# \*\*\*1AC Coast\*\*\*

### 1AC Habeas

#### Contention one is Habeas:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bush Administration's detainee policy made clear that - due to America's power - the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation - the United States. n412 As an institution of that same government, the courts are well-positioned to understand and interpret international law that has been incorporated into U.S. law. Because the courts have the capacity to track international legal norms, there was no longer a justification for exceptional deference to the Administration's interpretation of the Geneva Conventions as applied to the detainees. Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions. n413 But the Guantanamo litigation demonstrated that American hegemony has altered this classic assumption as well. The [\*154] transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it**.** The Kuwaiti government hired American attorneys to represent their citizens held at Guantanamo. n414 In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees. n415 Other nations learned about the treatment of their citizens through the information obtained by attorneys. n416 Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly - and Congress, in fact, acted twice to limit detainees' access to the courts n417 - this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically-charged issues. n418 Even "rogue states" such as Myanmar have their lobbyists in Washington. n419 In addition, foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels**.** n420 The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America's strategic interests. n421 In the Guantanamo litigation, the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations. The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms**,** and was therefore bound to generate intense controvers**y**. 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 Americanrule-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 wasrequired by American hegemony**.** In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449

#### Only a court ruling solves cooperation

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

American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable because other nations, seeking to protect their own security, form alliances to counter-balance the leading state. n322 But no nation or group of nations has yet attempted to challenge America's military predominance. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, the United States is geographically isolated from other potential rivals, who are located near one another in Eurasia. n327 This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another. n328 Second, the U.S. far exceeds the capabilities of all other states in every aspect of power - military, economic, technological, and in terms of what is known as "soft power." This advantage "is larger now than any analogous gap in the history of the modern state system." n329 Third, unipolarity is entrenched as the status quo for the first time since the seventeenth century, multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing. n330 Finally, the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening. A war between great powers in today's world is very unlikely. n331 These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. The lack of balancing means that the United States, 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 United States 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 United States 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 United States 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.

#### 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 theUnited States 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 theUnited States.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 aboutremaking a world to facilitate peace. The hegemonic project involves using political and economic advantages gained in world war to restructure the operation of the world market and interstate system in the hegemon's own image. The interests of the leader are projected on a universal plane: What is good for the hegemon is good for the world. The hegemonic state is successful to the degree that other states emulate it. Emulation is the basis of the consent that lies at the heart of the hegemo nic project.41 Since wealth depended on peace the U.S set about creating institutions and regimes that promoted free trade, and peaceful conflict resolution. U.S. benevolent hegemony is what has kept the peace since the end of WWII. The upshot is that U.S.hegemony and liberalism have produced the most stable and durable political order that the world has seen since the fall of the Roman Empire. It is not as formally or highly integrated as the European Union, but it is just as profound and robust as a political order, Kant’s Perpetual Peace requires that the system be diverse and not monolithic because then tyranny will be the outcome. As long as the system allows for democratic states to press claims and resolve conflicts, the system will perpetuate itself peacefully. A state such as the United States that has achieved international primacy has every reason to attempt to maintain that primacy through peaceful means so as to preclude the need of having to fight a war to maintain it.42 This view of the post-hegemonic Western worlddoes 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 forarticulating 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 isconsidered legitimate by the other states. It is not in a hegemonic leader's interest to preside over a global order that requires constant use of material capabilities to get other states to go along. Legitimacy exists when political order is based on reciprocal consent. It emerges when secondary states buy into rules and norms of the political order as a matter of principle, and not simply because they are forced into it. But if a hegemonic power wants to encourage the emergence of a legitimate political order, it must articulate principles and norms, and engage in negotiations and compromises that have very little to do with the exercise of power.44 So should this hegemonic power be called leadership, or domination? Well, it would tend toward the latter. Hierarchy has not gone away from this system. Core states have peripheral areas: colonial empires and neo-colonial backyards. Hegemony, in other words, involves a structure in which there is a hegemonic core power. The problem with calling this hegemonic power "leadership" is that leadership is a wonderful thing-everyone needs leadership. But sometimes I have notice that leadership is also an ideology that legitimates domination and exploitation. In fact, this is often the case. But this is a different kind of domination than in earlier systems. Its difference can be seen in a related question: is it progressive? Is it evolutionary in the sense of being better for most people in the system? I think it actually is a little bit better. The trickle down effect is bigger-it is not very big, but it is bigger.45 It is to this theory, Hegemonic Stability that the glass slipper properly belongs, because both U.S. security and economic strategies fit the expectations of hegemonic stability theory more comfortably than they do other realist theories. We must first discuss the three pillars that U.S. hegemony rests on structural, institutional, and situational. (1) Structural leadership refers to the underlying distribution of material capabilities that gives some states the ability to direct the overall shape of world political order. Natural resources, capital, technology, military force, and economic size are the characteristics that shape state power, which in turn determine the capacities for leadership and hegemony. If leadership is rooted in the distribution of power, there is reason to worry about the present and future. The relative decline of the United States has not been matched by the rise of another hegemonic leader. At its hegemonic zenith after World War II, the United States commanded roughly forty five percent of world production. It had a remarkable array of natural resource, financial, agricultural, industrial, and technological assets. America in 1945 or 1950 was not just hegemonic because it had a big economy or a huge military; it had an unusually wide range of resources and capabilities. This situation may never occur again. As far as one looks into the next century, it is impossible to see the emergence of a country with a similarly commanding power position. (2) Institutional leadership refers to the rules and practices that states agree to that set in place principles and procedures that guide their relations. It is not power capabilities as such or the interventions of specific states that facilitate concerted action, but the rules and mutual expectations that are established as institutions. Institutions are, in a sense, self-imposed constraints that states create to assure continuity in their relations and to facilitate the realization of mutual interests. A common theme of recent discussions of the management of the world economy is that institutions will need to play a greater role in the future in providing leadership in the absence of American hegemony. Bergsten argues, for example, that "institutions themselves will need to play a much more important role.46 Institutional management is important and can generate results that are internationally greater than the sum of their national parts. The argument is not that international institutions impose outcomes on states, but that institutions shape and constrain how states conceive and pursue their interests and policy goals. They provide channels and mechanisms to reach agreements. They set standards and mutual expectations concerning how states should act. They "bias" politics in internationalist directions just as, presumably, American hegemonic leadership does. (3) Situational leadership refers to the actions and initiatives of states that induce cooperation quite apart from the distribution of power or the array of institutions. It is more cleverness or the ability to see specific opportunities to build or reorient international political order, rather than the power capacities of the state, that makes a difference. In this sense, leadership really is expressed in a specific individual-in a president or foreign minister-as he or she sees a new opening, a previously unidentified passage forward, a new way to define state interests, and thereby transforms existing relations. Hegemonic stability theorists argue that international politics is characterized by a succession of hegemonies in which a single powerful state dominates the system as a result of its victory in the last hegemonic war.47 Especially after the cold war America can be described as trying to keep its position at the top but also integrating others more thoroughly in the international system that it dominates. It is assumed that the differential growth of power in a state system would undermine the status quo and lead to hegemonic war between declining and rising powers48, but I see a different pattern: the U.S. hegemonic stability promoting liberal institutionalism, the events following 9/11 are a brief abnormality from this path, but the general trend will be toward institutional liberalism. Hegemonic states are the crucial components in military alliances that turn back the major threats to mutual sovereignties and hence political domination of the system. Instead of being territorially aggressive and eliminating other states, hegemons respect other's territory. They aspire to be leaders and hence are upholders of inter-stateness and inter-territoriality.49 The nature of the institutions themselves must, however, be examined. They were shaped in the years immediately after World War II by the United States. The American willingness to establish institutions, the World Bank to deal with finance and trade, United Nations to resolve global conflict, NATO to provide security for Western Europe, is explained in terms of the theory of collective goods. It is commonplace in the regimes literature that the United States, in so doing, was providing not only private goods for its own benefit but also (and perhaps especially) collective goods desired by, and for the benefit of, other capitalist states and members of the international system in general. (Particular care is needed here about equating state interest with "national" interest.) Not only was the United States protecting its own territory and commercial enterprises, it was providing military protection for some fifty allies and almost as many neutrals. Not only was it ensuring a liberal, open, near-global economy for its own prosperity, it was providing the basis for the prosperity of all capitalist states and even for some states organized on noncapitalist principles (those willing to abide by the basic rules established to govern international trade and finance). While such behaviour was not exactly selfless or altruistic, certainly the benefits-however distributed by class, state, or region-did accrue to many others, not just to Americans.50 For the truth about U.S. dominant role in the world is known to most clear-eyed international observers. And the truth is that thebenevolent hegemonyexercised by the United Statesisgood 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 withmore violence and disorderandless democracy and economic growththan 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, butthe **anarchic nightmare of a New Dark Age**. Moreover, the alternative to unipolarity would not be multipolarity at all. It would be ‘apolarity’ –aglobal 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 toproject a set of political ideas or principlesabout 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 astable 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 continueeven after a hegemon's influence has eroded. Institutions provide opportunities for commitment and for observing whether others keep their commitments. Such opportunities are virtuallyessential to cooperation in non-zero-sum situations, as gaming experiments demonstrate. Declining hegemony and stagnant (but not decaying) institutions may therefore beconsistent with a stable provision of desired outcomes**,** although the ability to promote new levels of cooperation to deal with new problems (e.g., energy supplies, environmental protection) is more problematic. Institutions nevertheless provide a part of the necessary explanation.56 In restructuring the world after WWII it was America that was the prime motivator in creating and supporting the various international organizations in the economic and conflict resolution field. An example of this is NATO’s making Western Europe secure for the unification of Europe. It was through NATO institutionalism that the countries in Europe where able to start the unification process. The U.S. working through NATO provided the security and impetus for a conflict prone region to unite and benefit from greater cooperation. Since the United States emerged as a great power, the identification of the interests of others with its own has been the most striking quality of American foreign and defence policy. Americans seem to have internalized and made second nature a conviction held only since World War II: Namely, that their own wellbeing depends fundamentally on the well-being of others; that American prosperity cannot occur in the absence of global prosperity; that American freedom depends on the survival and spread of freedom elsewhere; that aggression anywhere threatens the danger of aggression everywhere; and that American national security is impossible without a broad measure of international security. 57 I see a multi-polar world as one being filled with instability and higher chances of great power conflict. The Great Power jostling and British hegemonic decline that led to WWI is an example of how multi polar systems are prone to great power wars**.** I further posit that U.S. hegemony is significantly different from the past British hegemony because of its reliance on consent and its mutilaterist nature. The most significant would be the UN and its various branches financial, developmental, and conflict resolution**.** It is common for the international system to go through cataclysmic changes with the fall of a great power. I feel that American hegemony is so different especially with its reliance on liberal institutionalism and complex interdependence that U.S. hegemonic order and governance will be maintained by others, if states vary in size, then cooperation between the largest of the former free riders (and including the declining hegemonic power) may suffice to preserve the cooperative outcome. Thus we need to amend the assumption that collective action is impossible and incorporate it into a fuller specification of the circumstances under which international cooperation can be preserved even as a hegemonic power declines.58 If hegemony means the ability to foster cooperation and commonalty of social purpose among states, U.S. leadership and its institutional creations will long outlast the decline of its post war position of military and economic dominance; and it will outlast the foreign policy stumbling of particular administrations**.**59 U.S. hegemony will continue providing the public good that the world is associated with despite the rise of other powers in the system “cooperation may persist after hegemonic decline because of the inertia of existing regimes**.** Institutional factors and different logics of regime creation and maintenance have been invoked to explain the failure of the current economic regime to disintegrate rapidly in response to the decline of American predominance in world affairs.”60 Since the end of WWII the majority of the states that are represented in the core have come to depend on the security that U.S. hegemony has provided, so although they have their own national interest, they forgo short term gains to maintain U.S. hegemony. Why would other states forgo a leadership role to a foreign hegemon because it is in their interests; one particularly ambitious application is Gilpin's analysis of war and hegemonic stability. He argues that the presence of a hegemonic power is central to the preservation of stability and peace in the international system. Much of Gilpin's argument resembles his own and Krasner's earlier thesis that hegemonic states provide an international order that furthers their own self-interest. Gilpin now elaborates the thesis with the claim that international order is a public good, benefiting subordinate states. This is, of course, the essence of the theory of hegemonic stability. But Gilpin adds a novel twist: the dominant power not only provides the good, it is capable of extracting contributions toward the good from subordinate states. In effect, the hegemonic power constitutes a quasigovernment by providing public goods and taxing other states to pay for them. Subordinate states will be reluctant to be taxed but, because of the hegemonic state's preponderant power, will succumb. Indeed, **if they receive net benefits** (i.e., a surplus of public good benefits over the contribution extracted from them), they may recognize hegemonic leadership as legitimate and so reinforce its performance and position. During the 19th century several countries benefited from British hegemony particularly its rule of the seas, since WWII the U.S. has also provided a similar stability and security that as made smaller powers thrive in the international system. The model presumes that the (military) dominance of the hegemonic state, which gives it the capacity to enforce an international order, also gives it an interest in providing a generally beneficial order so as to lower the costs of maintaining that order and perhaps to facilitate its ability to extract contributions from other members of the system.

#### Only judicial review affirms habeas

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

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

#### That precedent is necessary to shape Chinese norms

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To understand the direct and indirect ways through which U.S. criminal procedure law moves into new jurisdictions, it is helpful to examine a "hard case" of legal reform.n121 In 1997, when China underwent its first sweeping reform of criminal procedure law(CPL) in the post-Mao era, China adopted the so-called "summary procedure," a practice that resembles aspects of the American plea- bargaining system. n122 As described below, the surprising adoption of this device isthe result of the direct and indirect efforts to expose Chinese legal reformers to U.S. legal norms and practices. As a civil law country, in which the act of legal innovation falls to legal scholars more than it does to judges, the process of legal reform is best explained through an examination of China's expanding pool of law professors and legal experts. Despite the historical legacy of an inquisitorial legal system and a long-standing suspicion of U.S. rule of law efforts, a survey of legal periodicals suggests that, by the time of the 1997 CPL reforms, China had already developed considerablesupport for the adoption of U.S.-styleplea**-**bargaining. By the mid-1990s, many scholarswere already lauding elements in the U.S. criminal procedure law,such as "the Anglo- American adversarial system" and "Anglo-American plea-bargaining," n123 while recognizing the foreign roots of these elements. n124 [\*164] Contrary to Hume's pessimism about the ability of criminal law to move across jurisdictions, Chinese criminal procedure reform reveals the powerful influence of U.S. legal ideasand illustrates the accretive effects of exposure to and interaction with U.S. law. This article describes below the gradual opening of China's legal community to U.S. law and illustrates how this exposure created a body of experts more familiar and comfortable with the U.S. model. The exposure to U.S. legal practices of the codebooks of the People's Republic of China (PRC) began soon after Mao's death when growing numbers of Chinese scholars began traveling to the United States.n125 Sponsored by the U.S.-based Committee on Legal Educational Exchange with China (CLEEC), with funding from various U.S.-supported nongovernmental organizations (NGOs), more than 200 Chinese students and scholars participated in legal training in the United States during the 1980s and early 1990s. n126 By 1988, the Ford Foundation became the first international NGO to establish an office in China. n127 This growing familiarity with U.S. law grew deeper in subsequent years. As criminal procedure scholar Chen Ruihua described it, beginning in the 1980s, legal studies in China underwent "a gradual decrease in political interference and ideological restrictions." n128 Chinese universities convened numerous conferences at which U.S. criminal law scholars met with Chinese counterparts. n129 Participants included representatives of U.S.-supported efforts such as the U.S.-China Rule of Law Initiative, n130 bar associations, n131 the Ford Foundation, n132 and the [\*165] Asia Foundation. n133 In addition to these domestic exchanges, more Chinese legal academics enrolled in U.S. law schools. Before the rule of law became a high profile issue in the U.S.-China governmental agenda in the late 1990s, the CLEEC and other like-minded organizations were sponsoring the U.S. legal education of Chinese academics. n134 By 2002, students from the CLEEC program headed at least six of China's top law schools. n135 This biased exposure to U.S. law accounts for why reforms in the field of criminal law include so many common-law terms, such as intent, recklessness, knowledge, negligence, foreseeability, and causation. n136 As the number of Chinese legal academics familiar with U.S. criminal procedure law grew, so too did the number of institutions through which these ideas could spread. Between 1977 and 1995, the number of law schools in China rose from as few as two to more than one hundred, n137 many of which engaged deeply with their U.S. counterparts. Among the top ten law schools in China in 2010, n138 several were directed by deans with extensive experience in the United States in the form of serving as visiting scholars or publishing in English-language law journals. n139 [\*166] Chinese legal scholars directly involved in criminal procedure reform were among those increasingly exposed to U.S. law. In 1992, Chen Guangzhong, a leading criminal procedure scholar, received funding from China's National Social Sciences Fund to study foreign criminal procedure systems in advance of China's criminal procedure reform. n140 Chen and his team of scholars were well positioned to play the role of transnational legal brokers. Indeed, as estimated by one senior participant in the research team, roughly one-third of the group led by Chen had prior overseas experience with foreign law. n141 Of the remaining members, almost all had PhDs in law and extensive exposure to comparative law and the U.S. legal community present in Beijing. n142 In October of 1993, the Criminal Law Department of the Legislative Affairs Commission (LAC), a body which can delegate legislative drafting to experts, formally tasked the team of scholars led by Chen to compose a first draft of the revised CPL. With the support of the Ford [\*167] Foundation, it convened several conferences in Beijing with foreign experts, all of whom, one participant recalled, were extremely influential in shaping the views of the research team. n143 Especially influential were those from the United States and the sources they supplied. n144 This influence was due in large part to the linguistic skills of the participants. While some spoke German, Japanese, or Russian, most spoke and read English. n145 Moreover, at least 70 percent of these scholars already had legal experiences abroad, primarily in the United States. n146 The more exposure to the United States these scholars had, the more likely they were to incorporate U.S. procedure explicitly into their suggestions for criminal procedure reform. n147 By July of the following year, Professor Chen submitted a draft law, almost all of which was adopted, including the plea-bargain-like "summary procedure." n148 This quick survey of criminal procedure reform in the post-Mao period provides an illustration of the direct and indirect means through which the United States affects the development of law in the international system. Much of this power is wielded via traditional means such as generously funded government-led assistance programs like the Office of Overseas Prosecutorial Development, a division of the U.S. Department of Justice that deploys U.S. legal advisors abroad, and U.S. Agency for International Development rule of law initiatives. More subtle-though no less effective-manifestations of this power are felt less directly through U.S.-funded NGOs such as the Ford Foundation and, even more indirectly,through the exposure of foreign legal scholars to U.S. law and scholarship in classrooms, courtrooms, law firms, and conferences**.**

\*\*\*Would like to keep Lowe, but this is 1st on the chopping block

#### Key to *legitimacy* --- failure undermines it

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Over the past decade, China’s Communist Party leadership has embraced law to an unprecedented degree.  China’s leaders view creating a fair and effective legal system as crucial to their own legitimacy. In a society in which few true believers in communism remain, and in which the sole ideology often appears to be economic growth at any cost, strengthening the legal system has become a tool for curbing abuses, for addressing inequalities within China, and for confirming China’s place as a major international power.

Can this strategy succeed? Can China transform its legal system into one that provides a stable framework for business and foreign investment, that addresses the grievances of those left behind by China’s economic miracle, and that curbs corruption and wrongdoing by official actors, without posing challenges to one-party rule? As The People’s Court suggests, the answer is far from clear.

Before assessing the current and possible future trajectory of Chinese legal reforms, it is important to reflect on what China has accomplished thus far. In the thirty years since China began its legal reforms in 1978, the country has undergone perhaps the most rapid development of any legal system in world history. China has tried over the past three decades to accomplish a level of lawmaking and legal development that occurred over centuries in most western nations. China had no functioning legal system as it emerged from the Cultural Revolution and began opening to the outside world in 1978. The lack of a legal system during the Cultural Revolution was particularly striking given that for much of the past two thousand years China had one of the most sophisticated legal systems in the world. Realizing how far China has come adds perspective that is important for understanding current developments — and also why many in China bristle at western criticism of China’s legal system.

Since 1978, the changes have been remarkable. There were three thousand lawyers in China in 1978, virtually all of whom had been trained in the 1950s or earlier. Today there are approximately 150,000 lawyers, making the Chinese legal profession the third largest in the world. 294,000 people took the Chinese bar exam in 2007 alone, with 58,000 passing. China’s law schools began accepting students again in 1977 and 1978; all but one law school closed during the Cultural Revolution. Today there are more than 500 law schools and law departments in China (more than double the number in the United States), with tens of thousands of students studying law. Large numbers of Chinese lawyers and law professors and increasing numbers of judges have spent significant periods studying in the U.S. or Europe.

There were few laws on the books in the late 1970s.  China suspended work on new laws, including a civil and criminal code, in the early 1960s, and did not resume this work until 1978. Over the past thirty years China has drafted thousands of laws and regulations. Initially law drafting focused on creating a basic framework for economic development, particularly matters most relevant to trade and investment. During the past decade the scope of law making has expanded greatly, with new laws addressing a wide range of topics, including not just corporate law and contracts, but also environmental regulation, women’s and children’s rights, administrative regulation, and administrative litigation. In 2007 China adopted three major new pieces of legislation relating to labor and employment law.

Some of the most important changes in the Chinese legal system have been very recent. For much of the reform era most Chinese judges had little, if any, formal legal training. Today, all new judges must pass the bar exam. Older judges have gradually either been removed from hearing cases or have been forced to pursue law degrees. Three years ago official reports stated that for the first time more than fifty percent of China’s judges and procurators were university graduates, double the percentage of the early 1990s.

Civil litigation was virtually irrelevant in China in 1978. Today there are three to four million civil cases in China’s courts annually. The range of cases brought to court has expanded, so that Chinese courts today hear not only family law and contract cases, but also personal injury cases, housing and land disputes, environmental lawsuits, defamation claims, and even a small number of cases brought asserting rights under China’s constitution. Ordinary people are using the system in new and creative ways, in some cases in ways that central Party-state authorities have a difficult time controlling.

Chinese courts also hear approximately 100,000 cases a year against the government through administrative litigation. Plaintiffs in China may not always get a fair hearing of their cases, but individuals nevertheless increasingly voice their grievances in the language of law. Ordinary people have expectations of how the legal system should work.

Chinese courts have also shown willingness to innovate. Thus, for example, Chinese courts have adopted the equivalent of a public person standard in some defamation cases, despite clear absence of such a standard in Chinese law. In another case a judge in Henan Province invalidated a local regulation because it conflicted with national law — a radical step in a system in which courts do not have the power to resolve such conflicts, or to invalidate legislation. Courts routinely create new legal rules in less controversial areas.

The internet is facilitating court development. Just a few years ago judges had little access to information about how cases were decided elsewhere. Faced with a new legal question they would generally seek guidance from superior courts. Today, judges confronting new legal issues turn to the internet to learn how courts elsewhere in China, or even overseas, have dealt with similar issues. Such trends suggest there may be more room for courts to develop within the confines of the current political system than previously realized.

Acknowledging this progress is not intended to deny the many problems and abuses that continue to plague the effectiveness of law in China — many of which are clearly evident in The People’s Court. Courts remain subject to Party oversight and control, and are subject to a wide range of external pressures, including pressure from officials, from the Chinese media, and even from individual protesters. Intervention into cases by Party officials continues to be legitimate.  Court finances — and judges’ positions — remain subject to local government control, making it difficult for courts to rule against local governments.  And the authority of court decisions is undermined by a lack of finality in the Chinese legal system; cases can be reexamined at any time.

Judges are often evaluated based on whether they get their decisions right in the eyes of their superiors. Yet getting a decision right may mean issuing a decision that satisfies public or official opinion, rather than legal standards.In a system in which the greatest fear of the leadership is instability, the incentives to align with populist views of justice are very strong — sometimes much stronger than the power of law itself.

Control over civil society and activist lawyering has been tightened in recent years, in particular in the run-up to the Beijing Olympics. Authorities have restricted cases that they see as threats to social stability. For example, courts in some regions have been told not to accept class actions, despite the civil procedure law explicitly allowing group litigation. But the fact that we can use the terms “civil society” or “activist lawyering” to describe developments in the Chinese legal system is remarkable if we remember where China was thirty (or even fifteen) years ago.

Having a legal system that serves as a forum for resolving individual grievances is in the state’s interests. It is far better to have farmers bringing suit in court than it is to have them protesting or burning down local party offices. Having such cases heard and resolved in the courts also sends a message that the legal system can be used to address rights-based claims of individuals. Yet creating incentives for more disputes to be brought into the formal legal system is a workable plan only if people feel that the system serves their interests. Too often the system is perceived as serving the interests of local officials or powerful people, and as being fundamentally unjust.

China has devoted tremendous resources to legal education. Such efforts have worked — perhaps too well.  Widespread legal education has created expectations that the system should protect ordinary people. There is risk, however, that interaction with the formal legal system may increase disillusionment, thus undermining the legitimacy of both law and the Party-state.

Despite the progress in the Chinese legal system since 1978, many of the most difficult reforms remain to be undertaken. Within China there is widespread recognition that there are limits to what can be done in the current system, where courts lack authority and are subject to a range of influences that limit their ability to act independently. Far too often Party policies and the interests of individual Party leaders trump legal norms and procedures, especially at the local level. Reformers in China recognize that if the role of law itself is to be strengthened, the focus of legal reform efforts in China must extend to broader questions than just technical training of judges or the creation of new laws. Such reforms would include reducing courts’ links to local governments, making court finances independent, and reducing the ability of Party-state officials to intervene in cases. These steps would help to improve the quality of courts in China, even within the confines of overall leadership by the Communist Party.

The problem facing China’s leaders today is that this next step of legal reform, in particular those steps that are most necessary for curbing the worst abuses in the system, require structural reforms. Many of these problems are at least in part the product of China’s particular political and institutional structure, one in which the Party retains overall guidance, courts have limited powers even formally, and in which incentives favor stability above all else. China’s new leadership have not show much interest in addressing these problems in their first few years in power. Thus we see new legislation, but not significant institutional reform.

China’s leaders are not ignorant of the risks of failing to reform. The need for greater openness is acknowledged by China’s leadership, but it is also viewed with trepidation. Hence the state has tolerated and even encouraged recent efforts to strengthen administrative law, to have a greater role for public views in law drafting, as well as an active role for the commercialized (but still state-controlled) media in curbing abuses. Recognition of the need for courts to play a greater role in resolving conflicts also helps explain tolerance of innovation by the courts in some cases. But there have also been efforts to ensure that none of these developments lead to challenges to Party authority.

#### That causes Taiwan nuclear war

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Taiwan. Taiwan remains the single most plausible and dangerous source of tension and conflict between the United States and China. Beijing continues to be set on a policy to prevent Taiwan’s independence, and the United States maintains the capability to come to Taiwan’s defense. Although the tensions across the Taiwan Strait have subsided since both Taipei and Beijing embraced a policy of engagement in 2008, the situation remains combustible, complicated, by rapidly-diverging cross-strait military capabilities and persistent political disagreements. Moreover, for the foreseeable future Taiwan is the contingency in which nuclear weapons would most likely become a major factor, because the fate of the island is intertwined both with the legitimacy of the Chinese Communist Party and the reliability of U.S. defense commitments in the Asia-Pacific region.

### 1AC Afghanistan

#### Contention Two is Afghanistan:

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

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

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

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

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

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

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

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

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

#### That causes multiple nuclear wars

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

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

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

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

### 1AC Rendition

#### Contention Three is Rendition:

#### First, it fails and backfires

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

“However, to date, the fullscale and scopeof foreign government participation—as well as the number of victims—remains unknown, largely because of the extreme secrecy maintained by the United States and its partner governments,” Open Society Foundation investigator Amrit Singh wrote in the report.

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

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

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

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

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

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

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

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

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

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

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

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

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

We all know how that turned out.

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

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

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

One such government is our own.

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

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

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

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

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

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

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

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

Rashid was said to have been released in December 2007.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Although Boumediene contemplated placing greater weight on the practical arguments against habeas review in active theaters of war, it also emphasized avoiding bright-line rules that could invite executive manipulation. The Supreme Court noted that a “formal sovereignty-based test” for determining when the writ should apply raised “troubling separation-of-powers concerns.”82 Based on these concerns, Boumediene explicitly rejected the government’s suggestion that habeas extended only to those territories where the United States exercises formal (de jure) sovereignty, since such a rule would allow the government to deny noncitizens habeas simply by surrendering formal sovereignty over territory to a third party while retaining complete control over it.83 This danger, however, applies with equal force in Al Maqaleh. A bright-line rule declaring all combat zones to be habeas-free poses as much danger of executive abuse as a bright-line rule limiting the availability of habeas to de jure sovereign territory. Both rules share a common problem: when the President can identify an area of U.S.-controlled territory where habeas cannot reach, he is **incentivized to move enemy combatants to that location and** thereby avoid habeas review.Whether or not the President actually engages in such manipulation, the mere ability to do so is sufficient to raise serious concerns. Animated by a separation of powers concern84 that the clear demarcation of habeas-free zones would invite abuse, Boumediene adopted a functional, pragmatic approach.85 The district court in Al Maqaleh followed that approach well, recognizing the separation of powers concerns behind it. Although it recognized that practical obstacles would accompany the extension of the writ into active combat theaters, the district court did not find these obstacles insurmountable and observed that judicial process had been provided in active theaters before.86 More importantly, the district court rightly concluded that refusing to extend the writ into active combat theaters would establish a precedent more dangerous than the risks attending its extension.87 **Even assuming that the President—in choosing to transfer the Al Maqaleh petitioners to Bagram—was not in this case motivated by the desire to avoid habeas review, the district court wisely recognized that creating habeas-free zones around all active theaters of combat would invite future executive abuse.**88 This possibility is particularly troubling because each of the Al Maqaleh petitioners was captured outside of Afghanistan and brought into the theater of combat. While detaining an enemy combatant captured within the Afghan theater at Bagram might make sense because of its proximity, these petitioners had been apprehended as far away as Dubai and Thailand. The executive decision to transport the petitioners to a place where greater practical obstacles existed suggests the need for judicial scrutiny, not deference. Although cognizant of this separation of powers problem, the D.C. Circuit marginalized it and never legitimately considered whether the practical obstacles could be overcome.89 Instead, the circuit hastily deferred to the executive determination that further judicial review would endanger military prerogatives and imperil relations with the Afghan government.90 The D.C. Circuit failed to address the alarming plight of future detainees, who could similarly be captured beyond—but hauled into—active theaters of war91 to be deprived of access to the writ.92 Taking Al Maqaleh as guidance, a future President could order an alien captured anywhere outside the United States to be brought into an active theater of combat, declared an enemy combatant—in a nonadversarial proceeding not held before a neutral arbiter—and detained indefinitely.93 The judiciary would essentially have **no means to evaluate the legality** of the combatant’s detention, presenting a separation of powers problem just as compelling as that identified in Boumediene. In conclusion, the district court in Al Maqaleh correctly applied the Boumediene factors and arrived at the appropriate ruling—that the Suspension Clause should apply extraterritorially to the detainees held at Bagram—while the D.C. Circuit’s poor framing of the key issues unfortunately reversed that ruling.

#### And judicial review re-invigorates credibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Otherwise extinction is inevitable

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

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

### 1AC Solvency

#### Obama complies

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

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

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

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

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

## 2AC

**2AC AT: Circumvention**

**He thinks he’s constrained**

Saikrishna **Prakash 12,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But **the close attention the Executive pays to legal constraints suggests that the President** (who, after all, is in a good position to know) **believes** **himself constrained by law**. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, **it represents the President’s recognition of the various constraints** we have listed, **and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public**.

**2AC AT: U.S. Power**

**It supports U.S. power**

**Koh and Doyle 13**, November/December, Koh is a Legal Adviser at the Department of State and Professor at Yale, Michael Doyle is a Harold Brown Professor of U.S. Foreign and Security Policy at Colombia, The Case for International Law, <http://www.foreignaffairs.com/articles/140169/harold-hongju-koh-and-michael-doyle/the-case-for-international-law>

**When international law and lawyers help preserve the world’s respect for the U**nited **S**tates, **they advance the country’s global interests, rather than undermine its sovereignty or constitutional democracy. The U**nited **S**tates **can hardly be a global leader unless it takes on the hard task of making and following wise and durable global standards. This,** after all, **is what the U.S. government demands of countries such as China and Iran. Why should Americans expect any less of themselves?**

**T**

**2AC Ban T**

**We meet — habeas allows detention but stops it from being indefinite**

**Restriction is a limitation**

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

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

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

**Restrict is to check free activity — they confuse it with restraint**

**Oklahoma Attorney General**Opinions - 3/19/200**4**, Question Submitted by: The Honorable Mark Campbell, District Attorney, 19th District; The Honorable Jay Paul Gumm, State Senator, District 6, 2004 OK AG 7, [http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=43849](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=438494)

Accordingly, we must look to the plain and ordinary meaning of the term.*Webster's New International Dictionary*defines restrictions as follows: "something that restricts" and "a regulation that restricts or restrains." *Id.* at 1937 (3d ed. 1993). Restrict is defined as follows: "to set bounds or limits to: hold within bounds: as a : to check free activity, motion, progress, or departure." Id. Restrain is defined as to "prevent from doing something." *Id.* at 1936. Therefore, as used in Section 1125, "restrictions" is meant to describe those conditions of parole or probation which are intended to restrain or prevent certain conduct of the person subject thereto.

**War powers authority is preparation or execution of war**

Fred F. **Manget** – **1987**, J.D., Vanderbilt University Law School / CIA – “Presidential War Powers,” Extracts from Studies in Intelligence: A Commemoration of the Bicentennial of the U.S. Constitution, CIA, <http://media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf>

B. judicial Interpretation of War Powers Authority **There are a limited number of cases dealing with the** specific **war powers authority of the Executive Branch.** Nevertheless, **several clear principles have emerged from them. 1. Conduct of War The President has very wide discretion in conducting wars**. The strategy, objectives, and methods of waging war are squarely within his constitutional authority. The Supreme Court has stated that: As Commander in Chief, (the President) is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy.24 Other federal courts have been in accord.25 The President has wide latitude in action because the nature of modern warfare requires centralized command and control for the successful prosecution of a war. 26 The total war power shared by the President and Congress grants them authority to use all means necessary to weaken the enemy and to bring the struggle to a successful conclusion, and has very few limits:27 "While the Constitution protects against invasiom. of individual rights, it is not a suicide pact. " 28 Thus, how a war is to be waged is a matter of presidential. authority subject only to regular constitutional restrictions. **2.** Self-Defense **The President has constitutional authority to order defensive military action in response to aggression without congressional approval**. This theory of self-defense has justified many military actions, from the Barbary Coast to the Mexican-American War to the Tonkin Gul£. 29 The Supreme Court has agreed. In The Prize Cases, it found that President Lincoln had the right to blockade southern states without a congressional declaration of war: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. " 30 In a case arising out of the Vietnam war, the defendant claimed that draft law was unconstitutionally applied to him because Congress had not declared war. The court rejected that claim, stating that on the basis of the Commander in Chief power, "Unquestionably the President can start the gun at home or abroad to meet force with force. " 3 1 When the President acts in defense of the nation, he acts under war powers authority. **3.** Protection of Life and Property **The President also has the power to order military intervention in foreign countries to protect American citizens and property** without prior congressional approval.32 This theory has been cited to justify about 200 instances of use of force abroad in the last 200 years. 33 The theory was given legal sanction in a case arising from the bombardr:nent of a Nicaraguan oort by order of the President in 1854, in retaliation for an attack on an American consul. The court stated that it is the President to whom " .. . citizens abroad must look for protection of person and property .... The great object and duty of Government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home. Other cases have been in accord. 35 The President may use force or any other means to protect American citizens in foreign countries under his war powers authority.· This extends even to a retaliatory military strike against a country supporting terrorist acts against Americans, which occurred in :\pril1986 when US Navy and Air Force aircraft bombed the modern Barbary Coast nation of Libya. 4. Collective Security The President may also authorize military operations without prior congressional approval pursuant to collective security agreements such as NATO or OAS treaties. Unilaterial presidential action under these agreements may be justified as necessary for the protection of national security even though hostilities occur overseas and involve allies. 36 5. National Defense Power **The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting**. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. **The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. "** 3; **Another court has said that** **the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully**.3 H **A third court stated**: "It is-and must be-true that **the Executive should be accorded wide** and normally unassailable **discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means. "** 39 **Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it,** in the broadest sense. It operates at all times. 6. Role of Military The fundamental function of the armed forces is to fight or to be ready to fight wars. 40 The Supreme Court has recognized the existence of limited, partial, and undeclared wars:41 Thus, there is a judicially recognized and legitimate activity of the armed services in times of no armed conflict that stems directly from the war powers authority of the President. That activity is the preparation for the successful waging of war, which may come in any form or level of conflict. Any actions of the Executive Branch that are part of the fundamental functions of the armed services in readying for any type of hostility are based on constitutional war powers authority of the President. 7. Foreign Intelligence Operations The President is authorized to conduct foreign intelligence operations by his constitutional war powers. This authority is derived from the Constitution itself and does not depend on any grant of legislative authority conferred on the President by Congress.42 In a case where CIA sued a former employee (Marchetti) to enjoin him from publishing a book in violation of his secrecy oath and agreement, the court stated: "Gathering intelligence information and the other activities of the Agency, including clandestine affairs against other nations, are all within the President's constitutional responsibility for the security of the nation as the Chief Executive and as Commander in Chief of our armed forces. Canst., art. II, 2. " 43 In another case, the court said: Congress and the court recognize that in this time of global tension and distrust, the United States must have an efficient means of acquiring information about other countries, information not obtain· able except by covert means. It is a legitimate function of the Executive to provide for such intelligence operations and to maintain their secrecy. 44 The conclusion to be drawn from the principles outlined above is that to the extent foreign intelligence operations are directed toward preparation for any armed conflict or the conduct of any military or paramilitary activities, they spring directh• from the pawers granted to the Executive by the war · pawers clause of the Constitution. This chain of authority exists and operates in the absence of congressional action and even despite congressional oppasition to particular foreign intelligence operations. And, in fact, almost all foreign intelligence operations are directed toward war or the potential for war because of the nature of modern armed conflict and the current state of relations between nations.

**2AC XO**

**Congress blocks**

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

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

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

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

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

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

**Links to politics**

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

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

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

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

**Absent clarification district courts will make scattershot rulings that trigger the disad --- they also can’t solve habeas**

**Sparrow 11** (Indefinite Detention After Boumediene: Judicial Trailblazing in Uncharted and Unfamiliar Territory SUFFOLK UNIVERSITY LAW REVIEW [Vol. XLIV:261 p lexis Tyler Sparrow is an associate in the Securities Department, and a member of the Litigation and Enforcement Practice Group]

This section will argue that the current guidance on detainee habeas corpus actions offered by the Supreme Court as well as the Executive and Legislative branches is vague and inadequate.100 Because of this inadequacy, federal district court judges cannot proceed with any confidence that their judgments will stand, nor can the litigants form any reasonable predictions from the case law.101 This section will then examine how more definitive Supreme Court precedent would help to unify the case law dealing with detainee habeas corpus actions.102 Finally, this section will argue that adoption of legislation clearly addressing the substantive scope of the government’s detention authority would clarify the law for the public, the federal courts, and most importantly those detained without charge.103 The Supreme Court’s holding in Boumediene was limited to the constitutional issues regarding Guantanamo detainees’ access to the writ of habeas corpus, leaving all questions of procedure and substantive scope-ofdetention authority to the lower federal courts.104 This lack of guidance has drawn criticism from legal scholars and federal judges alike.105 A group of noted legal scholars observed that, in holding Guantanamo detainees were entitled to seek the writ of habeas corpus, the Supreme Court “gave only the barest sketch of what such proceedings should look like, leaving a raft of questions open for the district and appellate court judges.”106 Furthermore, the Obama Administration has stated that it will not seek further legislation from Congress to justify or clarify its detention authority.107 This lack of guidance has led to disparate results in detainee habeas corpus actions with similar facts, based not on the merits of the cases, but rather on which particular judge hears the petition.108 B. Need for Supreme Court Precedent Addressing Standards and Procedure for Detainee Habeas Corpus Actions The Supreme Court’s refusal to address the substantive scope of the government’s detention authority in Boumediene has left the task to federal district court judges, who are free to apply whichever standard they see fit, regardless of its disparity from the s

tandard being applied down the hall of the very same courthouse.109 For instance, it is up to the district judges whether to analyze detention authority under the rubric of “substantial support” for the Taliban and/or Al Qaeda, or the rubric pertaining to being a “part of” either of these groups.110 There are also differing opinions as to when, and how long, a detainee’s relationship with the Taliban and/or Al Qaeda must have existed to justify detention, under either the “part of” or “substantial support” rationales.111 Differing judicial approaches can also be seen in the weight of evidence required to justify detention, as well as how to treat hearsay and evidence obtained in the face of coercion.112 This creates a situation where neither the government nor the detainee “can be sure of the rules of the road in the ongoing litigation, and the prospect that allocation of a case to a particular judge may prove dispositive on the merits can cut in either direction.”113 The Supreme Court has the opportunity to unify these divergent paths by finally ruling on questions such as the substantive scope of the government’s detention authority, the standard and weight of evidence required for continued detention, whether a relationship with the Taliban and/or Al Qaeda can be sufficiently vitiated, and the reliability of hearsay evidence and statements made under coercion.114

**2AC N/U**

**Drone strikes are inevitable—any wind-downs are only rhetoric**

**Mazzetti and Landler 8/2** [08/02/13, Mark Mazzetti and Mark Landler, “Despite Administration Promises, Few Signs of Change in Drone Wars”, http://www.nytimes.com/2013/08/03/us/politics/drone-war-rages-on-even-as-administration-talks-about-ending-it.html?pagewanted=all&\_r=0]

WASHINGTON — There were more drone strikes in Pakistan last month than any month since January. Three missile strikes were carried out in Yemen in the last week alone. And after Secretary of State John Kerry told Pakistanis on Thursday that the United States was winding down the drone wars there, officials back in Washington quickly contradicted him. More than two months after President Obama signaled a sharp shift in America’s targeted-killing operations, there is little public evidence of change in a strategy that has come to define the administration’s approach to combating terrorism. Most elements of the drone program remain in place, including a base in the southern desert of Saudi Arabia that the Central Intelligence Agency continues to use to carry out drone strikes in Yemen. In late May, administration officials said that the bulk of drone operations would shift to the Pentagon from the C.I.A. But the C.I.A. continues to run America’s secret air war in Pakistan, where Mr. Kerry’s comments underscored the administration’s haphazard approach to discussing these issues publicly. During a television interview in Pakistan on Thursday, Mr. Kerry said the United States had a “timeline” to end drone strikes in that country’s western mountains, adding, “We hope it’s going to be very, very soon.” But the Obama administration is expected to carry out drone strikes in Pakistan well into the future. Hours after Mr. Kerry’s interview, the State Department issued a statement saying there was no definite timetable to end the targeted killing program in Pakistan, and a department spokeswoman, Marie Harf, said, “In no way would we ever deprive ourselves of a tool to fight a threat if it arises.” Micah Zenko, a fellow with the Council on Foreign Relations, who closely follows American drone operations, said Mr. Kerry seemed to have been out of sync with the rest of the Obama administration in talking about the drone program. “There’s nothing that indicates this administration is going to unilaterally end drone strikes in Pakistan,” Mr. Zenko said, “or Yemen for that matter.”

**2AC No Link**

**The aff only maintains the effectiveness of Boumediene—that doesn’t result in targeted killings**

**Vladeck 12** [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, **although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations** within the territorial United States and at Guantanamo, **it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings.** To the contrary, **the jurisprudence** of Judge Brown’s own court **has simultaneously** (1) **left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned**; **and** (2) for better or worse, **added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless**. And **in cases where judicial review prompted the government to release those against whom it had insufficient evidence**, **the effects of such review can** only **be seen as salutary**. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy.

**Mil to mil coop stops disputes from escalating**

**Bloomberg 9/30**, <http://www.bloomberg.com/news/2013-09-30/china-u-s-military-ties-grow-as-countries-eye-each-other-at-sea.html>

Next year, **Chinese ships will join the Rim of** the **Pacific exercise** **for the first time**. During a visit to the Pentagon last month, **Foreign Minister** Wang Yi **described military ties as a “bright spot” in the** U.S.-China **relationship**.

Wang’s words and **China’s participation reflect** a **changed attitude as the world’s** two **biggest militaries boost contacts despite competing for influence** in the Asia-Pacific, home to shipping lanes and resource reserves. The closer ties will be tested as China grows more assertive in a region dotted with nations that would call for U.S. help if attacked.

“The **competition** and conflicts between China and the U.S. **will** still **be there, but it will prevent them from escalating to an unmanageable level**,” Yan Xuetong, dean of the Institute of Modern International Relations at [Tsinghua University](http://topics.bloomberg.com/tsinghua-university/) in Beijing, said by phone. “It is preventable diplomacy rather than positive cooperation.”

U.S.-China ties will be on display at next week’s Asia-Pacific Economic Cooperation forum leaders meeting in Bali. China’s territorial disputes in the [South China Sea](http://topics.bloomberg.com/south-china-sea/) may be discussed, along with changing U.S. and Chinese roles in the region.

**Deference**

**Deference is dead**

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

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

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

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

**Chow 11**, JD from Cardozo

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

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

**No spillover**

**Siegel 12**, Associate at Cleary Gottlieb

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

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

**2AC Congress Turn**

**Court inaction causes Congress to fear executive overreach --- they’ll block presidential authorizations**

**Jinks and Katyal 7** [April, 2007, Derek Jinks is Assistant Professor of Law, University of Texas School of Law. Neal Kumar Katyal is Professor of Law, Georgetown University Law Center, “Disregarding Foreign Relations Law”, 116 Yale L.J. 1230]

**If adopted, one of the most dangerous byproducts** of Posner and Sunstein's theory **may be to weaken**, as a practical matter, **the ability of Congress to legislate meaningful constraints on executive power**. **Members of Congress**, when enacting legislation, **would now have to contemplate whether any statutory ambiguities would be used to permit the President to violate longstanding treaty commitments.** n170 **The result of their proposal**, ex ante, **may be to instill trepidation in Congress about enacting legislation in the first place.¶** For example, **imagine how Congress**, under the Posner and Sunstein model, **would react to an administration's request to pass a Use of Force Resolution. Members would have to fear that such legislation could be used by the President in the future as a blank check to permit him to disregard international law**. **The upshot of such fear is that they might not pass such a statute at all**. Instead, some would predictably embrace theories about the [\*1276] "inherent" right of the President to use military force in times of crisis; others would simply stay quiet and let the President use force**. The alternative to legislative silence** - that Congress would have to enact such laws with such a degree of specificity (for example, no domestic spying, no torture, no indefinite detentions) - **would demand such high foresight and po**

**litical maneuvering that it would often be safer for Congress to decide to do nothing.¶** The risk of furthering congressional inactivity exists even with contemporary presidential interpretations of the AUMF. **Congress already has to fear**, with or without Chevron deference**, that the executive will distort its statutes to permit activities that it did not intend**. n171 But **what stops that risk from flowering today is the courts** - **which have reassured Congress that it can pass something like the AUMF and not have it interpreted in ludicrous ways by the executive**. n172 In this respect, **cases such as Rasul v. Bush n173 and Hamdan are not only democracy-forcing ex post in that they compel Congress to act to give the executive additional powers in those specific areas; they are also democracy-forcing ex ante. They reassure the legislature that it can pass laws without having them subject to wild-eyed, self-interested interpretations by the executive.¶** By contrast, **Posner and Sunstein's proposal would encourage executive branch gamesmanship and might lead,** ex ante, **to fewer congressional enactments** **in the area. Congress would have to fear the risk of unwittingly authorizing a variety of activities that it could not adequately foresee, and it would therefore stay silent.** **The result would be to further the democratic deficit that already plagues the nation in the legal war on terror** - in which the [\*1277**] President has been acting without the explicit support of the legislature. This presidential netherworld is bad for the reputation of the United States, as well as for our deliberative democracy.¶** There is no way to "prove" that such a result would follow from Posner and Sunstein's proposal short of adopting it and watching what would unfold. But **the abdication of Congress for the five years after the September 11, 2001**, attacks in many of the key decisions in this realm **suggests that strong deference claims might make it harder to enact legislation. That view gains some support from structural principles as well.** After all, **our Founders set up the tripartite government to make it difficult for government to take action that deprives people of their rights**. Short of an emergency that precluded Congress from acting, **the concurrence of any one branch alone in such a scheme was not considered enough to change the status quo baseline**. n174 Instead, Congress had to pass a law, the President had to enforce the law, and the courts had to uphold the law**. All three branches thus had to agree under this constitutional framework - a key feature of the document that led to greater deliberation and dialogue among the branches.¶** Posner and Sunstein would flip that standard assumption. Under their view, **Congress would necessarily have to fear that its authorizing legislation**, in a world of Chevron deference, **could be used for radically unintended purposes. It would be entirely natural for the legislative body, faced with such a dilemma, to be led down the path of doing nothing at all**. This problem does not manifest itself as much in the domestic context, as there Congress has to act before the President can change the status quo. In the foreign policy arena, however, **Congress knows that the President can always use his "inherent authority" to use military force regardless of what it does, and it may therefore find it safer to stay silent than to legislate.¶** Posner and Sunstein respond to these arguments by suggesting that their proposal would force more, not less, legislative restriction over the President. n175 **They surmise that a future Congress "might issue a more detailed AUMF**, one that more carefully described the entities against which force could be used and the limits under which the President might operate, rather than leaving those issues to a President it did not trust or to courts that had no expertise in the area." n176 Their last words are just one tip-off among many that this claim is a weak one. After all, **if Congress didn't trust the courts, the status quo provides** [\*1278] **it plenty of opportunities to craft a more calibrated AUMF**. But of course **Congress hasn't done that, and the reasons have little to do with distrust of the courts**. **The reason why a more detailed AUMF is only conceivable in the University of Chicago Roundtable**, as opposed to the halls of Congress, **is that Congress will never be able**, as a practical matter, to **legislate with the necessary prospectivity.** It **did not foresee the National Security Agency** (NSA) **program or military commissions in the 2001 AUMF**, **and it is unlikely to be able to foresee the next round of programs either.** (Recall that the executive branch has repeatedly justified its failure to inform Congress of the NSA program on the ground that even debate about the program would reveal details of our intelligence activities that Congress and our enemies do not currently know.) n177

**2AC AT: War Fighting**

**No impact**

**Fettweis 10** – Professor of national security affairs @ U.S. Naval War College. [Christopher J. Fettweis, “Threat and Anxiety in US Foreign Policy,” Survival, Volume 52,

Issue 2 April 2010 , pages 59 – 82//informaworld]

**One potential explanation for the growth of global peace can be dismissed fairly quickly: US actions do not seem to have contributed much. The** **limited evidence suggests that there is little reason to believe in the stabilising power of the US hegemon, and that there is no relation between the relative level of American activism and international stability. During the** 19**90s, the U**nited **S**tates **cut back on its defence spending fairly substantially**. By 1998, the United States was spending $100 billion less on defence in real terms than it had in 1990, a 25% reduction.29 To internationalists, defence hawks and other believers in hegemonic stability, this irresponsible 'peace dividend' endangered both national and global security. 'No serious analyst of American military capabilities', argued neo-conservatives William Kristol and Robert Kagan in 1996, 'doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peace'.30 And yet the verdict from the 1990s is fairly plain**: the world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable US military**, or at least none took any action that would suggest such a belief. **No militaries were enhanced to address power vacuums; no security dilemmas drove insecurity or arms races; no regional balancing occurred once the stabilis-ing presence of the US military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in US military capabilities. Most of all, the U**nited **S**tates **was no less safe. The incidence and magnitude of global conflict declined while the U**nited **S**tates **cut its military spending** under President Bill Clinton, and kept declining as the George W. Bush administration ramped the spending back up. **Complex statistical analysis is unnecessary to reach the conclusion that world peace and US military expenditure are unrelated.**

**Sequestration destroyed readiness**

**Serbu 11/8**, Staff Writer at DOD News, Sequestration’s second year worse than its first, military chiefs warn, <http://www.federalnewsradio.com/?nid=394&sid=3500329&pid=0&page=2>

"**This will inevitably lead to reduced life in our ship and aircraft**," he said. "Ashore, we will conduct only safety essential renovation of facilities, further increasing the large backlog in that area. **We'll be compelled to keep a hiring freeze in place for most** of our **civilian positions**, and **that will further degrade the distribution of skill, experience and the balance in the civilian workforce, which is so critical."**

Greenert says the Navy would also have to cancel several major planned procurements if Congressdoesn't reprogram about $100 million into its acquisition accounts by January.

"We'll lose a Virginia-class submarine, a littoral combat ship and an afloat forward staging base," he said. "The [U.S.S. Gerald R. Ford], we need to finish that carrier, and by spring we stop work on it, which is not very smart, because it's almost done."

It's a similar story in the Air Force, Welsh said.

"While we hope to build a viable plan to slow the growth of personnel costs over time and to reduce infrastructure costs when able, **the only way to pay the full sequestration bill is by reducing force structure, readiness and modernization,"** he said. "

Over the next five years, the Air Force could be forced to cut up to 25,000 airmen and up to 550 aircraft, which is about 9 percent of our inventory. To achieve the necessary cost savings in aircraft force structure, we'll be forced to divest entire fleets of aircraft. We can't do it by cutting a few aircraft from each fleet."

Gen. Ray Odierno, the Army Chief of Staff, said in 2013, his service had to defer more than $700 million of equipment maintenance costs into 2014 and 2015. The Army now has 172 aircrafts sitting idle waiting for maintenance, and no clear way to pay for it.

**The Army also was forced to severely curtail soldier training, and Odierno says many of those missed opportunities aren't recoverable.**

"**As we scrambled in 2013 to come up with the dollars to meet our sequestration marks, there's things we did** that, frankly, **mortgaged our future**," he said. "**We stopped training. You can't ever recapture that. So what that does, it delays the build-up of future readiness. So we will have to pay that price somewhere down the road, because we simply cannot ever get that back. We were able to do it for one year, but it comes at a risk — if we have a contingency, will our forces be ready? And that's really an incredible risk that I am definitely not comfortable with. The second piece is we've had to furlough individuals who've worked for this government. And, frankly, they're beginning to lose faith in their government. Those are temporary measures that we do not want to revisit again. We have to have more permanent solutions."**

If sequestration was intended as a mechanism to save the government money, there are abundant examples in which it's had the opposite effect, the military leaders said. DoD will pay cancellation fees from terminated contracts and pay higher unit costs for fewer vehicles, ships and airplanes.

Amos said the Marine Corps has begun to estimate the magnitude of those higher costs.

"Just in Marine aviation alone, it's going to cost me $6.5 billion of inefficiency," he said. "And that's because of multi-year contracts I either can't sign or I've got to cancel, so I have to pay penalties, and buy airplanes on an individual basis. At the end of that, that's four [Joint Strike Fighter] squadrons and two MV-22 Osprey squadrons, simply because of the inefficient way we're going about doing businessin this sequester."

The Air Force's Welsh said he believes DoD could find ways to absorb the entire 10-year, $500 billion tab from sequestration, as long as the reductions can be phased in more gradually.

**K**

**Absent institutional concerns the alt is useless**

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

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

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

**2AC AT: Root Cause**

**No root cause**

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

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

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

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

**2AC AT: Ethics**

**Extinction first**

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

To sum up the lines of thought that Nietzsche starts, I suggest first that **it is** epistemologically **impossible for humanity to arrive at an estimation of the worth of itself** or of the rest of nature: **it cannot pretend to see itself from the outside** or to see the rest, as it were, from the inside. Second, after allowance is made for this quandary, which is occasioned by the death of God and the birth of truth, **humanity, placed in a position in which it is able to extinguish** human **life** and natural life on earth**, must simply affirm existence** as such. Existence must go on but not because of any particular feature or group of features. **The affirmation of existence refuses to say what worth existence has,** even from just a human perspective, from any human perspective whatever. It cannot say, because **existence** is indefinite; it **is beyond evaluating;** being undesigned it is unencompassable by a defined and definite judgment. (The philosopher Frederick A. Olafson speaks of "the stubbornly unconceptualizable fact of existence.") **The worth of** the **existence** passed on to the unborn **is** not measurable but **indefinite**. The judgment is minimal: **no** human purpose or **value within existence is worth more than existence and can ever be used to justify the risk of extinction**. Third, from the moral point of view, **exis**

**tence seems unjustifiable because of** the **pain** and ugliness in it, and therefore **the moral point of view must be chastened if it is not to block** attachment to **existence** as such. The other minimal judgment is that **whatever existence is, it is better than nothing**. For the first time, in the nuclear age, **humanity can** fully **perceive existence from the perspective of nothing,** which in part is the perspective of extinction.

**2AC AT: Prior Question**

**Social constructions are knowable --- prefer specificity**

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

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

 on the basis of their causal power – they have a constraining effect on our activity. 42 Critical Realists are happy to agree to an ‘epistemological relativism’ according to which knowledge is a social product created from a pre-existing set of beliefs, 43 but they maintain that the reality of social structures means that our beliefs about them can be more or less accurate – we must distinguish between the way things appear to us and the way they really are. There are procedures which enable us to rationally choose between accounts of reality and thereby arrive at more accurate understandings; epistemological relativism does not preclude judgemental rationalism. 44 It therefore remains possible to pursue the truth about social reality.