# 1AC

**1AC Plan**

**The United States federal judiciary should order the release of individuals in military detention who have won their habeas corpus hearing.**

**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**

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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**

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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.

**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.

**Robust empirical and statistical data proves — hegemony stops extinction**

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It is worth first examining the larger picture: **We live in a time of arguably the greatest structural change in the global order yet endured, with this historical moment's most amazing feature being its** relative and absolute **lack of mass violence**. That is something to consider when Americans contemplate military intervention in Libya, because **if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in** the same sort of **system-administering activity that has marked our stunningly successful stewardship of global order** since World War II. Let me be more blunt: **As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding down that path of perpetual war. Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace. We introduced the international liberal trade order known as globalization** and played loyal Leviathan over its spread. **What resulted was the collapse of empires, an explosion of democracy**, the **persistent spread of human rights, the liberation of women, the doubling of life expectancy**, a roughly **10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts.** That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. **¶ As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars.** That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude**, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity,** something the American-birthed system was designed to both encourage and accommodate. **But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come.¶** To continue the historical survey, after salvaging Western Europe from its half-century of civil war, **the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism. America then successfully replicated globalization further in East Asia over the second half of the 20th century, setting the stage for the Pacific Century now unfolding.**

**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**

**Suto 11, Research Associate at Tahrir Institute and J.D.**

[07/15/11, Ryan Suto is a Research Associate at Tahrir Institute for Middle East Policy, has degrees in degrees in law, post-conflict reconstruction, international relations and public relations from Syracuse Law, “Judicial Diplomacy: The International Impact of the Supreme Court”, http://jurist.org/dateline/2011/07/ryan-suto-judicial-diplomacy.php]

**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.

**Detention is key — indefinite detention emboldens global destruction of rights protection**

**Chaffee 9, Advocacy Counsel at Human Rights First**, Dismantling Guantanamo: Facing the Challenges of Continued Detention and Repatriation: The Cost of Indefinitely Kicking the Can: Why Continued "Prolonged" Detention Is No Solution To Guantanamo, <http://www.lexisnexis.com/hottopics/lnacademic/?>

The Guantanamo detentions have shown that assessments of dangerousness based not on overt acts, as in a criminal trial, but on association are unreliable and will inevitably lead to costly mistakes. This is precisely why national security preventive detention schemes have proven a dismal failure in other countries. The potential **gains** from such schemes **are** simply **not great enough to warrant departure from hundreds of years of western criminal justice traditions**. [n15](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.30065.195976206604&target=results_DocumentContent&returnToKey=20_T18200871754&parent=docview&rand=1379720049684&reloadEntirePage=true#n15)

The military leaders recognize the disagreeable company that the U.S. keeps when engaging in indefinite detention without trial. U.S. allies in Europe have implemented no comparable long term detention scheme in armed conflict or administrative preventive detention outside of the deportation context. [n16](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.30065.195976206604&target=results_DocumentContent&returnToKey=20_T18200871754&parent=docview&rand=1379720049684&reloadEntirePage=true#n16) The **governments of countries in Egypt, Malaysia, Zimbabwe, and Kenya** have **authorized indefinite or successive detention schemes in the name of fighting threats from terrorists or insurgents and all those schemes have resulted in violations of fundamental due process norms.**[**n17**](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.30065.195976206604&target=results_DocumentContent&returnToKey=20_T18200871754&parent=docview&rand=1379720049684&reloadEntirePage=true#n17)**In response to this criticism, such governments have cited Guantanamo Bay detention policies to justify repressive schemes of prolonged  [\*191]  detention** without trial-schemes that the U.S. criticizes as authorized arbitrary detention. [n18](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.30065.195976206604&target=results_DocumentContent&returnToKey=20_T18200871754&parent=docview&rand=1379720049684&reloadEntirePage=true#n18)

**Indefinite detention regimes aimed at preventing security risks are known to foster human rights abuses and to create perverse incentives against bringing criminal charges against prisoners**. That is why the U.S. has been consistently critical of governments that detain indefinitely without charge, including regimes that involve successive review or unrestrained renewable time limits. [n19](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.30065.195976206604&target=results_DocumentContent&returnToKey=20_T18200871754&parent=docview&rand=1379720049684&reloadEntirePage=true#n19) **If** the **Obama** administration **continues to pursue a detention regime for former Guantanamo detainees that permits indefinite detention without charge, it will impact detention policies of governments throughout the world and will likely embolden other governments to circumvent the protections guaranteed in criminal trials by citing security concerns**.

**This sets a global precedent for dissident crackdowns — internal reforms don’t resolve the “loaded weapon” effect**

**Waxman 9, Law Professor**, Matthew C, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 58

Opponents and skeptics of administrative detention rightly point out that creating new mechanisms for detention with procedural protections that are diluted compared with those granted criminal suspects may put liberty at risk. **The** most obvious **concern is that innocent individuals will get swept up and imprisoned— the “false positive” problem**. Civil libertarians rightly worry too that aside from the specific risk to particular individuals, **any expansion of administrative detention**— and I say “expansion” because, as noted earlier, it already exists in some nonterrorist contexts in U.S. law— **risks eroding the checks on state power more generally.** To some, **the idea of administrative detention of suspected terrorists is the** kind of “**loaded weapon**” that Justice Robert **Jackson worried about at the time of Japanese internment**. 52 **Even if critics are satisfied that the U.S.** government **can use** administrative **detention responsibly, there are many unsavory foreign regimes that will not. The U**nited **S**tates therefore **needs to be cautious about justifying principles that might be used by less democratic regimes as a pretext to crack down**, for example, **on dissidents that they label** “terrorists” or “**national security threats**.”

**Chinese crackdowns on Uighurs make them stronger and cause Asian war**

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

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

**That causes nuclear war**

**Mohan 13, distinguished fellow at the Observer Research Foundation** in New Delhi, C. Raja, March 2013, Emerging Geopolitical Trends and Security in the Association of Southeast Asian Nations, the People’s Republic of China, and India (ACI) Region,” background paper for the Asian Development Bank Institute study on the Role of Key Emerging Economies, <http://www.iadb.org/intal/intalcdi/PE/2013/10737.pdf>

**Three** broad **types of conventional conflict confront Asia**. The **first is the** **prospect of war between great powers**. Until a rising PRC grabbed the attention of the region, there had been little fear of great power rivalry in the region. The fact that **all major powers** interested **in Asia are** **armed with nuclear weapons**, and the fact that there is growing economic interdependence between them, has led many to argue that great power conflict is not likely to occur. **Economic interdependence**, as historians might say by citing the experience of the First World War, **is not a guarantee for peace in Asia**. Europe saw great power conflict despite growing interdependence in the first half of the 20th century. Nuclear weapons are surely a larger inhibitor of great power wars. Yet **we have seen military tensions** **build up** **between the PRC and the US** in the waters of the Western Pacific in recent years. The contradiction between the PRC’s efforts to limit and constrain the presence of other powers in its maritime periphery and the US commitment to maintain a presence in the Western Pacific is real and can only deepen over time.29 We also know from the Cold War that while **nuclear weapons** did help to reduce the impulses for a conventional war between great powers, they **did not prevent geopolitical competition**. Great power rivalry expressed itself in two other forms of conflict during the Cold War: inter-state wars and intra-state conflict. **If the outcomes in these conflicts are seen as threatening to one or other great power**, **they are likely to influence the outcome**. This can be done either through support for one of the parties in the inter-state conflicts or civil wars. **When a great power decides to become directly involved in a conflict** **the stakes are often very high**. In the coming years, **it is possible to envisage** **conflicts of all these types** in the ACI region. ¶ **Asia has** **barely begun** the work of **creating an institutional framework to resolve regional security challenges**. Asia has traditionally been averse to involving the United Nations (UN) in regional security arrangements. Major powers like the PRC and India are not interested in “internationalizing” their security problems—whether Tibet; Taipei,China; the South China Sea; or Kashmir—and give other powers a handle. **Even lesser powers have had a tradition of rejecting UN interference in their conflicts**. North Korea, for example, prefers dealing with the United States directly rather than resolve its nuclear issues through the International Atomic Energy Agency and the UN. Since its founding, the involvement of the UN in regional security problems has been rare and occasional.¶ The burden of securing Asia, then, falls squarely on the region itself. There are three broad ways in which a security system in Asia might evolve: collective security, a concert of major powers, and a balance of power system.30 Collective security involves a system where all stand for one and each stands for all, in the event of an aggression. While collective security systems are the best in a normative sense, achieving them in the real world has always been difficult. A more achievable goal is “cooperative security” that seeks to develop mechanisms for reducing mutual suspicion, building confidence, promoting transparency, and mitigating if not resolving the sources of conflict. The ARF and EAS were largely conceived within this framework, but the former has disappointed while the latter has yet to demonstrate its full potential. ¶ A second, quite different, approach emphasizes the importance of power, especially military power, to deter one’s adversaries and the building of countervailing coalitions against a threatening state. **A balance of power system**, as many critics of the idea point out, **promotes arms races**, **is inherently unstable**, **and** **breaks down** **frequently leading to systemic wars**. There is growing concern in Asia that amidst the rise of Chinese military power and the perception of American decline, **many large and small states are** stepping up their expenditure on **acquiring advanced weapons systems**. Some analysts see this as a structural condition of the new Asia that must be addressed through deliberate diplomatic action. 31 A third approach involves cooperation among the great powers to act in concert to enforce a broad set of norms—falling in between the idealistic notions of collective security and the atavistic forms of balance of power. However, acting in concert involves a minimum level of understanding between the major powers. The greatest example of a concert is the one formed by major European powers in the early 18th century through the Congress of Vienna after the defeat of Napoleonic France. The problem of adapting such a system to Asia is the fact that there are many medium-sized powers who would resent any attempt by a few great powers to impose order in the region.32 In the end, the system that emerges in Asia is likely to have elements of all the three models. In the interim, though, there are substantive disputes on the geographic scope and the normative basis for a future security order in Asia.

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

**Kersch 6, Assistant Professor of Politics**

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

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

**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.

**Nigeria models U.S. separation of powers**

[**Mwalimu**](http://www.google.com/search?hl=en&q=inauthor:%22Charles+Mwalimu%22&sa=X&ei=_lXhTIP2CIS-sAPfxfzNCg&ved=0CCgQ9Ag)**, Senior Legal Specialist at Law Library of Congress, 5**

The Nigerian Legal System: Public Law, Pg. 6

Nigeria is a country of special significance to the United States. The Nigerian constitutional system is patterned after that of the United States. From the point of view of influence of the American Constitution on Nigerian constitutional practices, this author has postulated that this impact is **discernible** and **encompasses the whole regime of the political function** in Nigeria during the period of civil rule. This feature of Nigerian constitutionalism, based on the United States model, finds particular expression in the constitutions of 1963 to 1999. These instruments are predicated on the presidential system of government guided by principles of separation of powers. More than any other factor, this consideration merits an in-depth exposition of the law of Nigeria as a testimony to this **special affinity** in constitutional formulation between the United States and Nigeria.

**This isn’t just historical**

**Campbell, Senior Fellow for Africa policy at the Council on Foreign Relations, 10**

Examining the U.S.-Nigeria Relationship in a Time of Transition, http://allafrica.com/stories/201002240888.html

Nigeria and the United states influence each other in ways more than diplomacy, security and energy. People-to-people links between the United States and Nigeria are more extensive than with any other African country. There is a vibrant, productive Nigerian-American community in the United States that may number two million. It is a successful immigrant community characterized by entrepreneurship, strong family ties and an emphasis on education. Nigerians like to say that more than one million of them have also been to the United States for extended periods and have since returned home, positively influenced by their American sojourns. Popular culture from New York and Los Angeles is ubiquitous in Lagos, while Fela Ransom-Kuti's 'afro-beat' and other musical styles of Nigerian origin have influenced American pop. Nigeria's legions of unemployed university graduates dream of a U.S. visa.

American educational, religious and civil society links to Nigeria are also probably more extensive than with any other African country. Over the years, many Nigerians have received their university educations in the United States. Nigeria now has a small community of private universities that are organized on the American model and teach an American curriculum. Churches of the same denomination on both sides of Atlantic have close links**. Nigerian civil society especially looks to the United States as a model of democracy and the rule of law**. Nigerian legislators and judges at every level relish contact with their American counterparts. U.S. and Nigeria government agencies cooperate closely around HIV/AIDS and other health issues. Otherwise, the non-official relationship is growing and strengthening without much reference to Abuja.

**Nigerian judicial independence is on the brink — loss destroys stability and democracy**

**Diblia 10/2**, Director of Programs at Access to Justice, Dwindling Judicial Funding: Danger Signal for Democracy,www.thisdaylive.com/articles/dwindling-judicial-funding-danger-signal-for-democracy-/160492/?utm\_source=rss&utm\_medium=rss&utm\_campaign=dwindling-judicial-funding-danger-signal-for-democracy-thisday-live

**In underfunding the Judiciary** the **Jonathan** administration **may be hoisting a red flag over** our collective preference for **democratic governance**, writes Leonard Dibia

The recent lamentations of the CJN over **dwindling funding of the judiciary by the federal government pose a deeply worrisome signal for what we have all come to identify as our “nascent” democracy** – a perennial nascence from which Nigeria has indulgently refused to hatch itself after fifty three years of Independence.

The CJN’s speech at the swearing-in ceremony of the latest batch of **Senior Advocates of Nigeria** on Monday, September 23, 2013 **lamented the smoldering intrusion of the executive into the judicial space**, as well as decried with accurate data the progressive reduction of the judiciary’s budget between 2010 and 2013. According to the CJN, “**Statistics have shown** that **funding** from the federal government has **witnessed a steady decline** since 2010, from N95 billion in that year to N85 billion in 2011, then N75 billion in 2012 and which dropped again in 2013 budget to N67 billion”. The two issues raised by the CJN which comprise attempts by the Head of Service to regulate the tenure of heads of judiciary agencies on one hand, and reduced funding for the judiciary on the other hand **present a frightening prognosis for constitutional democracy as it holds the potent possibility of rendering the judiciary completely inept and prostrate in no distant future**.

Although the CJN noted that “underfunding of the judiciary by the federal government would cause a setback to the on-going transformation of the sector”, the greater concern over the resurgence of these “old” political vices, in our humble view, is the assumption or impression that undergirds them. It does appear that in the constellation of socio-political interests that beset the federal government, the judiciary is considered far less important than the other two arms of government, or less deserving of robust funding than the other arms of government. If that is the case, as it seemingly appears, then the Jonathan administration may be hoisting a red flag over our collective preference for democratic governance.

A little deference and **reflection into political and constitutional histories of most nations of the world (including Nigeria) would reveal the danger inherent in neglecting the judiciary. History not only establishes the fact that adequate and robust funding is critical to judicial independence, it has also enunciated the fact that the dysfunctionalities of a judicial system reeling with ineptitude and neglect touches adversely on every aspect of a nation’s life and stability.**

When on December 29, 1993 the late General Sani Abacha mentioned judicial partisanship and corruption as one of his justifications for staging a military re-entry into power, he was unwittingly reiterating the statement of Sir John Marshall who stated in his address at the State of Virginia Convention in 1830 that a “dependent” judiciary is the scourge of an angry heaven upon humanity. Still on constitutional history, the US State Department Country Report on Nigeria, 2003 observed that “**The Judicial branch in Nigeria remained susceptible to executive** and legislative **pressure**…inefficiency and corruption continued to prevent the judiciary from functioning adequately”. **When the U**nited **S**tates of America **hit a strident constitutional crisis over** the **Watergate** scandal of 1973, **it took** the **intervention of the** US **Supreme Court** and its eminent Chief Justice Warren Burger **to pull America off the brink of a** **political cascade**.

There is no gainsaying the fact that inadequate funding on one hand, and judicial inefficiency and compromise on the other hand score a perfect co-relation in any society.  The concern for adequate judicial funding and independence are premised on two basic rationales; which are that, firstly, those who by designation and appointment arbitrate over conflicts of human interest must, of necessity, be insulated from such influences and control that could induce compromise of their impartiality and, secondly, that **public confidence in** the **efficiency and integrity of the judiciary is indispensable to political stability – as the courts provide a non-violent forum for the ventilation and resolution of highly charged political and civil conflicts in enduring democracies of the world.**

It is pertinent to note that enhancing and extricating judicial funding and administration from the control of the executive has remained a recurring reform recommendation of every judicial panel of inquiry/Commission in Nigeria since 1993. Both the Eso Panel of Inquiry Report of July 5, 1994 and the report of the Presidential Commission on the Reform of the Administration of Justice in Nigeria, 2006 (otherwise referred to as the “Ejiwunmi Commission”) identified independent and adequate funding for the judiciary as a major point of dire need for successful democratic governance.

**Nigerian democracy is key to survival of Nigeria**

**Leadership 10/1**, Nigeria’s “Most Influential Newspaper”, <http://leadership.ng/news/011013/democracy-has-stabilised-nigeria-babatope>

**Former** Transport **Minister**, Chief Ebenezer Babatope, on Tuesday, **said democracy** has **stabilised Nigeria**.

Babatope said in Yenagoa that the positive impact of democratic rule in governance had helped the country to stabilise the polity.

He made the remark at the 17th Anniversary Public Lecture organised by the Bayelsa government, in commemoration of the 17 years of the state’s creation.

The News Agency of Nigeria (NAN) reports that the anniversary lecture has ``Good Governance as Panacea for Promoting Stable Democracy and Sustainable Development'' as its theme.

The ex-minister said that **in spite of its challenges, Nigeria recorded great feats as a nation under democracy.**

**``Nigeria is a multi-tribal and multi-religious nation. Our delicate balancing of the operations of these essential features of our socio-political lives had helped tremendously in ensuring the triumph of democracy in our nation.**

**``Though we have conflicts, our nation has not gone under because no matter our faults, we have not allowed the basic tenets of democracy and democratic governance to be subverted in our country.**

**``Democracy**, therefore, **has gone a long way to stabilise our nation.''**

Babatope noted that the **current challenges facing the country centered on how to make democracy work and survive**.

According to him, it is clear that **democracy is the only form of government that can guarantee the *survival of Nigeria as a nation***.

**That destabilizes Africa — refugee flows will be massive**

**Buhari 4** – Former Head of State of the Federal Republic of Nigeria (Muhammadu, “Alternative Perspectives on Nigeria’s Political Evolution”, <http://www.dawodu.com/buhari1.htm>, April 8th, 2004, KTOP)

You are perhaps not all aware of the current state of affairs in **Nigeria, characterized** as they are **by a failure of political leadership and failed governance.** Nigeria, the largest and potentially the wealthiest country in sub-Saharan Africa, **is today a basket case, confronted by problems that threaten not only its nascent democracy, but its very existence**. The country's sheer size and complexity, its rich human and vast material endowments, provide both an opportunity and a challenge, depending on the attitude of Nigerians and their friends and partners, especially the U.S. It is worth observing that ignoring Nigeria and Nigerians by the U.S. or the world will have far-reaching negative consequences for the region and beyond. **An unstable Nigeria driven by internal wars, insurrections, or other manifestations of a failed state has the potential to destabilize the whole continent of Africa**. The common symptomatic phenomena of internal disarray by way of civil wars and refugees and internally displaced persons have been dealt with by the world with varying successes in the past. The two world wars in the last century and developments in their wake, the collapse of the Soviet Empire in Eastern Europe, Central Asia, the Middle East and the Balkans, have produced millions of refugees - which were and still are unacceptable. **But the break-up of Nigeria with a population of 130 million will produce a refugee crisis of unimaginable proportions. African countries will be overwhelmed and both Europe and Asia will be under severe strain.** **The highest number of refugees the world has had to deal with** has never exceeded 25 million, with another 30 million or so displaced persons. This **is about one third of the refugee potential of a war torn Nigeria**. The international community, especially the U.S. will see it in their interest to forestall this major tragedy for Africa and for the world. Since independence in 1960, Nigeria has gone through many crises including a bloody civil war that lasted from 1967 to 1970, and cost nearly a million lives, with attendant destruction, hunger, disease and massive population movements. The Nigerian military has, like its Turkish and Pakistani counterparts, deemed it prudent to intervene in the politics of Nigeria for reasons I will not want to delve into, in this submission. As a rule most of such interventions, even when adjudged necessary and or appropriate, have done permanent damage to the military's espirit de corps, professionalism and preparedness, and have more often than not, done permanent damage to political institution building and emergent consensus creation and articulation - so necessary to security, progress and prosperity, in a nation with such diverse and multifarious socio-economic and political constituencies. The Nigerian military have been compelled to surrender power and return to the barracks by the imperatives of political reality and the heavy, definitely unbearable toll on the institution. **Nigeria is once again at a crossroad, at a defining moment in its history and the history of Africa.**

**That causes global war**

**Glick 7,** **Middle East fellow at the Center for Security Policy**, Condi’s African holiday,http://www.carolineglick.com/e/2007/12/condis-african-holiday.php?pf=yes

The Horn of **Africa is a dangerous and strategically vital place. Small wars**, which rage continuously, **can easily escalate into big wars. Local conflicts have regional and global aspects. All of the conflicts in this tinderbox, which controls shipping lanes** from the Indian Ocean into the Red Sea, **can** **potentially give rise to** regional, and indeed **global conflagrations between** competing regional actors and **global powers**

**Nigerian democracy stops oil shocks**

**Lubeck, Sociology Prof at Santa Cruz, 7**

CONVERGENT INTERESTS: U.S. Energy Security and the “Securing” of Nigerian Democracy,” http://www.ciponline.org/NIGERIA\_FINAL.pdf

In the short and medium term, these and other instabilities, such as assertive petro-nationalism in Iran and Venezuela and political conflict in the Andean and Caspian oil zones, pose risks to the energy security of the United States: by making oil less available and more costly, perhaps rising as high as $100 per barrel or more; by contributing to the fragmentation of weak polities (such as Iraq or Sudan); by making oil-producing countries more prone to social violence; and by intensifying international competition for reliable sources. These possibilities have been foremost in the minds of Washington policymakers. Not long after President George W. Bush took office in 2001, the National Energy Policy Development Group, headed by Vice President Cheney, argued that the United States should look to West Africa’s Oil Triangle as a future source of reliable supply. And in March 2005, a National Intelligence Council report pointed out that “global demand for hydrocarbons will be extremely robust in the next 15 years and these [African] countries will face the nominally happy chore of disposing of large amounts of export revenue.”7 Oil from the Gulf of Guinea is especially attractive for American consumers because it has a transport advantage to oil terminals on the east coast of the U.S. and a lowsulfur, lightweight content that fetches a premium for gasoline production. Oil lobbyists and neoconservative interest groups aggressively promoted, well before September 11, 2001, the security advantage of oil from the Gulf of Guinea compared to that of the Persian Gulf (figure 2). In the aftermath of 9/11, the U.S. military began to deepen its imprint on the West African region, drawing up military cooperation agreements with governments there (see text box 3 of this brief).8 According to the U.S. Department of Energy (DOE), by 2025 American imports will rise from today’s 13 million barrels (bbl) per day to more than 18 million, depending on price (figure 3). From where will that oil come? Roughly two-thirds of the world’s oil and gas reserves are found in the Middle East, a geological reality that no grandiose rhetoric about “extending freedom” to that region can change (figure 4). Indeed, reports DOE, by 2025 the Middle East’s share of world oil production could increase from 21 to 34 million bbl per day or more.9 Yet, since 2001, notwithstanding oil prices in the $50 to $60 per barrel range, the prospects for a dramatic growth in Persian Gulf output have dimmed—in large part due to the civil war in Iraq and rising tensions over Iran’s nuclear research program—and there is growing skittishness about investing heavily in the region. 10 Oil from other sources could increase the security of supply and make the United States less beholden to potentially unstable or hostile regimes. As a result, American energy security planners have redefined the Gulf of Guinea as a strategic interest of the United States, a more stable and secure source of future petroleum needs,11 with potential reserves as high as 60 billion barrels.12 Most production to date has been onshore, but new offshore finds have made the Gulf a major and growing global supplier of high quality and relatively low cost oil.13 In fact, the West African Oil Triangle currently supplies about 15 percent of daily imports into the United States,14 which some predict could rise to 25 percent by 2015.15 Furthermore, vast supplies of natural gas have made Nigeria a major player in the global liquefied natural gas (LNG) industry––attracting enormous investments from U.S. and European companies (with another $30 billion expected through 2010). Nigeria is the energy exporting giant and most attractive leg of the Oil Triangle. Currently, its proven oil reserves are estimated at 40 billion barrels, but new offshore discoveries will raise reserves significantly. Most of this oil derives from onshore fields in the Niger Delta (figure 5), but offshore discoveries like the Bonga fields are rapidly changing this picture. Depending on the future price of oil, and internal security in Nigeria, annual production could rise from 2.5 million bbl per day in 2005 to as much as 5 million bbl per day in 2020. Achieving these historically unprecedented output levels, however, requires extending and deepening democratic governance across Nigeria and strengthening internal security in the Delta as much as increasing foreign investment or G8 interest. In global terms, the stakes are high and rising. Today, Nigeria accounts for over 60 percent of the Gulf of Guinea’s oil wealth. Its output makes Nigeria the eleventh largest oil producer in the world. It also contains the largest natural gas reserves in Africa (176 trillion cubic feet) and now possesses a large-scale LNG complex (e.g. five train lines) on Bonny 5 Island with more plants planned. According to the IMF, in 2005 oil revenues accounted for 99 percent of all Nigerian export revenues, 88 percent of government income, and 50 percent of Nigerian GDP, amounting to over $50 billion.16 Based on an oil price of $50/barrel, between 2006 and 2020 Nigeria alone could pocket more than $750 billion in oil income; the whole of West Africa, more than $1 trillion. For Africa, these are colossal numbers. Tight and volatile markets, coupled with short-term upward price pressures, suggest there is every reason to assume that these estimates of Nigeria’s and the region’s future oil wealth are quite conservative. Until now, however, insufficient attention and funding have been paid to resolving the conflicts and human rights abuses in the Niger Delta. A “hard line” security approach has failed abysmally, with grotesque human rights abuses only igniting more insurgencies and deepening criminality. Similarly, the American policy favoring “stability at all costs” has failed to deliver energy security. We argue here that democratic governance and conflict resolution are the only routes to securing the Delta and that multilateral institutions, the United States, and Nigeria must increase funding and support for democratization programs in the Delta and in Nigeria more generally. The only way to secure the Delta is to raise health, education and living standards, ensure free and fair elections, ameliorate conflicts over resources and broadly transform residents of the region into bona fide stakeholders who will benefit from oil revenues. Ultimately, unless democracy is consolidated in the Niger Delta, American energy security will be at risk as supplies will be threatened by chaos. The wild card in this state of affairs is whether future oil production in West Africa will prove any more stabilizing and less corrupting than it has to date.

# 2AC

**Status competition is inevitable — science proves**

**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.

**The alternative is unethical — blanket 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.

**Hegemonic decline causes lashout**

**Beckley 12** [“China’s Century Why America’s Edge Will Endure” research fellow in the International Security Program at Harvard Kennedy School’s Belfer Center for Science and International Affairs He will become an assistant professor of political science at Tufts University in the fall of 2012, http://belfercenter.ksg.harvard.edu/files/Chinas\_Century.pdf]

Change is inevitable, but it is often incremental and nonlinear. In the coming decades, China may surge out of its unimpressive condition and close the gap with the United States. Or China might continue to rise in place—steadily im-proving its capabilities in absolute terms while stagnating, or even declining, relative to the United States. At the time of this writing, the United States remains mired in the worst economic crisis since the Great Depression and carries the largest debt in its history. Moreover, the recent partisan standoff over raising the debt ceiling suggests the American political system is losing the capacity for compromise on basic issues, let alone on large-scale problems. It is impossible to say whether the current malaise is the beginning of the end of the unipolar era or simply an aberration. The best that can be done is to make plans for the future on the basis of long-term trends; and the trends suggest that the United States’ economic, technological, and military lead over China will be an enduring feature of international relations, not a passing moment in time, but a deeply embedded condition that will persist well into this century. In recent years, scholars’ main message to policymakers has been to prepare for the rise of China and the end of unipolarity. This conclusion is probably wrong, but it is not necessarily bad for Americans to believe it is true. Fear can be harnessed in the service of virtuous policies. Fear of the Soviet Union spurred the construction of the interstate highway system. Perhaps unjustiªed fears about the decline of the United States and the rise of China can similarly be used in good cause. What could go wrong? One danger is that **declinism could prompt trade conflicts and immigration restrictions**. The results of this study suggest that the United States beneªts immensely from the free ºow of goods, services, and people around the globe; this is what allows American corporations to specialize in high-value activities, exploit innovations created elsewhere, and lure the brightest minds to the United States, all while reducing the price of goods for U.S. consumers. Characterizing China’s export expansion as a loss for the United States is not just bad economics; it blazes a trail for jingoistic and protectionist policies. **It would be** tragically **ironic if Americans reacted to false prophecies of decline by cutting themselves off from a potentially vital source of American power**. Another **danger is that declinism may impair foreign policy decisionmaking**. If top government **officials come to believe that China is overtaking the U**nited **S**tates, **they are likely to react** in one of two ways, both of which are potentially disastrous. The first is that **policymakers may imagine the United States faces a closing “window of opportunity” and should take action “while it still enjoys preponderance and not wait until the diffusion of power has already made international politics more competitive and unpredictable**.”158 **This belief** may spurpositive action, but it also **invites parochial thinking, reckless behavior, and preventive war**.159 As Robert Gilpin and others have shown, **“[H]egemonic struggles have most frequently been triggered by fears of ultimate decline and the perceived erosion of power.”**160 **By fanning such fears, declinists may inadvertently promote the type of violent overreaction that they seek to prevent.** The other potential reaction is retrenchment—the divestment of all foreign policy obligations save those linked to vital interests, deªned in a narrow and national manner. **Advocates of retrenchment assume**, or hope, **that the world will sort itself out on its own**; that whatever replaces American hegemony, whether it be a return to balance of power politics or a transition to a postpower paradise, will naturally maintain international order and prosperity. **Order and prosperity**, however, **are unnatural. They can never be presumed**. When achieved, they are the result of determined action by powerful actors and, in particular, by the most powerful actor, which is, and will be for some time, the United States. **Arms buildups, insecure sea-lanes, and closed markets are only the most obvious risks of U.S. retrenchment. Less obvious are transnational problems, such as global warming, water scarcity, and disease, which may fester without a leader to rally collective action**. Hegemony, of course, carries its own risks and costs. In particular, America’s global military presence might tempt policymakers to use force when they should choose diplomacy or inaction. **If the United States abuses its power**, however, **it is not because it is too engaged with the world, but because its engagement lacks strategic vision. The solution is better strategy, not retrenchment.** The ªrst step toward sound strategy is to recognize that the status quo for the United States is pretty good: it does not face a hegemonic rival, and the trends favor continued U.S. dominance**. The overarching goal of American foreign policy should be to preserve this state of affairs**. Declinists claim the United States should “adopt a neomercantilist international economic policy” and “disengage from current alliance commitments in East Asia and Europe.”161 But the fact that the United States rose relative to China while propping up the world economy and maintaining a hegemonic presence abroad casts doubt on the wisdom of such calls for radical policy change.

**Desperation will override checks on conflict**

**Goldstein 7**, political science professor at Penn, 7 — Avery Goldstein, David M. Knott Professor of Global Politics and International Relations at the University of Pennsylvania, Associate Director of the Christopher H. Browne Center for International Politics, Senior Fellow at the Foreign Policy Research Institute, holds a Ph.D. from the University of California-Berkeley, 2007 (“Power transitions, institutions, and China's rise in East Asia: Theoretical expectations and evidence,” *Journal of Strategic Studies*, Volume 30, Number 4-5, August-October, Available Online to Subscribing Institutions via Taylor & Francis Online, p. 647-648)

Two closely related, though distinct, theoretical arguments focus explicitly on the consequences for international politics of a shift in power between a dominant state and a rising power. In War and Change in World Politics, Robert Gilpin suggested that peace prevails when a dominant state’s capabilities enable it to ‘govern’ an international order that it has shaped. Over time, however, as economic and technological diffusion proceeds during eras of peace and development, other states are empowered. Moreover, the burdens of international governance drain and distract the reigning hegemon, and challengers eventually emerge who seek to rewrite the rules of governance. As the power advantage of the erstwhile hegemon ebbs, it may become desperate enough to resort to the ultima ratio of international politics, force, to forestall the increasingly urgent demands of a rising challenger. Or as the power of the challenger rises, it may be tempted to press its case with threats to use force. It is the rise and fall of the great powers that creates the circumstances under which major wars, what Gilpin labels ‘hegemonic wars’, break out.13 Gilpin’s argument logically encourages pessimism about the implications of a rising China. It leads to the expectation that international trade, investment, and technology transfer will result in a steady diffusion of American economic power, benefiting the rapidly developing states of the world, including China. As the US simultaneously scurries to put out the many brushfires that threaten its far-flung global interests (i.e., the classic problem of overextension), it will be unable to devote sufficient resources to maintain or restore its former advantage over emerging competitors like China. While the erosion of the once clear American advantage plays itself out, the US will find it ever more difficult to preserve the order in Asia that it created during its era of preponderance. The expectation is an increase in the likelihood for the use of force – either by a Chinese challenger able to field a stronger military in support of its demands for greater influence over international arrangements in Asia, or by a besieged American hegemon desperate to head off further decline. Among the trends that alarm [end page 647] those who would look at Asia through the lens of Gilpin’s theory are China’s expanding share of world trade and wealth (much of it resulting from the gains made possible by the international economic order a dominant US established); its acquisition of technology in key sectors that have both civilian and military applications (e.g., information, communications, and electronics linked with the ‘revolution in military affairs’); and an expanding military burden for the US (as it copes with the challenges of its global war on terrorism and especially its struggle in Iraq) that limits the resources it can devote to preserving its interests in East Asia.14 Although similar to Gilpin’s work insofar as it emphasizes the importance of shifts in the capabilities of a dominant state and a rising challenger, the power-transition theory A. F. K. Organski and Jacek Kugler present in The War Ledger focuses more closely on the allegedly dangerous phenomenon of ‘crossover’– the point at which a dissatisfied challenger is about to overtake the established leading state.15 In such cases, when the power gap narrows, the dominant state becomes increasingly desperate to forestall, and the challenger becomes increasingly determined to realize the transition to a new international order whose contours it will define.

**Pursuit of hegemony is inevitable — public opinion and empirics prove**

**Mead 7** (Walter Russell, Henry A Kissinger Senior Fellow of US Foreign Policy @ Council on Foreign Relations, “The Case for Restraint,” November/December, <http://www.the-american-interest.com/article.cfm?piece=334>)

Barry Posen puts his fingers on some of the classic and enduring tensions in American foreign policy and makes a strong, Jeffersonian case for a grand strategy based on restraint. However, given the multiplicity of actors in the American foreign policy process and the conflicting perspectives and interests that they bring to the political process, it seems unlikely to me that his vision will prevail. American policy is likely to remain more interventionist than Posen would like, in part because too many Americans have too many convictions and interests that seek a more engaged and activist America. In part, too, American policy is likely to remain more activist and engaged because developments in a tumultuous world will cry out for American engagement. That engagement will not always be wise or well planned. We will often not like the consequences of the engagements we undertake, either. But from the early 20th century when the British world system began to fray at the edges, the pattern of world history has been that the United States, despite the hunger of many of its citizens and of its foreign policy intellectuals for a quiet life, has been drawn over and over again into a series of engagements because the consequences of disengagement seem unacceptable. That is likely to remain the case in coming decades, particularly so in Asia. In a short paper, Posen cannot present a full picture of his views on the unfolding Asian order, but his recommendation (that the United States “reconsider its security relationship with Japan”) covers only a very short stretch of a very large waterfront. Responding to the rising power of China and India (or responding to the failure of one or both to rise and to stabilize) is a big job. A new Asian framework has to be created, and while the United States neither can nor should seek to control this development, Asia is unlikely to find a stable geopolitical framework without a great deal of American engagement: political, military and economic. It is likely that U.S. involvement with Africa will also deepen in coming decades. Energy needs and investments will entangle the United States with the fate of Nigeria and other West African states; the rise of African Christianity and the growing political, cultural and moral ties between American Christians and their African counterparts is likely to add to the strong currents that already favor deeper American commitment to the economic, social and political development of this emerging but still troubled continent. The engagement of the American people with the rest of the world is going to continue to deepen and grow. Economic, religious, humanitarian, social and political engagements and commitments made by American business, American religious groups, secular civil society organizations, and the need for closer intergovernmental coordination over a variety of transnational issues continually press American foreign policy toward a closer engagement than Jeffersonians want; this is unlikely to change any time soon.

**—AT: Perpetual War**

**We aren’t stupid — internal checks stop endless war**

Allen **Buchanan 7**, Professor of Philosophy and Public Policy at Duke, 2007 (Preemption: military action and moral justification, pg. 128)

The intuitively plausible idea behind the 'irresponsible act' argument is that, other things being equal, **the higher the stakes in acting and in particular the greater the moral risk, the higher are the epistemic requirements for justified action. The decision to go to war is generally a high stakes** decision par excellence and the moral risks are especially great, for two reasons. First, unless one is justified in going to war, one's deliberate killing of enemy combatants will he murder, indeed mass murder. Secondly, at least in large-scale modem war, it is a virtual certainty that one will kill innocent people even if one is justified in going to war and conducts the war in such a way as to try to minimize harm to innocents. Given these grave moral risks of going to war, quite apart from often substantial prudential concerns, some types of justifications for going to war may simply be too subject to abuse and error to make it justifiable to invoke them. The 'irresponsible act' objection is not a consequentialist objection in any interesting sense. It does not depend upon the assumption that every particular act of going to war preventively has unacceptably bad consequences (whether in itself or by virtue of contributing lo the general acceptance of a principle allowing preventive war); nor does it assume that it is always wrong lo rely on a justification which, if generally accepted, would produce unacceptable consequences. Instead, the "irresponsible act' objection is more accurately described as an agent-centered argument and more particularly an argument from moral epistemic responsibility. **The 'irresponsible act' objection to preventive war is highly plausible if— but only if—one assumes that the agents who would invoke the preventive-war justification are, as it were, on their own** in making the decision to go to war preventively. In other words, the objection is incomplete unless the context of decision-making is further specified. Whether the special risks of relying on the preventive-war justification are unacceptably high will depend, *inter alia,* upon whether **the decision-making process includes effective provisions for redu­cing those special risks**. Because the special risks are at least in significant part epistemic—due to the inherently speculative character of the preventive war-justification—the epistemic context of the decision is crucial. Because **institutions can improve the epistemic performance of agents,** it is critical to know what the institutional context of the preventive-war decision is, before we can regard the 'irresponsible agent' objection as conclusive. Like the 'bad practice' argument, this second objection to preventive war is inconclusive because it does not consider— and rule out—the possibility that **well-designed institutions for decision-making could address the problems that would otherwise make it irresponsible for a leader to invoke the preventive-war justification.**

**2AC Ban T**

**Restriction is a limitation**

STATE OF **ARIZONA**, Appellee, **v.** JEREMY RAY **WAGNER**, April 10, **2008**, Filed, Appellant., 1 CA-CR 06-0167, 2008 Ariz. App. Unpub. LEXIS 613, opinion by Judge G. MURRAY SNOW

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

**In the area of refers to a certain scope**

Elizabeth **Miura 12**, China Presentation, prezi.com/tccgenlw25so/chin165a-final-presentation/

"**in the area of" refers to a certain scope**

**Schlag**

1. **The neg must connect their alternative to policy concerns and institutional practices—absent these questions shifts in knowledge production are useless – governments’ obey institutional logics that exist independently of individuals and constrain decisionmaking**

**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."

**Obviously the plan doesn’t happen, a debate over whether it should is productive — portable skills from government analysis stops oppression**

**Tonn, Professor – Communication – Maryland,** **5**

**(Taking Conversation, Dialogue, and Therapy Public, Rhetoric & Public Affairs 8.3, 405-430)**

To be sure, certain conventional boundaries between public and private forms of communication and problem solving are artificial; deliberation over facts, values, and courses of action **inherent in essentially all human decision making, whether it be over foreign policy or navigating daily life.** So, too, some rhetorical scholars, myself included, have noted that some rhetors may mobilize oppressed or politically disaffected constituencies by transferring certain communication skills acquired in the private sphere into the public domain, especially if the rhetor's aims entail transforming disempowered audiences into confident and skilled political actors. In fact, Campbell's treatment of the "rhetoric of conversation" in the talk of three historical female figures greatly mirrors the consciousness-raising that she earlier analyzed in the women's liberation movement.28

**Interaction with institutional logics is key – we exist in a complex social field – privilege collective action that accounts for existing structures**

**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’.

**Focus on the local disempowers resistance**

**Gelber, IR Professor at South Wales, ’95 (Kath, “Review of The Will to Violence: The Politics of Personal Behaviour” Green Left Weekly)**

The Will to Violence presents a powerful and one-sided critique of the forces which enable violence between individuals to occur. Violence between individuals is taken in this context to mean all forms of violence, from personal experiences of assault to war. Kappeler's thesis is that violence in all these cases is caused in the final instance by one overriding factor -- the individual choice to commit a violent act. Of course, in one sense that is true. Acknowledging alternative models of human behaviour and analyses of the social causes of violence, Kappeler dismisses these as outside her subject matter and exhorts her readers not to ignore the “agent's decision to act as he [sic] did”, but to explore “the personal decision in favour of violence”. Having established this framework, she goes on to explore various aspects of personal decisions to commit violence. Ensuing chapters cover topics such as love of the “other”, psychotherapy, ego-philosophy and the legitimation of dominance. However, it is the introduction which is most interesting. Already on the third page, Kappeler is dismissive of social or structural analyses of the multiple causes of alienation, violence and war. She dismisses such analyses for their inability to deal with the personal decision to commit violence. For example, “some left groups have tried to explain men's sexual violence as the result of class oppression, while some Black theoreticians have explained the violence of Black men as a result of racist oppression”. She continues, “The ostensible aim of these arguments may be to draw attention to the pervasive and structural violence of classism and racism, yet they not only fail to combat such inequality, they actively contribute to it” [my emphasis]. Kappeler goes on to argue that, “although such oppression is a very real part of an agent's life context, these `explanations' ignore the fact that not everyone experiencing the same oppression uses violence”, i.e. the perpetrator has decided to violate. Kappeler's aim of course was to establish a framework for her particular project: a focus on the individual and the psychological to “find” a cause for violence. However, her rejection of alternative analyses not only as of little use, but as actively contributing to the problem, frames her own thesis extremely narrowly. Her argument suffers from both her inability, or unwillingness, to discuss the bigger picture and a wilful distortion of what she sees as her opponents' views. The result is less than satisfactory. Kappeler's book reads more as a passionate plea than a coherent argument. Her overwhelming focus on the individual, rather than providing a means with which to combat violence, in the end leaves the reader feeling disempowered. After all, there must be huge numbers of screwed up and vengeful people in the world to have chosen to litter history with war, environmental destruction and rape. Where do we go from here? Those lucky enough to have read Kappeler's book are supposed to “decide not to use violence ourselves”. A worthy endeavour, but hardly sufficient to change the world.

**Debating policy strategies against detention mobilizes the public**

**Cole 12, Professor of Law**

[2012, David Cole is a Professor of Law, Georgetown University Law Center, “Legal Affairs: Dreyfus, Guantanamo, and the Foundation of the Rule of Law, 29 Touro L. Rev. 43]

Moreover, **while district courts exercising habeas corpus jurisdiction initially ruled in favor of the detainees** in the large majority of cases they heard, **the United States Court of Appeals for the D.C. Circuit has consistently sided with the government on its appeals, and has eased the government's burden to demonstrate that a detainee is lawfully held**. n69 **The Supreme Court has repeatedly denied petitions for certiorari from these D.C. Circuit decisions**. n70 Meanwhile, **the Supreme Court's other post-9/11 national security decisions have all been decided in the government's favor.** n71 [\*54] The Court rejected two lawsuits seeking damages against Attorney General John Ashcroft for alleged unconstitutional detentions in the roundups that occurred in the wake of 9/11. n72 And the Court rejected a First Amendment challenge to the criminalization of pure speech advocating peace and human rights under the "material support" statute. n73 Th**e Court's record on protecting human rights**, in short, while better than in previous crises, **is mixed.** Moreover, most of the Bush administration's curtailments of its aggressive initiatives enumerated above were not ordered by a court. No court ordered the abandonment of the first torture memo, an end to extraordinary rendition, the suspension of the NSA warrantless wiretapping program, the release of the secret torture memos, or the closure of the CIA's black sites. n74 Approximately 600 men have been released from Guantanamo, but the vast majority was released without a court order, and none have been released under a non-appealable court order. **While several district courts have ordered the release of Guantanamo detainees, every time the administration has appealed** to the District of Columbia Circuit ("D.C. Circuit"), **it has prevailed**. n75 **No court ordered the administration to abandon the Article II Commander-in-Chief theory of uncheckable executive power**. Additionally, as noted above, when the D.C. Circuit ruled that international law did not play any role in constraining the president's detention authority, President Obama in effect objected that the court had granted him too much unchecked authority, and insisted that his actions were bound by international law. **What, then, caused the United States**, specifically the executive branch, **to change course**? In my view, **they were much the same sorts of forces that worked to vindicate Alfred Dreyfus**: **not the formal separation of powers, but informal nongovernmental resistance in the name of upholding the rule of law**. As in the Dreyfus affair, **this resistance took the form of individuals, acting on their own and [\*55] in association with others**, **speaking out, issuing critical reports, organizing protests, filing lawsuits, and generally challenging perceived abuses of power**. n76 As in the Dreyfus affair, **the media played a critical role, by disclosing secret rights abuses and writing countless editorials espousing the importance of adhering to the rule of law and the Constitution**. Were it not for leaks reported in the media, we would not know about the torture at Abu Ghraib, the torture memo, the NSA warrantless wiretapping program, secret CIA prisons, and extraordinary renditions to torture. In addition, international voices played a major role. Guantanamo, after all, held nationals from forty-two countries, and some of those countries objected strongly to the way their countrymen were treated there. A former United Kingdom Law Lord, Lord Steyn, dubbed Guantanamo a "legal black hole," and 175 members of the Houses of Parliament filed an amicus brief on the Guantanamo detainees' behalf in the Supreme Court. n77 Together, **these informal forces are responsible**, as much as the formal separation of powers, **for reining in the United States' "war on terror" in important ways**. What lessons, then, can we draw from the Dreyfus affair and the first post-9/11 decade? The first is that **the rule of law and individual rights are all too vulnerable to fear and demagoguery in times of crisis.** Designed to constrain short-sighted decision making by insisting on adherence to basic principles of fairness, constitutional rights often seem inconvenient obstacles in a crisis. For Dreyfus and many Arabs and Muslims after 9/11, **the law was initially unable to offer much**, if any, **protection**. But **both affairs** also **suggest that the rule of law is more resilient than many cynics might think**. Alfred Dreyfus was eventually exonerated. The rule of law recovered in significant measure from its hasty dismissal in the aftermath of the 9/11 terrorist attacks. However, in both instances, **the tide turned only because individuals, associations, and nongovernmental organizations [\*56] mobilized behind the cause of justice for the vulnerable**. **When it comes to the reality of rights protections, much depends on the mobilization of the polity.** But as the other "affair" under examination in this conference - the lynching of American Jewish businessman Leo Frank - chillingly demonstrates, popular mobilization can go either way. n78 When, in 1915, Georgia's governor commuted Frank's death sentence for murder to life without imprisonment, based on substantial concerns with the fairness of the trial and the accuracy of the verdict, a mob gathered, abducted Frank from his cell, and lynched him. n79 **Popular mobilization** does not always take the side of human rights, and it **can easily overwhelm legal bulwarks** through brute force and terror. Precisely because **they help to establish and reinforce a culture of respect for equality and the rule of law**, **the assessments and reassessments of the "Dreyfus affair" that continue to this day in France are critically important for sustaining contemporary commitments to the rule of law. The fact that the case has become an "affair**," a narrative widely known, exhaustively studied, and frequently invoked is crucial, for the history of the "affair" **reminds us of what can go wrong when we depart from principles of fairness and justice**. **Whether the story of the United States' response to 9/11 will similarly become an "affair" from which the U**nited **S**tates **and others draw lessons about resisting the temptation to sacrifice our fundamental commitments** on the backs of the most vulnerable, **remains to be seen**. As was the case with Dreyfus for many years, the particular lessons to be drawn from the post-9/11 era are a matter of deep contestation. President Bush, Vice-President Cheney, and their supporters have sought to portray their actions as tough, but necessary and reasonable, decisions to recalibrate security and liberty. n80 Others, myself included, have insisted that the principal lesson [\*57] of the first post-9/11 decade is that sacrifices in the rule of law are all too easy to make, generally unnecessary, and come at a great cost to the legitimacy and long-term success of a democracy's struggle against terrorism. **The fact that Guantanamo has become one of the world's leading symbols for "lawlessness" suggests that the latter narrative has taken hold**, at least in the rest of the world. **The struggle over its meaning within the United States**, however, **continues**. n81 **At stake is nothing less than the nature of our constitutional culture**. **Whether**, after the next attack, **we repeat our mistakes or respond in a more resilient and rights-respecting manner depends ultimately on the lessons we learn as a nation from our recent past. Those who are committed to the protection of civil liberties and the rule of law must continue to work to ensure that the "Guantanamo affair" takes on the character of the "Dreyfus affair" in popular consciousness**. At the end of the day, **the strength of our legal protections turns on our culture's engaged commitment to the values of the Constitution, the rule of law, and human rights.**

**Judicial restrictions are effective — mere possibility constrains the executive and mobilizes the public — majoritarian politics fail**

**Cole 2011** - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

D. The Role of Politics **The force of ordinary electoral politics also cannot account for the shift in U.S. counterterrorism policy. None of the Bush administration's** initial **initiatives sparked majoritarian opposition**. To the contrary, [\*1244] President **Bush**, who had very low approval ratings shortly before 9/11, **shot up in popularity when he declared the "war on terror,"** and was reelected in 2004, in large measure on his promise to deliver security. n235 **Apart from opposition to the war in Iraq, there was little widespread popular pressure on President Bush to rein in his security initiatives**. Despite this evidence, Eric Posner and Adrian Vermeule have argued that in the modern era, political checks are all there are when it comes to restraining executive power. n236 They maintain that Congress, the courts, and the law itself cannot effectively constrain the executive, especially in emergencies, but that this need not concern us because the executive is adequately limited by political forces. **At first blush, the past decade might appear to vindicate Posner and Vermeule's views**, as political forces, broadly speaking, seem to have been at least as effective at checking the President as were Congress or the judiciary. n237 But **there is in fact little evidence that electoral politics or majoritarian sentiment played much, if any, role in persuading President Bush to ratchet back his security initiatives.** While **formal judicial and legislative checks cannot tell the whole story, the alternative account is not "politics**" as Posner and Vermeule define and describe it, **but a much more complex interplay of civil society, law, politics, and culture:** what I have called "civil society constitutionalism." [\*1245] In my view, **Posner and Vermeule** simultaneously **underestimate the constraining force of law and overestimate the influence of political limits** on executive overreaching. Sounding like Critical Legal Studies adherents, **they sweepingly claim that law is so indeterminate and manipulable as to constitute only a "façade of lawfulness."** n242 But in assessing law's effect, they look almost exclusively to formal indicia--statutes and court decisions. n243 **That approach disregards the role that law plays without coming to a head in a judicial decision** or legislative act. As the post-9/11 period illustrates, **when law is reinforced and defended by civil society institutions, it can have a disciplining function long before cases reach final judgment,** and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest. n244 **Executive officials generally cannot know in advance whether their actions will attract the attention of civil society watchdogs, or lead to court review.** **They** often **cannot know whether such oversight**--whether by a court, a legislative committee, or a nongovernmental organization--**will be strict or deferential. As long as there is some risk of such oversight, the resultant uncertainty itself is likely to have a disciplining effect on the choices they make**. There are, in short, plenty of reasons why executive lawyers generally take legal limits seriously. They take an oath and are acculturated to do so. They know that claims of illegality can undermine their objectives. And they cannot predict when a legal claim will be advanced against them. Similarly, in focusing exclusively on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress's legal oversight role plays through means short of formal statutes, such as by holding hearings, launching investigations, requesting information about doubtful executive practices, or restricting federal expenditures. **The effectiveness of these checks, moreover, will often turn on the strength of civil society**. **If there are significant watchdogs in the nongovernmental sector and/or the media focused on executive actions, ready to bring allegedly illegal conduct to public attention, the law will have substantial deterrent effect, with or without actual court decisions.** While they are overly skeptical about law, **Posner and Vermeule are unrealistically romantic about the constraining force of majoritarian politics. The political checks they identify consist solely of the fact that Presidents must worry about election returns, and must cultivate** [\*1246] credibility and **trust** among the electorate. n245 There are several reasons to doubt that these political realities are sufficient to guard against executive overreaching. First, and most fundamentally, **while the democratic process is well designed to protect the majority's rights** and interests, **it is poorly designed to protect the rights of minorities, and not designed at all to protect the rights of foreign nationals**, who have no say in the political process. n246 **In times of crisis, the executive nearly always selectively sacrifices the rights of foreign nationals**, often defending its actions by claiming that "they" do not deserve the same rights that "we" do. n247 To say the law is superfluous because we have elections is to relegate foreign nationals, and minorities generally, to largely unchecked abuse. Second, **the ability of the political process to police the executive is hampered by secrecy. Much of what the executive does, especially in times of crisis, is secret, and even when some aspects of executive action are public, its justifications often rest on grounds that are** assertedly **secret**. n248 Courts and Congress have at least some ability to pierce that veil and to insist on accountability. Absent legal rights, such as those created by the Freedom of Information Act, the general public has virtually no ability to do so. n249 Third, **the electoral process is a blunt-edged sword**. Presidential **elections occur only once every four years, and congressional elections every two** years. **Congressional elections** will often **involve an unpredictable mix of local and national matters, and there is little reason to believe they will concentrate on executive overreaching**. **Presidential elections** also inevitably **encompass a broad range of issues, most of which will have nothing to do with security** and liberty. **Elections are** therefore **unlikely to be effective at addressing specific abuses of power**. Voters' **concerns about abstract institutional issues s**uch as executive power may **clash with their interests on the substantive merits of particular issues, such as whether to use military force in support of Libyan rebels**. There is no guarantee that citizens will separate these issues in their minds, and no reason to believe that if they do so, they will favor abstract institutional concerns over specific policy preferences at the ballot box. [\*1247] Fourth, **the political process is notoriously focused on the short term**, while **constitutional rights and separation of powers generally serve long-term value**s. n250 **It was precisely because ordinary politics tend to be shortsighted that the framers adopted a constitutional democracy**. The Constitution identifies those values that society understands as important to preserve for the long term, but knows it will be tempted to sacrifice in the short term. n251 **If ordinary politics were sufficient to protect such values, we would not need a constitution in the first place**. Thus, there is little evidence in fact that majoritarian politics played a significant checking role in the aftermath of 9/11, or that such politics would generally be a sufficient checking force in times of crisis. And more generally, **there is little reason to believe that political checks will be sufficient to restrain presidential abuse**. The story is infinitely more complicated. As I have sought to illustrate here, in the aftermath of 9/11, the interplay of law, politics, and culture, framed and prompted by civil society organizations, was critical to rendering effective constitutional and international legal checks.

**2AC Fluck**

**Their epistemology K is flawed – social constructions are knowable – they pre-exist individuals and constrain action in predictable ways – prefer the specificity of the aff to broad philosophical indictments**

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

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

**Util**

**Nuclear war comes first**

**Kateb**, Professor of Politics at Princeton University, ‘**92** (George, “The Inner Ocean” p 111-112)

Schell's work attempts to force on us an acknowledgment that sounds far-fetched and even ludicrous, an acknowledgment hat **the possibility of extinction is carried by any use of nuclear weapons, no matter how limited** or how seemingly rational or seemingly morally justified. He himself acknowledges that there is a difference between possibility and certainty. But in a matter that is more than a matter, more than one practical matter in a vast series of practical matters, **in the "matter" of extinction, we are obliged to treat a possibility**-a genuine possibility-**as a certainty. Humanity is not to take any step that contains even the slightest risk of extinction**. The doctrine of no-use is based on the possibility of extinction. Schell's perspective transforms the subject. He takes us away from the arid stretches of strategy and asks us to feel continuously, if we can, and feel keenly if only for an instant now and then, how utterly distinct the nuclear world is. Nuclear discourse must vividly register that distinctiveness. **It is of no moral account that extinction may be only a slight possibility**. No one can say how great the possibility is, but **no one has yet credibly denied that by some sequence or other a particular use of nuclear weapons may lead to human and natural extinction. If it is not impossible it must be treated as certain: the loss signified by extinction nullifies all calculations of probability as it nullifies all calculations of costs and benefits**. Abstractly put, **the connections between any use of nuclear weapons and human and natural extinction are several**. Most obviously, **a sizable exchange** of strategic nuclear weapons **can**, by a chain of events in nature, **lead to the earth's uninhabitability**, to "nuclear winter," or to Schell's "republic of insects and grass." But the consideration of extinction cannot rest with the possibility of a sizable exchange of strategic weapons. It cannot rest with the imperative that a sizable exchange must not take place. **A so-called tactical or "theater" use, or a so-called limited use, is also prohibited absolutely, because of the possibility of immediate escalation into a sizable exchange** or because, even if there were not an immediate escalation, **the possibility of extinction would reside in the precedent for future use** set by any use whatever in a world in which more than one power possesses nuclear weapons. **Add other consequences: the contagious effect on nonnuclear powers who may feel compelled by a mixture of fear and vanity to try to acquire their own weapons, thus increasing the possibility of use** by increasing the number of nuclear powers; and the unleashed emotions of indignation, retribution, and revenge which, if not acted on immediately in the form of escalation, can be counted on to seek expression later. Other than full strategic uses are not confined, no matter how small the explosive power: **each would be a cancerous transformation of the world. All nuclear roads lead to the possibility of extinction**. It is true by definition, but let us make it explicit: the doctrine of no-use excludes any first or retaliatory or later use, whether sizable or not. No-use is the imperative derived from the possibility of extinction. By containing the possibility of extinction, **any use is tantamount to a declaration of war against humanity. It is not merely a war crime or a single crime against humanity. Such a war is waged by the user of nuclear weapons against every human individual as individual** (present and future), not as citizen of this or that country. It is not only a war against the country that is the target. To respond with nuclear weapons, where possible, only increases the chances of extinction and can never, therefore, be allowed. The use of nuclear weapons establishes the right of any person or group, acting officially or not, violently or not, to try to punish those responsible for the use. The aim of the punishment is to deter later uses and thus to try to reduce the possibility of extinction, if, by chance, the particular use in question did not directly lead to extinction. The form of the punishment cannot be specified. Of course the chaos ensuing from a sizable exchange could make punishment irrelevant. The important point, however, is to see that **those who use nuclear weapons are qualitatively worse than criminals**, and at the least forfeit their offices. John Locke, a principal individualist political theorist, says that in a state of nature every individual retains the right to punish transgressors or assist in the effort to punish them, whether or not one is a direct victim. Transgressors convert an otherwise tolerable condition into a state of nature which is a state of war in which all are threatened. Analogously, **the use of nuclear weapons**, by containing in an immediate or delayed manner the possibility of extinction, **is** in Locke's phrase **"a trespass against the whole species" and places the users in a state of war with all people**. **And people**, the accumulation of individuals, **must be understood as of course always indefeasibly retaining the right of selfpreservation**, and hence as morally allowed, perhaps enjoined, to take the appropriate preserving steps.

**State=Legit**

**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.

**War turns structural violence**

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

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

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

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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.

**Perm – do the aff in the MINDSET of the alt -- we solve the worst excesses — judicial constraints stop repression**

Colm **O’Cinneide 8**, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The **structural factors** discussed above **that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes**.¶ **However**, certain **legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle**. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, **judicial** and transnational **mechanisms** are now in place that appear to **have some** moderate **‘dampening’ effect on the application of emergency powers.**¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. **Legal processes can provide an avenue of political opportunity and mobilisation** in their own right, **whereby the** ‘relatively autonomous’ **framework of a legal system can be used to moderate the impact of the cycle of repression and backlash**. They also suggest that **this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression**.[113] **State responses** that have been **subject to this dampening effect may** have more legitimacy and **generate less repression**: the need for mobilisation in response may therefore also be diluted.

**Our demand for habeas stops extermination even if it fails**

**Ahmad 9, Professor of Law**

[2009, Muneer I. Ahmad is a Clinical Professor of Law, Yale Law School, “RESISTING GUANTÁNAMO: RIGHTS AT THE BRINK OF DEHUMANIZATION”, Northwestern University Law Review, Vol. 103, p. 1683, American University, WCL Research Paper No. 08-65] we do not endorse gendered language

Rights as Resistance.—**Habeas corpus**, whose history has been explored exhaustively by others,297 **translates as ―show me the body,‖ and captures the communitarian, corporeal, and testimonial dimensions of not just rights claims**, but citizenship. **For a judge to order the government to produce a defendant for the purposes of considering the legality of his detention is to recognize the defendant‘s a priori membership in the community**. **To require that the defendant himself—his corpus—be produced**, and not just reasons for his detention proffered, **is to acknowledge the physicality and inescapably human experience of an otherwise abstract liberty interest**. And **to permit the defendant to not only attend his own hearing, but to speak on his own behalf, is to credit his standing as an actor and agent.** Taken together, **the communitarian, corporeal, and testimonial bespeak a shared concern: human dignity**. It is this human dignity, the human as distinguished from the merely biological, with which Arendt was fundamentally concerned. For Arendt, **rights are indispensable to humanity, a protective membrane poised between the state and the individual**. **What she saw, and** Giorgio **Agamben** **has recently revived**,298 is **the idea that a confrontation between the state and the individual unmediated by rights reduces the individual to bare life, or naked life**,299 whic**h is life without humanity**. **It is this unmediated, unmitigated confrontation that both requires and enables the rendering of the human inhuman, animal, and savage**.300 **It is this rights-free confrontation that permits torture**—**the hand of the state encumbered by no law other than the laws of physics**. And it **is this unmediated confrontation that permits the transmogrification of a child into a terrorist.** For Arendt, **to be a citizen is to be human, and to be anything else is** merely, and **barely, life**. The conception of rights as a bare protection interposed between the individual and state violence is intuitively familiar to the anti-death penalty advocate301 and to criminal defense lawyers generally. But the American legal embodiment of citizenship as rights is Dred Scott.302 While Scott was suing for his freedom from slavery, the case turned upon his citizenship. The Supreme Court found that Scott was not a ―citizen of a State,‖ and therefore, under the jurisdictional limits of Article III of the Constitution, could not bring suit in federal court.303 Thus, the case removed Scott‘s right even to be heard, by removing him from the polity. **Like the Guantánamo prisoners, he had no right to have rights, and the negation of his political citizenship condemned him to the unmitigated violence of slavery**. **The denial of habeas to Omar and the other prisoners similarly placed them outside the communitarian consent that rights require.** **This expulsion from the polity authorizes the expulsion from humanity that torture represents**. Here, we must remember that **this expulsion was prefigured by the state iconography that placed the prisoners outside the realm of human understanding**, **and therefore outside of humanity itself**.304 **Stripped of the mediation of rights, Guantánamo reveals the essential and inescapable violence of law.** **Politics may dictate who is entitled to mediation and what form it will take**, but **all are subject to the force of the state that**, fundamentally, **animates law. The demand for rights is a plea to blunt state force, and not to** fundamentally **reorganize the structure of power**. With this understanding of rights in mind, I return to the litigation strategy we adopted in Omar‘s case. **By invoking rights, we sought recognition of Omar in a polity of significance.** In this way, **rights hailed Omar into the community**, though his admission would depend upon community consent. As Arendt‘s analysis suggests, **the demand for recognition is tantamount to a claim to humanity**. **To be human**, to rise above biological existence and to secure political and social life, **requires rights**. And yet, **once more, this bid was subject to political forces. No amount of rights-claiming could overcome a political will to deny the prisoners‘ humanity.** In light of this, **our strategy can be understood in a third way: rights as resistance.** By this account, **the rights claim sought not to escape the violence of the state, but to make that violence more costly to the state**. **To continue its brutal regime at Guantánamo, the government first would have to do violence to rights**; to lay its hands on Omar again, **the state would have to crash through his rights claims. Rather than avoid the state‘s confrontation with the individual, this strategy seeks to expose it**. **The onus** then **shifts from the prisoner trying to establish the existence of rights to the state establishing their nonexistence, from the individual establishing harm done to the state justifying its own violence**. In some respects, **this strategy has worked.** **So long as it could avoid any discussion of Guantánamo, as it long attempted to do, the government could enact violence without political cost**. But **rights claims force the government into discourse in which the violence of the state is put on display and must be justified.** **The claim of rights itself may interpose a membrane between the state and the individual even if the right itself ultimately is found not to exist.** Thus, **our rights-based strategy could be understood as interposing a protective membrane between Omar and the state**. In this way, we wanted to mediate, and moderate, the relationship between the state and Omar, with the hope of ultimately transforming the relationship from one of potentate and biological mass to one more recognizable as warden and prisoner. **This was a form of resistance to Omar‘s mistreatment, which required the state either to stop its violence or to engage in it in the public forum of the court**. **This approach had some success, as the worst of the mistreatment of Omar and the other prisoners stopped once the government was forced to grapple with it in the daylight of federal court**.305 And yet, Omar‘s other fundamental material conditions—indefinite detention, and trial before a substandard tribunal—remained the same, just as the fundamentals of Guantánamo have remained largely the same for the hundreds of other prisoners. At the end of the day, I believe our approach has not proven more successful because the fundamental question of political citizenship has not been resolved in the prisoners‘ favor, and as I have argued, the success of even first-order rights depends upon a priori political membership. When I have rehearsed these arguments for others, particularly lawyers, the response I have often gotten is that we did the best that we could, and that there was no alternative. To argue the existence of rights, and to do so forcefully, is to fulfill the professional obligation of a lawyer. But this strikes me as too weak a conception of professional obligation. I believe that the **rights-based approach** has been worthy and necessary, but not merely because it was a form of last-resort lawyering. Rather, the rightsbased lawyering **has performed an essential role of mounting resistance to the unbridled exercise of state violence, essential not because there is nothing else to be done, but because of the opportunities and potentialities that resistance creates**. **This is consistent with what Scott Cummings has termed ―constrained legalism,‖ 306 for it capitalizes on what law can accomplish, even as it recognizes what law cannot.**

**Detention legal strategies make political movements effective—utilizing the courts brings national attention and leads to policy changes**

**Lobel 4, Professor of Law**

[December 2004, Jules Lobel is a Professor of Law, University of Pittsburgh Law School, “Courts as Forums for Protest”, 52 UCLA L. Rev. 477]

[\*556] **I conclude with a discussion of the litigation brought on behalf of the prisoners being held by** the United States **at Guantanamo** Bay, Cuba. **This** important litigation **fits comfortably within the courts as forums for protest model, and illustrates many of the insights** and contradictions **of the model.** In early 2002, the CCR challenged the Bush Administration's detention of suspected Taliban and Al Qaeda prisoners at Guantanamo Bay without affording them the protections or rights mandated by the Geneva Convention and human rights norms. n375 At the time, many individuals and organizations were timid about openly challenging the administration's antiterrorism policies. n376 Moreover, a case on behalf of the Guantanamo detainees presented a particularly difficult context to challenge the administration. These prisoners had been captured in and around Afghanistan as part of a popular war effort. The memory of September 11 was fresh in people's minds. The government claimed that what it was doing at Guantanamo was necessary to defend American national security and prevent future terrorist attacks, a claim that resonates particularly strongly with the courts. Most important, Johnson v. Eisentrager, n377 decided by the Supreme Court in 1950, held that nonresident enemy aliens, after being convicted of war crimes by a military tribunal (detained by the U.S. government outside of U.S. territory) had no right or privilege to avail themselves of the jurisdiction of a U.S. court to challenge their detentions. **While the legal and political climate was bleak**, **the CCR attorneys believed that Johnson was distinguishable and that it was possible to win in court. The CCR decided to take the risk.** n378 The government's position was in clear violation of the Geneva Convention as well as due process and was in effect saying that no law applied to these detainees. But **the CCR's objective** [\*557] **went beyond winning or losing in court. Its objective was to demonstrate that there was resistance to U.S. policy, to help publicize the injustice to, and plight of, the detainees, to keep the issue of the detainees in the public mind, and to use the case as part of a broader political movement against the administration's antiterrorism policies**. **The decision to litigate was not based on whether the CCR attorneys thought the litigation had a good chance of winning in court.** **The CCR first filed a complaint with the Inter-American Commission of Human Rights** of the Organization of American States, **which ruled that the Guantanamo prisoners may not be held "entirely at the unfettered discretion of the United States government**," **and that the government must accord those prisoners a hearing to determine their legal status**. n379 **The Bush Administration** predictably **refused to comply with the Commission's ruling**. Indeed, given the certainty that the administration would not comply with any unfavorable Commission ruling, **the purpose of the complaint was to obtain an authoritative ruling, and to use that ruling to mobilize international and domestic public opinion against the administration's Guantanamo policies.** The CCR also brought a federal lawsuit on behalf of several of the detained prisoners. The federal district court, and then the U.S. Court of Appeals for the District of Columbia Circuit, ruled unanimously in the government's favor. n380 Nonetheless, the CCR persisted, and the Supreme Court decided in November 2003 to hear its appeal. n381 The Guantanamo case had an impact even before the Supreme Court handed down its June 2004 decision reversing the court of appeals. **For over two years, the case helped keep the outrageous Guantanamo situation in the public eye and galvanized international protest.** News reports sparked outrage at keeping the detainees in what British judges termed a "legal black hole." n382 **Amicus briefs** submitted to the Supreme Court **from former federal judges, former senior American diplomats, former American POWs, former Judge Advocates General of the Navy and top Marine Corps lawyers, the Bar Association representing the fifty-four nations of the former British Commonwealth, and the International Bar Association reflected and fanned [\*558] the widespread protest against the U.S. Guantanamo policy**. n383 **That protest, combined with Supreme Court review, compelled the administration to release a number of the prisoners, even before the Supreme Court announced its decision. n384** The question the case presented to the Supreme Court was narrow and involved only whether federal courts have jurisdiction to consider the detention of foreign nationals captured abroad and held at Guantanamo Bay. n385 Thus, **at that stage of the litigation, the specific relief being requested of the Court was minimal** (although the implications of the Court grant of that relief are significant), namely, a holding that federal courts have jurisdiction to hear plaintiffs' habeas petitions. On remand, the district court will determine what rights the plaintiffs have, and to what process they are entitled. Because the issue before the Court was solely jurisdictional, **the plaintiffs were able to obtain a ruling articulating the basic norm that executive detentions**, even in wartime, **cannot be lawless**. Yet because the issue was framed jurisdictionally, neither the plaintiffs nor the Court had to grapple immediately with the exact contours of the plaintiffs' rights and the potential remedies to which they may be entitled. **The Supreme Court's assertion of jurisdiction to hear the case is a tremendous victory. It articulates and gives meaning to a fundamental constitutional principle: that executive detentions of prisoners outside the United States cannot operate entirely outside the law** or without some legal process. While the Court's decision addresses only the applicability of the writ of habeas corpus to the detention of prisoners at Guantanamo Bay, Cuba, the implications of the Court's holding are broad; as Justice Scalia correctly notes in his dissent, the Court's decision potentially applies to prisoners held by the military in other places. Moreover, while the Court merely asserted federal court jurisdiction to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing, footnote fifteen of Justice Stevens' majority opinion states that the plaintiffs' claims "unquestionably describe "custody in violation of the Constitution or laws or treaties of the United States.'" n386 That footnote, in which Justice Stevens cities Justice Kennedy's concurrence in United States v. Verdugo-Urquidez, n387 [\*559] clearly indicates that on the merits, the plaintiffs have constitutional due process rights which a court must recognize. **The Court's mere assertion of jurisdiction in the Guantanamo case has dramatically affected governmental conduct**. Indeed, **the Supreme Court's decision to hear the Guantanamo case had a strong impact** on the government's behavior even before the Court announced its ruling, **leading to the release of many prisoners and** Secretary of Defense **Rumsfeld's decision that some process would be established to determine whether a prisoner should continue to be detained**. n388 Only eight days after the Supreme Court's decision, **the Department of Defense announced that procedures to inform the Guantanamo prisoners of their rights and to review their detention would be implemented.** n389 The government has thus moved quickly to establish some due process for the prisoners, although the prisoners' lawyers have severely criticized that process and seek hearings before federal district courts. Therefore, the process owed plaintiffs will be back before the courts fairly quickly. Finally, the Guantanamo case also illustrates the limitations of litigation to transform the public dialogue. For some of the lawyers at the CCR, the most fundamental issue involved in the case is the Executive's use of the wartime paradigm to detain and prosecute people who should be prosecuted under civilian law. These attorneys would want to challenge whether the "war against terrorism" truly fits within the definition of a war, or whether Al Qaeda should be treated as a criminal conspiracy and its members prosecuted under ordinary civilian law. n390 But a challenge in the Guantanamo case to whether the war against Al Qaeda is really a war for constitutional or international purposes would have little chance of success in the courts. n391 Therefore, these attorneys [\*560] are relegated to making that more fundamental point in their public speaking about the case, and not in court. However, **the filing and the arguing of the case at its various stages has resulted in a large amount of publicity in the United States and abroad**, **resulting in pressure on the government to discontinue this lawless policy.** **Such publicity**

**can have various effects throughout society**. **It can encourage people to engage in discussion about their views on that particular situation. It can generate support for the movements advocating the various sides of the issue.** **It could even result in bringing new financial resources, and organizational or legal talent, to the movement**. Thus, movement attorneys should realize that **litigation and publicity should go together hand in hand as part of an overall strategy that will result in eventual success**, **even if that success is temporarily delayed by defeats in the courts.** The Guantanamo litigation is but a recent example of the long tradition in this country of using courts as one arena of protest. That case started as a lonely protest against an illegal government policy. **The case was originally viewed as hopeless by most legal observers and rejected by the lower courts**. Many observers might even initially have said that no reasonable lawyer could have any hope for success. **The publicity and international outrage surrounding the Guantanamo policy helped force the Supreme Court to take the case seriously and eventually rule for the plaintiffs**. Yet **the fundamental lesson of the Guantanamo case is not to be found in the important Supreme Court victory, but in the decision of a dedicated group of lawyers to litigate the case in order to protest the administration's policy despite the seemingly difficult odds of success.** Conclusion The courts as forums for protest model differs from the traditional, private dispute standard on institutional reform, the two models traditionally described by legal scholars. The reduced emphasis on winning or losing and the lesser role of the judge are two features that distinguish this model from the others. Our nation has seen a long tradition of litigators and movements using the courts as platforms for arguing controversial positions and garnering public support for them. From the Revolutionary period, **through this country's struggle with the issues of slavery and women's suffrage, up until modern instances where private citizens and public officials have attempted to challenge governmental actions, our system's courts have been used as forums to stir debate by the citizenry.** [\*561] **Because of the importance of encouraging people to engage in discussion about current social issues, and because of the implications for freedom of speech, courts should not allow sanctions under Federal Rule of Civil Procedure** 11 **or other similar rules to stifle popular debate stirred by lawsuits that may be considered "frivolous" because they argue against precedent or are viewed as losing cases**. Bringing a lawsuit to generate publicity for one's cause should not be viewed as an improper purpose under Rule 11. **Under the Courts as Forums for Protest model, judges will** often **find themselves in a difficult position**: **they will be faced with a situation where legal precedent and social and political reality collide.** Though articulating a legal principle while deciding a case without enforcing that principle may seem problematic, **judges should feel comfortable doing so when it is necessary in order to encourage society and governmental actors to remedy an injustice** which otherwise will continue unchecked.