**1AC**

**1AC**

**1AC Plan**

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

**1AC Legitimacy**

**Contention One is Legitimacy**

**In Kiyemba, the court ruled the right to habeas doesn’t give the power to release a detainee or stop transfer**

**Milko 12**

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

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

**These rulings make habeas useless—this abdicates the Court’s key role**

**Milko 12** [Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

A. Arguments for a Remedy **By urging deference to the Executive Branch**, **the D.C. Circuit Court** of Appeals **has scolded the district courts that have second-guessed the political branches' determinations about release** and suitable transfers. **Those in favor of judicial power** have **argued** **that the denial of the right to review** the Executive's decisions **is allowing too much deference to that branch and** severely **limiting the remedies that courts have had the power to issue in the past.** Though the petitioners have made several arguments for relief, **the main arguments for judicial power stem from the idea that the court of appeals has been improperly applying** Supreme Court **precedent**. Petitioners have argued that **the D.C. Court of Appeals expanded the scope of Munaf too broadly** as the Supreme Court noted that the decision was limited to the facts of that case. n118 In Munaf, **the Court was primarily concerned about allowing the Iraqi government to have the power to punish people** who had committed crimes in that territory when fashioning its holding, and the petitioners in that case had the opportunity of notice because they were told about their transfer and were able to petition the court to try and prevent it. n119 Petitioners have argued that **those facts are entirely different than cases such as Mohammed and Khadr were there was concern of torture in foreign nations but no need to allow those nations to have the ability to prosecute the detainees for crimes**, **there was potential for torture at the hands of non-government entities**, **and no notice of transfer was permitted**. n120 [\*190] Additionally, Petitioners have argued that **the use of Munaf has impermissibly limited Boumediene by preventing courts from fashioning equitable relief for habeas petitions**. n121 **There has been concern that the ability to use the writ of habeas will be essentially eliminated if there is no chance for a petitioner to challenge the** Executive Branch's **determinations regarding safe transfers**. The Boumediene Court spent considerable time discussing the history of the writ n122 and noted that the tribunals implemented in that case to determine enemy combatant status were not a sufficient replacement for the writ of habeas because they lacked, in part, the authority to issue an order of release. n123 Here, **the D.C. Circuit Court of Appeals has effectively prevented the other courts from determining if there is a right not to be transferred**, **which has been argued to be an inadequate statement of the right of habeas**. n124 Similarly, it has been argued that **by accepting the Executive Branch's assurances of its efforts to release the detainees**, **the courts are not properly using the power of habeas corpus that has been granted to them** by the Constitution. n125 By refusing to question these assertions, **the courts would be unable to offer a remedy to the petitioners who have the privilege of habeas corpus**. n126 The Petitioners also argued a due process right to challenge transfers as the detainees have a right to a meaningful hearing to at least have the opportunity to challenge the Government's conclusions regarding safety. n127 **By refusing to second-guess the Executive, the judiciary may be losing an important check on the former's power because there is no guarantee that the Executive is ensuring safety or making the best effort to protect the unlawfully kept detainees.** **Without allowing courts to have the power to enjoin a transfer in order to examine these concerns**, **there is the potential that the detainee could be harmed at the hands of foreign terrorists.** **Without the ability to challenge the Executive Branch through the judicial tool of habeas corpus, there has been genuine concern that the courts are losing too much power and that their authority** [\*191] **is being improperly limited, as they are not utilizing their constitutional power properly.**

**This undoes Boumediene — it’s the crucial “test” of the Court’s global leadership – specifically it’s key to rule of law during conflict**

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**The precedent of this Court has** a **significant impact on rule of law in foreign states. Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S.** in **upholding** the **rule of law**. As foreign governments and judiciaries grapple with new and challenging issues associated with upholding the rule of law during times of conflict, **U.S. leadership on the primacy of law during the war on terror is particularly important.** Recent decisions of this Court have reaffirmed the primacy of rule of law in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, **most notably Boumediene v. Bush**, 128 S.Ct. 2229 (2008), have **established clear precedent that Guantanamo detainees have a right to petition for habeas corpus relief. Despite a clear holding from this Court in Boumediene, the Court of Appeals sought in Kiyemba v. Obama to narrow Boumediene to such a degree as to render this Court’s ruling hollow**. 555 F.3d 1022 (D.C. Cir. 2009). **The** present **case is** thus **a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring faithful implementation of its prior decisions**. Although this Court’s rulings only have the force of law in the U.S., **foreign governments will take note of the decision in the present case and use the precedent set by this Court to guide their actions in times of conflict. PILPG has advised over two dozen foreign states on peace negotiations and post-conflict constitution drafting, as well as all of the international war crimes tribunals**. Through providing pro bono legal assistance to foreign governments and judiciaries, PILPG has **observed the** important **role** this **Court and U.S. precedent serve in promoting rule of law in foreign states. In Uganda, for example, the precedent established by this Court in Hamdan v. Rumsfeld**, 548 U.S. 557 (2006), and Boumediene, **influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In Nepal, this Court has served as a model for the nascent judiciary. In Somaliland, the government relied heavily on U.S. terrorism legislation when drafting terrorism legislation for the region. And in the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy of law and the importance of enforceability of previous adjudicative decisions** in the5 Abyei Arbitration, one of the most important and contentious issues in the ongoing implementation of the peace agreement. **Foreign judges** also **follow the work of this Court closely**. In a number of the judicial training programs PILPG has conducted, foreign judges have asked PILPG detailed questions about the role of this Court in upholding rule of law during the war on terror. A review of foreign precedent confirms how closely foreign judges follow this Court. **In numerous foreign states, and in the international war crimes tribunals, judges regularly cite the precedent of this Court to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own legal systems. Given** the **significant influence of this Court** on foreign governments and judiciaries, **a decision in Kiyemba implementing Boumediene will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict**.6 ARGUMENT I. **KIYEMBA v. OBAMA IS A TEST OF SUPREME COURT LEADERSHIP IN UPHOLDING RULE OF LAW IN TIMES OF CONFLICT**. **The precedent set by the Supreme Court in the present case will have a significant impact on the development of rule of law in foreign states.** **Foreign judicial, executive, and parliamentary bodies closely follow the work of this Court, and this Court’s previous decisions related to the war on terror have shaped how foreign states uphold the rule of law in times of conflict**. **Foreign governments and judiciaries will review this Court’s decision in the present case in light of those previous decisions**. **A decision in the present case implementing previous decisions of this Court granting habeas rights to Guantanamo detainees is an opportunity for this Court to reaffirm to foreign governments that the U.S. is a leader and role model in upholding the rule of law during times of conflict**. Recent Supreme Court precedent established a clear role for the primacy of law in the U.S. war on terror. In particular, this Court’s landmark decision in **Boumediene highlighted the critical role of the judiciary in a system dedicated to the rule of law, as well as the “indispensable” role of habeas corpus** as a “time tested” safeguard of liberty. Boumediene v. Bush, 128 S.Ct. 2229, 2247, 2259 (2008). **Around the globe, courts and governments took note of this Court’s stirring words**: “Security subsists, too, in fidelity to freedom’s first principles. **Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty7 that is secured by adherence to the separation of powers. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives.”** Id. at 2277. In contrast to the maxim silent enim leges inter arma (in times of conflict the law must be silent), this Court affirmed in Boumediene that “[t]he laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled, and in our system they are reconciled within the framework of the law.” Id. Boumediene held that the detainees in the military prison at Guantanamo Bay are “entitled to the privilege of habeas corpus to challenge the legality of their detentions.” Id. at 2262. Inherent in that privilege is the right to a remedy if the detention is found to be unlawful. In the present case, the Petitioners, who had been found not to be enemy combatants, sought to exercise their privilege of habeas corpus. The Executive Branch conceded that there was no legal basis to continue to detain the Petitioners, that years of diligent effort to resettle them elsewhere had failed, and that there was no foreseeable path of release. The District Court implemented Boumediene, ordering that the Petitioners be brought to the courtroom to impose conditions of release. In re Guantanamo Bay Detainee Litigation, 581 F. Supp. 2d 33, 42-43 (D.C. Cir. 2008). The Court of Appeals reversed, with the majority concluding that the judiciary had no “power to require anything more” than the Executive’s representations that it was continuing efforts to find a foreign country willing to admit Petitioners. Kiyemba v. Obama, 555 F.3d 1022, 1029 (D.C. Cir. 2009). **The Court of Appeals’ decision effectively narrowed Boumediene to such a degree that it rendered the ruling hollow**. Circuit Judge Rogers recognized this in her dissent, opining that the majority’s analysis “was not faithful to Boumediene.” Id. at 1032 (Roberts, J., dissenting). **Given the Court of Appeals’ attempt to narrow Boumediene, Kiyemba v. Obama is a test of this Court’s role in upholding the primacy of law in times of conflict**. **A decision in favor of the Petitioners in Kiyemba will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict**. II. PILPG’S EXPERIENCE ADVISING FOREIGN GOVERNMENTS AND JUDICIARIES ILLUSTRATES THE IMPORTANCE OF SUPREME COURT PRECEDENT IN PROMOTING RULE OF LAW IN FOREIGN STATES DURING TIMES OF CONFLICT. **During PILPG’s work providing pro bono legal assistance to foreign governments and judiciaries on the rule of law in conflict and post-conflict settings, clients frequently request guidance on U.S. laws and the role of the judiciary in the U.S. system of governance**. In recent years, **as states have watched the U.S. tackle the legal issues surrounding the war on terror, foreign governments and judiciaries have expressed keen interest in, and have demonstrated reliance on, the legal mechanisms the U.S. has adopted to address the challenges presented in this new form of conflict**. The U.S. Government, under the guidance of this Court, has set a strong example for upholding the rule of law during times of conflict, and foreign governments have followed this lead.

**That independently stops extinction**

**Weston 91** – Chair of the International and Comparative Law Program @ The University of Iowa [Weston, Burns H., “Logic and Utility of a Lawful United States Foreign Policy,” Transnational Law & Contemporary Problems, Vol. 1, Issue 1 (Spring 1991), pp. 1-14

To begin with, **it is not healthy** for people (and for other living things) **to resist** principles of **international law in a world that is bristling with** **more than 50,000 nuclear weapons and other greatly expanded technologies** **of war and mass destruction**. **If** the **history** of the last half century **has** **taught us anything, it is that our present militarily competitive international** **order cannot be expected to prevent large-scale war for very long** (e.g.,Kuwait). **There is**, therefore, **little hope for genuine security**, national or global, **without** a strengthening of the **legal foundations**, bilateral and multilateral, **for** the **nonmilitary**-preferably democratic-**resolution of** **international disputes.** These would include, but not be limited to, the improvement of U.N. peacekeeping and peacemaking opportunities and capabilities, and the improvement of both national and international opportunities and capabilities for legal challenges to coercive foreign policies. 13 Even if other countries do not always follow suit, surely **our** **country and our children's future will be better served if we strive** hard **to build as peaceful and just** a world **society** as we can, and **while we still** **have the chance**. 14 The Soviet Union, home to more than 25,000 nuclear weapons and many newly-awakened nationalisms, faces a world history that demonstrates little support for the proposition that collapsing empires fade quietly. And **in our increasingly "high-tech" world, with military** **research and development fast at work on atomic guns, particle-beam cannons, and** other **space age deviltries that divert attention from the perils** **of nuclear proliferation, many** regimes in Western Asia and elsewhere **have** **been acquiring nuclear and other weapons of mass destruction-and the** **means to deliver them, with frightening ease and speed, to almost anywhere** **on earth.**

In sum, **it is respect** (or lack of respect) **for international law that**, in the end, **will determine the fate of the Earth**. As the late Bill Bishop counseled pithily over two decades ago, "under present conditions **all [States]**¶ **need international law in order to continue to exist together on this planet.**"15 **Rededication to the world rule of law and cooperation in this Age of Nuclear** **Anxiety is not a matter of choice. It is**, quite simply, **a matter of survival**.

2. Respect for International Law Enhances International Stability

Living as we do in the twilight years of the global Middle Ages, characterized by more than 160 separate fiefdoms, each with a monopoly control over the military instrument and each only barely accountable in any formal sense either to each other or to the larger arena in which each operates, it is easy to be seduced by the popular claim that ours is an anarchical world. Such an outlook does not, however, comport with reality. Every hour of every day, ships ply the sea, planes pierce the clouds, and artificial satellites probe outer space. Every hour of every day, communications are transmitted, goods and services traded, and people andthings transported from one country to another. Every hour of every day, transactions are negotiated, resources exploited, and institutions established across national and equivalent frontiers. And in all these respects, the many processes of authoritative and controlling decision that help to regulate such endeavors-what we call international law-are observed rather well on the whole.

On the other hand, **when States bend, twist, or** otherwise show **disrespect** for this ordering force to suit their special interests, **international law**, because **it** is an essentially voluntarist process of decision that is seriously lacking in centralized command and enforcement structures, **quickly loses its otherwise stabilizing influence**. The kidnapping of sixty-two Americans at the U.S. Embassy in Teheran in 1979, for example, demonstrates well the fundamental instability that can flow from a failure or refusal to abide by international law. Without, in this instance, a commitment to the basic rules of diplomatic protection, diplomacy ceased to exist and respectable discourse became impossible. Without a commitment to the world rule of law there could be no assurance of inter-governmental stability.

Of course, States-especially the major powers-are perfectly capable of unilaterally resisting the doctrines, principles, and rules of international law without necessarily feeling directly the destabilizing impact that their noncompliance ultimately has on the wider structure of international law and order itself. The probability of being formally punished for violating international law is usually so slim that foreign policy strategists commonly give little or no weight to the cost of decision-making marked by dubious legality.

**Reaffirming habeas rights shape global legal development through transnational judicial dialogue—credible remedy is key**

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TRANSNATIONAL JUDICIAL DIALOGUE CONFIRMS THIS COURT’S LEADERSHIP IN PROMOTING ADHERENCE TO RULE OF LAW IN TIMES OF CONFLICT. **PILPG’s on-the-ground experience demonstrating the leadership of this Court is confirmed by a study of transnational judicial dialogue**. Over the past halfcentury, **the world’s constitutional courts have been engaged in a rich and growing transnational judicial dialogue on a wide range of constitutional law issues**. See, e.g., Melissa A. Waters, Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law, 93 Geo. L.J. 487 (2005); Anne-Marie Slaughter, Judicial Globalization, 40 Va. J. Int’l L. 1103 (2000). **Courts around the world consider, discuss, and cite foreign judicial decisions** not out of a sense of legal obligation, but **out of a developing sense that foreign decisions are valuable resources in elucidating complex legal issues and suggesting new approaches to common problems.** See Waters, supra, at 493-94. In this transnational judicial dialogue, **the decisions of this Court have exercised a** profound — and **profoundly positive — influence on the work of foreign and international courts**. See generally Constitutionalism and Rights: The Influence of the United States Constitution Abroad (Louis Henkin & Albert J. Rosenthal eds., 1990); Anthony Lester, The Overseas Trade in the American Bill of Rights, 88 Colum. L. Rev. 537 (1988). As Anthony Lester of the British House of Lords has noted, “**there is a vigorous overseas trade in the Bill of Rights, in** international and constitutional **litigation involving norms derived from American constitutional law**. When life or liberty is at stake, **the landmark judgments of the Supreme Court** of the United States, giving fresh meaning to the principles of the Bill of Rights, are **studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C**.” Id. at 541. This Court’s overseas influence is not limited to the Bill of Rights. **From Australia to India to Israel to the United Kingdom, foreign courts have looked to the seminal decisions of this Court** **as support for their own rulings upholding judicial review, enforcing separation of powers, and providing a judicial check on the political branches**. Indeed, for foreign courts, this Court’s rulings in seminal cases such as Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803),4 Brown v. Board of Education, 347 U.S. 436 (1954),5 United States v. Nixon, 418 U.S. 683 (1974),6 and Roper v. Simmons, 543 U.S. 551 (2005)7 take on a special significance. **Reliance on the moral authority of this Court can provide invaluable support for those foreign courts struggling to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own national legal systems. This Court’s potential to positively influence the international rule of law is particularly important in the nascent transnational judicial dialogue surrounding the war on terrorism and the primacy of rule of law in times of conflict. As the world’s courts begin to grapple with** the **novel, complex, and delicate legal issues surrounding the modern-day war on terrorism**, **and as states seek to develop judicial mechanisms to address domestic conflicts**, **foreign governments and judiciaries are confronting similar challenges**. In particular, **foreign governments and judiciaries must consider how to accommodate the legitimate needs of the executive branch** in times of war within the framework of the law. Although foreign courts are just beginning to address these issues, **it is already clear that they are looking to the experience of the U.S., and to the precedent of this Court, for guidance on upholding the rule of law in times of conflict.** In recent years, **courts in Israel, the United Kingdom, Canada, and Australia have relied on the precedent of this Court in decisions addressing the rights of detainees.**8 In short, **as a result of this Court’s robust influence on transnational judicial dialogue, its decisions have proved extraordinarily important to the development of the rule of law around the world**. **International courts have** similarly **relied on the precedent of this Court in influential decisions.** For example, in the important and developing area of international criminal law, **the international war crimes tribunals for Yugoslavia and Rwanda both relied heavily on the precedent of this Court** in their early opinions. In the first five years of the Yugoslav Tribunal, the first in the modern iteration of the war crimes tribunals, **the justices cited this Court at least seventeen times in decisions establishing the fundamental legal principles** under which the Tribunal would function.9 **The International Criminal Tribunal for Rwanda** similarly **relied on this Court’s precedent, citing this Court at least twelve times in its first five years.**10 **The precedent of this Court has provided a crucial foundation for international criminal law**. **The reliance on the precedent of this Court speaks to the Court’s international leadership on the promotion of respect for the rule of law** in times of conflict. **By ruling** in favor of the Petitioners, **this Court will reaffirm the precedent established in its prior decisions granting habeas rights to Guantanamo detainees and, in doing so, demonstrate to these foreign courts, and to other courts who will be addressing these issues in the future, that all branches of government must be bound by the rule of law, even in the most challenging of times**. CONCLUSION For the aforementioned reasons, **this Court should reverse the decision of the Court of Appeals**, thereby **reaffirming this Court’s leadership in upholding the rule of law and promoting respect for rule of law in foreign states during times of conflict.**

**Legitimacy makes hegemony sustainable and effective—only stability, perception, and de-politicization of court decisions on the aff solve**

**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 globalization**. 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.**

**Only judicial clarification of a meaningful right to habeas solves**

**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

**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 hegemonic 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 alon**g. **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 U**nited **S**tates, 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.

**The best data proves — everything is getting better because of hegemony — shocks to the system cause global instability**

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**Is Unipolarity Peaceful?** As evidence, **Monteiro provides metrics of the number of years during which great powers have been at war.** For the unipolar era since the end of the Cold War, the United States has been at war 13 of those 22 years or 59% (see his Table 2 below). Now, **I've been following** some of **the discussion by** and about Steven **Pinker** and Joshua Goldstein's [work](http://www.nytimes.com/2011/12/18/opinion/sunday/war-really-is-going-out-of-style.html?pagewanted=all) **that suggests the world is becoming more peaceful** **with** interstate wars and intrastate **wars becoming more rare**. I was struck by the graphic that Pinker used in a Wall Street Journal [piece](http://online.wsj.com/article/SB10001424053111904106704576583203589408180.html) back in September that drew on the Uppsala Conflict Data, which shows a steep decline in the number of deaths per 100,000 people. **How do we square this account by Monteiro of a unipolar world that is not peaceful** (**with the U.S. at war during this period in Iraq twice, Afghanistan, Kosovo**) **and** **Pinker's account which suggests declining violence in the contemporary period**? **Where Pinker is focused on systemic outcomes, Monteiro's measure merely reflect years during which the great powers are at war**. Under unipolarity, there is only one great power so the measure is partial and not systemic. However, Monteiro's theory aims to be systemic rather than partial. In critiquing Wohlforth's early work on unipolarity stability, Monteiro notes: Wohlforth’s argument does not exclude all kinds of war. Although power preponderance allows the unipole to manage conflicts globally, this argument is not meant to apply to relations between major and minor powers, or among the latter (17). So presumably, **a more adequate test of the peacefulness or not of unipolarity** (at least for Monteiro) **is not the number of years the great power has been at** **war but whether the system as a whole is becoming more peaceful under unipolarity compared** to previous eras, including wars between major and minor powers or wars between minor powers and whether the wars that do happen are as violent as the ones that came before. Now, as Ross Douthat pointed [out](http://douthat.blogs.nytimes.com/2011/10/17/steven-pinkers-history-of-violence/), Pinker's argument isn't based on a logic of benign hegemony. It could be that even if the present era is more peaceful, unipolarity has nothing to do with it. Moreover, **Pinker may be wrong**. Maybe the world isn't all that peaceful. I keep thinking about the places I don't want to go to anymore because they are violent (Mexico, Honduras, El Salvador, Nigeria, Pakistan, etc.) As Tyler Cowen [noted](http://marginalrevolution.com/marginalrevolution/2011/10/steven-pinker-on-violence.html), the measure Pinker uses to suggest violence is a per capita one, which doesn't get at the absolute level of violence perpetrated in an era of a greater world population. **But, if my read of other** [**reports**](http://www.hsrgroup.org/human-security-reports/20092010/graphs-and-tables.aspx) **based on Uppsala data is right, war is becoming more rare and less deadly** (though later [data](http://www.pcr.uu.se/research/ucdp/charts_and_graphs/) suggests lower level armed conflict may be increasing again since the mid-2000s). The apparent violence of the contemporary era may be something of a presentist bias and reflect our own lived experience and the ubiquity of news media **.Even if the U.S. has been at war for the better part of unipolarity, the deadliness is declining, even compared with Vietnam, let alone World War II.** Does Unipolarity Drive Conflict? So**, I** kind of took **issue with the Monteiro's premise that unipolarity is not peaceful**. What about his argument that unipolarity drives conflict? Monteiro suggests that the unipole has three available strategies - defensive dominance, offensive dominance and disengagement - though is less likely to use the third. Like Rosato and Schuessler, Monteiro suggests because other states cannot trust the intentions of other states, namely the unipole, that minor states won't merely bandwagon with the unipole. Some "recalcitrant" minor powers will attempt to see what they can get away with and try to build up their capabilities. As an aside, in Rosato and Schuessler world, unless these are located in strategically important areas (i.e. places where there is oil), then the unipole (the United States) should disengage. **In Monteiro's world**, **disengagement would inexorably lead to instability and draw in the U.S. again** (though I'm not sure this necessarily follows), but neither defensive or offensive dominance offer much possibility for peace either since it is U.S. power in and of itself that makes other states insecure, even though they can't balance against it.

**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.

**Prefer our data --- there’s causation and correlation between hegemony and peace --- it facilitates cooperation**

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

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

**Interdisciplinary consensus of biology, economics, anthropology, sociology, psychology, and neuroscience proves status competition is inevitable**

**Wohlforth 9** William, professor of government at Dartmouth College, “ Unipolarity, Status Competition, and Great Power War”Project Muse

Mainstream theories generally posit that states come to blows over an international status quo only when it has implications for their security or material well-being. The guiding assumption is that a state’s satisfaction [End Page 34] with its place in the existing order is a function of the material costs and benefits implied by that status.24 By that assumption, once a state’s status in an international order ceases to affect its material wellbeing, its relative standing will have no bearing on decisions for war or peace. But the assumption is undermined by cumulative research in disciplines ranging from **neuroscience and evolutionary biology to economics, anthropology, sociology, and psychology** that human beings are powerfully motivated by the desire for favorable social status comparisons. This research suggests that the preference for status is a basic disposition rather than merely a strategy for attaining other goals.25 People often seek tangibles not so much because of the welfare or security they bring but because of the social status they confer. Under certain conditions, the search for status will cause people to behave in ways that directly contradict their material interest in security and/or prosperity.

**1AC Democracy**

**Contention two is Democracy:**

**Kiyemba created a model of runaway executive power undermining the global rule of law**

**Vaughn and Wiliams, Professors of Law, 13** [2013, Katherine L. Vaughns B.A. (Political Science), J.D., University of California at Berkeley. Professor of Law, University of Maryland Francis King Carey School of Law, and Heather L. Williams, B.A. (French), B.A. (Political Science), University of Rochester, J.D., cum laude, University of Maryland Francis King Carey School of Law, “OF CIVIL WRONGS AND RIGHTS: 1 KIYEMBA V. OBAMA AND THE MEANING OF FREEDOM, SEPARATION OF POWERS, AND THE RULE OF LAW TEN YEARS AFTER 9/11”, Asian American Law Journal, Vol. 20, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2148404]

**When it denied certiorari** in Kiyemba III, **the Supreme Court missed the opportunity to reassert its primary role under the separation of powers doctrine**. In so doing, **it allowed the D.C. Circuit’s reinstated, and misguided, decision to stand—allowing the Executive’s sovereign prerogative to trump constitutional mandates**. After being reversed three times in a row—in Rasul, Hamdan, and then Boumediene—**the D.C. Circuit finally managed in Kiyemba to reassert its highly deferential stance towards the Executive** in cases involving national security. Of critical significance is the fact that **the D.C. Circuit’s ruling in Kiyemba relied on its own view of separation of powers principles**—a view that is dramatically different than the view espoused in Boumediene.272 In particular, the D.C. Circuit concluded that **an order mandating the Uighurs’ release into the continental United States would impermissibly interfer with the political branches’ exclusive authority over immigration matters**. But, this reasoning is legal ground that the Supreme Court has already impliedly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier.273 **Denying a practical remedy for unlawfully detained individuals** at Guantanamo Bay, in the face of Supreme Court precedent providing such individuals an opportunity to challenge their detention, **effectively eviscerates the landmark decision rendered in Boumediene**. Thus, **the Bush administration’s strategy in employing the “war” paradigm at all costs** and without any judicial intervention, while unsuccessful in the Supreme Court, **has paid off—in troubling, and binding, fashion—in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” are with little, if any, real check. The consequences of this decision continue today with passage of the NDAA** of 2012,274 which President Obama signed into law with reservations on December 31, 2011.275 What is different about **this particular defense authorization bill** is that it **contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed**.276 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.277 In signing the bill President Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them.278 Of course, that doesn’t necessarily mean that another administration wouldn’t do otherwise. As a result of these events, what we now have is a fascinating dichotomy with regard to the privilege of habeas corpus: A detainee may challenge the legality of their detention through the mechanism of a petition for habeas corpus. But, a habeas court may not order that individual’s release, even in the face of indefinite detention, if the Executive argues otherwise. Thus, as we explain below, what is needed, in our view, is a dissenting voice, reminding us of what is at stake and what is in peril as the Executive’s counterterrorism efforts persist.279 But first, we confront the problem that placed us here: judicial abstention, caused largely by political and practical external influences on the court that have pushed us away from the all-essential separation of powers. 1. Separation of Powers: A Necessary Check on Executive Excess As noted above, the doctrine of separation of powers is a constitutional imperative. As Neal Katyal has noted, “[t**]he standard conception of separation of powers presumes three branches with equivalent ambitions** of maximizing their powers.”280 **Today**, however, “**legislative abdication is the reigning modus operandi**.”281 Indeed, **during the Bush Administration’s reign against terror**, **Congress** either **failed to act and/or did the Administration’s bidding**—**providing almost a blank check for any actions the Executive wished to undertake**. In such a situation, **it is all the more important that the Court act to preserve our tripartite system of government**, particularly because national security is an area vulnerable to abuse and excess. The Supreme Court was on board with refusing to endorse a blank check for four years running. But, **the Court dropped the ball when it dismissed—at the Executive’s urging—the certiorari petitions in Kiyemba I and III**. As stated in the Uighurs’ certiorari petition, as a constitutional matter, “**the President’s discretionary release of a prisoner is no different from his discretionary imprisonment: each proceeds from unchecked power**.”282 To view the question of release as based on sovereign prerogative in the administration of immigration law, while viewing the question of imprisonment as based on constitutional authority is, put simply, senseless and without precedent. It cannot be that the two inquiries are unrelated; they both undoubtedly implicate individual constitutional rights and the separation of powers.

**Democratic transitions are coming now — Supreme Court influence is the determining factor**

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

**Promoting a strong judiciary is necessary to make those transitions stable and democratic—detention policies guarantee global authoritarianism**

**CJA 4**, Center for Justice and Accountability

[OCTOBER 2004, The Center for Justice & Accountability (“CJA”) seeks, by use of the legal systems, to deter torture and other human rights abuses around the world., “BRIEF OF the CENTER FOR JUSTICE AND ACCOUNTABILITY, the INTERNATIONAL LEAGUE FOR HUMAN RIGHTS, and INDIVIDUAL ADVOCATES for the INDEPENDENCE of the JUDICIARY in EMERGING DEMOCRACIES as AMICI CURIAE IN SUPPORT OF PETITIONERS”, http://www.cja.org/downloads/Al-Odah\_Odah\_v\_US\_\_\_Rasul\_v\_Bush\_CJA\_Amicus\_SCOTUS.pdf]

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

**Democracy makes war impossible—the U.S. judicial model is the most important factor**

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

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

**And it’s reverse causal — democratic backsliding causes great power war**

**Gat 11, Professor at Tel Aviv University**, Ezer Weizman Professor of National Security at Tel Aviv University, Azar 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, **the decline of major great power war has deepened** further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. **War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’,** **where countries that have** so far **failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars** among themselves, as well as with developed countries.¶ While the trend is very real, **one wonders if the** near **disappearance of armed conﬂict within the developed world is likely to** **remain as stark** **as it has been since the collapse of communism**. **The post-Cold War moment** may turn out to **be** a **ﬂeeting** one. **The probability of major wars within the developed world remains low**—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. **But the deep sense of change** prevailing since 1989 **has been based on the far more radical notion that the triumph of capitalism** also **spelled the irresistible ultimate victory of democracy**; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. **This notion**, however, **is** **fast eroding** **with the return of capitalist non-democratic great powers that have been absent from the international system since 1945**. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist **China**, whose massive growth **represents the greatest change in the global balance of power. Russia**, too, **is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character**.¶ **Authoritarian capitalism may be more viable than people tend to assume**. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the **capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan**, particularly the former, **were as efﬁcient economically as**, **and** if anything **more successful militarily than,** **their democratic counterparts**. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the **new non-democratic powers are both** **large and capitalist.** **China** in particular **is the largest player in the international system in terms of population and is showing spectacular economic growth** that within a generation or two is likely to make it a true non-democratic superpower.¶ Although **the return of capitalist non-democratic great powers** does not necessarily imply open conﬂict or war, it **might indicate that the democratic hegemony since the Soviet Union’s collapse could be** **short-lived** **and that** **a universal ‘democratic peace’ may still be far off**. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, **as China grows in power, it is likely to become more assertive,** **ﬂex its muscles, and behave like a superpower**, even if it does not become particularly aggressive. The **democratic and non-democratic powers may coexist more or less peacefully**, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. **But there is** also **the prospect of** **more antagonistic relations**, **accentuated ideological rivalry**, **potential and actual conﬂict,** **intensiﬁed arms races**, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

**The plan stops the Russian human rights crackdown — it facilitates U.S. engagement**

**Mendelson 9**, Sarah E. Mendelson, Director, Human Rights and Security Initiative, Center for Strategic and International Studies, “U.S.-Russian Relations and the Democracy and Rule of Law Deficit,” CENTURY FOUNDATION REPORT, 2009, p. 3-4.

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern. Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future. **While** the **Obama** administration **plans to cooperate with Moscow** on a number of issues, **it will find that Russia’s** current **deficit in** the areas of **democracy and the rule of law complicate the relationship and** may, in some cases, **undermine** attempts at **engagement.** The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample **surveys** in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all **suggest the current democracy and rule of law deficit is** rather **stark**. The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, **U.S. departures from the rule of law made the** **U**nited **S**tates **increasingly problematic as a global partner**, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, **coping with authoritarian trends in Russia** (and elsewhere) **will involve changes in U.S. policies** that have, on the surface, nothing to do with Russia. Bush administration **counterterrorism** policies that authorized torture, **indefinite detention** of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo have had numerous negative unintended consequences for U.S. national security, including serving as a recruitment tool for al Qaeda and insurgents in Iraq. Less often recognized, **these policies also have undercut** whatever **leverage the** **U**nited **S**tates **had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian policies adopted by,** among others, the **Putin** administration. At its worst, **American departures from the rule of law** may **have enabled abuse inside Russia**. These departures certainly left human rights defenders isolated. **Repairing the damage to U.S. soft power and reversing the departure from human rights norms** that characterized the Bush administration’s counterterrorism policies **will provide the** Obama **administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy**. The **changes** that **need to be made in U.S.** counterterrorism **policies**, however politically sensitive, **are** somewhat more **straightforward** than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power.

**Continued human rights violations risk a Russian revolution**

**Ullman 6/12**, senior advisor, Atlantic Council, “The Third Russian Revolution,” UPI, 6—12—13, www.upi.com/Top\_News/Analysis/Outside-View/2013/06/12/Outside-View-The-third-Russian-Revolution/UPI-84461371009900/, accessed 8-7-13.

**Make no mistake: On the current trajectory, Russia won't be immune to** many of the **forces that provoked** the so-called colored **revolutions in** adjacent states and even **the** misnomered **Arab Awakening. A third Russian revolution is unfolding.** The only questions are when will that revolution reach a critical mass and, most importantly, will the forces of autocracy or pluralism carry the day? Russia, of course, experienced two revolutions in the 20th century. The Kaiser's Germany provoked the first by sending Lenin from Switzerland to Russia in the famous sealed train in 1917. That led to the undoing of the tsar and the Kerensky government as well as the Treaty of Brest-Litovsk that ended the war with Germany and allowed the Bolsheviks to sweep away the opposition. The second revolution came about in some seven decades later. The causes were a corrupt and fundamentally dishonest political system kept in place by a disciplined central leadership and dictatorship of the party. But that required able or at least competent leadership. Instead, the ruling Politburo became a genitocracy headed by sick, old men. Leonid Brezhnev took years to die and was replaced by two even less well general secretaries. In the mid-1970s, CIA Director William Colby repeatedly predicted Brezhnev's pending demise. It wasn't until 1982 that Colby's forecast came true. In the succession process, a few younger members were elevated to the Politburo. Because of the succession of antiquated leaders, Mikhail Gorbachev found himself moving from post to post from his appointment to the Politburo in 1979. In each post, he realized that the Soviet Union was an empty shell and each department was grossly mismanaged and underperforming. Six years later, when he became general secretary, Gorbachev was determined to save the Soviet Union and modernize the failing system. Gorbachev's tools were glasnost (openness) and perestroika (restructuring). The floodgates of reform were fully opened and the old and unworkable system couldn't resist them. By 1991, the Soviet Union was no more. In the two decades since, Vladimir **Putin has emerged as the Ironman of Russia**. In the process, **Russia has been** described and **viewed by many as a kleptocracy ruled by the few who have pillaged national wealth** for their own benefits. Under what Republicans and Democrats alike in the United States see as a government of and by thugs, **human rights have been violated; dissidents and members of the media arrested; and opponents of the Kremlin subjected to purges and show trials leading to long prison sentences.** Russia's immediate neighbors are fearful of the return of the aggressive Russian bear anxious to spread its influence through manipulating its oil and natural gas reserves for political purposes and through military maneuvers designed to intimidate. Further, cyberattacks, principally against Estonia, reinforce this perception of a neo-Soviet Union under the leadership of former KGB Colonel Putin. And Putin's commitment to far greater military spending as well as unwillingness to accept NATO's missile defenses raises sinister possibilities. **Within Russia, discontent** on the part of many Russians **is waxing. Outright theft on the part of oligarchs has gone too far. Persecution** of political **opposition is particularly vexing**. And **the health and longevity of a declining population** reflects more than excesses of consumption of vodka and harsh winters. Indeed, as a buffer to Putin's intent to ramp up his military, the Kremlin faces a very limiting factor: 90 percent of all Russian youth are unfit for military service. Unfortunately, the West in general and the United States in particular have never been very good at Kremlinology (or indeed in understanding many foreign cultures). **Whether Putin is aware of the ticking time bomb over which he presides or not, Russia is still very important to Western interests**. Syria and Iran are two major crises where Russian support could be important.

**Extinction**

**Pry 99** (Peter Vincent, Former US Intelligence Operative, War Scare: U.S.-Russia on the Nuclear Brink, netlibrary)

**Russian internal troubles**—such as a leadership crisis, coup, or civil war—**could aggravate Russia’s fears of foreign aggression and lead to a miscalculation of U.S. intentions and to nuclear overreaction**. While this may sound like a complicated and improbable chain of events, **Russia’s story** in the 1990s **is one long series of domestic crises that have all too often been the source of nuclear close calls.** The war scares of August 1991 and October 1993 arose out of coup attempts. The civil war in Chechnya caused a leadership crisis in Moscow, which contributed to the nuclear false alarm during Norway’s launch of a meteorological rocket in January 1995. Nuclear war arising from Russian domestic crises is a threat the West did not face, or at least faced to a much lesser extent, during the Cold War. **The** Russian **military’s continued fixation on surprise-attack scenarios into the 1990s, combined with Russia’s deepening internal problems, has created a situation in which the U**nited **S**tates **might find itself the victim of a preemptive strike for no other reason than a war scare born of Russian domestic troubles.** At least in nuclear confrontations of the 1950s–1970s—during the Berlin crisis, Cuban missile crisis, and 1973 Middle East war—both sides knew they were on the nuclear brink. There was opportunity to avoid conflict through negotiation or deescalation. The nuclear war scares of the 1980s and 1990s have been one-sided Russian affairs, with the West ignorant that it was in grave peril.

**2AC**

**2AC Heg=True**

**Our hegemony advantage is true --- last 20 years of unipolarity correlate to a statistical decline in conflict because of peacekeeping and economic interdependence --- this in conjunction with overwhelming U.S. power make war counter productive --- we control every indicator --- poverty, violence, and authoritarianism are ALL DECLINING because of hegemony’s stabilizing forces**

**Our data is good --- Owen says empirical studies are data driven and free of theoretical or ideological bias --- there has been a steep decline in political deaths that directly correlates with hegemony**

**History proves this --- Wolforth cites 2000 years of data across societies from the Amana System to Rome to the U.S. today --- unipolarity creates clear systems of deterrence that keep the peace**

**And we’re backed by interdisciplinary consensus --- biology, economics, anthropology, sociology, psychology, and neuroscientific data subjected to rigorous scrutinization that their evidence doesn’t pass through**

**The alternative is unethical — rejections of U.S. power condone genocide**

Christian **Reus-Smit 4** IR @ Australian Nat’l, American Power and World Order p. 109-115

The final ethical position — the polar opposite of the first — holds that the exercise of hegemonic power is never ethically justifiable. One source of such a position might be pacifist thought, which abhors the use of violence even in unambiguous cases of self-defence. This would not, however, provide a comprehensive critique of the exercise of hegemonic power, which takes forms other than overt violence, such as economic diplomacy or the manipulation of international institutions. A more likely source of such critique would be the multifarious literature that equates all power with domination. **Postmodernists (and anarch­ists, for that matter) might argue that behind all power lies self-interest** and a will to control, both of which are antithetical to genuine human freedom and diversity. Rad­ical liberals might contend that the exercise of power by one human over another transforms the latter from a moral agent into a moral subject, thus violating their in­tegrity as self-governing individuals. Whatever the source, these ideas lead to radical scepticism about all institutions of power, of which hegemony is one form. The idea that the state is a source of individual security is replaced here with the idea of the state as a tyranny; the idea of hegem­ony as essential to the provision of global public goods is A framework for judgement Which of the above ideas help us to evaluate the ethics of the Bush Administration's revisionist hegemonic project? There is a strong temptation in international relations scholarship to mount trenchant defences of favoured para­digms, to show that the core assumptions of one's pre­ferred theory can be adapted to answer an ever widening set of big and important questions. There is a certain discipline of mind that this cultivates, and it certainly brings some order to theoretical debates, but it can lead to the 'Cinderella syndrome', the squeezing of an un­gainly, over-complicated world into an undersized theor­etical glass slipper. The study of international ethics is not immune this syndrome, with a long line of scholars seeking master normative principles of universal applic­ability. My approach here is a less ambitious, more prag­matic one. With the exceptions of the first and last positions, each of the above ethical perspectives contains kernels of wisdom. The challenge is to identify those of value for evaluating the ethics of Bush's revisionist grand strategy, and to consider how they might stand in order of priority. The following discussion takes up this challenge and arrives at a position that I tentatively term 'procedural solidarism'. The first and last of our five ethical positions can be dismissed as unhelpful to our task. The idea that might is right resonates with the cynical attitude we often feel to­wards the darker aspects of international relations, but it does not constitute an ethical standpoint from which to judge the exercise of hegemonic power. First of all, it places the right of moral judgement in the hands of the hegemon, and leaves all of those subject to its actions with no grounds for ethical critique. What the hegemon dictates as ethical is ethical. More than this, though, the principle that might is right is undiscriminating. It gives us no resources to determine ethical from unethical hegemonic conduct. **The idea that might is never right is equally unsatisfying**. It is a principle implied in many critiques of imperial power, including of American power. But like its polar opposite, it is utterly undiscriminating. No matter what the hegemon does **we are left with one blanket assessment**. No procedure, no selfless goal is worthy of ethical endorsement. **This is a deeply impoverished ethical posture**, as it raises the critique of power above all other human values. It is also completely counter-intuitive. **Had the United States intervened militarily to prevent the Rwandan genocide, would this not have been ethically justifiable**? If one answers no, then **one faces the difficult task of explaining why the exercise of hegemonic power would have been a greater evil than allowing almost a million people to be massacred**. If one answers yes, then one is admitting that a more discriminating set of ethical principles is needed than the simple yet enticing propos­ition that might is never right.

**2AC Democracy=True**

**And our democracy advantage is correct**

**1st it’s an empirical law of IR --- Murukavich cites the historical record proving pacific effects of democracy**

**2nd liberal democracy is peaceful --- similar political structures make cooperation easier --- that’s Kirsh**

## Framework

**The judge should vote for the best policy option --- that fosters decision-making skills --- operating in an alternative discursive framework moots the 1AC and makes it structurally impossible for us to get offense --- the alternative isn’t a relevant consideration to where the plan’s action should occur --- only opportunity costs should be evaluated to teach cost-benefit analysis --- this inculcates better decision-making skills**

**Absent institutional concerns the alt is useless**

**Wight – Professor of IR @ University of Sydney – 6**

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

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

**Engaging policy is key**

**McClean**, **Professor – Philosophy, Rutgers**, **1**

**(THE CULTURAL LEFT AND THE LIMITS OF SOCIAL HOPE, http://www.american-philosophy.org/archives/2001%20Conference/Discussion%20papers/david\_mcclean.htm)**

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

**Ontology**

**Questions of ontology shut down pragmatic political action – we never move past ontological “priming” to practiced material struggle**

**Barnett**, **Geography Prof at Open**, **8**

**(Political affects in public space: normative blind-spots in non-representational ontologies, Transactions of the Institute of British Geographers, Volume 33, Issue 2)**

Thrift’s spatial politics of affect and Connolly’s neuropolitics of media affects sits, therefore, in a much broader range of work that is concerned with affective aspects of political life. But the examples noted above all focus on the affective aspects of life without adopting a vocabulary of ontological layers, levels and priority. This is in contrast to the characteristic ontologisation of affect in human geography. The ontologisation of affect as a layer of preconscious ‘priming to act’ reduces embodied action simply to the dimension of being attuned to and coping with the world. **This elides the aspect of embodied knowing that involves the capacity to take part in ‘games of giving and asking for reasons’**. While the ontologisation of theory in human geography has been accompanied by claims to transform and reconfigure understandings of what counts as ‘the political’, this project has been articulated in a register which **eschews the conventions of justification**, that is, the giving and asking for reasons. This is particularly evident when it comes to accounting for why the contemporary deployment of affective energy in the public realm is bad for democracy. The contemporary deployment of anxious, obsessive and compulsive affect in the political realm is presented as having ‘deleterious consequences’ on the grounds that it works against democratic expression (Thrift 2007, 253); contributes to a style of democracy that is **consumed but not practised** (2007, 248); promotes forms of sporadic engagement that can be switched on and off (2007, 240); and generally leads to certain dispositions being placed beyond question. There is certainly a vision of democracy as a particular type of engaged ethical practice at work in these occasional judgements (2007, 14), but t

he precise normative force of this view is not justified in any detail. The eschewing of justification arises in part because the content of these ontologies, which emphasise various layers of knowing that kick-in prior to representation, is projected directly onto the form of exposition. **There is a particular type of authority put into play in this move**. The avowedly antiintentionalist materialism associated with contemporary cultural-theoretic ontologies of affect **closes down the conceptual space in which argument and disagreement can even get off the ground** (see Leys 2007). In contrast, and as outlined above, the argument pursued here follows an avowedly ‘nonrepresentationalist’ perspective according to which assertions of knowledge, including the types of knowledge asserted by ontologies of affect, always stand in need of reasons, precisely because they emerge as reasons for certain sorts of commitments and entitlements (Brandom 1996, 167). On this understanding ontological assertions act as justifications, and are subject to the demand for justification. If ‘placing things in the space of reasons’ (McDowell 1994, 5) in this sense is not acknowledged as one aspect of practice, then **recourse to the ontological register closes down the inconclusive conversations upon which democratic cultural politics depends** (Rorty 2006).

**VTL Turn**

**Binary reduction of lives with and without value denies agency and turns itself**

**Fassin, 10** - Social Science Prof at Princeton (Didier, “Ethics of Survival: A Democratic Approach to the Politics of Life” Humanity: An International Journal of Human Rights, Humanitarianism, and Development, Fall, Vol 1 No 1, Project Muse)//dm

Conclusion Survival, in the sense Jacques Derrida attributed to the concept in his last interview, not only shifts lines that are too often hardened between biological and political lives: it opens an ethical space for reflection and action. Critical thinking in the past decade has often taken biopolitics and the politics of life as its objects. It has thus unveiled the way in which individuals and groups, even entire nations, have been treated by powers, the market, or the state, during the colonial period as well as in the contemporary era. However, through indiscriminate extension, this powerful instrument has lost some of its analytical sharpness and heuristic potentiality. On the one hand, the binary reduction of life to the opposition between nature and history, bare life and qualified life, when systematically applied from philosophical inquiry in sociological or anthropological study, erases much of the complexity and richness of life in society as it is in fact observed. On the other hand, the normative prejudices which underlie the evaluation of the forms of life and of the politics of life, when generalized to an undifferentiated collection of social facts, end up by **depriving social agents of legitimacy, voice, and action**. The risk is therefore both scholarly and political. It calls for ethical attention. In fact, the genealogy of this intellectual lineage reminds us that the main founders of these theories expressed tensions and hesitations in their work, which was often more complex, if even sometimes more obscure, than in its reduced and translated form in the humanities and social sciences today. And also biographies, here limited to fragments from South African lives that I have described and analyzed in more detail elsewhere, suggest the necessity of complicating the dualistic models that oppose biological and political lives. Certainly, powers like the market and the state do act sometimes as if human beings could be reduced to “mere life,” but democratic forces, including from within the structure of power, tend to produce alternative strategies that escape this reduction. And people themselves, even under conditions of domination, [End Page 93] manage subtle tactics that transform their physical life into a political instrument or a moral resource or an affective expression. But let us go one step further: ethnography invites us to reconsider what life is or rather what human beings make of their lives, and reciprocally how their lives permanently question what it is to be human. “The blurring between what is human and what is not human shades into the blurring over what is life and what is not life,” writes Veena Das. In the tracks of Wittgenstein and Cavell, she underscores that the usual manner in which we think of forms of life “not only obscures the mutual absorption of the natural and the social but also emphasizes form at the expense of life.”22 It should be the incessant effort of social scientists to return to this inquiry about life in its multiple forms but also in its everyday expression of the human.

**No VTL**

**There is an infinite value to life- your framework causes extinction**

**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.

**The concept of Social death denies agency**

**Brown 09** (Vincent Brown is Professor of History and of African and African-American Studies at Harvard University. AMERICAN HISTORICAL REVIEW, DECEMBER 2009 http://history.fas.harvard.edu/people/faculty/documents/brown-socialdeath.pdf)

Slavery and Social Death was widely reviewed and lavishly praised for its erudition and conceptual rigor. As a result of its success, social death has become a handy general deﬁnition of slavery, for many historians and non-historians alike. But it is often forgotten that the **concept of social****death** is a distillation from Patterson’s breathtaking survey—**a theoretical abstraction** that is meant not to describe the lived experiences of the enslaved so much as to **reduce them****to a least** **common denominator** that could reveal the essence of slavery in an ideal-type slave, shorn of meaningful heritage. As a concept, it is what Frederick Cooper has called an “agentless abstraction” that provides a neat cultural logic but ultimately **does little to illuminate the** social and political experience of enslavement and the struggles that produce historic transformations. Indeed, it is difﬁcult to use such a distillation to explain the actual behavior of slaves, and yet in much of the scholarship that followed in the wake of Slavery and Social Death, Patterson’s abstract distillates have been used to explain the existential condition of the enslaved. Having emerged from the discipline of sociology, “social death” ﬁt comfortably within a scholarly tradition that had generally been more alert to deviations in patterns of black life from prevailing social norms than to the worldviews, strategies, and social tactics of people in black communities. Together with Patterson’s work on the distortions wrought by slavery on black families, “social death” reﬂected sociology’s abiding concern with “social pathology”; the “pathological condition” of twentieth-century black life could be seen as an outcome of the damage that black people had suffered during slavery.University of Chicago professor Robert Park, the grand-pe`re of the social pathologists, set the terms in 1919: “the Negro, when he landed in the United States, left behind almost everything but his dark complexion and his tropical temperament.” 8 Patterson’s distillation also conformed to the nomothetic imperative of social science, which has traditionally aimed to discover universal laws of operation that would be true regardless of time and place, making the synchronic study of social phenomena more tempting than more descriptive studies of historical transformation. Slavery and Social Death took shape during a period when largely synchronic studies of antebellum slavery in the United States dominated the scholarship on human bondage, and Patterson’s expansive view was meant to situate U.S. slavery in a broad context rather than to discuss changes as the institution developed through time. Thus one might see “social death” as an obsolete product of its time and tradition, an academic artifact with limited purchase for contemporary scholarship, were it not for the concept’s reemergence in some important new studies of slavery. 9 WIDELY ACKNOWLEDGED AS AMONG the most onerous of social institutions, slavery has much to tell us about the way human beings react to oppression. At the same time, the extreme nature of the institution naturally encourages a pessimistic view of the capacity for collective agency among subjugated people. As a result, trends in the study of slavery, as with the study of dominance more generally, often divide between works that emphasize the overwhelming power of the institution and scholarship that focuses on the resistant efforts of the enslaved. In turn, this division frames a problem in the general understanding of political life, especially for the descendants of the powerless. It might even be said that these kinds of studies form different and opposing genres—hopeful stories of heroic subalterns versus anatomies of doom—that compete for ascendance. In recent years, if the invocation of Patterson’s “social death” is any indication, the pendulum seems to have swung decidedly toward despair.

**Wilderson=No**

**Perm do both – inclusion of pragmatic, reformist coalitions is key to political effectiveness**

**Winant, 97** – Howard Winant, Professor of Sociology and Director of the Center for New racial Studies at UC Santa Barbara, September-October 1997, “Behind Blue Eyes: Contemporary White Racial Politics,” online: http://www.soc.ucsb.edu/faculty/winant/whitness.html

Although the differences and indeed the hostility -- between the neoliberal and abolitionist projects, between the reform-oriented and radical conceptions of whiteness -- are quite severe, we consider it vital that adherents of each project recognize that they hold part of the key to challenging white supremacy in the contemporary US, and that their counterpart project holds the other part of the key. Neoliberals rightfully argue that a pragmatic approach to transracial politics is vital if the momentum of racial reaction is to be halted or reversed. Abolitionists properly emphasize challenging the ongoing commitment to white supremacy on the part of many whites. Both of these positions need to draw on each other, not only in strategic terms, but in theoretical ones as well. The recognition that racial identities -- all racial identities, including whiteness -- have become implacably dualistic, could be far more liberating on the left than it has thus far been. For neoliberals, it could permit and indeed justify an acceptance of race-consciousness and even nationalism among racially-defined minorities as a necessary but partial response to disenfranchisement, disempowerment, and superexploitation. There is no inherent reason why such a political position could not coexist with a strategic awareness of the need for **strong**, class-conscious, **transracial coalitions**. We have seen many such examples in the past: in the anti-slavery movement, the communist movement of the 1930s (Kelley 1994), and in the 1988 presidential bid of Jesse Jackson, to name but a few. This is not to say that all would be peace and harmony if such alliances could come more permanently into being. But there is no excuse for not attempting to find the pragmatic "common ground" necessary to create them. Abolitionists could also benefit from a recognition that on a pragmatic basis, whites can ally with racially-defined minorities without renouncing their whiteness. If they truly agree that race is a socially constructed concept, as they claim, abolitionists should also be able to recognize that racial identities are not either-or matters, not closed concepts that must be upheld in a reactionary fashion or disavowed in a comprehensive act of renunciation. To use a postmodern language I dislike: racial identities are deeply "hybridized"; they are not "sutured," but remain open to rearticulation. "To be white in America is to be very black. If you don't know how black you are, you don't know how American you are" (Thompson 1995, 429).v

**All-or-nothing choice fails – small reforms towards concrete policies are the only viable solutions**

**Wright 7** (Erik Olin, Vilas Distinguished Professor of Sociology at the University of Wisconsin, “Guidelines for Envisioning Real Utopias”, Soundings, April, www.ssc.wisc.edu/~wright/Published%20writing/Guidelines-soundings.pdf)

5. Waystations The final guideline for discussions of envisioning real utopias concerns the importance of waystations. The central problem of envisioning real utopias concerns the viability of **institutional alternatives** that embody **emancipatory values**, but the practical achievability of such institutional designs often depends upon the existence of smaller steps, intermediate institutional innovations that move us in the right direction but only partially embody these values. Institutional proposals which have an all-or-nothing quality to them are both less likely to be adopted in the first place, and may pose more difficult transition-cost problems if implemented. The catastrophic experience of Russia in the “shock therapy” approach to market reform is historical testimony to this problem. Waystations are a difficult theoretical and practical problem because there are many instances in which partial reforms may have very different consequences than full- bodied changes. Consider the example of unconditional basic income. Suppose that a very limited, below-subsistence basic income was instituted: not enough to survive on, but a grant of income unconditionally given to everyone. One possibility is that this kind of basic income would act mainly as a subsidy to employers who pay very low wages, since now they could attract more workers even if they offered below poverty level earnings. There may be good reasons to institute such wage subsidies, but they would not generate the positive effects of a UBI, and therefore might not function as a stepping stone. What we ideally want, therefore, are **intermediate reforms** that have two main properties: first, they concretely demonstrate the virtues of the **fuller** program of **transformation**, so they contribute to the ideological battle of convincing people that the alternative is credible and desirable; and second, they enhance the capacity for action of people, increasing their ability to push further in the future. Waystations that increase popular participation and bring people together in problem-solving deliberations for collective purposes are particularly salient in this regard. This is what in the 1970s was called “nonreformist reforms”: reforms that are possible within existing institutions and that pragmatically solve real problems while at the same time empowering people in ways which enlarge their scope of action in the future.

**No root cause**

**Shelby, 7** (Tommie Shelby, Professor of African and African American Studies and of Philosophy at Harvard, 2007, We Who Are Dark: The Philosophical Foundations of Black Solidarity)

Others might challenge the distinction between ideological and structural causes of black disadvantage, on the grounds that we are rarely, if ever, able to so neatly separate these factors, an epistemic situation that is only made worse by the fact that these causes interact in complex ways with behavioral factors. These distinctions, while perhaps straightforward in the abstract, are difficult to employ in practice. For example, it would be difficult, if not **impossible**, for the members of a poor black community to determine withanyaccuracy whether their impoverished condition is due primarily to institutional racism, the impact of past racial injustice, the increasing technological basis of the economy, shrinking state budgets, the vicissitudes of world trade, the ascendancy of conservative ideology, poorly funded schools, lack of personal initiative, a violent drug trade that deters business investment, some combination of these factors, or some **other explanation** altogether. Moreover, it is notoriously difficult to determine when the formulation of putatively race-neutral policies has been motivated by racism or when such policies are unfairly applied by racially biased public officials. There are very real **empirical difficulties** in determining the **specific causal significance** of the factors that create and perpetuate black disadvantage; nonetheless, it is clear that these factors exist and that justice will demand different practical remedies according to each factor's relative impact on blacks' life chances. We must acknowledge that our social world is complicated and not immediately transparent to common sense, and thus that systematic empirical inquiry**,** historical studies, and rigorous social analysis are required to reveal its systemic structure and sociocultural dynamics. There is, moreover, no mechanical or infallible procedure for determining which analyses are the soundest ones. In addition, given the inevitable bias that attends social inquiry, legislators and those they represent cannot simply defer to social-scientific experts. We must instead rely on **open public debate**—among politicians, scholars, policy makers, intellectuals, and ordinary citizens—with the aim of garnering rationally motivated and informed consensus. And even if our practical decision procedures rest on critical deliberative discourse and thus live up to our highest democratic ideals, some trial and error through actual practice is unavoidable. These difficulties and complications notwithstanding, a general recognition of the distinctions among the ideological and structural causes of black disadvantage could help blacks refocus their political energies and self-help strategies. Attention to these distinctions might help exposethesuperficiality of theories that seek to reduce all the social obstacles that blacks face to contemporary forms of racism or **white supremacy**. A more penetrating, subtle, and empirically groundedanalysis **is needed to** comprehend the causes of racial inequality and black disadvantage. Indeed, these distinctions highlight the necessity to probe deeper to find the causes of contemporary forms of racism, as some racial conflict may be a symptom of broader problems or recent social developments (such as immigration policy or reduced federal funding for higher education).

**Nihilism is a self-fulfilling prophecy – progressivism checks white violence**

**Miah** quoting **West, 94** (Malik Miah, Cornel West's Race Matters, May-June, http://www.solidarity-us.org/node/3079)

In the chapter, “Nihilism in Black America,” West observes “The liberal/conservative discussion conceals the **most basic issue** now facing Black America: the nihilistic threat to its very existence. This threat is not simply a matter of relative economic deprivation and political powerlessness -- though economic well-being and political clout are requisites for meaningful Black progress. It is primarily a question of speaking to the profound sense of psychological depression, personal worthlessness, and social despair so widespread in Black America.” (12-13) “Nihilism,” he continues, “is to be understood here not as a philosophic doctrine ... it is, far more, the lived experience of coping with a life of horrifying meaningless, hopelessness, and (most important) lovelessness.” (14) “Nihilism is not new in Black America. . . . In fact,” West explains,”the major enemy of Black survival in America has been and is neither oppression nor exploitation but rather the nihilistic Threat -- that is, loss of hope and absence of meaning. For as longas hope remains and meaning is preserved,the possibility of overcoming oppression stays alive**.** The self-fulfilling prophecy of the nihilistic threat is that without hope there can be no future, that without meaning there can be no struggle.” (14-15)

**Binary = Bad**

**They will say that anti-blackness came first---regardless of truth value, focus on it as such skews racial justice and promotes nationalist and xenophobic racism**

**Sunstrom 8, Associate Professor of Philosophy**

[2008, Ronald R. Sunstrom is a black Associate Professor of Philosophy at the University of San Francisco; additionally, he teaches for USF's African American Studies program and the Master of Public Affairs program for the Leo T. McCarthy Center of Public Service and the Common Good. He was awarded the 2008 Sankofa Faculty Award from USF's Multicultural Student Services, USF's 2009 Ignatian Service Award, and was a co-winner of the 2010 USF Distinguished Teaching Award. His areas of research include political theory, critical social and race theory, and African American and Asian American philosophy, “The Browning of America and the Evasion of Social Justice”, pp. 65-92]

**The future of race** in the United States, or elsewhere, **will not be determined solely through the American instinct to return to black white politics**—**as if the question of the conservation or elimination of race and racial justice is in the hands of whites and blacks who need to hash out their issues** for the sake of all of us. **That somehow American racial problems are primarily black and white** problems **is the conceit** of too many Americans. This conceit is rooted in an image of an America defi ned by Protestantism, the English language, and its ties to Europe and populated by fading yet romantic “Indians,” a few Mexicans, and “Orientals” but dominated by whites and blacks. In this fantasy, **the racial problems that we have are determined by the** painful yet interesting **history between whites and blacks.** From here, liberals and conservatives part company, but **the central vision holds**—both sides affi rm that black-white division is the United States’ core racial problem, and **that solving black-white confl ict is the master key to all of its racial problems**. The result of this assumption has been that the concerns, problems, and questions, specifi c to blacks and whites and the relationship between them, have historically dominated discourse over race in the United States. **The domination of this focus**, often **called the blackwhite binary, has colored the U.S. reaction toward, and policies abou**t, **Native Americans, Asians, Latinos, and its colonial subjects, such as Puerto Ricans and Filipinos.**1 **The color line**, which W. E. B. Du Bois famously claimed marked the twentieth century and spanned the globe, **was imagined in the cast of the black-white binary**. In the following sections I clarify various conceptions of the black-white binary and consider their relative merits and failings. I then turn to the host of objections against this binary. I support the primary complaint against **the binary**, that it **does not engender accurate descriptions of the United States’ racial past or present**, **and it skews discussions of the future of race and racial justice toward the perspectives and interests of blacks and whites**. **Some readers** may **think that the problems with the black-white binary are so obvious and great that the subject is not worth a chapter-length study**. I urge such readers to momentarily suspend their incredulity about the blackwhite binary so that they can consider the demands for justice that motivate its proponents. I argue that the black-white binary should not simply be dismissed, for incautious dismissals of it end up casting off the demands of justice that frequently motivate statements that seemingly support the binary. Nonetheless, **there are troubling aspects of the black-white binary that go beyond the usual objections, leadin**g, fi nally, **to its total rejection**. **The black-white binary is rooted in a peculiar conception of black-white American nationalism and xenophobia that is ultimately hostile** to American multiculturalism. **Such a view is fundamentally illiberal, and the people of the United States should not capitulate to its desire that the false image of America as black and white not be upset.**

**And, the binary disempowers racial groups from defining their own identity and identifying instances of racism—this makes effective solutions to racial oppression impossible**

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The errors and consequences that result from the confl ations of the fourth form of the binary are grounds enough for its dismissal. However, **it has other consequences that deserve exposure, because they show the full force of its irresponsible nature, which ultimately will have profoundly troubling effects on liberal discussions of race and social justice**. Linda Martín Alcoff pinpoints this problem in her critique of the black-white binary. According to Alcoff, “**The black/ white paradigm has disempowered various racial and ethnic groups from being able to defi ne their own identity**,” with the result that “**Asian Americans and Latino/as have historically been ignored or marginalized in the public discourse in the United States on race and racism**.” **These marginalizations have eliminated “specifi cities with the large ‘black’ or nonwhite group” and have “undercut the possibility of developing appropriate and effective legal and political solutions for the variable forms that racial oppression can take.”**32 **The black-white binary**, as Alcoff has argued, **is a bald attempt by black and white America to speak for the totality of the racial experience** in the United States.33 **Its impulse to be avant-garde regarding concerns over race and social justice undermines its own conceit that it is inclusive**. **It leaves out claims for consideration that are radically different than traditional African American claims for civil rights and integration into the basic structure society**. This reveals a fourth confl ation committed by the fourth version of the black-white binary: **it assumes** **that** (4) **African American solutions for racial oppression are fit for all other groups.** However, **traditional black-white civil rights claims are silent about, and** perhaps even **hostile to, claims for multicultural rights typically made by indigenous groups**, groups whose primary language is something other than English, and immigrant groups.

**2AC AT: Incarceration**

**Our LEGAL PRECEDENT stops OTHER FORMS of immigration**

Farha Aziz **Faisal 12**, Harvard graduate with honors in Government, “Due Process Protections in the War on Terrorism: A Comparative Analysis of Security - Based Preventive Detention in the United States and the United Kingdom”, March, http://www.gov.harvard.edu/files/IR%20thesis%202.pdf

Overall, **this** thesis **provides insight into how the structure of political institutions interacts with legal frameworks during emergencies to contribute to the formulation of** preventive **detention systems**. Beyond explaining the mechanisms of such interactions, this thesis contributes to an understanding of how political structures impact human r ights within the broader context of security policy making. The **findings** of this investigation **are instructive for answering a number of questions regarding the relationship between decision-making and the protection of human rights**.¶ Beyond the theoretic al contributions of this study, **this** research **has significant** real - world **implications**. Given the rise of global terrorism within the past decade, states may need to create preventive detention systems. The findings of this research can identify the processes of such decision - making and selection of legal framework that are likely to result in preventive **detention with sufficient due process protections for** terrorist **suspects**. This **is more important than ever before since an increase in** the level of **terrorism** worldwide **suggests that more suspects**, including many innocent individuals, **could be detained** for purely security reasons. Accordingly, **it is vital that states adopt detention systems that protect** the fundamental human right to **due process** guaranteed under the rule of law. Moreover, the findings of **this** research **can be generalized beyond security-detention, to** the policy - formulation of **detention regimes relating to immigration** detention, pre-trial detention, **and health-based quarantines. In each of these areas, the policy** implications **from this** research **could provide meaningful input in creating systems sensitive** to and protective **of due process**.

**2AC AT: State (LAW)**

**The legal system and state are not inherently racist --- the law can support racial justice**

**Farber 98**

(Daniel, Prof. of the Minnesota School of Law, “Is American Law Inherently Racist”, w/ Prof. Delgado, Berkeley Law Scholarship Repository, http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1211&context=facpubs)

Let me begin with the vision of the American legal system that Professor Delgado presented in his first twenty minutes. **I do not intend** to **deny the reality of the dark side of American law** in American legal history, and **that dark side has** indeed **been very bad at times**. Nevertheless, I think **one might equally point to** some **more positive aspects of American legal society**, and that **we get only a skewed** and incomplete **picture** if we focus only on one side of the picture: **if we ignore the Thirteenth**, 5 **Fourteenth**, 6 **and Fifteenth** 7 **Amendments**; if we ignore **Brown v. Board of Education**8" and the work of **the Warren Court**; if we ignore **the Civil Rights Acts** of 1964,' 9 1965,20 and 1990;2" **and** if we ignore or minimize the commitment to **affirmative action** that many American institutions, especially educational institutions, have had for the past two decades. I do not think you have to be a triumphalist to think that these are important developments-you only have to be a realist. Similarly, **as serious as the problem of racial inequality remains in our society, it is also unrealistic to ignore the considerable amount of progress that has been made**. Consider **the emergence of the black middle class** in the last generation or generation and a half, **and the integration of important American institutions** such as big-city police forces, which **are important in the day-to-day lives of many minority people**. The military has sometimes been described as the most successfully integrated institution in American society. We all know, as well, that **the number of minority lawyers has risen substantially**. **In state and federal legislatures, there was no such thing as a black caucus in Congress thirty or forty years ago, because there would not have been enough black people present** to call a caucus. **And do not forget the considerable evidence of sharp changes in white attitudes over that period in a more favorable and tolerant direction**. It is true that there is much in our history that we can only look back on with a feeling of shame, but **there is** also **much to be proud of that we should not forget**. **I also think that the accusation that the American legal system is inherently racist lacks perspective in the sense that it seems to imply that there is something specifically American about this problem. If you look around the world, societies virtually everywhere are struggling with the problems of ethnic and cultural pluralism**, and are trying to find ways to incorporate diverse groups into their governing structures. I think if you look around the world, including even countries like France which Professor Delgado referred to, **it is far from clear that we are doing worse than the others. In some ways, I think we are doing considerably better than most.**

**If the law is racist that’s why reversals of executive authority and support for rights are key**

**Delgado 98**

(Richard, Jean N. Lindsley Professor of Law at the University of Colorado Law School, “Is American Law Inherently Racist”, Debate w/ Prof. Farber, Berkeley Law Scholarship Repository, http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1211&context=facpubs)

AUDIENCE: **If we accept the premise that American law is inherently racist, what can be done** about it? Where do we start? And related to that, **how can an inherently racist law be made unracist, or are we just doomed to a perpetual battle to decrease the level of racism** in our laws? PROFESSOR DELGADO: **No. I don't think that it is a dispiriting or** an overly **pessimistic view**, **if one accepts the position**-as I do, **that American law is recurrently, inherently racist any more than, it is enervating to accept the proposition that the human body**, let's say, **is inherently frail**. From which **it follows then that one ought to take reasonable measures**. **One ought to wear safety belts**, one ought to vaccinate children, and one does not simply give up from the recognition that something is inherently a difficulty or a problem. **Vigilance is what is called for, not giving up**. So no, **I do not take the position that the inherent racism that seems to inflict our society requires any sort of surrender**. Quite the contrary, **it requires all of our efforts if we are to be the society that we can be** and that we are in other respects. I will address this point later in my talk.

**The alternative makes life worse for other minorities**

**Fire Rider 5** (advocate from the Northern Ontario Ojibwe and American Indian Movement) 5 (Marty, Why Churchill Political Agenda is Wrong for Indians, February 2005, http://aimfireca.tripod.com/id44.html)
I think we can agree that Churchill's political philosophy is liberal socialism regarding foreign policy. If that is his position he is entitled to that. In describing his fellow Americans, for instance, Churchill cannot refrain from using the language of spite. The victims of the Sept. 11 attacks he compares to Nazis; even middle-class Americans he disparages as vapid hedonists too engrossed in materialism to care about the sufferings of "brown-skinned" people overseas. Basically, he advocates that America is the evil empire of the world and needs to be replaced or severely weakened. But if America was to collapse as a legal government does Churchill or anyone believe that in a chaotic world with no laws that Indians would fair any better. It would be a world of unchecked Indian racism and discrimination by all hate groups be it left or right. If the September 11th victims are technocrats supporting the evil economic empire of America as Churchill professes, then is not he a hypocrite by educating American youth who will graduate with degrees to enter the technocratic economy of America? But what does the U.S. foreign policy have to do with a starving Indian on the Reservation or urban living? What has Churchill done for the poor Indian. Our AIM organization has helped to repair Indian elders homes; provide reservation security to protect the people against police abuse and tribal goons; written legal constitutions for reservations; legal research for tribes and individuals; feeding and clothing Indians; having the local Bureau of Indian Affairs office investigated for incompetence and complacency by the Inspector Generals Office, including other agencies as well, or advising Tribal governments. Further, our national Indian radio talk show is effective in educating and empowering our people. In other words we are in the field fighting daily for our people. We are AIM and we would lay our lives down in defense of our people, but only if attacked. If violence was the only Indian way we as a people would have been exterminated a long time ago. We in AIM do not support, nor condone violence. We do not need someone making noisy speeches about foreign policy, we need leaders fighting for and helping our people on domestic issues, that is the real AIM. Sadly, there is much discrimination in the world regarding indigenous people. But American Indians have problems nearly as equal such as third world living conditions on many reservations. Churchill's foreign policy speeches using the September 11th victims to make his political point only reflects negatively on all Indians and harms the good name of the American Indian Movement and it true leaders. Unfortunately, Churchill is causing division in Indian country. Indian strength lies in our unity, not disunity. And his actions and words only leads to Indian disunity. That was the same strategy used by non Indians to divide and conquer Indian people to take our lands. If ones walks the Red Path they remain balanced in the middle thus avoiding the political extremes of left or right. Remember being Indian is not a democrat or republican, liberal or conservative. Being Indian is following the traditional ways of tolerance, accepting all races and culture, spirituality with respect for all life. Taking of any life was only for defense, not taking a life for a political belief or to make a statement. Churchill's ways of advocating violence against innocent lives makes a mockery of the Great Spirits teachings that all life is sacred. If you are going to be an Indian activist you have to do more than beat the drum to make a lot of noise. You have feel the drum beat in your heart. Times have changed, and people like Churchill can stand outside the government while make all the noise, however very little has changed in 30 years for American Indians. Our future success will come through not only our unity, but by Indians learning the American political and legal landscape while working from within the system to change the system for Indian justice and sovereignty. We need to remove the path of ignorance, apathy and hatred to build a bridge of respect and honor of those who have walked before us. We need to never lose site of our culture by staying spiritually strong. Eventually the changes can be positive for our people. But advocating the overthrow of the American government is irresponsible resulting in a destabilizing political environment where Indians would be subject to further violence, racism and discriminating.

# 1AR

**Ontology doesn’t come first: ontological unity is a mirage and judging the impacts of our actions is key to environmental ethics, and human survival**

**Norton, 96** – Professor of Philosophy at the Georgia Institute of Technology

Bryan, “Environmental Pragmatism,” Edited by Light and Katz, pg. 106

Thus ends my explanation of, and please for, a practical environmental ethic that seeks to integrate pluralistic principles across multiple levels/dynamics. **Rather than reducing** pluralistic **principles by relating them to an underlying value** theory **that recognizes only** economic preferences or “inherent” value as the **ontological** stuff that unifies all moral **judgments. I have sought integration of multiple values on** three irreducible scales of **human concern** and valuation, choosing **pluralism** over monism, **and attempting to integrate values within an ecologically informed, multi-scalar model of the human habitat**. I believe that **the non-ontologica**l, pluralistic **approach** to values **can better express** the inductively based **values and** **management** approach of Leopold’s land ethic, which can be seen as a precursor to the tradition of adaptive management. And, if the problem of environmentalism is the need to support rationally the goals of environmental protection – the problem Callicott misconceived as the need for a realist moral ontology to establish the “objectivity” of environmental goals – then I endorse the broadly Darwinian approach to both epistemology and morals proposed by the American pragmatists. **The environmental community is the community of inquirers**; it is the community of inquirers that, for better or worse, must struggle, immediately as individuals and indefinitely as a community, both to survive and to know. In this struggle useful knowledge will be information about how to survive in a rapidly evolving culture and habitat. It is in this sense that human actors are a part of multi-layered nature; our actions have impacts on multiple dynamics and multiple scales. **We humans will understand our moral responsibilities only if we understand** the **consequences of our action** as they unfold on multiple scales; **and the human community will only survive** to further evolve and adapt **if we learn to achieve individual welfare and justice in the present in ways that are less disruptive of the processes**, evolving on larger spatio-temporal scales, **essential to human and ecological communities**.