# 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**

**Scharf 13**, Professor Michael P. Scharf, PILPG Managing Director, John Deaver Drinko — Baker & Hostetler Professor of Law and Director of the Frederick K. Cox International Law Center at the Case Western Reserve University School of Law, BRIEF OF THE PUBLIC INTERNATIONAL LAW & POLICY GROUP AS AMICUS CURIAE IN SUPPORT OF PETITIONERS, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf

**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**

**Barnett 11** Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, Center for Naval Warfare Studies, U.S. Naval War College American military geostrategist and Chief Analyst at Wikistrat., worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” March 7 http://www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads

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/?](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**.

**Indefinite detention 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**

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#### Perm — do the aff and embrace democracy from the bottom up – resolves all their links by recognizing other nations as drivers of change but can be influenced by the U.S.

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 advocacy of democracy generates solidarity — the alt cause nuclear war and genocide

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

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

## 2AC AT: Bond

#### Schuette thumps

**Feder 9/2**

[Jody, Legislative Attorney, Banning the Use of Racial Preferences in Higher Education: A Legal Analysis of Schuette v. Coalition to Defend Affirmative Action, 9/2/13, <http://www.fas.org/sgp/crs/misc/R43205.pdf>]

In the more than three decades since the Supreme Court’s ruling in Regents of the University of California v. Bakke affirmed the constitutionality of affirmative action in public colleges and universities, many institutions of higher education have implemented race-conscious admissions programs in order to achieve a racially and ethnically diverse student body or faculty. Nevertheless, **the pursuit of diversity in higher education remains controversial**, **and** **legal challenges** **to** such **admissions programs routinely continue to occur.** Currently, **the Court is poised to consider a novel question** **involving affirmative action** in higher education **during its upcoming 2013-2014 term**. **Unlike earlier rulings**, in which the Court considered whether it is constitutional for a state to use racial preferences in higher education, the new case, **Schuette** v. Coalition to Defend Affirmative Action, **raises the question of whether it** **is constitutional** for a state **to ban** such **preferences in higher education**. Schuette arose in the wake of a pair of cases involving admissions to the University of Michigan’s law school and undergraduate programs. Although the Court struck down the undergraduate admissions program, it upheld the law school’s program in a decision that affirmed the constitutionality of the limited use of race-conscious admissions programs in public higher education. In the wake of the University of Michigan cases, opponents of affirmative action in Michigan successfully lobbied for the passage of Proposal 2, which amended the Michigan state constitution to prohibit preferential treatment on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. Opponents of Proposal 2 sued, and a federal appeals court ruled that Proposal 2’s ban on racial preferences in public education violates the equal protection clause of the United States Constitution. This decision was subsequently upheld in a divided ruling by the full court of appeals, sitting en banc, and **the Supreme Court will review the case during the upcoming term.**

#### So does public prayer

**Reuter 5/20**, <http://www.reuters.com/article/2013/05/20/us-usa-court-religion-idUSBRE94J0EW20130520>

(Reuters) - **Delving into the controversial relationship between government and religion, the** U.S. **Supreme Court** on Monday **agreed to consider whether a town** in New York **could allow** members of the public, who in practice were nearly all **Christian clergy, to open meetings with a prayer**.

Two residents sued [Greece](http://www.reuters.com/places/greece), New York, in 2008, saying it was endorsing Christianity, a violation of the U.S. Constitution's First Amendment guarantee of separation of church and state.

Susan Galloway and Linda Stephens said the vast majority of prayer-givers since the practice started in 1999 were Christian ministers. Attendees would often be asked to join in or bow their heads, they alleged.

The Supreme Court ruled in a 1983 case, Marsh v. Chambers, that legislative sessions could begin with a prayer in most circumstances, citing the "unique history" of the practice throughout U.S. history.

The new case gives the nine justices the opportunity to outline "neutral principles" that would allow government entities to hold prayers without violating the Constitution, said Marci Hamilton, a First Amendment expert at the Benjamin N. Cardozo School of Law in New York.

"The hard part for the court is drawing the boundary lines," she added, predicting a close vote among the justices. "I have no doubt it will be a 5-4 decision."

Despite the 1983 precedent, the 2nd U.S. Circuit Court of Appeals in New York ruled against the town. A district court had previously supported the town's position by dismissing the lawsuit filed by Galloway and Stephens.

#### And Hedges

Downing 9/3 [09/03/13, Larry Downing, “Supreme Court to rule on fate of indefinite detention for Americans under NDAA”, http://rt.com/usa/ndaa-scotus-hedges-suit-359/]

The United States Supreme Court is being asked to hear a federal lawsuit challenging the military’s legal ability to indefinitely detain persons under the National Defense Authorization Act of 2012, or NDAA. According to Pulitzer Prize-winning journalist Chris Hedges — a co-plaintiff in the case — attorneys will file paperwork in the coming days requesting that the country’s high court weigh in on Hedges v. Obama and determine the constitutionality of a controversial provision that has continuously generated criticism directed towards the White House since signed into law by President Barack Obama almost two years ago and defended adamantly by his administration in federal court in the years since. Should the Supreme Court reject the plaintiffs’ plea, Hedges said it could signal the “obliteration of our last remaining legal protections.” With the inking of his name to the annual Pentagon spending bill nearly two years ago, President Obama awarded his military the power to imprison persons suspected of ties to terrorist groups until the vaguely-defined “end of hostilities.” Journalists and human rights workers were among those to immediately oppose the Dec. 31, 2011 signing of the NDAA — and one provision in particular, Section 1021(e) — because they said the US government could manipulate the law in order to detain anyone alleged to have “substantially supported” a group that’s considered an enemy of America, without trial, until the end of persistent and consistently expanding warfare.

### 2AC Theory False

#### Judges don’t consider capital when deciding.

Landau, JD Harvard and clerk to US CoA judge, 2005

(David Landau, JD Harvard Law, clerk to Honorable Sandra L. Lynch, U.S. Court of Appeals for the First Circuit, 2005, “THE TWO DISCOURSES IN COLOMBIAN CONSTITUTIONAL JURISPRUDENCE: A NEW APPROACH TO MODELING JUDICIAL BEHAVIOR IN LATIN AMERICA” 37 Geo. Wash. Int'l L. Rev. 687)

Theoretically, attitudinalists could argue that judges rule in accordance with their own ideological preferences honestly, rather than strategically, because for some reason judges simply are not capable of, or prefer not to, act strategically. In practice, however, this is not what they say. Attitudinalists instead say that the factual environment renders strategic action unnecessary, at least for U.S. Supreme Court justices, because, for example, federal judges have life tenure, U.S. Supreme Court justices have no real ambition for higher office, and congressional overrides are rarely a realistic danger. [n25](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n25) "The Supreme Court's rules and structures, along with those of the American political system in general, give life-tenured justices  [\*696]  enormous latitude to reach decisions based on their personal policy preferences." [n26](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n26) In other words, both strategic and attitudinal models, in practice, assume that judges are willing and able to act strategically. Where the two theories differ is in their factual assumptions: Strategic models support the belief that judges face various types of constraints that force them to support decisions that differ from their preferred policy points, while attitudinalists believe that the institutional environment leaves at least those judges that they study - generally U.S. Supreme Court justices - free to make decisions that are exactly in accord with their preferred policies. Similarly, followers of strategic theory could theoretically believe that judges act strategically to maximize achievement of some set of goals other than their ideological policy preferences. For example, perhaps judges could prefer "legalistic" goals like adherence to precedent, but would have to defect strategically from absolute adherence to those goals given the presence of other institutions with some clout, like the U.S. Congress. In practice, however, this is not what happens. Instead, strategic theorists virtually always model judges as strategically furthering sets of ideological policy goals, which are the exact same goals modeled by the attitudinal theorists. [n27](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n27) What we have, then, are two theories that in practice tend to collapse into one. In both theories, actors are assumed: (1) to have preferences; and (2) to act strategically for the maximization of those preferences. [n28](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n28) In addition, attitudinalists and strategic theorists both believe in a particular kind of rational choice theory: Specifically, the actors' preferences are assumed to be solely ideological, policy-based goals derived from the political realm. It is important to emphasize that both theories also believe that the  [\*697]  proper way to test judicial behavior is to look at what judges actually do, not at what they say: Thus, what matters is the outcome, not the reasoning of the case.

### 2AC June

#### End of term release shields the link

Mondak 92 [Jeffery J., assistant professor of political science @ the University of Pittsburgh. “Institutional legitimacy, policy legitimacy, and the Supreme Court.” American Politics Quarterly, Vol. 20, No. 4, Lexis]

The process described by the political capital hypothesis acts as expected in the laboratory, and the logic of the link between institutional and policy legitimacy has thus gained strong empirical corroboration. However, the dynamic's pervasiveness defies precise estimation due to the limitations of available public opinion data. Still, the results reported here are provocative. First, this view of legitimation may apply to institutions beyond the Supreme Court. Consequently, efforts to use this theory in the study of other institutions may yield evidence supportive of a general process. A second concern is how the Court responds to its institutional limits. Specifically, strategy within the Court can be considered from the context of legitimacy. For example, what tactics may the Court employ to reduce the erosion of political capital? By releasing controversial rulings at the end of a term, for instance, the Court may afford itself a healing period, a time to repair damaged credibility prior to the next round of efforts at conferring policy legitimacy. This suggests a third issue, the manner in which institutional approval is replenished. Does institutional support return to some equilibrium once dispute surrounding a particular ruling fades, or must the Court release popular edicts to offset the effects of its controversial actions?

**Ruling in favor of Bond is key to federalism**

**Connelly et al. 2013** - Constitutional attorney and the Executive Director of the United States Justice Foundation (May 15, Michael, Herbert W. Titus, Robert J. Olson, William J. Olson, John S. Miles, Jeremiah L. Morgan, “BRIEF AMICUS CURIAE OF U.S. CONGRESSMAN STEVE STOCKMAN, GUN OWNERS FDN., GUN OWNERS OF AMERICA,CITIZENS UNITED’S AMERICAN SOVEREIGNTY ACTION PROJECT, U.S. JUSTICE FDN., THE LINCOLN INSTITUTE, INSTITUTE ON THE CONSTITUTION, THE ABRAHAM LINCOLN FDN., DOWNSIZE DCFDN., DOWNSIZEDC.ORG, POLICY ANALYSIS CENTER,CONSERVATIVE LEGAL DEF. AND ED. FUND, AND TENTH AMENDMENT CENTER IN SUPPORT OF PETITIONER” <http://www.lawandfreedom.com/site/constitutional/BondII_Amicus.pdf>)

There is no more fundamental provision in the United States Constitution than the Tenth Amendment in the Bill of Rights. As this Court unanimously concluded in Bond v. United States25: The principles of limited national powers and state sovereignty are intertwined. While neither originates in the Tenth Amendment, both are expressed by it. Impermissible interference with state sovereignty is not within the enumerated powers of the National Government ... and action that exceeds the National Government’s enumerated powers undermines the sovereign interests of States. [Bond III, 131 S. Ct. at 2366.] Feeling bound by Missouri v. Holland’s crabbed view of the Tenth Amendment, the court below departed from this high view of the Tenth Amendment’s protective reach. However, the Holland court neglected the Amendment’s history and original purpose. See Bond II, 681 F.3d at 156. As noted above, Joseph Story warned against an expansive interpretation of the treaty power that could “annihilate” other authorities, “chang[ing] the organization of government [or] overturn[ing] its republican form.” See Story’s Commentaries at 339. Confidently, Story contended that any such treaty would be found “void; because it would destroy, what [the constitution] was designed ... to fulfill, the will of the people.” Id. St. George Tucker likewise worried that, because “there is no[] restriction as to the subjects of treaties,” there were only two constitutional guarantees that protected the States, the one securing to the states “a republican form of government” and the other securing the States’ authority to selfprotection against invasions. Tucker’s View at 269. In sum, both Story and Tucker cautioned that the treaty power not be read in a way that, in Tucker’s words, would “dismember[] the federal republic.” Id. But that is precisely what the court below seems to have decided in its reliance on Justice Holmes’s opinion in Holland, ruling that, while there is “[n]o doubt the great body of private relations usually fall within the control of the State ... a treaty may override its power.” Holland, 252 U.S. at 434. At the heart of the constitutional guarantee of a republican form of government to every state is the principle that the laws are to be enacted by the representatives of the people of each State. See W. Rawle, A View of the Constitution of the United States, reprinted in 4 The Founders’ Constitution, Item 13, pp. 571-72 (Kurland, P. & Lerner, R., eds.: Univ. Chi. Press: 1987). In turn, the Tenth Amendment reserves to the States powers not delegated to the federal government. Traditionally, the powers reserved to the States are commonly known as the police powers, including public safety, health, and welfare. Under the guise of implementing the Convention against the use of toxic chemicals in warfare among nations, Congress has enacted section 229, utilizing such broad language that it invades the States’ sovereign police powers. If allowed to stand, **it will introduce a wholly new chapter of the transfer of power from the States to the federal government via the treaty power,** in a world that is increasingly trending toward the internationalization of human rights, imposing upon states “obligation[s] to protect ... civil and political rights or economic, social and cultural rights.” See T. Buergenthal, D. Shelton, & D. Stewart, International Human Rights in a Nutshell, p. 27 (4th ed. 2009). In this contemporary drive for increasingly transnational enforcement of universal norms is the “widespread international political acceptance of the proposition that democracy is a precondition for the effective protection of human rights.” Id. at 26. **At stake**, then, in the setting of constitutional parameters to the treaty power **is whether the American federal republic**, in which powers are divided between a national and several State governments, **will survive,** or whether the treaty power will be used to “annihilate” our system of checks and balances that otherwise would stand in the way of a national democracy unlimited by independent and sovereign States. The overriding design and purpose of the Tenth Amendment is to secure America’s federal structure so as to better secure and preserve “individual liberty.” See Bond III, 131 S. Ct. at 2364. The Amendment does that by ensuring that “the enactment of positive law [is left] to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power.” Id. To that end, the treaty power must be made subordinate to the Tenth Amendment, first because it is a power that can be exercised unchecked by the House, which is the legislative branch of the national government closest to the people. Second, the treaty can be misused as a vehicle to transfer the power reserved to the people and to the States to international bodies, disenfranchising the people of the several States and imposing upon the people of the States a totally foreign political or moral standard.

**Federalism Solves War – General**

**Federalism prevents violence and war**

Calabresi, Associate Professor, Northwestern University School of Law, 1995

[Steven, Michigan Law Review, 94 Mich. L. Rev. 752, December, p. 770]

**Small state federalism is a big part of what keeps the peace in countries like the United States** and Switzerland. It is a big part of the reason why we do not have a Bosnia or a Northern Ireland or a Basque country or a Chechnya or a Corsica or a Quebec problem. **American federalism in the end is not a trivial matter or a quaint historical anachronism. American-style federalism is a thriving and vital institutional arrangement** - partly planned by the Framers, partly the accident of history - and it prevents violence and war. **It prevents religious warfare, it prevents secessionist warfare, and it prevents racial warfare. It is part of the reason why democratic majoritarianism in the United States has not produced violence or secession for 130 years**, unlike the situation for example, in England, France, Germany, Russia, Czechoslovakia, Yugoslavia, Cyprus, or Spain. **There is nothing in the U.S. Constitution that is more important or that has done more to promote peace, prosperity, and freedom than the federal structure of that great document**. There is nothing in the U.S. Constitution that shouldabsorb more completely the attention of the U.S. Supreme Court.

**Korea – Unification**

**North Korean collapse is inevitable**

Foster-Carter 05

2/17, Honorary senior research fellow in sociology and modern Korea at Leeds University, “The Six-Party Failure,” http://www.nautilus.org/fora/security/0516A\_Carter.html

The grassroots are restive too. A Seoul non-governmental organization (NGO) lately released the first-ever video of dissidents in the Democratic People's Republic of Korea. Sunshine cheerleaders rubbished this, but the real question is: What took them so long? Half-baked reforms have seen inflation soar and rations slashed. Yet if the state no longer provides, the old social contract is dead. Ever more North Koreans will start to ask the **Janet Jackson question** of their rulers: What have you done for me, lately? It is crucial to see the big picture and take the long view. **The key North Korea question is how and when - not whether - this ghastly failed regime will cease to be.** Just possibly it might manage to morph into something more sensible, like China and Vietnam. But that looks a long shot. It is only prudent to guard against and plan for much bumpier landings.

**American federalist model key to successful unification**

Rowan, Poli Sci Prof at Chicago State, 06

“American Federalism and Korean Unification,” Google

Chi Bong-do elaborates an understanding of what is called “unification through independence” or chajusong.4) Chajusong denotes mutual self-determination of national conditions by the two regions through a unified government as the basis for national autonomy.5) Under a model based on American federalism, the two constituent states of a unified Korea, North and South, should become unified and act as a unified entity through their peaceful coexistence as regions with state governments.6) Two keystones of the system envisaged under Chi’s notion are flexibility and mutuality. **A federal system on the United States model could provide for these qualities** through its permission of circumscribed autonomy for constitutionally-defined local purposes (of geographically defined subsidiary governments) and of common institutions and policies for shared purposes (a shared national government). We should turn to examine how American federalism would orient the primary powers for the new Korean national government: defense, foreign policy and economics. However, first it is necessary to consider Korea’s political culture.

**The impact is great power nuke war**

Stares and Wit 09

January, Senior fellow for Conflict Prevention and director of the Center for Preventive Action at the Council on Foreign Relations, Adjunct senior research fellow at the Weatherhead East Asia Institute, Columbia University, “Preparing for Sudden Change in North Korea”

Under these circumstances, the uncertainty and stress imposed by a lengthy andperhaps ultimately inconclusive leadership struggle on the overall system of governance might prove too much. As numerous cases from around the world attest, totalitarian states––despite outward signs of strength––are remarkably brittle when stressed by internal forces. North Korea is an exceptional state for all the reasons outlined, but at a certain point the pressures could become too intense for the country to stay intact. In this case, earlier predictions of collapse and the end of North Korea as an independent sovereign state might finally come to pass. These various scenarios would present the United States and the neighboring states with challenges and dilemmas that, depending on how events were to unfold, could grow in size and complexity. Important and vital interests are at stake for all concerned. North Korea is hardly a normal country located in a strategic backwater of the world. As a nuclear weapons state and exporter of ballistic missile systems, it has long been a serious proliferation concern to Washington. With one of the world’s largest armies in possession of huge numbers of long-range artillery and missiles, it can also wreak havoc on America’s most important Asian allies––South Korea and Japan––both of which are home to large numbers of American citizens and host to major U.S. garrisons committed to their defense. Moreover, North Korea abuts two great powers—China and Russia––that have important interests at stake in the future of the peninsula. That they would become actively engaged in any future crisis involving North Korea is virtually guaranteed. Although all the interested powers share a basic interest in maintaining peace and stability in northeast Asia, a major crisis from within North Korea could lead to significant tensions and––as in the past–– even conflict between them. A contested or prolonged leadership struggle in Pyongyang would inevitably raise questions in Washington about whether the United States should try to sway the outcome.5 Some will almost certainly argue that only by promoting regime change will the threat now posed by North Korea as a global proliferator, as a regional menace to America’s allies, and as a massive human rights violator, finally disappear. Such views could gain some currency in Seoul and even Tokyo, though it seems unlikely. Beijing, however, would certainly look on any attempt to promote a pro-American regime in Pyongyang as interference in the internal affairs of a sovereign state and a challenge to China’s national interests. This and other potential sources of friction could intensify should the situation in North Korea deteriorate. The impact of a severe power struggle in Pyongyang on the availability of food and other basic ser- vices could cause tens and possibly hundreds of thousands of refugees to flee North Korea. The pressure on neighboring countries to intervene with humanitarian assistance and use their military to stem the flow of refugees would likely grow in these circumstances. Suspicions that the situation could be exploited by others for political advantage would add to the pressure to act sooner rather than later in a crisis. China would be the most likely destination for refugees because of its relatively open and porous border; its People’s Liberation Army (PLA) has reportedly developed contingency plans to intervene in North Korea for possible humanitarian, peacekeeping, and “environmental control” missions.6 Besides increasing the risk of dangerous military interactions and unintended escalation in sensitive borders areas, China’s actions would likely cause considerable consternation in South Korea about its ultimate intentions toward the peninsula. China no doubt harbors similar fears about potential South Korean and American intervention in the North. Should the situation unravel further and North Korea begin to collapse entirely, another set of issues would come to the fore and likely place still more strain on allied cooperation and regional stability. For South Korea, the disintegration of the North Korean state would present both the opportunity to reunify the Korean people and the challenge of coping with the aftermath of change. Having seen the enormous social and economic costs that reunification imposed on Germany, Seoul might balk at rapid absorption and choose instead a slower, incremental path—assuming it had the choice. Although Washington’s incli- nation will be to defer to Seoul’s wishes, it may still prefer not to delay or risk the opportunity for Korean reunification that it has long seen as desirable for the stability of northeast Asia. The possibility, therefore, of discord arising between Washington and Seoul over the pace and character of reunification is not inconceivable. In any case, Washington’s acute concern about the security and safety of North Korea’s nuclear weapons and other weapons of mass destruction might force it to take unilateral action. Such action could put it at odds with Seoul, not to mention Beijing. Tokyo’s legitimate concerns would also need to be taken into account. China’s likely preference in such circumstances would be to sustain North Korea as an independent state for as long as possible. Should that goal prove untenable, Beijing would seek to preserve important Chinese interests, such as maintaining strategic depth, regional influence, and economic stability—all of which could bring it into conflict with Washington and Seoul. The prospect of North Korea being absorbed by South Korea and U.S. forces potentially being deployed near Chi- na’s northeastern border are matters of acute concern. The same fears helped trigger China’s entry into the Korean War. Moscow undoubtedly shares many of Beijing’s concerns, though Russia appears less poised to intervene should the situation deteriorate. Its diplomatic and possibly logistical support would still be critical in managing a major crisis on the peninsula. However, with the deterioration in U.S.-Russia relations since the Georgia crisis of August 2008, Russia’s role in any future North Korean contingency might not be as passive or as cooperative as many have so far assumed. How the potential challenges associated with sudden, destabilizing change in North Korea are handled will have profound consequences for the subsequent evolution of Korea, the stability of northeast Asia, and the future course of U.S.-China relations. Unfortunately, there are good reasons to be concerned about the level of preparedness of all the principal actors, including the United States and its allies, and with it the potential for misunderstanding and outright discord.

## 2AC AT: TERROR DA

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

ACLU 09 [American Civil Liberties Union]

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

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

#### No danger from releasing detainees who have won their habeas hearing

ACLU 09 [American Civil Liberties Union]

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

The government has offered no justification for why these Petitioners must be detained that actually relates to the Petitioners themselves. The government has not claimed that the Petitioners are dangerous or that it would be impossible to keep track of the Petitioners if they were released on appropriate conditions. The government also has not claimed that releasing the Petitioners in the United States would cause friction with other countries or endanger our national security. (Thus, none of these issues is before the Court on this record.) The government's blank refusal to release cannot satisfy any conception of due process that actually considers the Petitioners' libertv interest in freedom from indefinite arbitrary imprisonment.

#### The aff is key to win over Muslim moderates—that’s critical to victory

Sidhu 11

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

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

#### **Executive control hurts counter-terror and causes poor resource allocation**

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

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

**Deference is dead**

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

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

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising **in the context of foreign or military affairs**. Rather, lower federal **courts should adjudicate these claims** on their merits **by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine”** as a nonjusticiability doctrinein cases involving individual rights – even those arising **in a foreign policy context.** In fact, **a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the** so-called “**political question doctrine**” as a true nonjusticiable doctrine **to dismiss individual rights claims** (and arguably, not to any claims at all), **even those arising in the context of foreign or military affairs**. This includes the seminal “political question” case of Marbury v. Madison. Rather, **the Supreme Court has almost always rejected t**

**he “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs**. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, **the post-9/11 Supreme Court cases of Hamdi** v. Rumsfeld, **Rasul** v. Bush, **and** Bush v. **Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss** individual rights claims as nonjusticiable**, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine**” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. **In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs** rather than finding the claim nonjusticiable.

### 2AC AT: Nuclear Terror

#### Probability is one in 3.5 billion

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

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

## 2AC AT: Politics DA

**GOP hardliners are delusional --- they won’t give in**

Krugman, 9/29 (Paul, 9/29/2013, “Rebels Without a Clue,” <http://www.nytimes.com/2013/09/30/opinion/krugman-rebels-without-a-clue.html>))

**No sane political system would run this kind of risk. But we don’t have a sane political system; we have a system in which a substantial number of Republicans believe that they can force** President **Obama to cancel health reform by threatening a government shutdown, a debt default, or both, and in which Republican leaders who know better are afraid to level with the party’s delusional wing.** For they are delusional, about both the economics and the politics.

On the economics: **Republican radicals generally reject the scientific consensus on climate change; many of them reject the theory of evolution, too. So why expect them to believe expert warnings about the dangers of default? Sure enough, they don’t**: the G.O.P. caucus contains a significant number of “default deniers,” who simply dismiss warnings about the dangers of failing to honor our debts.

Meanwhile, on the politics, reasonable people know that Mr. Obama can’t and won’t let himself be blackmailed in this way, and not just because health reform is his key policy legacy. After all, once he starts making concessions to people who threaten to blow up the world economy unless they get what they want, he might as well tear up the Constitution. But **Republican radicals — and even some leaders — still insist that** Mr. **Obama will cave in to their demands**.

#### Court shields and plan pacifies the base

Stimson 9 [09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

#### Won’t be released till June

SCOTUS 12, Supreme Court of the United States, 7/25/2012 (“The Court and Its Procedures,”

<http://www.supremecourt.gov/about/procedures.aspx>, Accessed 7/25/2012, rwg)

**The Court maintains this schedule each Term** until all cases ready for submission have been heard and decided. **In May and June the Court sits only to announce orders and opinions**. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

#### Backlash fractures the GOP --- helps the agenda

Cohn 9 (Jonathon Cohn, The New Republic, “The Case for Presidential Multi-Tasking,” March 11, 2009, http://blogs.tnr.com/tnr/blogs/the\_treatment/archive/2009/03/11/the-case-for-presidential-multi-tasking.aspx)

Meanwhile, Obama's multi-faceted strategy has certain clear advantages. For one thing, it keeps the right wing unsettled**.** **With so many initiatives going forward, there's no chance for conservatives to coalesce in opposition to any one issue.** Instead of the entire conservative movement hammering away in unison, you have some of them going after health care, some of them going after earmarks, some of them going after cap-and-trade, and so on. In that sort of environment, few attacks resonate because they don't get the sustained attention they need.

#### Obama can unilaterally increase the debt limit

Market Watch, 9/25(“If all else fails, Obama will raise debt ceiling himself: analyst,” 9/25/2013, [http://blogs.marketwatch.com/capitolreport/2013/09/25/if-all-else-fails-obama-will-raise-debt-ceiling-himself-analyst/)](http://blogs.marketwatch.com/capitolreport/2013/09/25/if-all-else-fails-obama-will-raise-debt-ceiling-himself-analyst/%29))

**If Congress fails to raise the debt limit** by Oct. 17, **could** President Barack **Obama step in and raise the ceiling by executive action?**

Greg **Valliere, chief political strategist for Potomac Research Group, says Obama would do so, if faced with the prospect of a certain default on paying the nation’s creditors.**

 “I am not flat out saying that [executive fiat] is the end game, but it has to be on the table if a default looks imminent,” Valliere said in an interview with MarketWatch.

**During the last debt ceiling showdown in the summer of 2011, there were scholars and senators who suggested Obama did have such a silver bullet — the 14th Amendment to the Constitution.**

None other than former President Bill **Clinton agreed.**

In an interview with The New York Times in 2011, Clinton said Obama should invoke the 14th Amendment “without hesitation” to raise the debt ceiling and “force the courts to stop me.”

The provision in question, Section 4 of the amendment, says that the validity of the public debt “shall not be questioned.”

Laurence Tribe, a noted professor of constitutional law at Harvard, tried at the time to throw cold water on such arguments.

In an op-ed in the Times, Tribe said that only Congress has the power to borrow money on the credit of the United States. Arguments that the president may do whatever is necessary to avoid default “has no logical stopping point,” Tribe noted.

In addition, a legal cloud would hang over any newly issued bonds, Tribe said, because of the risk that the government might refuse to honor those debts as legitimate.

**Back in 2011, Obama and administration officials shied away from the suggestion he could act unilaterally.**

**But Valliere noted that times have changed, with Obama now in his second term in office.**

**“Obama has fewer constraints,”** Valliere said.

#### Debt ceiling empirically denied

Michael Tanner 11, National Review, “No Surrender on Debt Ceiling”, Jan 19, <http://www.nationalreview.com/articles/257433/no-surrender-debt-ceiling-michael-tanner>

Of course the Obama administration is already warning of Armageddon if Congress doesn’t raise the debt ceiling. Certainly it would be a shock to the economic system. The bond market could crash. The impact would be felt at home and abroad. But would it necessarily be worse than the alternative? While Congress has never before refused to raise the debt ceiling, it has in fact frequently taken its time about doing so. In 1985, for example, Congress waited nearly three months after the debt limit was reached before it authorized a permanent increase. In 1995, four and a half months passed between the time that the government hit its statutory limit and the time Congress acted. And in 2002, Congress delayed raising the debt ceiling for three months. It took three months to raise the debt limit back in 1985 as well. In none of those cases did the world end. More important, what will be the consequences if the U.S. government fails to reduce government spending? What happens if we raise the debt ceiling then continue merrily on our way spending more and running up ever more debt? Already Moody’s and Standard & Poor’s have warned that our credit rating might be reduced unless we get a handle on our national debt. We’ve heard a lot recently about the European debt crisis, but, as one senior Chinese banking official recently noted, in some ways the U.S. financial position is more perilous than Europe’s. “We should be clear in our minds that the fiscal situation in the United States is much worse than in Europe,” he recently told reporters. “In one or two years, when the European debt situation stabilizes, [the] attention of financial markets will definitely shift to the United States. At that time, U.S. Treasury bonds and the dollar will experience considerable declines.” Moreover, unless we do something, federal spending is on course to consume 43 percent of GDP by the middle of the century. Throw in state and local spending, and government at all levels will take 60 cents out of every dollar produced in this country. Our economy will not long survive government spending at those levels.

#### No econ impact

**Zakaria** Editor Newsweek **‘9**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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