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CAUTION IN WHAT YOU WISH FOR: THE CONSEQUENCES OF A RIGHT TO DEMOCRACY

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I. INTRODUCTION

The publication of Thomas Franck's seminal article *The Emerging Right to Democratic Governance* in 1992[1] began a vigorous scholarly discussion over a right to democracy.[2] The debate has occurred along several different dimensions,

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[1] Thomas M. Franck, *The Emerging Right of Democratic Governance*, 86 AM. J. INT'L L. 46 (1992); *see also* International Covenant on Civil and Political Rights art. 25, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (recognizing citizens' rights to participate in public affairs through freely elected representatives); Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539 (1992) (discussing right to political participation in international law).

[2] Article 21 of the Universal Declaration of Human Rights states that it is an individual's "right to

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notably whether or not the right indeed exists at the present time and its evolution,[3] different cultural conceptions of the right,[4] and what role the international community has in protecting that right,[5] among others. Notably absent has been a concern with the consequences associated with guaranteeing or expanding an international legal right to democracy, as well as that right's effect on a world composed largely of democratic states.

While the scholarly discourse has focused on legal elements of global democratization, the world itself has undergone dramatic changes. From 1974 through 1990, dozens of states experienced regime transitions to democracy in what Huntington called the "third wave of democratization."[6] In the last two decades, the pace has slowed, but nevertheless the trend has continued with nearly 40 states joining the democratic family and 96 of 164 countries (58.5%) classified as democratic by 2010.[7] Most recently, the uprisings in the Middle East ("the Arab Spring") have taken the democratization movement to the one region of the globe where democracy was largely absent. At this writing, it is not clear whether the final products of popular uprisings in Egypt, Tunisia, Libya, and elsewhere will necessarily be democratic regimes.[8] Nevertheless, such cases illustrate the

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take part in the government of his country, directly or through freely chosen representatives." Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). Franck and Ezetah argue that an enforceable right to democracy has emerged in international law. Reginald Ezetah, *The Right to Democracy: A Qualitative Inquiry*, 22 BROOK. J. INT'L L. 495, 503–14 (1997); Franck, *supra* note 1, at 80–85. Tesón and Buchanan contend that democracy is a state responsibility and those states that fail to protect it should not be viewed as legitimate to the world community. ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION 68–70 (2004); FERNANDO TESÓN, A PHILOSOPHY OF INTERNATIONAL LAW 16–22 (1998). Benhabib goes a step further, arguing that democracy is an individual's human right, which should be recognized at the international rather than state level. Seyla Benhabib, *Is There a Human Right to Democracy? Beyond Interventionism and Indifference*, *in* PHILOSOPHICAL DIMENSIONS OF HUMAN RIGHTS 191, 194–95 (Claudio Corradetti ed., 2012). For a contrasting view of the right to democracy, see Alyssa R. Bernstein, *A Human Right to Democracy: Legitimacy and Intervention*, *in* RAWLS'S LAW OF PEOPLES: A REALISTIC UTOPIA? 278 (Rex Martin & David A. Reidy eds., 2006); Joshua Cohen, *Is There a Human Right to Democracy?*, *in* THE EGALITARIAN CONSCIENCE: ESSAYS IN HONOUR OF G. A. COHEN 227, 227 (Christine Sypnowich ed., 2006).

[3] *See, e.g.*, Fox, *supra* note 1, at 551 (arguing that popular sovereignty never emerged as a rule among states); Thomas M. Franck, *Legitimacy and the Democratic Entitlement*, *in* DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW 25, 32–35 (Gregory H. Fox & Brad R. Roth eds., 2000) (explaining origin of democratic entitlement in UN system).

[4] *See, e.g.*, Same Varayudej, *A Right to Democracy in International Law: Its Implications for Asia*, 12 ANN. SURV. INT'L COMP. L. 1, 12–14 (2006) (discussing varying perspectives on democracy and Asian cultural norms).

[5] *See, e.g.*, Ibrahim J. Gassama, *Safeguarding the Democratic Entitlement: A Proposal for United Nations Involvement in National Politics*, 30 CORNELL INT'L L. J. 287 (1997) (arguing for increased U.N. role in national elections).

[6] SAMUEL P. HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY 21–26 (1993). The data on regime transitions comes from the Monty G. Marshall & Keith Jaggers, *Polity IV Project: Political Regime Characteristics and Transitions, 1800–2010*, CENTER FOR SYSTEMIC PEACE, http://www.systemicpeace.org/polity/polity4.htm (follow "Polity IV Data Series version 2010" hyperlink) (last updated Feb. 15, 2012).

[7] The Polity IV Project notes that 96 of 164 countries (58.5%) had democracy scores six or higher (on a scale from 0–10) as of 2010. This is calculated from the "Excel Times-Series Data" file for the year 2010. Marshall & Jaggers, *supra* note 6. The 2011 Freedom House survey data reports 87 of 194 countries (45%) free and 60 of 194 (22%) countries partially free. FREEDOM HOUSE, FREEDOM IN THE WORLD 2011, http://www.freedomhouse.org/report/freedom-world/freedom-world-2011 (last visited May 4, 2012).

[8] Indeed, one prominent analyst, Bruce Bueno de Mesquita, suggests that while some democratic improvements are likely in these states and others in the region, none is likely to become a democracy

importance of understanding not merely whether an abstract legal right exists, but what the consequences of extending such a right might entail.

Democracy includes more than a stated condition for a country; indeed, North Korea's official name is the "Democratic People's Republic of Korea," but few would regard that country as exhibiting processes and rights remotely classifiable as democratic. A democracy includes certain common elements related to institutions and political rights. The Polity IV Project, the most widely used scholarly database on democracy and authoritarianism, reflects these conceptual and operational criteria:

> Democracy is conceived as three essential, interdependent elements. One is the presence of institutions and procedures through which citizens can express effective preferences about alternative policies and leaders. Second is the existence of institutionalized constraints on the exercise of power by the executive. Third is the guarantee of civil liberties to all citizens in their daily lives and in acts of political participation. Other aspects of plural democracy, such as the rule of law, systems of checks and balances, freedom of the press, and so on are means to, or specific manifestations of, these general principles.[9]

The purpose of our analysis is to evaluate some of the consequences of a right to democracy. An evaluation standard of practical utility and desirable outcomes has been adopted in assessing other legal controversies, most notably those involving the use of force.[10] Yet such a metric has not yet found its way into legal debates on democracy. We intend to fill that gap with two foci. This Article examines how the international community might promote a right to democracy, and whether this will produce results that support the existing international legal and political order, or rather, produce unintended and deleterious consequences.

First, protecting democratic rights in existing states and expanding the right to encompass other states necessarily means that the international community, and leading states in particular, might need to carry out a variety of actions, including the use of force. If a right to democracy precipitates external military intervention or economic sanctions to support existing or nascent democratic regimes, how effective are such actions? The first part of the Article examines whether military interventions are successful in protecting and expanding the right of democracy. The conclusions are decidedly mixed with some success stories, but high costs and

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according to Western norms. Bruce Bueno de Mesquita, Predictioneering the Future, Lecture at the University of South Carolina (Oct. 29, 2011); *see* BRUCE BUENO DE MESQUITA, THE PREDICTIONEER'S GAME: USING THE LOGIC OF BRAZEN SELF-INTEREST TO SEE AND SHAPE THE FUTURE (2010) (setting forth game theory model to predict political events).

[9] MONTY G. MARSHALL, KEITH JAGGERS & TED ROBERT GURR, POLITY IV PROJECT: POLITICAL REGIME CHARACTERISTICS AND TRANSITIONS, 1800-2010: DATASET USERS' MANUAL 14 (2011), *available at* http://www.systemicpeace.org/inscr/p4manualv2010.pdf.

[10] *See* Jide Nzelibe & John Yoo, *Rational War and Constitutional Design*, 115 YALE L.J. 2512 (2006) (evaluating whether various executive and legislative arrangements enhance U.S. decisionmaking regarding war). *But see* Paul F. Diehl & Tom Ginsburg, *Irrational War and Constitutional Design: A Response to Professors Nzelibe and Yoo*, 27 MICH. J. INT'L L. 1239, 1259 (2006) (arguing that executive-centered decisionmaking facilitates irrational wars); Paul F. Diehl & Shyam Kulkarni, *Worth a Pound of Cure?: An Empirical Assessment of the Bush Doctrine and Preventive Military Action*, 19 U. MIAMI INT'L & COMP. L. REV. (forthcoming 2012).

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failures in other cases. In a related fashion, democracy might also be forced on a society whose authoritarian government resists democratic change. This Article looks at instances where this has occurred (sometimes along with imposed constitutions) and assesses how often and under what conditions these imposed governments hold up in the long run. This analysis will allow us to evaluate the utility of military occupation and collective military efforts to spread the right to democracy. We also consider what effect economic sanctions and noncoercive measures have on democratization. Our general conclusion is that the international community is limited in its ability to ensure democracy through the use of military force and other coercive mechanisms. Although the outcomes are not uniform, this suggests uncertain prospects at best for long-term democracy in Iraq, Afghanistan, and various states in the Middle East.

Second, a right to democracy should increase the number of democratic states in the world. This has a number of beneficial consequences for political behavior and international legal observance. The so-called "democratic peace," which posits that democratic states do not fight wars with other democracies, suggests that more democracies should lead to more peace and thereby greater observance of international legal prohibitions on the use of force.[11] An increasingly democratic world also means that democratic *and nondemocratic* states alike will avail themselves of peaceful conflict resolution mechanisms, including international adjudication and arbitration. Nevertheless, democratization is often a lengthy process. There is no guarantee that democratization will come to full fruition in all instances, as the case of Russia illustrates. More significantly, the democratization process itself might be a particularly dangerous one, raising the likelihood of civil unrest and international conflict with neighbors.[12] We might also observe an increased willingness of states to sign and observe a variety of international treaties including those dealing with human rights, but this is not necessarily the case, as the United States has proven to be an exception to many of these patterns. With a few qualifications, however, our conclusion is that the long-term consequences of expanded democracy around the globe are positive and promote the value of peaceful conflict resolution.

We refer to existing debates in the legal literature to frame some of these concerns, but we also rely extensively on empirical work from the international relations discipline to address those concerns and understand the consequences of a right to democracy. Doing so reflects what Shaffer and Ginsburg refer to as the "empirical turn in international legal scholarship."[13]

II. GUARANTEEING AND EXPANDING THE RIGHT OF DEMOCRACY

An international right to democracy does not in itself guarantee that more states will become democratic or that extant democratic states will remain that

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[11] BRUCE RUSSETT, GRASPING THE DEMOCRATIC PEACE 4 (1993); *see also* BRUCE RUSSETT & JOHN ONEAL, TRIANGULATING PEACE: DEMOCRACY, INTERDEPENDENCE, AND INTERNATIONAL ORGANIZATIONS 43–52 (2001) (explaining dyadic theory of democratic peace).

[12] EDWARD D. MANSFIELD & JACK SNYDER, ELECTING TO FIGHT: WHY EMERGING DEMOCRACIES GO TO WAR 145–149 (2005).

[13] Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship,* 106 AM. J. INT'L L. 1, 1 (2012).

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way.[14] The coterminous existence of various human rights standards (e.g., women's rights evidenced in CEDAW)[15] and the repeated and widespread violations of said standards are illustrative. Almost all writings on the right to democracy ignore the processes under which this right is achieved and rarely discuss any additional legal rules that might be necessary to achieve it. Yet we know that any new "normative" rule that expands rights requires compatible elements of the legal "operating" system or other normative rules to ensure that the rights are implemented and then enforced.[16] In this Article, we ignore issues concerning which actors hold the right to democracy and what legal remedies, including court structures, exist or might be created to handle disputes that might arise over their rights. Rather we consider what kind of actions undertaken by the international legal community might be brought to bear to protect the right to democracy and encourage its expansion. In this Part, we consider the viability of military intervention, occupations (including imposed constitutions), and economic sanctions in the support of a right to democracy.

A. Military Intervention

Traditional conceptions of international law on the use of military force prohibit military intervention and actions. Fundamental to these rules is Article 2, Section 4 of the UN Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[17]

Such a prohibition places a presumption against military action, and thus any permitted uses of force have to be exceptions to this limitation. The primary exception to the prohibition against military force is the long-recognized right of self-defense. This right is reflected in Article 51 of the UN Charter:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the

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[14] However, if a right to democracy exists *and* it is realized in practice, then there will be more democracies in the system. Yet this relationship is endogenous, as the expansion of the proportion of democratic states may be necessary for the right to democracy to emerge as a recognized global right.

[15] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1978, 1249 U.N.T.S. 13.

[16] Rules that provide issue-specific requirements about behavioral conduct can be referred to as part of the "normative system" of international law. Working in tandem with normative requirements, the "operating system" provides the framework for establishing rules and norms, outlines the parameters of interaction, and provides the procedures and forums for resolving disputes involving the norms. *See* PAUL F. DIEHL & CHARLOTTE KU, THE DYNAMICS OF INTERNATIONAL LAW 74–102 (2010).

[17] U.N. Charter art. 2, para. 4.

> authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[18]

A subsequent provision, Article 52, recognizes the right of collective as well as individual self-defense with provisions for regional security organizations.[19]

Unless those prohibitions were altered, it would presumably be illegal for other states to take military action in order to protect a threatened democratic regime or to assist democratic forces during a civil war. Leaving aside the question of how intolerant an established democracy becomes or how strong antidemocratic actors must be before intervention is justified,[20] the current legal system offers two alternatives in which intervention to support democracy is legal. One is through an existing treaty in which a state would provide advance consent for intervention by another state in the event that a military coup or uprising threatened democratic rule.[21] This might also be done as part of a collectivity of democratic states in which any coup in one state would trigger action by all others in the pact.[22] Alternatively, using relevant charter or covenant powers, an international organization can authorize states to take action in support of prodemocratic forces. This could allow states to invade a country to protect or restore a democratic regime; this was the case in Haiti (1994) when the OAS and UN permitted states to take action against the military regime of General Cedras and in support of the democratically elected regime of President Aristide.[23] More recently, the UN permitted states to take military action in Libya, executed under the NATO umbrella.[24] Although the authorization was ostensibly to prevent human rights violations against civilians, in reality it became an operation that was opposed to the authoritarian government there and supported purportedly prodemocratic rebels.

There has been some movement toward expanding the rights of the international community to use military force in pursuit of global values. Most notably, commentators have advocated that states, individually or collectively, be allowed to violate the sovereignty of another state in order to restrain wrongdoing, primarily in the form of genocide and widespread human rights abuses.[25] More

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[18] *Id.* art. 51.

[19] *Id.* art. 52.

[20] *See* Gregory H. Fox & Georg Nolte, *Intolerant Democracies*, 36 HARV. INT'L L.J. 1 (1995) (concluding that the international community should use only a minimally interventionist route to bring about adherence to a state's democratic system).

[21] *See* David Wippman, *Treaty Based Intervention: Who Can Say No?*, 62 U. CHI. L. REV. 607, 620 (1995); *see also* David Wippman, *Prodemocratic Intervention by Invitation*, *in* DEMOCRATIC GOVERNANCE IN INTERNATIONAL LAW, supra note 3, at 293–297. *But see* Brad R. Roth, *The Illegality of "Pro-Democratic" Invasion Pacts*, *in* DEMOCRATIC GOVERNANCE IN INTERNATIONAL LAW, *supra* note 3, at 328–42.

[22] Tom Farer, *A Paradigm of Legitimate Intervention*, *in* ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 316, 332 (Lori Fisler Damrosch ed., 1993).

[23] S.C. Res. 917, U.N. Doc. S/RES/917 (May 6, 1994).

[24] S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

[25] *See* Thomas M. Franck & Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 AM. J. INT'L L. 275 (1973) (discussing the circumstances under which the use of military force might be warranted in cases of humanitarian intervention); *see also* Adam Roberts, *The So-Called 'Right' of Humanitarian Intervention*, 3 Y.B. INT'L HUMANITARIAN L. 3 (2000) (assessing the debate on whether the international community was justified in using military force in response to humanitarian intervention in Iraq, Somalia, Haiti, and Kosovo).

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recently, that idea has been extended beyond a mere right to an *obligation* to take military action; this is reflected in the principle of a "responsibility to protect" in which the international community is supposed to intervene whenever there is a gross violation of human rights.[26] Neither the right nor obligation of intervention has yet become part of legal canon,[27] but this example does illustrate that suggestions related to transcending state sovereignty are not unprecedented. Nevertheless, humanitarian intervention is limited in that it involves intervention only to halt particular actions, not to affect the type of regime or replace its leaders. As noted below, intervention to promote democracy is more expansive.

There has been considerable debate over whether military intervention should be permitted in order to protect or facilitate the expansion of a right to democracy. Morton Halperin was among the first to promote military intervention, arguing, "the United States and the international community should not only assist but should 'guarantee' the result," democracy.[28] Some have argued that such a right now exists, even though one of its advocates, Roland Rich, admits that the consensus of legal opinion is against it.[29] Regardless, the efficacy of the strategy is not discussed in these treatments.

The empirical evidence is decidedly mixed on whether military intervention promotes democracy, even if the intervention was legally justified. Mark Peceny looked at the immediate aftermath of ninety U.S. military interventions between 1898 and 1992. Overall, few target regimes (only eleven) were democratic before an intervention, and there was only slight improvement within a year thereafter; twenty-three states were democratic, leaving more than seventy percent undemocratic.[30] For example, American and international intervention in Somalia in the early 1990s did not lead to democracy; indeed, the aftermath did not even produce stability or alter the status of that country as a failed state. Nevertheless, democratization is often a lengthy process and evaluating only a single year following intervention might miss any positive long-term impacts on liberalization.

Simply intervening in another state is not sufficient for democracy to occur in the aftermath. Indeed, the purpose of the intervention might be other than to modify or replace the political regime in the target country. The record improves if the intervening party encourages proliberalization policies during the intervention; these include holding free and fair elections, reducing human rights abuses, and facilitating civilian control of the military.[31] The Philippines are a successful case study,[32] but these instances are still exceptions in the broader sample of ineffective interventions. A broader analysis, extending beyond U.S. military actions to include interventions by the United Kingdom and France as well, also discovered

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[26] Alex J. Bellamy, *The Responsibility to Protect and the Problem of Military Intervention*, 84 INT'L AFF. 615, 622 (2008); Christopher C. Joyner, *"The Responsibility to Protect": Humanitarian Concern and the Lawfulness of Armed Intervention*, 47 VA. J. INT'L L. 693, 701 (2007).

[27] Joyner, *supra* note 26, at 696.

[28] Morton H. Halperin, *Guaranteeing Democracy*, FOREIGN POL'Y, Summer 1993, at 105, 105.

[29] Roland Rich, *Bringing Democracy into International Law*, J. DEMOCRACY, July 2001, at 20, 31.

[30] *See* Mark Peceny, DEMOCRACY AT THE POINT OF BAYONETS 195 (1999).

[31] *Id.* at 206; *see also* Mark Peceny, *Forcing Them to Be Free*, 52 POL. RES. Q. 549, 577 (1999).

[32] *See* Renato Velasco, *Philippine Democracy: Promise and Performance*, *in* DEMOCRATIZATION IN SOUTHEAST AND EAST ASIA 77, 81–84 (Anek Laothamatas ed., 1997).

that military intervention was largely ineffective. U.S. military actions resulted in democracy in only three cases, and only in Panama did it last for an extended period.[33] The record of successful democracy promotion for the United Kingdom and France was no better, resulting in zero and one democratic transformation respectively.[34] The only apparently successful interventions were under the auspices of the United Nations.[35] Yet these interventions were not military ones in the traditional sense. Rather, they were peacekeeping missions (rather than peace enforcement ones). Accordingly, UN intervention most often involved the supervision of elections after a ceasefire and a peace settlement agreement was signed.[36] Thus, the international community is best able to play a democracy-promoting role as a guarantor of a process in which disputing parties have already committed to democracy. Still, most cases of democratization (eighty-four percent) did not involve liberal military intervention,[37] indicating that transforming states to democracies largely occurs by processes internal to the states involved. Key internal conditions associated with democratization success, most of which are not easily malleable by international action, include high levels of economic development, supportive elites, parliamentary (rather than presidential) systems, and support for inclusive conceptions of nationalism.[38] For example, Indonesia transformed into a democracy after 2000 without the benefit of external military intervention.[39]

B. Imposed Democracies

There will be times that simple military intervention in support of democratic government (e.g., Haiti) or carried out for other purposes will be insufficient. It might be that states in the international community will need not only to invade a given country, but also overthrow its regime and establish a new democratic regime. This involves:

> not merely encouraging or facilitating leadership change, but rather a complete restructuring of the domestic political system in the target state. In doing so, the existing political structure in the target state is dismantled and remade by an intervening state, and new political leaders are installed to head these institutions.[40]

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[33] Jeffrey Pickering & Mark Peceny, *Forging Democracy at Gunpoint*, 50 INT'L STUD. Q. 539, 555 (2006).

[34] These four successful cases are out of a total of seventy-nine military interventions. *Id.* at 546.

[35] *Id.*

[36] PAUL F. DIEHL & DANIEL DRUCKMAN, EVALUATING PEACE OPERATIONS 64–71 (2010).

[37] Pickering & Peceny, *supra* note 33, at 556.

[38] Valerie Bunce, *Comparative Democratization: Big and Bounded Generalizations*, 33 COMP. POL. STUD. 703, 707–15 (2000). Other internal factors might also be important, but these tend to be unique to specific regions or individual states.

[39] *See* Marshall & Jaggers, *supra* note 6, (follow "Indonesia" hyperlink).

[40] Andrew J. Enterline & J. Michael Greig, *Perfect Storms?: Political Instability in Imposed Polities and the Futures of Iraq and Afghanistan*, 52 J. CONFLICT RESOL. 880, 883 (2008). While military intervention can sometimes precede the imposition of democracy, the two strategies are distinct. Military interventions are not always designed to change the entire political structure of the

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Such new governments are referred to as "imposed polities," and most are designed to be democracies.[41] Thus, the purpose is not merely to *promote* democracy indirectly through a variety of policies, but rather to install democratic institutions and processes directly. Imposed polities are most common following wars in which the victorious states defeat their enemies and seek to install regimes more favorable to their interests. The U.S. and British invasion of Iraq is a notable example in that the government of Saddam Hussein was overthrown, democratic elections were held, and a parliamentary system of government was installed. Similarly, U.S. and NATO forces entered Afghanistan after the 9/11 attacks and succeeded, in cooperation with local forces, in ousting the Taliban government; democratic elections and a presidential system of government followed.

It is premature at this time to judge whether Iraq and Afghanistan will successfully consolidate their regimes and remain democracies in the long run. Nevertheless, there is an extensive historical record on the fates of imposed democracies that give us some insights on the likely efficacy there and indeed of any coercive attempts to guarantee a right to democracy. The successful cases of Germany and Japan come to mind when looking at the long-term impact of imposed democracies.[42] In both cases, Allied powers defeated those states in World War II and followed these victories with extended occupations. Yet new democratic constitutions were created during that interim period, and when the states regained full independence (West Germany in 1955 and Japan in 1952), there began an ongoing half century of democratic governance.

It would be a mistake, however, to generalize the utility of imposed democracy from the German and Japanese experiences. Indeed, a more systematic historical assessment provides some sobering conclusions. In their analysis of forty-three imposed democratic regimes from 1800 to 1994, Andrew Enterline and J. Michael Greig found that almost sixty-three percent of them failed in the long run.[43] Indeed, the average length of imposed democracies is only 13.1 years.[44] For example, British efforts to promote democracy in Zimbabwe, before and after racial majority rule, have been unsuccessful in sustaining free elections and civil rights.[45]

Why is it so difficult to ensure a right to democracy through intervention and occupation? Democracy can only be established under the local conditions in which it can be nurtured and grown. Invasions and imposed governments cannot fundamentally change the social and economic conditions in the target state. Many of those local conditions are critical for the success—or failure—of attempts to establish democracies by force. Most notably, failed imposed democracies occur

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target state, while imposing new democratic regimes involves an active strategy to change the target state's domestic political system.

[41] *Id.* at 880.

[42] *See generally* DEMOCRACY IN JAPAN (Takeshi Ishida & Ellis S. Krauss eds., 1989) (detailing the process of establishing democracy in Japan after World War II); RICHARD L. MERRITT, DEMOCRACY IMPOSED: U.S. OCCUPATION POLICY AND THE GERMAN PUBLIC, 1945-1949 (1995) (describing the long process of establishing democracy in the defeated German state).

[43] Andrew J. Enterline & J. Michael Greig, *Against All Odds?: The History of Imposed Democracy and the Future of Iraq and Afghanistan*, 4 FOREIGN POL'Y ANALYSIS 321, 341 (2008).

[44] *Id.*

[45] Crisford Chogugudza, *Failure of Democracy in Zimbabwe, a Tragedy for SADC and Beyond*, AFRICA RESOURCE (Mar. 6, 2008), http://www.africaresource.com/index.php?option=com_content&view=article&id=504:failure-of-democracy-in-zimbabwe-a-tragedy-for-sadc-and-beyond&catid=141:politics&Itemid=350.

when there is a high degree of ethnic heterogeneity in society.[46] For example, the perhaps misnamed Democratic Republic of the Congo has a very high level of ethnic fractionalization with over two hundred groups,[47] has been unable to sustain democratic governance, and has experienced two bloody wars in the last twenty years. Such divisions make it difficult to find consensus in the forms of democratic governance. Nevertheless, Switzerland and South Africa, to take two very different examples, have established and maintained democracy despite ethnic fractionalization.

Almost inevitably, there will be winners and losers in the democratic process, and this creates incentives for disadvantaged minorities to take up arms and launch insurgencies that threaten the stability of the nascent democratic regime. Hence, consecutive elections after the end of the civil war in Angola did not produce a stable democratic government, and renewed violence was common in the aftermath of the elections.[48] Increasing the size of indigenous military forces has limited utility in overcoming challenges to the regime.[49] Host-state security forces might beat back insurgents, but there is also the risk that the use of such forces will increase repression and human rights abuses, practices inimical to the maintenance of a democratic regime based on the rule of law.

Beyond ethnicity concerns, imposed democracy is best able to take root in states with small populations (less than 1.5 million) with relatively high levels of economic development.[50] A key element in both of these conditions is how they mitigate the competition over scarce resources in a fledgling democracy.[51] The successful performance of a government in meeting the needs of its constituency is a key signal to the populace that this new form of government is viable and worthy of support. The provision of needs is much easier to achieve in a context in which fewer people need to be served by the distribution of abundant resources. This can be critical in imposed democracies as such governments might be viewed as "foreign" or illegitimate because of their origins. Thus, the presumption of the populace can be against the democratic government unless perspectives change through the satisfactory supply of benefits and efficient performance. Without that, people might favor a return to other governmental arrangements, especially authoritarian modes that provided stability and basic human needs. Various military coups in Pakistan (in the late 1950s and later in its history) are indicative of this problem, whether the original government was imposed externally or not.

Imposed democracies do not necessarily take place in isolation, but rather are part of a broader regional strategy. Indeed, one of the motivations for establishing democracy in Iraq was the hope and expectation that democracy would

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[46] *See* J. Michael Greig & Andrew J. Enterline, *No Good Choices,* FOREIGN POL'Y (Nov. 11, 2009), http://www.foreignpolicy.com/articles/2009/11/11/no_good_choices; *see also* Enterline & Greig, *supra* note 40, at 899.

[47] Central Intelligence Agency, *Democratic Republic of the Congo*, WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html (last visited Apr. 5, 2012).

[48] *See* Marina Ottaway, *Angola's Failed Elections*, *in* POSTCONFLICT ELECTIONS, DEMOCRATIZATION, AND INTERNATIONAL ASSISTANCE 133, 143 (Krishna Kumar ed., 1998).

[49] Greig & Enterline, *supra* note 40, at 899–903.

[50] *Id.*

[51] J. Michael Greig & Andrew J. Enterline, The Durability of Externally Imposed Democracy & the Futures of Iraq & Afghanistan 10–12 (Nov. 29, 2010) (unpublished manuscript) (available at http://www.psci.unt.edu/Greig/durability.pdf).

spread to other states in the Middle East.[52] The record of imposed democracies on their neighbors is dependent on how deeply ingrained democracy becomes in the first state, and the results are decidedly mixed even in the best of circumstances. Enterline and Greig considered the regional effects of twenty-seven externally imposed democracies between 1909 and 1994.[53] Strongly democratic states, or what are referred to as "bright beacons of democracy,"[54] have the positive effects of reducing war and stimulating economic prosperity in the regional neighborhood. Yet they do not stimulate additional democratization. Thus, successfully imposed democracies do not enhance the right to democracy in geographically proximate states. More worrisome are the effects from weak democracies or "dim beacons."[55] They actually increase the chances for war, undermine other democratization efforts, and limit economic growth.[56] Thus, less-than-successful attempts at imposed democracies not only fail to achieve their initial goals, but also have deleterious spillover effects.

One of the ways to ensure that democracy "sticks" in a country could be to install a constitution that incorporates democratic processes and institutions. This goes beyond a military action to promote democracy or even a military occupation to ensure the right of democracy. Rather, it includes the extra step of setting up the legal framework under which democracy might flourish rather than leaving it to indigenous forces. Zachary Elkins, Tom Ginsburg, and James Melton examined the long-term viability of "occupation constitutions," or constitutions that were written during or immediately after military occupation by a foreign power, since 1789.[57] They found that not all military occupations result in imposed constitutions and not all the constitutions are necessarily democratic. Nevertheless, their findings do offer some insights on the viability of imposing legal structures to promote democracy. All constitutions, whether imposed or voluntarily constructed, have a relatively short life, averaging just seventeen years; occupation constitutions are only slightly less durable, lasting approximately thirteen years.[58] Thus, constitutional guarantees alone are unlikely to sustain a right to democracy in the long run. Few occupation constitutions survive in the long term, but those that do, notably the Japanese constitution constructed after World War II, have the characteristic of being "self-enforcing." Specifically, this is reflected in the process in which "losers" (be these electoral or those in the economic sphere) retain a stake in maintaining the constitution.[59] In Japan's case, this meant that the minority political party could share in some of the spoils of the political system and had

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[52] *See* JIM TRAUB, THE FREEDOM AGENDA: WHY AMERICANS MUST SPREAD DEMOCRACY (JUST NOT THE WAY THAT GEORGE BUSH DID) 219 (2008).

[53] Andrew J. Enterline & J. Michael Greig, *Beacons of Hope? The Impact of Imposed Democracy on Regional Peace, Democracy, and Prosperity*, 67 J. POL. 1075, 1085–93 (2005).

[54] *Id.* at 1083, 1085.

[55] *Id.* at 1085.

[56] *Id.*

[57] Zachary Elkins, Tom Ginsburg & James Melton, *Baghdad, Tokyo, Kabul . . .: Constitution Making in Occupied States*, 49 WM. & MARY L. REV. 1139, 1151–52 (2008) [hereinafter Elkins et al., *Occupied States*]; *see also* Zachary Elkins, Tom Ginsburg & James Melton, *The Lifespan of Written Constitutions*, THE RECORD ONLINE, http://www.law.uchicago.edu/alumni/magazine/lifespan (last visited May 3, 2012) (discussing generally the lifespan of constitutions) [hereinafter Elkins et al., *Lifespan*].

[58] Elkins et al., *Occupied States*, *supra* note 57, at 1158.

[59] *Id.* at 1166–67

enough power to block unfavorable constitutional amendments by the ruling majority.[60] Local involvement in the constitution writing is also associated with more durable documents.[61]

C. *Economic Sanctions*

As evident from the above analysis, the viability of military intervention and occupation as mechanisms to guarantee a right to democracy is limited. Might other coercive mechanisms be more effective? One suggested approach is the use of sanctions, specifically economic sanctions, to promote democracy and facilitate regime change from authoritarianism to democracy. Sanctions have the benefit of a stronger foundation in the international legal regime than military interventions. The choice of with whom to trade and other economic policy lies solely in the hands of a state and meets international legal standards, providing that existing treaties are not violated. Furthermore, multilateral sanctions often carry the legal imprimatur of an authoring agency such as the United Nations Security Council, which is specifically permitted in its Charter to authorize such actions.[62] Sanctions also have the benefit of limiting particular costs—financial and human—associated with military actions, especially protracted ones.

Yet the general record of economic sanctions in producing change in target state behavior is weak.[63] Whether this is because certain conditions were lacking (e.g., economic vulnerability) or the sanctions were largely symbolic and never intended to induce behavioral change, it is far from certain that they will have a significant effect on the target state. With respect to encouraging democracy, the intended impact is minimal and the unintended effects pernicious. Economic sanctions do not enhance the prospects for democracy and indeed are associated with a diminution of democratic practices and forces in the target state.[64] Most notably, sanctions actually increase government political repression of opposition groups, many of which might be advocating democratic reforms.[65] For example, restrictions on oil sales against Saddam Hussein's Iraq did not lessen his government's persecution of domestic opposition forces and black market sales of oil allowed revenues to continue to flow to the elite supporters of the regime. General sanctions tend to harm the general population and opposition groups more than the political elites who resist democratic reforms. Sanctions also increase the incentives for the government to repress its opponents; the regime reacts to foreign pressure by clamping down further on the opposition to demonstrate its resolve and

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[60] Elkins et al., *Lifespan*, *supra* note 57, at 200–01.

[61] *Id.* at 1174.

[62] U.N. Charter art. 41.

[63] *See* Robert Pape, *Why Economic Sanctions Do Not Work*, 22 INT'L SECURITY 90–136 (1997). *See generally* GARY HUFBAUER, JEFFREY SCHOTT, KIMBERLY ELLIOTT & BARBARA OEGG, ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY (3d ed., 2008) (examining the effectiveness of sanction conditions).

[64] Dursun Peksen & A. Cooper Drury, *Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy*, 36 INT'L INTERACTIONS 240, 257 (2010).

[65] Dursun Peksen & A. Cooper Drury, *Economic Sanctions and Political Repression: Assessing the Impact of Coercive Diplomacy on Political Freedoms*, 10 HUM. RTS. REV. 393, 403–08 (2009); Reed Wood, *A Hand upon the Throat of the Nation: Economic Sanctions and State Repression, 1976–2001*, 52 INT'L STUD. Q. 489, 502–05 (2008).

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signal that it will not give in to foreign pressure.[66] The fear that domestic democratic reform groups might be emboldened by the sanctions also provides impetus for the extant government to crack down.[67] The prototypical example of such an effect is Cuba.[68] Following the overthrow of the Batista regime and the ascendency of Fidel Castro and the Communist Party, Cuba was subject to numerous sanctions, most notably from the United States. Despite sanctions for over fifty years and repeated calls for democratic reform, Cuba has instituted few, if any, meaningful political reforms in the direction of democratic rule. At the same time, political opposition figures have been forced into exile or jailed.

Part of the problem with economic sanctions is that they tend to be indiscriminant, making little distinction between intransigent elites and prodemocratic forces that they hurt. Dursun Peksen and A. Cooper Drury raise the possibility that targeted or "smart" sanctions that are focused specifically on government leaders might be more effective in promoting democracy or at least mitigate some of the deleterious effects:

> "Smart" sanctions that directly aim at the target leadership might help decrease the corrosive impact that the sanctions with no discriminatory measures inflict on democratic freedoms . . . . At minimum, such targeted sanctions in the form of arms embargoes, financial asset freezes or international travel bans on the political elites will not worsen the economic well-being of the opposition. Instead they might directly hurt political elites and subsequently make them less intransigent against foreign demands for greater respect for political rights and civil liberties.[69]

Nevertheless, smart sanctions are not a panacea because they don't necessarily remove the incentives for government leaders to repress, and the evidence for efficacy of targeted sanctions has yet to be provided.[70]

D. Noncoercive Measures

The international community might also avail itself of other techniques to promote democracy, but these are somewhat limited as well. In contrast to the use of "sticks" in the form of economic sanctions, states and international organizations might also employ "carrots" or inducements in the form of foreign aid to facilitate the adoption of democratic processes. Such aid is thought to improve internal conditions such as economic development associated with successful democratization and provide incentives for leaders to adopt democratic practices.[71]

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[66] Peksen & Drury, *supra* note 64, at 246.

[67] *Id.* at 257.

[68] *See generally* MARTIN GITLIN, U.S. SANCTIONS ON CUBA (2011).

[69] Peksen & Drury, *supra* note 64, at 259.

[70] *See, e.g.*, DAMIEN FRUCHART ET AL., UNITED NATIONS ARMS EMBARGOES: THEIR IMPACT ON ARMS FLOWS AND TARGET BEHAVIOUR (2003) (considering the success of targeted sanctions, specifically arms embargoes).

[71] Foreign aid is theorized to lead to democratization through one of three causes. First, aid can provide technical assistance for electoral processes, strengthening checks on executive power through legislatures and judiciaries and promoting civil society. Second, aid can be made conditional on the

Nevertheless, looking at a wide range of countries between 1975 and 1999, Stephen Knack of the World Bank did not find a significant correlation between foreign aid per capita received and democratic improvements.[72]

It might be that the international community cannot make a state democratic when it resists such overtures. Yet the United Nations and other international organizations can assist states that are interested in democratizing; this help can take several forms.[73] The United Nations Electoral Assistance Unit assists states in the organization and conduct of elections and verifies whether elections were legitimate, or "free and fair."[74] In some instances, peacekeeping troops have been deployed to ensure that elections run smoothly and that there are no attempts to undermine voting through violence.[75] There have been various instances of peacekeeping success in such operations, most notably in Cambodia[76] and Namibia.[77]

E. Some Conclusions

A right to democracy might also entail a variety of actions by the international community to safeguard or promote that right. Yet our analysis indicates that regardless of the coercive mechanisms employed—military interventions, occupations, imposed constitutions, and economic sanctions—their utility is extremely limited, whether such actions are permitted under international law or not. Even more positive inducements such as foreign aid apparently have limited utility. Perhaps only assistance with elections for states already committed to the democratization process has a notable positive effect. Without considering any of the costs associated with such actions (and these can be substantial, as the U.S. and British invasion of Iraq demonstrates), it appears that the payoffs are negligible for actions designed to promote a democracy norm. The next Part of the Article moves beyond considerations of how the international community might

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recipient taking steps to democratize. Lastly, aid may improve education and per capita income, both of which are associated with democratization. Stephen Knack, *Does Foreign Aid Promote Democracy?*, 48 INT'L STUD. Q. 251, 252–54 (2004).

[72] *Id.* at 257–61. However, U.S. aid targeted towards democracy promotion may be more effective. *See* James M. Scott & Carie A. Steele, *Sponsoring Democracy: The United States and Democracy Aid to the Developing World, 1988-2001*, 55 INT'L STUD. Q. 47, 61 (2011).

[73] *See generally* Christopher Joyner, *The United Nations and Democracy*, 5 GLOBAL GOVERNANCE 333, 346–47 (1999).

[74] For details on how this organization operates, see generally UNITED NATIONS DEV. PROGRAMME, UNDP AND ELECTORAL ASSISTANCE: *TEN YEARS OF EXPERIENCE*, http://www.undp.org/governance/docs/Elections-Pub_DecadeReview.pdf (last visited Apr. 21, 2012). Other international organizations such the Organization for Security and Co-operation in Europe (OSCE) perform similar functions.

[75] Virginia Page Fortna, *Peacekeeping and Democratization*, *in* FROM WAR TO DEMOCRACY: DILEMMAS OF PEACEBUILDING 39, 44–46 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

[76] *See generally* Michael W. Doyle & Nishkala Suntharalingam, *The UN in Cambodia: Lessons for Complex Peacekeeping*, 1 INT'L PEACEKEEPING 117 (1994) (examining factors affecting success and failure in multidimensional peacekeeping operations).

[77] *See generally* Paul F. Diehl & Sonia R. Jurado, *United Nations Election Supervision in South Africa: Lessons from the Namibian Peacekeeping Experience*, 16 STUD. CONFLICT & TERRORISM 61, 62–66 (1993).

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protect and enhance this prospective right to analyzing what the implications might be should the right be established and be respected, with the result being greater democratization in the world.[78]

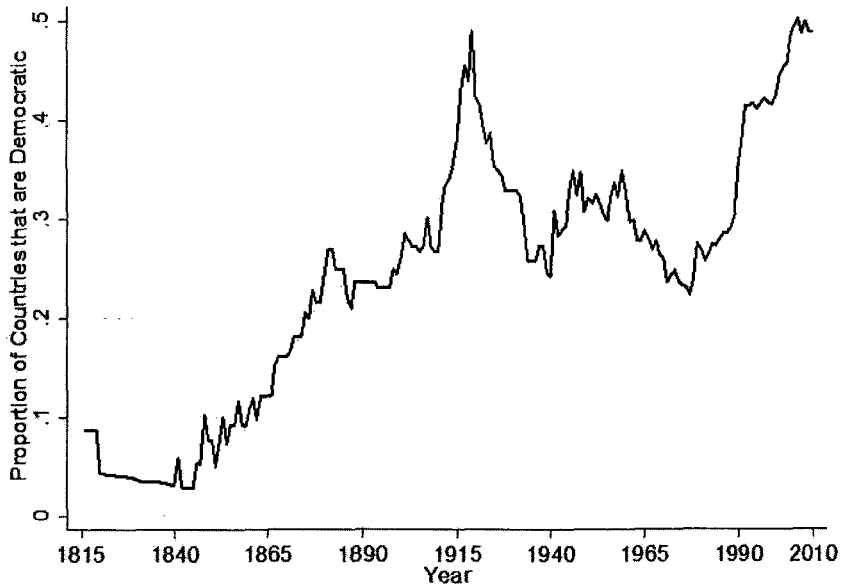
III. CONSEQUENCES OF A MORE DEMOCRATIC WORLD

A right to democracy might not be guaranteed or easy to secure, but the international system has witnessed a rapid growth in the proportion of democratic states, as seen in Figure 1. More than half of all countries in the world today have democratic institutions.[79]

[78] It is also possible that the idea of a "right to democracy" is itself caused by the historical waves of democracy that have occurred. In this regard, the "right to democracy," which was articulated by Immanuel Kant and other philosophers, became part of the normative international legal system but has not been fully codified into its operating system. There are elements of the right to democracy in some regional treaties, such as the European Union and the Organization of American States, and some human rights treaties, such as the ICCPR, but a broad legal "right to democracy" has not become fully ensconced in international law. *See* DIEHL & KU, *supra* note 16, at 46.

[79] There is some variance in the degree to which these states have fully consolidated democratic regimes. Our measure includes countries that score six through ten on the aggregated Polity democracy minus autocracy index. States with scores in the six through seven range are typically transitioning regimes that have some features of democracy (e.g., elections), while not providing other democratic rights (e.g., participation by a large number of political parties).

Figure 1: Proportion of Democratic Countries in the International System[80]



In this Part, we consider the consequences of this broader global shift towards a more democratic international system. There are many positive consequences including greater peace between democratic states,[81] increased levels of economic integration and cooperation through international organizations,[82] a decline in coercive territorial conquest,[83] and improvements in the protection of

[80] The data on democracy comes from the Polity IV Project as described *supra* note 6. The baseline number of countries is calculated using the Correlates of War Project's definition of system membership based on population size, membership in the United Nations or League of Nations, and diplomatic recognition by major powers. *See generally* CORRELATES OF WAR, http://www.correlatesofwar.org/ (last visited Apr. 12, 2012) (offering datasets of variables correlated with war).

[81] RUSSETT & ONEAL, *supra* note 11, at 81; Michael W. Doyle, *Kant, Liberal Legacies and Foreign Affairs* (pt. 1), 12 PHIL. PUB. AFF. 205, 225 (1983); Zeev Maoz & Bruce Russett, *Normative and Structural Causes of Democratic Peace, 1946–1986*, 87 AM. POL. SCI. REV. 624, 624–36 (1993).

[82] JON C. PEVEHOUSE, DEMOCRACY FROM ABOVE: REGIONAL ORGANIZATIONS AND DEMOCRATIZATION 15–45 (2005); RUSSETT & ONEAL, *supra* note 11, at 157–93; MEGAN SHANNON, THE DEMOCRATIC COMMUNITY AND THE EXPANSION OF INTERNATIONAL ORGANIZATIONS 41–43 (2005); Sara McLaughlin Mitchell, Kelly M. Kadera & Mark J.C. Crescenzi, *Practicing Community Norms: Third Party Conflict Management and Successful Settlements*, *in* INTERNATIONAL CONFLICT MEDIATION: NEW APPROACHES AND FINDINGS 243, 256–61 (Jacob Bercovitch & Scott Sigmund Gartner eds., 2008); Bruce Russett, John Oneal & David Davis, *The Third Leg of the Kantian Tripod for Peace*, 52 INT'L ORG. 441, 462–63 (1998).

[83] STEPHEN G. BROOKS, PRODUCING SECURITY: MULTINATIONAL CORPORATIONS, GLOBALIZATION, AND THE CHANGING CALCULUS OF CONFLICT 80–128 (2005); *see also* Stephen G. Brooks, *The Globalization of Production and the Changing Benefits of Conquest*, 43 J. CONFLICT RESOL. 646, 646–70 (1999); Paul R. Hensel, Michael E. Allison & Ahmed Khanani, *Territorial Integrity Treaties and Armed Conflict over Territory*, 26 CONFLICT MGMT. & PEACE SCI. 120, 134 (2009); Hoon Lee & Sara McLaughlin Mitchell, *Foreign Direct Investment and Territorial Disputes*, 56 J. CONFLICT RESOL. (forthcoming 2012), *available at* http://jcr.sagepub.com/content/early/2012/04/29/0022002712438348.full.pdf+html; Mark W. Zacher, *The Territorial Integrity Norm:*

human rights inside the state.[84] International courts and third-party mediators have also played a more prominent role in international conflict management, and even autocratic states are turning more towards these third parties for conflict resolution.[85]

On the other hand, the process of democratization could be dangerous in the sense that elites might use coercive foreign policy strategies to rally the populace around their new leadership.[86] Globalization also has potential negative consequences for those on the losing side of the economic inequality spectrum.[87] Furthermore, events such as the Arab Spring are occurring in a period of potential decline for Western democracies, especially the United States. The rise of China and emerging democracies like India and Brazil presents new challenges for the democratic community in terms of how these rising states will be incorporated into the democratic community. In short, while liberalism seems to be "winning" in terms of its adoption as a form of governance by states,[88] the systemic consequences of this shift are multifaceted with both costs and benefits to the established democratic countries of the Western world.

A. The "Kantian" Peace

Immanuel Kant predicted the recent growth of democratic states in his theory of "Perpetual Peace,"[89] which focused on three key conditions for perpetual peace: (1) republican forms of government domestically; (2) an international federation of free states; and (3) a principle of cosmopolitanism, or universal hospitality. Kant believed that human beings' categorical imperative to end warfare could be reached through the spread of a domestic and international "rule of law," founded on legal equality, individual freedom, and the separation of legislative and executive powers. Citizens would be freer to act morally under a republican form of government built on these principles. Furthermore, democracy would promote peace in the international system by decreasing the uncertainty that arises in a state of anarchy.

International Boundaries and the Use of Force, 55 INT'L INTERACTIONS 215, 218 (2001).

[84] Christian Davenport & David A. Armstrong, II, *Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996*, 48 AM. J. POL. SCI. 538, 547 (2004).

[85] On the increasing use of international courts and tribunals, see Karen J. Alter, *Delegating to International Courts: Self-Binding vs. Other-Binding Delegation*, 71 L. & CONTEMP. PROBS. 37 (2008) (analyzing qualitative and empirical developments in international courts); Laurence R. Helfer & Anne-Marie Slaughter, *Why States Create International Tribunals: A Response to Professors Posner and Yoo*, 93 CALIF. L. REV. 899, 931–39 (2005). On the increasing use of third-party conflict management tools by autocratic countries, *see* MITCHELL, KADERA, & CRESCENZI, *supra* note 82, at 244, 247–48.

[86] Edward D. Mansfield & Jack Snyder, *Democratization and the Danger of War*, 20 INT'L SECURITY 5, 17 (1995); MANSFIELD & SNYDER, *supra* note 12, at 31–34.

[87] *See, e.g.*, Dale C. Copeland, *Economic Interdependence and War: A Theory of Trade Expectations*, 20 INT'L SECURITY 5, 21–31 (1996); Mark David Nieman, *Shocks and Turbulence: Globalization and the Occurrence of Civil War*, 37 INT'L INTERACTIONS 263, 267–76 (2011); Rafael Reuveny & William R. Thompson, *Uneven Economic Growth and the World Economy's North-South Stratification*, 52 INT'L STUD. Q. 579, 602 (2008).

[88] *See, e.g.*, Francis Fukuyama, *The End of History*, NATIONAL INTEREST, Summer 1989, at 3.

[89] IMMANUEL KANT, PERPETUAL PEACE 99–105 (H. S. Reiss ed., 2d ed., Cambridge Univ. Press 1991) (1795).

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The path by which the Kantian peace could occur is multiply realizable.[90] Some arguments suggest that democracy develops largely through a process of contestation and competition inside the state[91] and that the experience of warfare compels citizens to demand better governing institutions from their leaders. War justifies the development of democratic governments and creates a more durable peace, which is essential to the survival and improvement of republican constitutions.[92] States improve their internal political institutions as a result of experiencing the horrors of civil and international wars.[93] To protect this improvement in their domestic republican constitutions (the domestic rule of law), states alter their international relations as well (the international rule of law). The greater strength and success of the democratic community that evolves over time encourages other states to liberalize (competition), while the "rule of law" externalized by democracies in their relations with each other (socialization) creates a more democratic international "rule of law."[94] In this "right makes might" account, democratic institutions develop largely through internal political processes, although intrastate and interstate warfare facilitates the trend towards democracy.[95] Empirical analyses since 1816 suggest that more frequent and intense interstate wars have increased the proportion of democratic states in the system; at the same time, the pacifying effect of global democracy on interstate war has also intensified. This has created an evolutionary trend towards more democracy and less interstate war.[96]

A second account tends to view the expansion of global democracy as the result of external intervention by democratic major powers and military alliances, such as NATO. Recent wars in Iraq and Afghanistan and NATO's military interventions in Bosnia and Libya fit this pattern. We reviewed the efficacy of this strategy above and found it wanting. Nevertheless, this approach tends to create dichotomies between states that are full-fledged or newly accepted members of the democratic community and those that are outside the community, or what scholars have termed

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[90] ALEXANDER WENDT, SOCIAL THEORY OF INTERNATIONAL POLITICS 152 (1999). By multiply realizable, we mean that a certain macro-state (e.g., a Kantian world) could be constructed by a variety of different combinations of lower level properties. For example, a global democratic peace could be organized around a strong, democratic hegemonic state or around a confederation of smaller states (e.g., the European Union).

[91] *See generally* Beate Jahn, *Kant, Mill, and Illiberal Legacies in International Affairs*, 59 INT'L ORG. 177 (2005) (discussing liberalism's interaction with imperialism).

[92] KANT, *supra* note 89, at 47.

[93] *Id.* at 48.

[94] Wade L. Huntley, *Kant's Third Image: Systemic Sources of the Liberal Peace*, 40 INT'L STUD. Q. 45, 48–62 (1996). For a more in-depth discussion of this argument, see Sara McLaughlin Mitchell, Scott Gates & Håvard Hegre, *Evolution in Democracy-War Dynamics*, 43 J. CONFLICT RESOL. 771, 774–78 (1999); *see also* Mark J.C. Crescenzi, Kelly M. Kadera, Sara McLaughlin Mitchell & Clayton L. Thyne, *A Supply Side Theory of Mediation*, 55 INT'L STUD. Q. 1069, 1071–80 (2011); Kelly M. Kadera, Mark J. C. Crescenzi & Megan L. Shannon, *Democratic Survival, Peace, and War in the International System*, 47 AM. J. POL. SCI. 234, 234–47 (2003) (showing that fledgling democracies have a greater chance for survival in a system that has a strong democratic community); Sara McLaughlin Mitchell, *A Kantian System? Democracy and Third Party Conflict Management*, 46 AM. J. POL. SCI. 749, 750–53 (2002).

[95] Ewan Harrison & Sara McLaughlin Mitchell, Might Makes Right Versus Right Makes Might?: Two Systemic Democratic Peace Tales 7–14 (Sept. 12, 2007) (unpublished manuscript) (available at http://www.saramitchell.org/research.html) (last visited Apr. 21 2012).

[96] We discuss these findings in more detail in the Part on Systemic Democratic Peace, see *infra* notes 132141 and accompanying text.

zones of peace versus zones of conflict.[97] John Rawls draws a similar distinction between liberal and decent peoples on the one hand and outlaw states, burdened societies, and benevolent absolutisms on the other hand.[98] Such a classification can be problematic as it may deny access to the community by states that have democratic institutions or it may tolerate repressive behavior by autocratic regimes that support the democratic community.[99]

There is a large empirical literature that substantiates Kant's predictions regarding the democratic peace, especially the lack of warfare between democratic countries. Analyses have been conducted at multiple levels: (1) monadic or single state (are democratic countries more peaceful in general in their foreign policy behavior than nondemocratic countries?); (2) dyadic or pairs of states (are democratic countries peaceful towards other democratic countries?); and (3) systemic or global (is a world with more democratic countries more peaceful?). Evidence is strongest at the dyadic level of analysis, as there are virtually no instances of interstate war between two democratic states, where war is considered an event that generates one thousand or more battle deaths for all war participants.[100] Pairs of democratic countries are also less likely to use militarized force to settle diplomatic issues, they are more likely to strike negotiated settlements to resolve diplomatic conflicts,[101] and they rarely inflict casualties on democratic opponents.[102] Democratic countries may be more amenable to settling disputes with the assistance of third parties[103] due to a norm of trust in legal

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[97] Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs* (pt. 2), 12 PHIL. PUB. AFF. 323, 351–52 (1983); Arie M. Kacowicz, *Explaining Zones of Peace: Democracies as Satisfied Powers*, 32 J. PEACE RES. 265, 265 (1995).

[98] *See* JOHN RAWLS, THE LAW OF PEOPLES 4 (1999).

[99] Mark Peceny argues that the Spanish-American War is an example of the democratic community not embracing a newer democracy into its group, while the differential treatment of Syria compared to Libya is a more recent example of the democratic community tolerating a repressive regime. Mark Peceny, *A Constructivist Interpretation of the Liberal Peace: The Ambiguous Case of the Spanish-American War*, 34 J. PEACE RES. 415 (1997).

[100] There are hundreds of studies showing support for dyadic democratic peace. For representative studies, see PAUL K. HUTH & TODD L. ALLEE, THE DEMOCRATIC PEACE AND TERRITORIAL CONFLICT IN THE TWENTIETH CENTURY 277–97 (2002); RUSSETT & ONEAL, *supra* note 11, at 111; Stuart A. Bremer, *Dangerous Dyads*, 36 J. CONFLICT RESOL. 309, 334 (1992); Maoz & Russett, *supra* note 81, at 624–36. For reviews of the literature, see JAMES LEE RAY, DEMOCRACY AND INTERNATIONAL CONFLICT: AN EVALUATION OF THE DEMOCRATIC PEACE PROPOSITION 1–46 (1995); RUSSETT, *supra* note 11, at 3–23; Steve Chan, *In Search of Democratic Peace: Problems and Promise*, 41 MERSHON INT'L STUD. REV. 59, 59–91 (1997); James Lee Ray, *Democracy on the Level(s): Does Democracy Correlate with Peace?*, *in* WHAT DO WE KNOW ABOUT WAR 299, 299–318 (John A. Vasquez ed., 2000).

[101] William J. Dixon & Paul D. Senese, *Democracy, Disputes, and Negotiated Settlements*, 46 J. CONFLICT RESOL. 547, 558 (2002). If the least democratic country in a pair of states experienced a one-standard deviation increase in its democracy score, the probability of a militarized dispute in the dyad would decline by about forty-two percent. *See* RUSSETT & ONEAL, *supra* note 11, at 125–54.

[102] Frank Wayman, Patterns of Militarized Disputes Between Liberal States, 1816-1992 (Nov. 1, 2002) (unpublished manuscript) (on file with author).

[103] William J. Dixon, *Democracy and the Management of International Conflict*, 37 J. CONFLICT RESOL. 42, 68 (1993); Gregory A. Raymond, *Democracies, Disputes, and Third-Party Intermediaries*, 38 J. CONFLICT RESOL. 24, 34 (1994) [hereinafter Raymond, *Intermediaries*]; Gregory A. Raymond, *Demosthenes and Democracies: Regime-Types and Arbitration Outcomes*, 22 INT'L INTERACTIONS 1, 1–20 (1996). Dixon finds that the probability of third-party conflict management in an interstate crisis is fifty percent higher in pairs of states with the most democratic regimes compared to pairs of states with the least democratic regimes. However, studies by Sara Mitchell, Kelly Kadera, and Mark Crescenzi find no positive effect of democracy on third-party conflict management. *See* Mitchell, *supra* note 94, at 755; Mitchell, Kadera & Crescenzi, *supra* note 82, at 257. Mark Crescenzi, Kelly Kadera, Sara Mitchell, and Clayton Thyne argue that the effect of a global supply of democratic

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procedures,[104] which also explains why democracies are more likely to recognize the jurisdiction of international courts[105] and resolve disputes with the assistance of international organizations.[106] Recent research expands the focus on democratic regimes types to a broader liberal peace emphasizing economic interdependence and shared membership in international organizations as well as those conditions that reinforce the passivity of democratic states.[107]

Evidence at the monadic level is more mixed, with some studies finding democracies are more pacific in general and less likely to initiate militarized conflicts,[108] while others discovering few differences in the dispute involvement behavior by different types of political regimes.[109] There are many possible explanations for the discrepancies in the empirical monadic democratic peace literature. Democracies could be the targets of attacks by nondemocratic states, and thus the lack of monadic peace could simply reflect democratic regimes protecting themselves.[110] Democratic major powers have occupied the position of the hegemonic state over the past several centuries and thus many uses of force could be attributed to actions by the United Kingdom or the United States. Democracies might also exhibit variation in their own belligerence depending on the degree to which their internal institutions are consolidated. This idea is captured by the notion of a "normative democratic peace," which posits that democratic norms have a stronger influence on a state's foreign policy the longer democratic institutions have been operating legitimately.[111] This suggests that one cannot necessarily expect immediate pacific benefits from states such as Libya and Egypt, even if these states manage to hold free and democratic elections in the near term. In those cases and other prospective regime transitions from the Arab Spring (e.g., Tunisia) and elsewhere, citizens and

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mediators may actually have stronger influence on the behavior of nondemocratic countries. *See* Crescenzi, Kadera, Mitchell & Thyne, *supra* note 94, at 1075–77.

[104] Beth Simmons, *See You in 'Court'? The Appeal to Quasi-Judicial Legal Processes in the Settlement of Territorial Disputes*, *in* A ROAD MAP TO WAR: TERRITORIAL DIMENSIONS OF INTERNATIONAL CONFLICT 205, 211 (Paul F. Diehl ed., 1999); Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503, 517 (1995).

[105] Sara Mitchell and Emilia Powell find that democratic countries are more likely to recognize the compulsory jurisdiction of the International Court of Justice than nondemocratic states. They find a similar pattern when examining ratification patterns for the International Criminal Court, as democratic states are much more likely to ratify the Rome Statute than nondemocratic states. SARA MCLAUGHLIN MITCHELL & EMILIA JUSTYNA POWELL, DOMESTIC LAW GOES GLOBAL: LEGAL TRADITIONS AND INTERNATIONAL COURTS 120, 152 (2011) (Rome Statute ratification and PCIJ/ICJ compulsory jurisdiction); Emilia Justyna Powell & Sara McLaughlin Mitchell, *The International Court of Justice and the World's Three Legal Systems*, 69 J. POL. 397, 409 (2007) (ICJ compulsory jurisdiction).

[106] Holley Hansen, Sara McLaughlin Mitchell & Stephen C. Nemeth, *IO Mediation of Interstate Conflicts: Moving Beyond the Global vs. Regional Dichotomy*, 51 J. CONFLICT RESOL. 295, 311 (2008).

[107] RUSSETT & ONEAL, *supra* note 11, at 125–54.

[108] DAVID L. ROUSSEAU, DEMOCRACY AND WAR: INSTITUTIONS, NORMS, AND THE EVOLUTION OF INTERNATIONAL CONFLICT 43–48 (2005); RUSSETT & ONEAL, *supra* note 11, at 81–122; Charles R. Boehmer, *A Reassessment of Democratic Pacifism at the Monadic Level of Analysis*, 25 CONFLICT MGMT. PEACE SCI. 81, 89 (2008); Vesna Danilovic & Joe Clare, *The Kantian Liberal Peace (Revisited)*, 51 AM. J. POL. SCI. 397, 406–08 (2007).

[109] Doyle, *supra* note 81, at 232–35; Zeev Maoz & Nasrin Abdolali, *Regime Types and International Conflict, 1816-1976*, 33 J. CONFLICT RESOL. 3, 17–20 (1989).

[110] *See generally* ROUSSEAU, *supra* note 108 (analyzing democracy variables at the monadic level); KENNETH A. SCHULTZ, DEMOCRACY AND COERCIVE DIPLOMACY (2001) (arguing that democratic governance reduces information asymmetries leading to war).

[111] HUTH & ALLEE, *supra* note 100, at 101–23; Maoz & Russett, *supra* note 81, at 625.

government leaders have not yet internalized democratic norms.

Zeev Maoz and Bruce Russett find strong empirical support for the normative model in a dyadic analysis from 1946 to 1986, as democratic regimes that have been stable for longer periods of time and employ less political violence against their citizens are significantly less likely to engage in militarized conflicts with other democratic countries.[112] Empirical research on the settlement of territorial disputes in the twentieth century reaches similar conclusions, as leaders are more apt to seek out negotiations to resolve border disputes if they come from older, less domestically violent democratic regimes.[113] Norms of "bounded competition" (i.e., violence is an illegitimate mechanism for dispute resolution) in democratic states put pressure on the governments to resolve disputes with peaceful and legalistic tools.[114]

The above findings indicate that the pacific effects of democracy might not accrue to newly democratic states. Newer, less consolidated democratic countries might actually be more "dangerous" or more prone to conflict in the short-term compared with more established democratic or autocratic states.[115] First, norms of territorial integrity are more entrenched in regions with established democracies.[116] Territorial disputes are a leading cause of war historically,[117] thus older democracies may simply remove a hotly contested issue from the diplomatic menu. Internally repressive democracies, often in the process of democratic transition domestically, are more likely to use force to resolve border disputes and they are more likely to escalate border conflicts to severe levels.[118] For example, Nicaragua began democratizing in the early 1990s, but used military force against Colombia in a clash over San Andrés y Providencia in 1995.[119] Militarized confrontations that occur between newer, democratizing regimes are more likely to involve highly salient border disputes, in comparison to militarized conflicts between fully democratic states, which tend to involve resource disagreements over such issues as

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[112] Maoz & Russett, *supra* note 81, at 628–36.

[113] HUTH & ALLEE, *supra* note 100, at 282.

[114] Dixon & Senese, *supra* note 101, at 548–49; William J. Dixon, *Democracy and the Peaceful Settlement of International Conflict*, 88 AM. POL. SCI. REV. 14, 15–18 (1994) [hereinafter Dixon, *Settlement*].

[115] The age of a regime and its degree of democratic consolidation are two different properties. Most quantitative analyses in political science use measures that capture the degree of democratic consolidation, such as considering a country's annual score on the Polity democracy index. Tests of the normative democratic peace proposition, on the other hand, analyze the age of a democratic regime in years. *See, e.g.*, Maoz & Russett, *supra* note 82, at 627 (examining normative model of war among democratic states).

[116] Of the total interstate territorial disputes from 1919 to 1995 recorded by Huth and Allee, twenty-eight percent of disputes in Europe and twelve percent of disputes in the Americas occurred in the post-1945 period. These predominantly democratic regions have much lower rates of territorial disputes after 1945 in comparison to the Middle East (thirty-six percent), Africa (fifty-four percent), and Asia (sixty-five percent); HUTH & ALLEE, *supra* note 100, at 27. For a more general discussion of the relationship between democracy and a general territorial integrity norm, see Mark W. Zacher, *The Territorial Integrity Norm: International Boundaries and the Use of Force*, 55 INT'L ORG. 215 (2001).

[117] KALEVI J. HOLSTI, PEACE AND WAR: ARMED CONFLICTS AND INTERNATIONAL ORDER 1648-1989, at 87–91 (1991); JOHN A. VASQUEZ, THE WAR PUZZLE 146 (1993).

[118] HUTH & ALLEE, *supra* note 100, at 114–15, 282.

[119] On April 5, 1995, two Colombian helicopters and an airplane violated Nicaragua's airspace after Nicaragua detained a Colombian boat. *Colombian Aircraft Violate Nicaraguan Air Space*, XINHUA NEWS AGENCY, April 6, 1995, *available at* http://www.lexis.com/research (follow "News" hyperlink; follow "Individual Publications" hyperlink; follow "X" hyperlink; follow "Xinhua General News Service" hyperlink; search "Colombian Aircraft Violate Nicaraguan Air Space" for appropriate date).

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oil and fishing rights or disagreements over who should rule a given regime.[120]

Second, leaders in fledgling democratic regimes may have stronger incentives to use force to secure their tenure in office than their peers in older, more consolidated democratic states. Leaders in democratizing regimes rely on a small group of elites for support, buffering themselves against greater accountability at the ballot box.[121] Military groups may find themselves most disadvantaged in the process of democratization and their interests may be difficult to reconcile with those of the new groups enfranchised in a democratic system, such as the industrialists or the urban working class. This can result in a process of elite logrolling whereby the military's interests can be addressed with policies for military buildup, imperialism, or war.[122] The military's continuing influence in Pakistan, even under democratic rule, and its covert and overt actions against long-time rival India are indicative of this tendency.[123] Leaders may benefit from successful foreign policy adventurism abroad by rallying domestic public opinion. Incentives to initiate force in the face of bad economic conditions or domestic turmoil could challenge the democratic peace,[124] although evidence suggests that autocratic regimes most often use force in response to domestic turmoil.[125]

Broadly speaking, empirical evidence for the "democratizing is dangerous" proposition is inconclusive at this time. Edward Mansfield and Jack Snyder find that regime changes towards democracy or autocracy increase the chances for war participation relative to war risks for stable regimes.[126] Other studies report that regime change in general increases states' risks for interstate conflict involvement, with democratization often having a lower conflict risk relative to other types of regime changes, but nevertheless still positively associated with violent conflict.[127]

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[120] Sara McLaughlin Mitchell & Brandon C. Prins, *Beyond Territorial Contiguity: Issues at Stake in Democratic Militarized Interstate Disputes*, 43 INT'L STUD. Q. 169, 174 (1999).

[121] Mansfield & Snyder, *supra* note 86, at 23.

[122] *Id.* at 27–31.

[123] Akisato Suzuki & Neophytos Loizides, *Escalation of Interstate Crisis of Conflictual Dyads: Greece-Turkey and India-Pakistan*, 46 COOPERATION & CONFLICT 21, 32–33 (2011).

[124] John R. Oneal & Jaroslav Tir, *Does the Diversionary Use of Force Threaten the Democratic Peace? Assessing the Effect of Economic Growth on Interstate Conflict, 1921–2001*, 50 INT'L STUD. Q. 755, 755 (2006) (finding that "economic conditions do affect the likelihood that a democracy, but not an autocracy, will initiate a fatal militarized dispute, even against another democracy").

[125] *See, e.g.*, Graeme A. M. Davies, *Domestic Strife and the Initiation of International Conflicts: A Directed Dyad Analysis, 1950-1982*, 46 J. CONFLICT RESOL. 672, 672 (2002) ("[V]iolent domestic strife increases the likelihood of a diversionary conflict . . . ."); Andrew J. Enterline & Kristian S. Gleditsch, *Threats, Opportunity, and Force: Repression and Diversion of Domestic Pressure, 1948–1982*, 26 INT'L INTERACTIONS 21, 40 (2000) ("Greater constraints on executives appear to reduce the likelihood both of resort to repression and external dispute involvement."); Sara McLaughlin Mitchell & Brandon C. Prins, *Rivalry and Diversionary Uses of Force*, 48 J. CONFLICT RESOL. 1, 18 (2004) ("In opportunity rich environments, nondemocratic states initiate militarized disputes as economic conditions deteriorate."); David Sobek, *Rallying Around the* Podesta*: Testing Diversionary Theory Across Time*, 44 J. PEACE RES. 29, 29 (2007) ("Oligarchies are more likely to initiate wars during periods of domestic unrest . . . ."). This could be driven by the fact that democratic leaders have opportunities to use diversionary force, but their potential adversaries make greater concessions as a result of democratic leaders' credible threats to use force in such bad times. Brett Ashley Leeds & David R. Davis, *Domestic Political Vulnerability and International Disputes*, 41 J. CONFLICT RESOL. 814, 828 (1997); Alastair Smith, *Diversionary Foreign Policy in Democratic Systems*, 40 INT'L STUD. Q. 133, 150 (1996).

[126] Mansfield & Snyder, *supra* note 86, at 12 (finding that democratizing states are two-thirds more likely to go to war relative to states that have experienced no regime changes).

[127] *See, e.g.*, William R. Thompson & Richard Tucker, *A Tale of Two Democratic Peace*

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Additional analyses suggest the effects may depend on the degree to which a democratic transition is complete or incomplete, with higher risks for interstate war involvement occurring in states that experience incomplete democratic transitions.[128] By most accounts, Russia's democratization efforts have stalled and even regressed; meanwhile, it invaded Georgia and fought the South Ossetia War with that neighbor in 2008. In the diversionary war literature, we see mixed findings as well, with some studies showing that democratic institutions have no significant effect on dispute initiation,[129] and other studies showing a higher risk of dispute initiation for democratic states in times of domestic turmoil.[130] Yet these results tend to be driven by the behavior of the United States and United Kingdom, states that have ample opportunities to use force given their hegemonic status. Thus when we consider the potential behavior for conflict initiation by newer transitioning regimes, such as Egypt, Tunisia, or Libya, it is not clear whether the risks for conflict will rise in the region. Peace will depend to some degree on the extent to which the militaries in these states will need to be placated, as well as the external opportunity environments for force, such as territorial disputes. South Sudan provides an example of a transitioning regime that enters statehood with several border disputes with its neighboring states, a situation that could threaten interstate peace.[131]

B. Systemic Democratic Peace

The systemic transformation of the international system into a world filled with democratic countries has profound implications for interstate conflict and cooperation amongst states, a pattern that has received a great deal of attention from analysts focused on the systemic level of analysis. Liberal peace scholars seek to understand the relationship between global democracy and global warfare, wondering if democracies promote their norms of democratic interaction globally. The two most recent hegemonic powers, the United Kingdom and the United States, are fully consolidated democratic regimes. Their victories in the major wars of the twentieth century influenced the architecture of the postwar orders that emerged, with democratic victors being more likely to put limits on the victors' power

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Critiques, 41 J. CONFLICT RESOL. 428, 445 (1997) (correlating democratic regime change with increased conflict only with regard to variable "openness of executive recruitment"). *But see* Andrew J. Enterline, *Driving While Democratizing (DWD)*, 20 INT'L SEC., no. 4, 1996, at 183 (refuting Mansfield and Snyder's findings that democratization increases conflict); John R. Oneal & Bruce Russett, *The Classic Liberals Were Right: Democracy, Interdependence, and Conflict, 1950-1985*, 41 INT'L STUD. Q. 267, 267 (1997) ("[W]e find no evidence that states that have recently undergone regime changes, whether in the democratic or autocratic direction, are particularly conflict prone."); Michael D. Ward & Kristian S. Gleditsch, *Democratizing for Peace*, 92 AM. POL. SCI. REV. 51, 59 (1998) ("[T]he process of democratization is accompanied by a decrease in the probability of a country being involved in a war . . . .").

[128] *See, e.g.*, Edward D. Mansfield & Jack Snyder, *Democratic Transitions, Institutional Strength, and War*, 56 INT'L ORG. 297, 328 (2002).

[129] *See, e.g.*, Leeds & Davis, *supra* note 125, at 828; Mitchell & Prins, *supra* note 125, at 19.

[130] *See, e.g.*, Christopher Gelpi, *Democratic Diversions: Governmental Structure and the Externalization of Domestic Conflict*, 41 J. CONFLICT RESOL. 255, 255 (1997); Oneal & Tir, *supra* note 124, at 773.

[131] John A. Vasquez, *Why Do Neighbors Fight? Proximity, Interaction, and Territoriality*, 32 J. PEACE RES. 277, 285–86 (1995) (arguing that secessionist movements are potentially dangerous, especially if the creation of a new state generates new interstate territorial disputes).

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through the creation of postwar institutions and security agreements.[132] This leadership helped to create institutionalized order in the international system, especially after World War II, with the creation of the United Nations, World Bank, International Monetary Fund, International Court of Justice, and the World Trade Organization, among other international institutions.

The successful propagation of a right to democracy has the potential to produce a more peaceful world, but such a result is neither guaranteed nor immediate with the addition of more democratic states. One study found that as the proportion of jointly democratic dyads in the system increased, the amount of global conflict at lower severity levels also increased, but that the proportion of democracies was negatively related to the total amount of full-scale war in the system.[133] It may be problematic to assume that an increase in the proportion of democracies globally will immediately decrease the level of systemic conflict.[134] If the probability of war is greater in "mixed dyads" (democracy vs. autocracy) than the probability of war between two authoritarian states, then the relationship between the proportion of democracies in the international system and the frequency of international conflict could be parabola-shaped. In other words, if the proportion of democracies in the system is low, then the initial effect of new democracies entering the system would be an overall *increase* in the level of global conflict because of the high risk for militarized conflicts among democratic-autocratic pairs of states (e.g., Sudan vs. South Sudan). This increases up to a threshold point, where the proportion of democracies is large enough to produce greater levels of systemic peace, with the threshold point depending on the probability of war in mixed and jointly autocratic dyads. Empirical analyses provide some support for this theoretical relationship, with the pre-World War II period being associated with more democracy and more war, and the post-World War II period being characterized by more democracy and less war in the international system.[135]

One theoretical logic for the dynamic relationship between war and democracy builds upon Kant's argument that the experience of civil and interstate war compels citizens to improve the institutions of their governments, and that these governments in turn seek to protect those gains by promoting a democratic rule of law internationally.[136] This produces an evolutionary dynamic towards more

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[132] *See* G. JOHN IKENBERRY, AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE REBUILDING OF ORDER AFTER MAJOR WARS 258 (2001) ("[T]he leading state agrees to restrain its own potential for domination and abandonment in exchange for greater compliance by subordinate states."); DAVID A. LAKE, HIERARCHY IN INTERNATIONAL RELATIONS 175–76 (2009) ("Although they may bias the rules to their advantage . . . dominant states must produce political order, discipline subordinates, and restrain their own freedom of action."); CHARLES LIPSON, RELIABLE PARTNERS: HOW DEMOCRACIES HAVE MADE A SEPARATE PEACE 169 (2003) ("[C]onstitutional democracies avoid war because they have a unique capacity to form effective partnerships that assuage fears, diminish risks, and capture joint benefits.").

[133] Maoz & Abdolali, *supra* note 109, at 27 (analyzing data between 1817 and 1976); *see also* Mark J. C. Crescenzi & Andrew J. Enterline, *Ripples from the Waves? A Systemic, Time-Series Analysis of Democracy, Democratization, and Interstate War*, 36 J. PEACE RES. 75, 86–87 (1999) (finding that the proportion of democracy and proportion of war are inversely related).

[134] Nils Petter Gleditsch & Håvard Hegre, *Peace and Democracy: Three Levels of Analysis*, 41 J. CONFLICT RESOL. 283, 283 (1997) (concluding that "increasing democratization initially produces more war, and the reduction of starts only at a higher level of democratization").

[135] *Cf. id.* at 295.

[136] Huntley, *supra* note 94, at 58.

democracy and less war over time. A second logic for an evolutionary relationship points to the empirical findings relating regime type and success in interstate war.[137] If democracies are more likely to win the wars they fight,[138] and if losing states in wars are most likely to experience regime changes,[139] then democratic regimes surviving in the aftermath of interstate wars will increase in the system over time. Analyses from 1816 to 2001 support this argument, showing that global levels of democratization are inversely related to the proportion of states at war and that the pacifying effect of democracy on war became more pronounced over time.[140]

An international right to democracy might first be felt in particular geographic regions rather than in the international system as a whole. Democratic peace analyses have also shown the importance of regional regime type configurations for predicting interstate conflict. Pairs of states located in more democratic regions with higher densities of regional trade experience lower risks for militarized conflict compared to those in more autocratic, unstable regions.[141]

C. Conflict Management Strategies

An increase in the number of democratic states in the international system that results from a right to democracy should also produce additional desirable outcomes. This goes beyond lowering the risk for war to actually promoting the peaceful resolution of disputes that do occur. The expansion of the democratic community provides a larger supply of mediators to resolve conflicts, with democratic countries stepping into the mediating fray more often than nondemocratic countries.[142] As leading states in the international system, the United States and Great Britain served as entrepreneurs in the use of binding forms

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[137] Mitchell, Gates & Hegre, *supra* note 94, at 777.

[138] *See* David A. Lake, *Powerful Pacifists: Democratic States and War*, 86 AM. POL. SCI. REV. 24, 31 (1992) (finding that since 1816, democracies have won eighty-one percent of the interstate wars they have fought against autocratic regimes). *See generally* DAN REITER & ALLAN C. STAM, DEMOCRACIES AT WAR (2002) (examining why democracies are more likely to win wars).

[139] Bruce Bueno de Mesquita, Randolph M. Siverson & Gary Woller, *War and the Fate of Regimes: A Comparative Analysis*, 86 AM. POL. SCI. REV. 638, 642 (1992) (finding that the probability of violent regime change increases from .008 to .44 for the state that initiates and loses a war (compared to victors) and for states who are targeted in war, the probability of violent regime change doubles if they lose the war (from .11 to .22)).

[140] Mitchell, Gates & Hegre, *supra* note 94, at 771 (showing, through analysis of the endogenous relationship between democracy and conflict, that higher levels of interstate war create more global democracy while a higher proportion of democracies reduces the amount of war in the system, and that the relationship changes over time, with the democratic peace effect being strongest after World War II). Other authors have argued instead that peace creates conditions conducive to democratization. *See generally* ZEEV MAOZ, DOMESTIC SOURCES OF GLOBAL CHANGE (1996) (analyzing domestic and international conflicts to argue that evolutionary change leads to lower levels of conflict than revolutionary change); KRISTIAN SKREDE GLEDITSCH, ALL INTERNATIONAL POLITICS IS LOCAL: THE DIFFUSION OF CONFLICT, INTEGRATION, AND DEMOCRATIZATION 89–91 (2002) (examining how geographic areas of peace affect democracy). Both processes could occur simultaneously if the largest wars in history act as positive political shocks for democratic waves, while dangerous regional neighborhoods influence the chances for successful democratization.

[141] GLEDITSCH, *supra* note 140, at 110–11; Zeev Maoz, *Pacifism and Fightaholism in International Politics: A Structural History of National and Dyadic Conflict, 1816-1992*, 6 INT'L STUD. REV. 107, 123 (2004).

[142] Crescenzi, Kadera, Mitchell & Thyne, *supra* note 94, at 1084–85. Fully democratic states are 172% more likely to serve as mediators than fully autocratic states. As the average level of democracy in the international system increases, third-party mediation is much more likely to occur as well.

of dispute settlement, such as arbitration and adjudication. Their use of arbitration procedures to resolve claims surrounding the Jay Treaty and damages wrought by the *Alabama* in the American Civil War was highly successful.[143] This success was noticed by other states in the Western Hemisphere, as they sought to enshrine the use of several conflict management techniques in regional institutions such as the Central American Court of Justice and the Organization of American States.[144] The success of the *Alabama* claims also sparked negotiations for the Hague Conferences at the turn of the twentieth century, resulting in the creation of the Permanent Court of Arbitration (PCA) and the Permanent Court of International Justice (PCIJ).[145] The PCA still hears cases today, as does the International Court of Justice, the successor of the PCIJ.

States' willingness to negotiate interstate disputes peacefully or to involve third-party mediators in the dispute settlement process depends, in large part, on their domestic regime type. Several studies confirm that pairs of democratic states promote the use of peaceful strategies to resolve interstate conflicts[146] and that those settlement attempts are successful.[147] Furthermore, shifts toward democratization in the context of a dispute also bode favorably for peaceful dispute settlement and the termination of interstate rivalries, as the former rivalry between Ecuador and Peru illustrates.[148] Other features of domestic institutions influence conflict management strategies as well, especially those that signal a competitive political environment in which political leaders might be held accountable for their actions. The presence of viable political opposition to government elites or the political party in power increases the likelihood of legalistic dispute settlement (e.g., arbitration and adjudication) for resolving territorial disputes.[149] Recent elections in a targeted state in an interstate conflict also raise the chances for peaceful talks.[150]

The increasing use of third-party conflict management can also be viewed as an outgrowth of the emerging and powerful democratic community.

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[143] Mitchell, *supra* note 94, at 751.

[144] The Central American Court of Justice was quite innovative considering it was established in the early twentieth century. It had very broad jurisdiction, allowed for individuals to bring cases to the court in some cases, and could have jurisdiction over the domestic affairs of member states through its annexed article. JEAN ALLAIN, A CENTURY OF INTERNATIONAL ADJUDICATION: THE RULE OF LAW AND ITS LIMITS 69–73 (2000).

[145] Mitchell, *supra* note 94, at 753.

[146] HUTH & ALLEE, *supra* note 100, at 2; William J. Dixon, *Dyads, Disputes, and the Democratic Peace*, *in* THE POLITICAL ECONOMY OF WAR AND PEACE 103, 103 (Murray Wolfson ed., 1998); Dixon, *supra* note 103, at 43; Dixon, *Settlement*, *supra* note 114, at 14; J. Michael Greig, *Moments of Opportunity: Recognizing Conditions of Ripeness for International Mediation Between Enduring Rivals*, 45 J. CONFLICT RESOL. 691, 710 (2001) [hereinafter Greig, *Ripeness*]; J. Michael Greig, *Stepping into the Fray: When Do Mediators Mediate?*, 49 AM. J. POL. SCI. 249, 254 (2005) [hereinafter Greig, *Fray*]; Raymond, *Intermediaries*, *supra* note 103, at 25; Lesley G. Terris & Zeev Maoz, *Rational Mediation: A Theory and a Test*, 42 J. PEACE RES. 563, 576 (2005). *But see* Kyle Beardsley, *Pain, Pressure and Political Cover: Explaining Mediation Incidence*, 47 J. PEACE RES. 395, 400 (2010); Paul R. Hensel, *Contentious Issues and World Politics: The Management of Territorial Claims in the Americas, 1816-1992*, 45 INT'L STUD. Q. 81, 84 (2001); Mitchell, Kadera & Crescenzi, *supra* note 82, at 246.

[147] Russell J. Leng & Patrick M. Regan, *Social and Political Cultural Effects on the Outcomes of Mediation in Militarized Interstate Disputes*, 47 INT'L STUD. Q. 431, 447 (2003).

[148] Greig, *Ripeness*, *supra* note 146, at 697; Greig, *Fray*, *supra* note 146, at 254; Paul R. Hensel, Gary Goertz & Paul F. Diehl, *The Democratic Peace and Rivalries*, 62 J. POL. 1173, 1186 (2000).

[149] HUTH & ALLEE , *supra* note 100, at 230.

[150] *Id.* at 226.

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Accompanying the increase in the number of democratic states in the international system has been a growth in the number of international organizations, international courts, and nongovernmental organizations available as potential conflict managers. This follows naturally from the broader liberal peace process, which includes international organizations as one of the three legs of the Kantian tripod for peace (democratic regimes and trade constitute the other two legs).[151] Democratic states are more likely to mediate other states' interstate conflicts than autocratic states. Therefore, the international system has witnessed a significant increase in the supply of third-party conflict managers, both through international organizations and courts and through the spread of democratic state mediators and arbitrators. A larger proportion of democracies globally increases the probability of third-party conflict management, *even among autocratic states*, which lack the democratic institutions that encourage peaceful settlement.[152] Thus, a right to democracy has the potential to produce a halo effect for peaceful resolution of disputes among those states that do not necessarily respect or actualize that right.

More generally, democratic countries favor the creation of international institutions to foster cooperation. As noted previously, major democratic powers have incentives in the aftermath of interstate wars to place limits on their power by tying themselves down through security and economic institutions.[153] Other democracies in the international system then join these newly created organizations to share in the public goods provided by the leading states in the system, such as the provision of security and access to economic markets. Democracies have been staunch supporters of legalistic forums for settling disputes in a wide variety of contexts from the International Court of Justice to the European Court of Justice to the International Criminal Court. Although leading powers such as the United States and United Kingdom have sometimes been opposed to new institutions, the broader coalition of democratic states at the negotiating table sees the benefits of a greater number of legal forums for dispute settlement.[154]

Shared ties in international organizations and international courts have additional benefits for their members. A higher density of shared international organization ties reduces the chances for militarized conflict between member states and also increases the frequency and success of peaceful conflict management techniques.[155] International organizations improve the chances for compliance with peaceful settlements both actively, through their direct involvement as conflict managers, and passively, through an increase in shared international organization memberships between the disputants.[156] An increased web of shared ties in international organizations also increases the chances for nonbinding third-party

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[151] RUSSETT & ONEAL, *supra* note 11, at 4.

[152] Crescenzi, Kadera, Mitchell & Thyne, *supra* note 94, at 256; Mitchell, *supra* note 94, at 749 (finding that third-party conflict management is sixteen times more likely for nondemocratic dyads when the international system is fifty percent democratic than in a system with no democratic states).

[153] IKENBERRY, *supra* note 132, at 4.

[154] Consider the creation of the International Criminal Court, which was opposed by the United States, but advocated for strongly by many other democratic countries such as India, Canada, and Germany. MITCHELL & POWELL, *supra* note 105, at 96–128.

[155] RUSSETT & ONEAL, *supra* note 11, at 171; Hansen, Mitchell & Nemeth, *supra* note 106, at 311.

[156] Sara McLaughlin Mitchell & Paul R. Hensel, *International Institutions and Compliance with Agreements*, 51 AM. J. POL. SCI. 721, 722 (2007).

conflict management[157] and active intervention by international organizations.[158] Security organizations such as NATO have similar effects, with shared alliances between disputants increasing the chances for third-party mediation[159] and peaceful dispute settlement more broadly.[160] Thus another positive consequence of the growing global democratic community is the increased use and success of third-party conflict management strategies. Studies of international courts also illustrate the influence of potential judicial intervention on peaceful dispute settlement. States are more likely to reach agreements in bilateral negotiations when they have the credible option of taking a case to the ICJ, especially if the states have domestic legal traditions that are similar to the legal rules and principles employed by the Court.[161] We observe similar behavior in the World Trade Organization, as a credible threat to take a trade dispute to a higher level of the adjudication mechanism induces out-of-court agreements at lower levels.[162] The active and passive effects of international organizations and courts and peace in relations between democratic states may help to explain why the likelihood of interstate conflict has reached an historical low point in the twenty-first century.[163]

IV. CONCLUSION

Debates over a right to democracy have raised important legal, moral, and practical considerations. Consideration of the consequences of that right, however, should be part of the discourse. New international legal rights embody the values of the international community and presuppose some positive outcomes as a result of their adoption. Without such desirable consequences, new rights lack a fully compelling case for adoption. In this Article, we considered the efficacy of the international community's promotion of a right to democracy as well as the consequences of a more democratic world. In final analysis, the international community has limited ability to coerce observance of such a right, but the payoffs from achieving greater democratization are potentially great. Nevertheless, even such general conclusions are subject to some qualification.

We examined the role of external interventions in securing a state's right to democracy, noting that coercive strategies have, at best, a mixed historical record in terms of the ability of newly imposed democracies to survive. None of a variety of

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[157] Hensel, *supra* note 146, at 86.

[158] Hansen, Mitchell & Nemeth, *supra* note 106, at 311.

[159] Terris & Maoz, *supra* note 146, at 577.

[160] Dixon, *Settlement*, *supra* note 114, at 24; Dixon & Senese, *supra* note 101, at 559; Mitchell & Hensel, *supra* note 156, at 730.

[161] MITCHELL & POWELL, *supra* note 105, at 213–18 (finding that the out-of-court effects for the World Court (PCIJ/ICJ) are strongest for civil law countries because the Court was designed according to civil law principles).

[162] Marc L. Busch & Eric Reinhardt, *Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes*, 24 FORDHAM INT'L L.J. 158, 162 (2003) (finding that defendants are more likely to make concessions after a panel has formed but before it has ruled); Eric Reinhardt, *Adjudication without Enforcement in GATT Disputes*, 45 J. CONFLICT RESOL. 174, 178 (2001).

[163] *See generally* JOHN MUELLER, QUIET CATACLYSM, REFLECTION ON THE RECENT TRANSFORMATION OF WORLD POLITICS (1995) (discussing the lower likelihood of major war and the relationship between democracy and peace).

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coercive instruments—military interventions, imposed governments, nor economic sanctions—has been shown to be associated with stable and consolidated democracy in the long run. There are certainly some success stories, but these have not been numerous and have been achieved only when combined with other actions such as instilling the rule of law in societies and institution building initiatives. Compare this to Immanuel Kant's description of a democratic peace that emerges through a more bottom-up process, in which the experience and horrors of warfare improve domestic institutions over time.

Despite the difficulty of compelling compliance with a right to democracy, there are a number of positive benefits stemming from a more democratic world, however achieved. Such benefits include, mostly notably, a decrease in the risk of armed conflict. Also likely are greater cooperation between democratic states, a higher density of international organizations, courts, and third-party mediators to resolve interstate disputes, greater economic exchange, improvements in states' human rights behavior, and a decline in territorial conquest. There are, however, some short-term risks that occur in the process of democratization, such as the incentives for leaders in these regimes to use force to rally their militaries and populace around their newly established rule and perhaps a temporary increase in conflict across the system until there is a tipping point after which the proportion of democracies reaches a critical mass.

There are many other benefits that states receive when they are fully accepted members of the democratic community. Fledgling democracies are more likely to experience successful democratic consolidation in a regional and global system that is filled with powerful democracies.[164] Yet history shows that states are not always accepted into the democratic community, even though they adopt the community's institutions. Consider the debate surrounding Turkey's desire to join the European Union, a troubling dynamic that may give us a glimpse into the West's future interactions with other democratizing states in the Middle East. The economic troubles for the United States and Europe and the potential for China to become the next hegemon also raise a need for caution. Democratic countries should continue to promote the benefits of their community, while actively engaging future global and regional leaders of the club, such as China, India, and Brazil.

In sum, a right to democracy has the potential to produce many desirable consequences, but not all are necessarily positive. Although legal scholars and policymakers might aspire to enshrine a right to democracy in international law, there is ample reason to exercise some caution in what we wish for.

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[164] Kadera, Crescenzi & Shannon, *supra* note 94, at 234–37.

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