol II provide that persons deprived of liberty for reasons related to the conflict must also be treated humanely in all circumstances. In particular, they are protected against murder, torture, as well as cruel, humiliating or degrading treatment. Those detained for participation in hostilities are not immune from criminal prosecution under the applicable domestic law for having done so.

**Boumediene thumps**

**Amnesty No Date**, At least 2009, <http://www.amnestyusa.org/our-work/issues/security-and-human-rights/illegal-and-indefinite-detention/habeas-corpus>

President **Bush tried to suspend habeas** when he issued a military order entitled, Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism. **He declared the right to indefinitely detain individuals that he claimed were suspected of having links to terrorism as “unlawful enemy combatants”**. In violation of international and Constitutional law, he asserted that these detainees could be held forever without legal counsel, without knowing what they were accused of doing, and without ever seeing the inside of a courtroom.
Over the course of years, the **Bush** administration **held over 700 such designated “unlawful enemy combatants”** on a U.S. detention camp in Guantanamo Bay, Cuba. All the while, **in American court rooms, a vigorous legal battle over the legality of the detentions has ensued**. Most recently, **the** U.S. **Supreme Court in Boumediene, held** that **those** held **at Guantanamo** Bay **have the right of habeas corpus and can bring such claims in U.S. federal court**.

**No link**

**Webber 12**, Solicitor of the Senior Courts of England and Wales; LL.B. (Hons.), University of London; LL.M., Georgetown University; S.J.D. Candidate, Georgetown University<http://jnslp.com/wp-content/uploads/2012/08/06__Webber_Master-0629.pdf>

Part I analyzes the legal framework for preventive detention in accordance with the LOAC. Part II discusses duration of detention. Part III examines problems relating to challenging detention in the context of some recent cases of detainees at Guantánamo Bay. Part IV discusses detention in Iraq and Afghanistan and focuses on the case of Fadi al Maqaleh,5 currently detained at Parwan. Part V discusses sections of the National Defense Authorization Act of 2012 (NDAA) dealing with detainee detention.6 This article concludes that over a decade after 9/11, the law dealing with detention is still unclear, **the current state of the LOAC does not provide an adequate blueprint to deal with future detention challenges**, and the **NDAA does not resolve all the problems it aims to fix. The form of preventive detention of suspected terrorists that is deemed necessary by the U.S. government does not fit within the current domestic U.S. criminal law framework or the U.S Constitution; hence the reliance on the LOAC. However, the way forward should not lie in trying to make a framework out of a LOAC that does not serve as a totally appropriate model to detain** suspected **terrorists. Using the LOAC as a framework does not rectify the inadequacies of the LOAC in the terrorism context. It is time for a fresh look at the entire issue**.

**Non-unique – UK model contradicts LOAC**

**Webber 12**, Solicitor of the Senior Courts of England and Wales; LL.B. (Hons.), University of London; LL.M., Georgetown University; S.J.D. Candidate, Georgetown University<http://jnslp.com/wp-content/uploads/2012/08/06__Webber_Master-0629.pdf>

This attitude has continued in the British response to Islamist extremist activity **in the U**nited **K**ingdom. Since 2000 there has been a raft of anti- terror legislation in the United Kingdom. **Terror**ist activity **is treated as something to be dealt with squarely in the criminal law system**. Preventive detention is permitted. Since 2006 suspected terrorists could be held for up to twenty-eight days without charge,24 but since January 25, 2011, the maximum number of days for detention without charge in terrorist cases has been reduced to fourteen.25 Although **indefinite detention of suspected alien terrorists pending deportation was specifically struck down by the House of Lords**26 (now called the Supreme Court) for violating Article 5 of the European Convention on Human Rights,27 there has been no human rights challenge to detention without charge for twenty-eight days. In 2005, a system of “**control orders” was introduced.**28 A control order is an order that may be made against an individual imposing obligations connected with preventing or restricting involvement by that individual in terrorism-related activity by, for example, house arrest or curfews.29 Since its inception the control order regime has been greatly criticized by “controlees” and civil libertarians, because orders were made using classified evidence to which controlees were not privy.30 In February 2009, the European Court of Human Rights ruled that it was essential that as much information about the allegations and evidence against the controlee should be disclosed, without compromising national security or the safety of others.31 Then in June 2009, the U.K. House of Lords acknowledged the requirement to give the controlee sufficient information to enable him to give effective instructions to his lawyer in court proceedings. It is necessary to know the “essence of the case.”32 The U.K. Home Office has conducted annual reviews of various counterterrorism measures, including control orders, and the most recent was published in January 2011.33 In the wake of all the criticism, the British Home Secretary has recommended the introduction of a new control order regime starting in 2012, dubbed “T-Pims” (Terrorism Prevention and Investigation Measures).34 The new regime is meant to be “more focused and flexible” but critics say it is ‘“little more than ‘control orders lite.’”35 Curfews will be reduced from a maximum of sixteen hours a day to between eight and ten hours a day.36 Thus **the U**nited **K**ingdom has **settled on a model that is not drawn from the LOAC, but is based on domestic criminal law. The U**nited **K**ingdom **appears to have established a preventive detention regime that sits**, although perhaps not too comfortably, **within the framework of the European Convention on Human Rights**.

**Empirically denied by pre-9/11 posture**

**Webber 12**, Solicitor of the Senior Courts of England and Wales; LL.B. (Hons.), University of London; LL.M., Georgetown University; S.J.D. Candidate, Georgetown University<http://jnslp.com/wp-content/uploads/2012/08/06__Webber_Master-0629.pdf>

**Prior to 9/11, the U**nited **S**tates **treated terrorism** on U.S. soil **as criminal activity**.45 Immediately after the attacks “the Bush Administration rushed to the judgment that America’s old approach to fighting terrorism, which treated it as a crime like any other, was inadequate for the post 9/11 world. Almost without discussion, it was agreed that a new kind of enemy required new tactics.”46 The Administration immediately went onto a war footing.

**Alt cause – ICJ**

Charles J. **Dunlap**, USAF, Duke University Law School, Dec 20**11**, The Mottled Legacy of 9/11: A Few Reflections on the Evolution of the International Law of Armed Conflict, Yearbook of International Humanitarian Law / Volume 14

Even the UN’s own judicial arm has come under fire. **Professor** John Norton Moore, the respected international lawyer from the University of Virginia, **gave a scathing assessment of the United Nations’ International Court of Justice’s performance in a series of jus ad bellum cases, accusing it of ‘‘shocking failure[s] of legal craftsmanship.**’’14 **Such failings merit immediate and searching examination if international law related to security matters—to include ILOAC—is to continue to evolve as a legal construct worthy of respect and deference**.

**AT: Terror DA**

**The aff wins over Muslim moderates --- that’s key**

**Sidhu 11**

[2011, Dawinder S. Sidhu, J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania, Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, NATIONAL SECURITY LAW BRIEF, Vol. 1, Issue 1 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb]

For soft power to move from the shadows to a place of prominence in American foreign policy with respect to the national struggle against terrorists, America must ﬁ rst determine what soft power resources are available to it**. The universe of American soft power resources is indeed extensive and includes**, for example, **American popular culture, democracy, support of human rights, and its civic institutions.**62 **This Article is concerned with the law as an aspect of American soft power.** Nye, in almost passing fashion, indicates that the law is subsumed under the banner of soft power.63 But he does not explicitly ﬂ esh out the precise features of the law in America that may attract others to our interests. The question therefore arises, what is it about law in America that may serve as soft power? Before attempting an answer, it **is important to identify the audience of any soft power volley in the post-9/11 context**. As Nye acknowledges, **a prerequisite for the use of soft power is the existence of “willing receivers” of a nation’s particular message.**64 **The core fundamentalists absorbed by their warped take on Islam may be beyond reason and thus may not be receptive** to a message on the intangible virtues of the American state. **The moderate elements in Afghanistan, Iraq, and neighboring regions,** however, **may be amenable to persuasion and, if convinced, may be effective agents of the American narrative by subsequently and more meaningfully conveying it to the extremists.** With the hardcore fundamentalists presumptively out of the reach of reasonable argument or enticement, “**the ability to attract the moderates is critical to victory.65 Therefore, legal soft power must address and convince these moderates**.

**Turn – detention causes false leads – diverts from counter terror**

**O’Neil 11** [Winter, 2011, Robin O'Neil, “THE PRICE OF PURITY: WEAKENING THE EXECUTIVE MODEL OF THE UNITED STATES' COUNTER-TERROR LEGAL SYSTEM”, 47 Hous. L. Rev. 1421]

**While providing for judicial review may not make sense in every anti-terror context**, **absent limitation, the executive may offend the Constitution in any number of ways**, leaving those affected no recourse. n152 Further, **the lack of judicial review compromises counter-terror activities by not requiring the President to provide plausible reasons for and explanations of his actions**; n153 for example, **"by failing to provide even perfunctory individualized hearings** [to detainees at Guantanamo Bay], ... **the U.S. government ... misspent our scarce interrogation capacities on individuals of minimal or no intelligence value**." n154 **Had the President's orders been subject to** [\*1445] **judicial oversight, he would have had to explain how the unilaterally implemented deprivations of due process were narrowly tailored to effect an important purpose**, **prompting a more thorough analysis of what was to be gained by the President's detention policies**. n155 **The weak form of the executive model gives the President limited flexibility in exigent circumstances** to move forward without congressional authorization, while retaining a strong preference for specifically authorized executive action and the judicial recourse it usually provides. n156 The fact that both Congress and the Bush Administration made a concerted effort to cut the courts out of the counter-terrorism legal scheme altogether supports the proposition that **the anti-terrorism legal system developed during the Bush Administration** has **brought the U.S. executive model perilously close to operating in its pure form**, **notwithstanding the broad legislative mandates enacted in support of the President's unilateral activities**. n157 President Obama should heed the Boumediene Court's admonitions regarding the centrality of judicial review to the preservation of American democracy and press Congress to lift what barriers to judicial recourse the MCA continues to impose on War on Terror detainees. n158 In those rare circumstances in which legislative authorization is not practicable, the President should provide for meaningful judicial recourse by his own order. n159

**The plan has no negative effect on the military – Boumediene should have already caused the link**

**ACLU 9** (Brief Amicus Curiae of the American Civil Liberties Union in Support of Petitioners, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuACLU.authcheckdam.pdf)

The third Boumediene factor, the practical obstacles involved, again weighs more heavily in favor of these Petitioners than it did in Boumediene. **In Boumediene, the Court acknowledged that recognizing habeas jurisdiction in domestic courts for Guantanamo detainees could impose some costs** — both economic and non-economic — **on the military**. But it stressed that Boumediene did not pose the risks that the Eisentrager Court apparently perceived regarding 'judicial interference with the military's efforts to contain 'enemy elements, guerilla fighters, and "were-wolves,"' noting that although the detainees were "deemed enemies of the United States," who might be "dangerous ... if released," they were "contained in a secure prison facility located on an isolated and heavily fortified military base." Id. at 2261 (quoting Eisentrager, 339 U.S. at 784). **In this case, allowing the Petitioners to assert their due process claim would add nothing**, or virtually nothing, **to the economic and procedural burdens that the Government already faces by virtue of the Petitioners' undeniable right to habeas corpus. Nor would it interfere with the military's activities against our enemies, since the United States does not even claim that the Petitioners are enemies — or, for that matter, that the military has any desire to continue to detain them.** Finally, **neither this case nor Boumediene raises the specter of "friction with the host government," because the United States is "answerable to no other sovereign for its acts on the "answerable to no other sovereign for its acts on the base**." Id. at 2261. The Boumediene factors, then, show that **recognizing the Petitioners' due process right to be free from indefinite arbitrary detention raises fewer and less substantial functional concerns (if any) than recognizing the Boumediene petitioners' habeas rights did**. Nor do any other factors from the Court's extraterritoriality cases — such as the possibility of cultural or legal incompatibility between the right recognized and the location of the person asserting that right, see, e.g., Dowries, 182 U.S. at 282 — raise any significant obstacle to recognizing the due process right at issue here. Boumediene s anatysis thus compels the conclusion that the Petitioners are entitled to challenge their ongoing detention under the Due Process Clause.10

**Probability is one in 3.5 billion**

**Schneidmiller 9** (Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

**There is an "almost vanishingly small" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon**, one expert said here yesterday (see GSN, Dec. 2, 2008). **In even the most likely scenario** of nuclear terrorism, **there are 20 barriers** between extremists and a successful nuclear strike on a major city, **said** John Mueller, **a political science professor at Ohio State** University. The process itself is seemingly straightforward but exceedingly difficult -- **buy** or steal highly enriched **uranium, manufacture** a weapon, **take the bomb** to the target site and blow it up. Meanwhile, **variables strewn across the path** to an attack **would increase the complexity** of the effort, Mueller argued. **Terrorists would have to bribe officials** in a state nuclear program to acquire the material, **while avoiding** a sting by **authorities** or a scam by the sellers. **The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you**. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. **The terrorists would then have to find scientists and engineers** willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further **technological expertise would be needed** to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. **The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion,** he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, Atomic Obsession. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. **A** **nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan,** which today is perhaps the nation of greatest concern regarding nuclear security, **keeps its bombs in two segments that are stored at different locations,** he said (see GSN, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental **discussions** of acts of nuclear or biological terrorism have tended to **focus on "worst-case assumptions** about terrorists' ability to use these weapons to kill us." **There is need for consideration for what is probable rather than simply what is possible,** he said. Friedman took issue with the finding late last year of an **experts' report that** an act of **WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that **most terrorist organizations have no interest** in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

**No excessive burdens created by extraterritorial habeas review**

**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)

The second factor concerns the “practical obstacles” to habeas running at Bagram. The al Maqaleh court emphasized that Bagram remains in an “active theater of war” in ruling against the petitioners. **Though Afghanistan is the location of ongoing hostilities, Bagram itself is “heavily fortified and secure.”As an example, Bagram has held briefs and tours for media. The belief that the base is safe enough for the local press is difficult to square with the view, endorsed by the al Maqaleh court, that habeas review would be practically infeasible at the same facility. Moreover, in 2009 the United States completed construction on a new, sixty million-dollar detention facility at Bagram. The facility was designed specifically to allow for hearings during which “inmates are assessed for readiness to be released**,” **which would be “open to outsiders, including nonprofit groups and journalists,” according to “Brig. Gen. Mark Martins, who is in charge of detention facilities at Bagram.” The building of a new facility intended to host hearings open to the public demonstrates some measure of stability in the immediate region, and undercuts the notion that habeas proceedings could not take place safely and effectively at Bagram despite the technical reality that the region and nation are witness to active hostilities**.

**Err aff --- past re-location to Bagram proves the disad is false**

**Sidhu 11**, JD George Washington

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

This analysis reveals two fundamental legal flaws in the D.C. Circuit’s opinion. First, the panel paid short shrift to the fact that the United States has plenary control over the detainees as they are held at Bagram, even if the United States does not exercise full or exclusive control over the entire, expansive base. Such control, as will be explained in greater detail below, is sufficient for habeas purposes. Second, **the panel exaggerated the practical problems that would exist were habeas proceedings to take place at Bagram, as the facility itself is heavily fortified and secure, and as it is the government that ultimately and directly bears responsibility for bringing the detainees to this “active theatre of war.”**

**Judicial review results in better decision-making**

**Somin 13**, Law Prof at George Mason

(Winter, Ilya, LIBERTARIAN LEGAL THOUGHT: Libertarianism and Judicial Deference, 16 Chap. L. Rev. 293)

**There can be no expertise justification for judicial deference** if the challenged government policies are not in fact based on superior knowledge. There is little doubt that legislatures and executive branch officials often have superior knowledge relative to federal judges. If that were the only relevant comparison, it could justify judicial deference on a wide range of issues. **In many cases**, however, **judicial deference ends up transferring decision-making authority to actors who are less knowledgeable than those who would decide the issue if the judiciary were to strike down the law in question**. When the judiciary strikes down a law because it violates some constitutionally protected individual right, it allows private individuals to decide for themselves what they wish to do. A decision protecting property rights, for example, enables property owners to decide for themselves what they are going to do with their possessions. A decision protecting freedom of speech allows people to decide for themselves what speech they will engage in. Often, private sector actors have better knowledge than the government about decisions of theirs that the government seeks to restrict. As Nobel Prize-winning libertarian economist F.A. Hayek famously emphasized, participants in markets and civil society have "local knowledge" that is unavailable to government officials and planners. n44 Such local knowledge includes "knowledge of the particular circumstances of time and place" with respect to which "practically every individual has some advantage over all others" because "he possesses unique information of which beneficial use might be made, but of which use can be made only if the decisions depending on it are left to him or are made with his active cooperation." n45 As a general rule, government regulators are less likely to have such detailed local knowledge, especially when establishing a regulatory rule that will apply to the entire nation or a large state. n46 Moreover, a great deal of valuable information about potential opportunities and opportunity costs is contained in a market price system. Prices convey information about the relative value of a wide range of goods and services, and their inputs. When government regulation restricts market transactions, it disrupts the price system and often prevents it from transmitting that information to private sector actors. **If judicial protection of individual rights constrains government action** and lets private sector actors make decisions for themselves, **it can help ensure that those decisions are made by parties who have greater knowledge rather than lesser. Far from undermining well-informed decision-making, such judicial review might actually facilitate it.**

## 1AR

**Rejecting the state fails and causes massive suffering — vote aff to reform the state**

**Pasha 96** [July-Sept. 1996, Mustapha Kamal, Professor and Chair of the Department of Politics and International Relations at the University of Aberdeen, “Security as Hegemony”, Alternatives: Global, Local, Political, Vol. 21, No. 3, pp. 283-302, JSTOR]

An attack on the postcolonial state as the author of violence and its drive to produce a modern citizenry may seem cathartic, without producing the semblance of an alternative vision of a new political community or fresh forms of life among existing political communities. Central to this critique is an assault on the state and other modern institutions said to disrupt some putatively natural flow of history. Tradition, on this logic, is uprooted to make room for grafted social forms; modernity gives birth to an intolerant and insolent Leviathan, a repository of violence and instrumental rationality's finest speci- men. Civil society - a realm of humaneness, vitality, creativity, and harmony - is superseded, then torn asunder through the tyranny of state-building. The attack on the institution of the state appears to substitute teleology for ontology. In the Third World context, especially, the rise of the modern state has been coterminous with the negation of past histories, cultures, identities, and above all with violence. The stubborn quest to construct the state as the fount of modernity has subverted extant communities and alternative forms of social organization. The more durable consequence of this project is in the realm of the political imaginary: the constrictions it has afforded; the denials of alternative futures. The postcolonial state, however, has also grown to become more heterodox - to become more than simply modernity's reckless agent against hapless nativism. The state is also seen as an expression of **greater capacities against want, hunger, and injustice**; as an escape from the arbitrariness of communities established on narrower rules of inclusion/exclusion; as identity removed somewhat from capri- cious attachments. No doubt, the modern state has undermined tra- ditional values of tolerance and pluralism, subjecting indigenous so- ciety to Western-centered rationality. But tradition can also conceal particularism and oppression of another kind. Even the most elastic interpretation of universality cannot find virtue in attachments re- furbished by hatred, exclusivity, or religious bigotry. **A negation of the state is no guarantee that a bridge to universality can be built.** Perhaps the task is to rethink modernity, not to seek refuge in a blind celebration of tradition. Outside, the state continues to inflict a self-producing "security dilemma"; inside, it has stunted the emergence of more humane forms of political expres- sion. But there are always sites of resistance that can be recovered and sustained. **A rejection of the state** as a superfluous leftover of modernity that continues to straitjacket the South Asian imagination **must be linked to the project of creating an ethical and humane order** based on a restructuring of the state system that privileges the mighty and the rich over the weak and the poor.74 Recognizing the constrictions of the modern Third World state, **a reconstruction** of state-society re- lations **inside the state appears to be a more fruitful avenue than wishing the state away, only to be swallowed by Western-centered globalization and its powerful institutions.** A **recognition of the patent failure of other institutions either to deliver the social good or to procure more just distributional rewards in the global political economy may provide a sobering reassessment of the role of the state.** An appreciation of the scale of human tragedy accompanying the collapse of the state in many local contexts may also provide **im- portant points of entry into rethinking the one-sided onslaught on the state**. Nowhere are these costs borne more heavily than in the postcolonial, so-called Third World, where time-space compression has rendered societal processes more savage and less capable of ad- justing to rhythms dictated by globalization.

**No root cause**

**Sharpe 10,** lecturer, philosophy and psychoanalytic studies, and Goucher, senior lecturer, literary and psychoanalytic studies – Deakin University, ‘10

(Matthew and Geoff, Žižek and Politics: An Introduction, p. 231 – 233)

We realise that this argument, which we propose as a new ‘quilting’ framework to explain Žižek’s theoretical oscillations and political prescriptions, raises some large issues of its own. While this is not the place to further that discussion, we think its analytic force leads into a much wider critique of ‘Theory’ in parts of the latertwentieth- century academy, which emerged following the ‘cultural turn’ of the 1960s and 1970s in the wake of the collapse of Marxism. Žižek’s paradigm to try to generate all his theory of culture, subjectivity, ideology, politics and religion is psychoanalysis. But a similar criticism would apply, for instance, to theorists who feel that the method Jacques Derrida developed for criticising philosophical texts can meaningfully supplant the methodologies of political science, philosophy, economics, sociology and so forth, when it comes to thinking about ‘the political’. Or, differently, thinkers who opt for Deleuze (or Deleuze’s and Guattari’s) Nietzschean Spinozism as a new metaphysics to explain ethics, politics, aesthetics, ontology and so forth, seem to us candidates for the same type of criticism, as a reductive passing over the empirical and analytic distinctness of the different object fields in complex societies. In truth, we feel that Theory, and the continuing line of ‘master thinkers’ who regularly appear particularly in the English- speaking world, is the last gasp of what used to be called First Philosophy. The philosopher ascends out of the city, Plato tells us, from whence she can espie the Higher Truth, which she must then bring back down to political earth. From outside the city, we can well imagine that she can see much more widely than her benighted political contemporaries. But from these philosophical heights, we can equally suspect that the ‘master thinker’ is also always in danger of passing over the salient differences and features of political life – differences only too evident to people ‘on the ground’. Political life, after all, is always a more complex affair than a bunch of ideologically duped fools staring at and enacting a wall (or ‘politically correct screen’) of ideologically produced illusions, from Plato’s timeless cave allegory to Žižek’s theory of ideology.

We know that Theory largely understands itself as avowedly ‘post- metaphysical’. It aims to erect its new claims on the gravestone of First Philosophy as the West has known it. But it also tells us that people very often do not know what they do. And so it seems to us that too many of its proponents and their followers are mourners who remain in the graveyard, propping up the gravestone of Western philosophy under the sign of some totalising account of absolutely everything – enjoyment, différance, biopower . . . Perhaps the time has come, we would argue, less for one more would- be global, allpurpose existential and political Theory than for a multi- dimensional and interdisciplinary critical theory that would challenge the chaotic specialisation neoliberalism speeds up in academe, which mirrors and accelerates the splintering of the Left over the last four decades. This would mean that we would have to shun the hope that one method, one perspective, or one master thinker could single- handedly decipher all the complexity of socio- political life, the concerns of really existing social movements – which specifi cally does not mean mindlessly celebrating difference, marginalisation and multiplicity as if they could be suffi cient ends for a new politics. It would be to reopen critical theory and non- analytic philosophy to the other intellectual disciplines, most of whom today pointedly reject Theory’s legitimacy, neither reading it nor taking it seriously.

**their ev is totalizing**

Azar **Gat 9**, Chair of the Department of Political Science at Tel Aviv University, “So Why Do People Fight? So Why Do People Fight? Evolutionary Theory and the Causes of War”, European Journal of International Relations 2009 15: 571-599

This article’s contribution is two-pronged: it argues that **IR theory regarding the causes of** conflict and **war is deeply flawed**, locked for decades **in ultimately futile debates over narrow, misconstrued concepts**; this conceptual confusion is untangled and the debate is transcended once a broader, comprehensive, and evolutionarily informed perspective is adopted. Thus **attempts to find the root cause of war** in the nature of either the individual, the state, or the international system **are fundamentally misplaced**. In all these ‘levels’ **there are necessary but not sufficient causes for war, and the whole cannot be broken into pieces**.13 **People’s needs and desires** — which may be pursued violently — **as well as the resulting quest for power and the state of mutual apprehension which fuel the security dilemma are all molded in human nature** (some of them existing only as options, potentials, and skills in a behavioral ‘tool kit’); **they are so molded because of strong evolutionary pressures that have shaped humans in their struggle for survival over geological times, when all the above literally constituted matters of life and death. The violent option of human competition has been largely curbed within states, yet is occasionally taken up on a large scale between states because of the anarchic nature of the inter-state system**. However, returning to step one, international **anarchy** in and of itself **would not be an explanation for war were it not for the potential for violence in a fundamental state of competition over scarce resources that is imbedded in reality** and, consequently, **in human nature. The necessary and sufficient causes of war — that obviously have to be filled with the particulars of the case in any specific war — are** thus as follows: **politically organized actors that operate in an environment where no superior authority effectively monopolizes power resort to violence when they assess it to be their most cost-effective option for winning** and/or defending evolution-shaped objects of desire, and/or their power in the system that can help them win and/or defend those desired goods.

**Prefer specificity**

**Swanson 5** Jacinda Swanson is Assistant Professor of Political Science at Western. Michigan University – Theory, Culture & Society August 2005 vol. 22 no. 4 87-118 – DOI: 10.1177/0263276405054992 –The online version of this article can be found – http://tcs.sagepub.com/content/22/4/87

**It is** thus **misleading to suggest that social relations are ever solely economic, political or cultural, or that the causes of and remedies for unjust social arrangements are singular** (see also Butler, 1997c: 273, 276; Young, 1997: 154–6; Sayer, 1999). Although Fraser insists on the thorough imbrication of culture and economics, her **emphasis on** the two categories of redistribution and recognition and on **root causes undermines** the **more complex understanding** she articulates elsewhere.6 Moreover, despite her commitment to perspectival dualism – and thus her rejection of substantive dualism and economism – in several instances Fraser describes the economy and capitalism in economically reductionist and determinist terms (2003: 53, 58, 214–18). **For instance**, although she correctly insists that capitalism and culture interact, **she often appears to conceptualize capitalism** and other economic activities **as** in themselves fundamentally economic **practices that function independently of political and cultural processes**, and, related, appears to conceive economic behavior/phenomena as devoid of values. To cite just a few examples, Fraser provides the following conceptualizations: ‘In this marketized zone, interaction is not directly regulated by patterns of cultural value. It is governed, rather by the functional interlacing of strategic imperatives, as individuals act to maximize self-interest’ (2003: 58); ‘system integration, in which interaction is coordinated by the functional interlacing of the unintended consequences of a myriad of individual strategies’; and ‘a quasi-objective, anonymous, impersonal market order that follows a logic of its own. This market order is culturally embedded, to be sure. But it is not directly governed by cultural schemas of evaluation’ (2003: 214). **As the concept of overdetermination shows, ‘economic’ practices themselves depend on specific (cultural) knowledges**, values and discourses, as well as specific (political) rules and regulations (and vice versa). Values are therefore not confined to the cultural status order.7 In addition to discourses and knowledges, values, for example, constitute ideas and behavior related to business enterprise success and purposes, rational considerations and calculations, individual self-interest, appropriate and desirable objects of economic production and exchange, etc. (Amariglio and Ruccio, 1994; Watkins, 1998). The theoretical perspective I am advocating here thus urges both the multiplication of analytical categories and concrete empirical investigations of the numerous conditions of existence (located throughout society) of any unjust practice (see also Smith, 2001: 121). It consequently suggests that overcoming any given form of oppression most likely will require transforming a wide range of cultural, economic and political practices.

**If they’re right they can’t solve**

**Toffler & Toffler 93** (Alvin-, Heidi-, Members of the U.S. Committee for U.S. China Relations, War and Anti-War, P. 226)

**Making peace cannot depend on the priori solution of all the world’s moral, social, and economic ills.** Those who tell us that war is a result of poverty, injustice, corruption, overpopulation, and misery may be right though the formula seems oversimple. But **if these must be eliminated before peace is possible, then war prevention or limitation becomes a utopian exercise. The problem is not how to promote peace in a perfect world but in the world that we actually have and the new one we are creating. In today’s real world we have a new global system in the making and a brand-new way of making war, yet so far few corresponding innovations in the way we try to make peace.**

**/Seeking to determine value is impossible and turns its own ends**

**Schwartz 2** [Lisa, Lecturer in Philosophy of Medicine, Department of General Practice at the University of Glasgow, Medical Ethic: A case-based approach, Chapter 6: A Value to Life: Who Decides and How?, [www.fleshandbones.com/readingroom/pdf/399.pdf](http://www.fleshandbones.com/readingroom/pdf/399.pdf)]

The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that **the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life**. The important addition here is that **the decision is a personal one that, ideally, ought not to be made externally by another person** but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. **Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide** for themselves on the basis of relevant information about their future, and comparative consideration of their past. **As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.**

**Extinction first**

**Kateb**, Professor of Politics at Princeton University, ‘**92** (George, The Inner Ocean, pg. 141)

To sum up the lines of thought that Nietzsche starts, I suggest first that **it is** epistemologically **impossible for humanity to arrive at an estimation of the worth of itself** or of the rest of nature: **it cannot pretend to see itself from the outside** or to see the rest, as it were, from the inside. Second, after allowance is made for this quandary, which is occasioned by the death of God and the birth of truth, **humanity, placed in a position in which it is able to extinguish** human **life** and natural life on earth**, must simply affirm existence** as such. Existence must go on but not because of any particular feature or group of features. **The affirmation of existence refuses to say what worth existence has,** even from just a human perspective, from any human perspective whatever. It cannot say, because **existence** is indefinite; it **is beyond evaluating;** being undesigned it is unencompassable by a defined and definite judgment. (The philosopher Frederick A. Olafson speaks of "the stubbornly unconceptualizable fact of existence.") **The worth of** the **existence** passed on to the unborn **is** not measurable but **indefinite**. The judgment is minimal: **no** human purpose or **value within existence is worth more than existence and can ever be used to justify the risk of extinction**. Third, from the moral point of view, **existence seems unjustifiable because of** the **pain** and ugliness in it, and therefore **the moral point of view must be chastened if it is not to block** attachment to **existence** as such. The other minimal judgment is that **whatever existence is, it is better than nothing**. For the first time, in the nuclear age, **humanity can** fully **perceive existence from the perspective of nothing,** which in part is the perspective of extinction.

**War turns structural violence**

**Goldstein 1**—Prof PoliSci @ American University, Joshua, War and Gender , P. 412

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, "**if you want peace, work for justice**". Then if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but **rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influences wars' outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices**. So, "if you want peace, work for peace." Indeed, **if you want justice** (gener and others), **work for peace**. Causality does not run just upward through the levels of analysis from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that **changes in attitudes toward war and the military may be the most important way to "reverse women's oppression**" The dilemma is that peace work focused on justice brings to the peace movement energy, allies and moral grounding, yet, in light of this book's evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

**Academic public policy research prevents political elite cooption**

**Walt, IR Prof at Harvard, ’11** (Stephen, July 21, “International Affairs and the Public Sphere” Institute for Public Knowledge, http://publicsphere.ssrc.org/walt-international-affairs-and-the-public-sphere/)

There is today no shortage of global problems that social scientists should study in depth: ethnic and religious conflict within and between states, the challenge of economic development, terrorism, the management of a fragile world economy, climate change and other forms of environmental degradation, the origins and impact of great power rivalries, the spread of weapons of mass destruction, just to mention a few. In this complex and contentious world, one might think that academic expertise about global affairs would be a highly valued commodity. Scholars would strive to produce useful knowledge, students would flock to courses that helped them understand the world in which they will live and work, and policymakers and the broader public would be eager to hear what academic experts had to say. One might also expect scholars of international relations to play a prominent role in public debates about foreign policy, along with government officials, business interests, representatives of special interest groups, and other concerned citizens. Social scientists are far from omniscient, but the rigor of the scientific process and the core values of academia should give university-based scholars an especially valuable role within the broader public discourse on world affairs. At its best, academic scholarship privileges creativity, validity, accuracy, and rigor and places little explicit value on political expediency. The norms and procedures of the academic profession make it less likely that scholarly work will be tailored to fit pre-conceived political agendas. When this does occur, the self-correcting nature of academic research makes it more likely that politically motivated biases or other sources of error will be exposed. Although we know that scholarly communities do not always live up to this ideal picture, the existence of these basic norms gives the academic world some important advantages over think tanks, media pundits, and other knowledge-producing institutions.

**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.