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A Brief History of America's Republican Empire

By **James G. Wilson**, Professor of Law
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For almost a century, most Americans have thought of their country as a “republic,” not an “empire.” In popular culture, Star Wars audiences cheered the virtuous Jedi Knights’ efforts to save their beleaguered Republic from the heartless Empire. Intellectuals reassuringly distinguished the United States from decadent European countries that clung to their nineteenth-century spoils well into the twentieth-century. President Ronald Reagan all but invoked Darth Vader when he labeled the late Soviet Union an “Evil Empire.”

One of the more surprising reactions to the September 11 atrocities has been the widespread debate over whether the United States has become an “empire.” President Bush preserved the preexisting, sentimental dichotomy when he told a group of veterans that the United States does not have any “territorial ambitions. We don’t seek an empire. Our nation is committed to freedom for ourselves and for others.” His National Security Advisor, Condoleezza Rice, extended the definition of empire beyond geographical expansion to political domination: “The United States does not have territorial ambitions, or ambitions to control other people.” But in a lengthy essay in the *New York Times Sunday Magazine*, Michael Ignatieff argued that the United States has evolved into an empire. He worried that the assumption of imperial obligations could undermine republican norms and institutions—the government has diverted resources from domestic needs to military ventures and has compromised fundamental human rights, such as the right to a fair hearing under due process by summarily incarcerating numerous individuals suspected of terrorism. In a widely read book, *A REPUBLIC, NOT AN EMPIRE: RECLAIMING AMERICA’S DESTINY*, Pat Buchanan warned that the nation should not transform itself from a republic into an empire. Entering “empire, repub-

In his recent book, THE IMPERIAL REPUBLIC: A STRUCTURAL HISTORY OF AMERICAN CONSTITUTIONALISM FROM THE COLONIAL ERA TO THE BEGINNING OF THE TWENTIETH CENTURY (Ashgate 2002), Professor Wilson discloses the quest for empire that has lain hidden in the heart of the American democracy since its founding. The essay for Law Notes places his findings in a contemporary context. Ed.

lic, Bush" on the Google Internet search engine generates tens of thousands of responses. There is a secondary debate over the beginning of the American empire. There have been claims that the empire arose after September 11, after World War II, after the Spanish-American War in 1898 when the United States established permanent colonies and even during the early 1800s.



Montesquieu

More is at stake here than just semantics. A careful historical survey of the two central words, "republic" and "empire," helps us understand who we have been, who we are, and who we should be. The short answer, which the rest of this essay defends, is that the United States has always been a "republican empire." A large part of this country's success is attributable to its capacity to maintain an uneasy equilibrium between the two forces of republicanism and imperialism, cultural/political imperatives that simultaneously conflict with and reinforce each other. In an era of protracted troubles like the present, there can be little doubt that the greatest danger is that the necessities of empire will overwhelm the republican aspects of our society.

The Federalists who supported the proposed Constitution in 1789 did not perceive a Manichean dichotomy between an empire and a republic. Bernard Bailyn's magisterial collection of the most influential speeches and pamphlets discussing America's proposed Constitution, *THE DEBATE ON THE CONSTITUTION*, contains numerous positive references to the nation as an "empire." "The Federalist Papers" used the word over 30 times. In an impassioned, influential speech in Philadelphia that was reprinted many times, James Wilson exclaimed, "Ill fated America! *** Thy crisis was approaching! Perhaps it was come! *** Without a government! Without energy! *** In such a situa-

tion, distressed but not despairing, thou desirest to re-assume thy native vigour, and to lay the foundation for future empire!"

Even in the context of the times, the Founders' use of the word seems a bit surprising. After all, the Americans had only recently freed themselves from the British Empire.

But more important, they seemed to accept the Anti-Federalists' argument that the new Constitution violated the political principles established by Montesquieu, who argued that the "spirit of the laws" of an empire diametrically opposed the structure and

the political principles established by Montesquieu, who argued that the "spirit of the laws" of an empire diametrically opposed the structure and

"federal republics." They also pointed out that existing states, most notably Virginia, which at that time extended to the Mississippi River, were already large geographical sovereignties that could never resemble Montesquieu's idealized, small republican societies. But the Federalists knew their new system conflicted with Montesquieu's vision. As James Madison explained in the now famous "The Federalist Papers No. 10," a large republic was more likely to endure than a small one because the multiplicity of interests would prevent any single faction from seizing control. Empire and republic were not in opposition; they strengthened each other. Many years later, Thomas Jefferson wrote to his good friend Madison that United States history had successfully refuted Mon-

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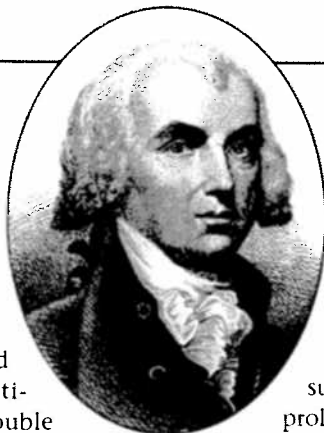
culture of a republic. Montesquieu believed republics had to be small to maintain their agrarian virtues, while empires would grow until they collapsed from a combination of centralized power, luxury, militarism, and hubris. As Patrick Henry explained during the Virginia Ratification Debates: "If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: Liberty, sir, was the primary object."

On one level, the Federalists argued that their system of dual sovereignty was consistent with Montesquieu's approach because the French philosopher had endorsed

tesquieu's anxieties about a large republic.

There were other noted political authorities for the Framers' positions, but they are political philosophers this country rarely acknowledges as part of its intellectual heritage. Most of our intellectual history focuses on such relatively reassuring figures as Locke, Hume, Montesquieu, and the authors of "The Federalist Papers." But equally relevant are Machiavelli and Hobbes. Machiavelli's *DISCOURSES ON LIVY* far better illuminates our political culture than his sardonic advice to leaders in his much better known work, *THE PRINCE*. The main lesson that Machiavelli learned from Livy's history of Rome was that republics must either expand or perish. Although it is conceivable that a small republic could survive if it were geographically well

protected, most republics grow at the expense of their neighbors. Republics are particularly powerful because they operate under a legal double standard: Citizens have full, generous rights while the rest of the world remains legally and politically subordinate. This double standard increases the citizens' allegiance to the republic. Ex-



Madison

pllosion that would ultimately destroy civilization, they believed they could create a republicanism that would last for at least a century. At that dark time, the country would become urban, substituting a deferential proletariat for the sturdy, independent yeoman farmers that were the economic and

ing the Civil War, an election that could have led to a permanent division of the nation. Certainly, none of the present threats can possibly warrant the suspension of elections.

But two fundamental props of the electoral process—free political speech and physical freedom—are more vulnerable. This year, the Supreme Court had to determine in *Virginia v. Black* if the burning of a cross is *per se* punishable. During oral argument, Justice Thomas broke his customary silence by angrily stating that such an act was so inherently threatening that it should be criminalized. Most disturbing, he thereby called into question the foundation case, *Brandenburg v. Ohio*, which protects all political speech not intended to persuade others to engage imminently in unlawful action. *Brandenburg* creates the core First Amendment right to be free of governmental “particularized viewpoint discrimination,” the governmental power to suppress unpopular ideologies and beliefs. In his dissent, Thomas went further, arguing that such conduct by this “terrorist organization” was inherently criminal. Thomas’s creation of an exception to viewpoint neutrality undermines the republican process. If the burning of crosses can be banned because of its very disturbing historical connotations and because it has been used by a “terrorist organization,” what about T-shirts with a picture of Osama Bin Laden, swastikas worn by bikers, or speeches honoring the genocidal General Custer or the tyrant Joseph Stalin? Justice O’Connor created a doctrinal compromise that preserved the heart of *Brandenburg* but limited the scope of another crucial case, *R.A.V. v. St. Paul*, by constricting *R.A.V.*’s broad conception of “viewpoint discrimination.” O’Connor held that the State of Virginia could not pass a law that made cross burning *per se* proof of intimidation, a crime that she defined as a “true threat” that is “directed at a particular person.” Rather, the State could pass a law outlawing any cross burnings that actually intimidate particular indi-

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pressing a sentiment that many Latin Americans would have recognized over the past two centuries, Machiavelli pitied those countries near a successful republic. Thomas Hobbes supplemented this approach by rejecting the size issue as a dangerous distraction; the only question is whether the country is big enough to deter its inevitable rivals. Hobbes’s defense of empire—the definition of empire as a country of vast size and power—should remind us that a smaller version of the United States would have had a great deal of difficulty defeating fascism and Soviet Union-style communism during the twentieth century. Despite its legion of sins, the United States defeated two imperial cultures that were far more venal. Before this century ends, this country may engage in an intense struggle with China, a conflict that both sides will justify with stirring rhetoric. Such rhetoric should not distract us from the grim historical truth that the dispute would be yet another example of our species’ tendency to dominate through force, which is justified by self-persuading arguments.

Although Jefferson and Madison were influenced by the grim economist Malthus who foresaw a population ex-

cultural foundation of a healthy republicanism. Thus, the Virginia aristocrats’ republicanism had positive political and cultural norms as well as a theory of what the new country should avoid as long as possible. It is worth considering these factors to determine what kind of republic we have and what actions we need to take to protect it from the relentless pressures of empire.

Madison’s republicanism began with a structural premise. Every branch of government had to be ultimately selected by the electorate. For example, the Constitution created a purely republican form of government because voters directly elected members to the House of Representatives, Presidential electors, and State representatives who had the power to select the United States Senators, who in turn join the President in choosing Supreme Court Justices. This fundamental tenet of Madisonian republicanism has remained untouched. Indeed, the electorate gained more influence once it began directly electing United States Senators. President Abraham Lincoln held an election dur-

viduals. Although many civil libertarians will be understandably worried about the Court's dilution of *R.A.V.*'s hostility to statutes that focus on intimidating expressive conduct associated with particular ideologies (in this case, cross burning is associated with the Ku Klux Klan), the ultimate outcome preserves *Brandenburg's* essential rights. At the least, Klan members can sometimes burn a cross as part of their repulsive rituals. Thus, whether a person is a member of a governmentally (or, in Thomas's dissent, a judicially) designated "terrorist organization" or not, that person has the fundamental right to use words, wear symbols, and engage in rituals. Conversely, any person who burns a cross to intimidate another person is liable to criminal prosecution. At least for the time being, there is no total suppression of speech based upon the "war against terrorism."

Far more disturbing is the Bush administration's eagerness to gather up numerous suspects, including United States citizens, without providing them any access to the legal system. Summary incarcerations not only chill speech; they also prevent political opponents from participating in the community and voting. This term, the Supreme Court will resolve this fundamental issue. Although the cases can be factually distinguished, the Court of Appeals in *Hamdi v. Rumsfeld* has upheld such in incarcerations, while the Court in *Padilla v. Rumsfeld* has not. In *Hamdi*, Fourth Circuit Court of Appeals Judge Harvey Wilkinson, who is allegedly on the Bush Administration's short list for a Supreme Court nomination, all but wrote a love letter to the Bush Administration. While acknowledging that the perpetual detention of American citizens without any hearing or any contact with a lawyer was a potential threat to our liberties, he concluded that any serious judicial intervention via *habeas corpus* violated "separation of powers." Aside from that conclusory statement, Judge Wilkinson made a single legal argument: No seri-

ous constitutional problems existed because Hamdi was only detained, not tried, sanctioned, and stigmatized. This distinction transcends the absurd; anyone who is indefinitely incarcerated, probably while being subjected to some form of psychosomatic torture like sleep deprivation, is definitely being sanctioned, traumatized, and stig-

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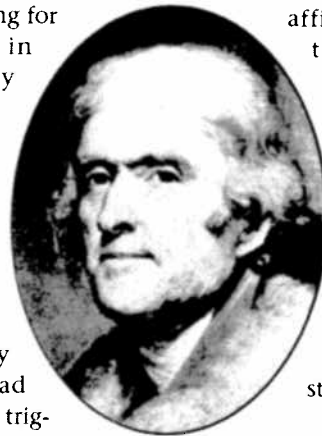
matized. Although the case can theoretically be narrowed to its "facts"—Hamdi allegedly was captured while armed and fighting for the Taliban in Afghanistan—the highly deferential approach need not be limited to overseas conduct. The opinion relied upon a conclusory government document stating that Hamdi was an "enemy combatant" and upon statements by Hamdi's father, who had acted as "next friend" to trigger the litigation.

In a dissent from a motion for the full Fourth Circuit Panel to rehear the case, Judge Michael Luttig, another Supreme Court aspirant, simultaneously argued that the amount of process that the Court had given Hamdi was pathetic and that the Court had been insufficiently deferential to the Executive Branch. Luttig wrote that the Court could not rely on Hamdi's father's statements, which only stated that Hamdi was residing in Afghanistan, to reach its conclusion that Hamdi was in a combat zone. But Luttig thought that the Court was inappropriately requiring the government to prove that "enemy combat-

ants" must be in a combat zone. Conceding that the war against terrorism may last for many years and may extend throughout the world, Luttig concluded that the Court should defer to the Executive once it has recited some dramatic facts, about which there was "not even a hint of fabrication" "sufficient to satisfy "the constitutionally

appropriate standard for the President's designation of an enemy of the United States." In this particular case, the affidavit stated that Hamdi trained with the Taliban, his military unit surrendered to the Northern Alliance, and he turned over his weapon to the Northern Alliance before being imprisoned. The law of perjury and the judgment of the President of the United States are the only constraints on this power.

The Court of Appeals in *Padilla v. Rumsfeld* held that the Executive Branch does not have the authority to summarily seize American citizens on American soil. The Court distinguished *Hamdi* on the grounds that Hamdi was incarcerated after being captured in a combat zone, while Padilla was seized in America—based upon allegations that he might be planning a terrorist attack. Hopefully, very few of us will stumble into a foreign field of battle; all of us are covered if the government wins in *Padilla*. The Court of Appeals avoided an ultimate showdown with the President by concluding that the incarceration violated the Federal Non-Detention Act. This Act, passed in response to the dis-



Jefferson

graceful internment of Japanese-Americans during World War II, clearly states, "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." (18 U.S.C., Dec. 4001(a)). The Supreme Court should not distort this text; it should hold that all detentions of U.S. citizens (Handi as well as Padilla) must comply with due process of law. The government cannot indefinitely deprive citizens of their liberty without indicting and trying them.

Never have so many fundamental rights been sacrificed for so little—the power to imprison perpetually those few civilians who are stupid and depraved enough to join terrorist organizations. The government had no difficulty convicting John Walker Lindh through the usual channels. This dilution of basic citizenship

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rights—a violation of the Machiavellian principle that citizens are special—is a basic premise of the Bush Administration. In September 2002, it asserted in "The National Security Strategy of the United States of America" that "the distinction between domestic and foreign affairs is diminishing." The federal government seems to have forgotten the warning of Winston Churchill, no stranger to serious threats to national security: "The power of the executive to cast a man into prison without formulating any charge known to law, and particularly to deny him the judgment of his peers, is in the highest degree odious, and the foundation of all totalitarian government whether Nazi or Communist."

The Founders' second republican premise was "equal citizenship," a constitutional doctrine establishing that all citizens must have equal rights

throughout the republican empire. Tragically, this geographical conception of equality did not require equal treatment of all adults within the new country. Assuming that the minimal definition of citizenship consists of the right to vote, serve in public office, and participate fully in the market place, the vast majority of Americans—women, slaves, Native Americans, and a significant percent of low-income whites—did not immediately benefit. Indeed, the ethnic cleansing of Native-Americans and the use of the peculiar form of "agricultural capital" known as race slavery were two of the defining characteristics of the new republic. Nevertheless, this doctrine of equal citizenship was revolutionary and progressive within the context of its times; it was the constitutional foundation of the American Revolution. Formulated by Benjamin Franklin and best articulated by Thomas Jefferson, the American colonists argued that the

British Parliament had no constitutional legitimacy to regulate them. Although every member of the British Empire had a duty to the King, none were legally subordinate to others based upon geography. As Franklin put it, Americans could not be "subjects of subjects." Wealthy, white male colonists had certain "rights of Englishmen" that Parliament could not erase without turning the colonists into slaves whose property was totally under English control.

James Madison reaffirmed this revolutionary principle at the Constitutional Convention. The delegate Gouverneur Morris led a Northeastern group that attempted to preserve that region's power by giving those states disproportionate representation to offset the political effects of westward migration. Morris also proposed that new states must pay a fee to help reduce the

national debt as a condition of entry. Madison's successful rebuffs of these proposals were not motivated solely by republican, egalitarian abstractions. He knew that many Virginians in Kentucky would recoil at being offered second-class citizenship. Some were already thinking of turning to Spain to guarantee their access to the Mississippi River through New Orleans. Our history might have turned out very differently if Morris had prevailed. The Federalists barely won the vote at the Virginia ratifying convention with votes from western Virginia providing the margin of victory.

Both in theory and in subsequent practice, the Presidency played a unique role by combining both imperial and republican attributes. In 1789, the year the Constitution was ratified, the historian David Ramsay wrote in a very popular history of the American Revolution that the new form of government would create republican freedom within its borders while allowing the President to act like an emperor in foreign affairs. In the founda-

tion case *Marbury v. Madison*, Chief Justice Marshall constitutionalized Machiavellian republicanism: The Executive branch could not violate domestic, individual constitutional rights, but the President is "accountable only to his country in his political character, and to his own conscience" in the conduct of foreign affairs. One of Jefferson's first acts as President was to attack the Barbary pirates without first obtaining Congressional authorization. Madison's and Jefferson's highest commitment was to empire, not to equal citizenship or strict construction of federal powers. After negotiating the Louisiana Purchase, they appointed political allies to control the new Territories rather than authorizing immediate elections.

Although Madison and Jefferson believed they had refuted Montesquieu, they made several other Pres-

idental decisions that confirmed Montesquieu's warnings that large countries could not preserve a republican society closely resembling his ideal. All three men believed that republicanism had cultural as well as political components. Montesquieu preferred republics because they were not suffused with empire's corrosive "spirits" of conquest, luxury, decadence, and urban centralized power. In addition to preferring small farmers to industrial urban centers, the Virginia Republicans were wary of such powerful institutions as standing armies and national banks. Jefferson and Madison had vigorously, but unsuccessfully, opposed Alexander Hamilton's national bank. But when Jefferson gained power, he did not eliminate the bank (although he did reduce the debt after the Louisiana Purchase). After the War of 1812 revealed many flaws in America's military and political institutions, Madison and Jefferson acknowledged the need for more central governmental power. With Jefferson's consent, Madison ignored Jefferson's adage that the country should grow peacefully through "compact and equality" via purchase agreements and equal citizenship. Under the Madison administration, Americans invaded Florida twice and Canada (the hoped-for spoil of the War of 1812).

In his attempt to keep the South in the Union, John C. Calhoun heavily relied upon "equal citizenship." All American citizens had the right to take their property, in particular their slaves, into the new Territories that were held in common on behalf of all of the States and their peoples. Chief Justice Taney later constitutionalized that doctrine in *Dred Scott v. Sandford*. Taney held that Congress could not prevent Americans from taking their slaves into Territories that had not yet settled the slavery issue. This aggressive decision has been appropriately reviled as politically inept and morally bankrupt. Neverthe-

less, *Dred Scott* contained several humanitarian doctrines that the Fourteenth Amendment did not repeal when the Court stated that all persons born in the United States were citizens of both the United States and the State within which they reside. The Fourteenth Amendment only reversed Taney's holding that Dred Scott could not file his case in federal court under Article III's diversity of citizenship jurisdiction clause because he, along with all other African-Americans, could never be United States citizens. First, Taney reaffirmed the Revolutionary War notion of equality of citizenship. Americans should be able to take their property with them when they travel or wish to settle elsewhere. The legal/moral problem does not arise in the

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generalized right, which really is an early version of the right to travel and settle throughout the nation, but emerges in the application of that right to that immoral form of property known as slavery. Citizens should have the right to move about the land and bring their property with them, but that general right does not include the right to bring all forms of property, such as drugs that may be illegal in another state. Taney also reinforced the doctrine of equal citizenship by stating that Congress did not have the power to create permanent colonies; he wanted any Southern expansion into Latin America to lead to new slave states that would protect the South in national elections. Overall, Taney too narrowly extended equal citizenship within the Republic's boundaries by excluding all blacks from national citizenship but protected equal citizenship's requirement that there be geographical uniformity of rights throughout the republic.

The Reconstruction Amendments temporarily put a brake on geographical expansion. Although many American politicians still hoped to obtain Canada, they could no longer easily expand southward because they would have to give Cubans, Mexicans, and other people of color full citizenship rights. Yet the demands of empire soon trumped the foundational principle of equal citizenship and the anti-racist goals of the Reconstruction Amendment. After the United States gained vital military/commercial bases throughout the Atlantic and Pacific by winning the Spanish-American War in 1898, Congress decided that these new lands—most notably Puerto Rico,

Cuba and the Philippines—would be permanent colonies. When the Supreme Court faced this political development in a series of cases dubbed "The Insular Cases", it explicitly promoted "empire" over competing constitutional considerations. It gave Congress the power to determine almost all the rights (except for property rights) of the new subjects. The Court dismissed *Dred Scott* due to its obviously hideous pedigree, obfuscating the fact that it was arguably acting even in a worse way by constitutionalizing racism in light of the Fourteenth Amendment. The Taney Court at last had the powerful legal argument that the Framers had drafted the original Constitution to protect slavery. Otherwise, the Southern states would have never agreed to the new Constitution.

Fortunately, the United States has not exploited the "Insular Cases" by formally expanding its borders after 1898. It found such expansion unnee-

essary—in part, because of the racial issues (could it really have kept all Mexicans in colonial subordination?), but, more important, because it found alternative means to extend its power—gunboat diplomacy, international corporations, and placing and maintaining compliant, well-paid elites in charge of South American nations. Machiavelli's warnings to the neighbors of a successful republic were validated. While eventually expanding its citizenship rights to women and gradually permitting African-Americans to exercise their fundamental rights, the United States continued throughout the twentieth century to value "stability" far above democracy when it looked abroad. On the other hand, the "Insular Cases" remain good law, unlike their equally racist contemporary *Plessy v. Ferguson*, which created the "separate but equal" doctrine validating Southern apartheid. Puerto Rico remains a constitutional travesty, a large, permanent colony whose people, although American citizens, do not have full citizenship rights because they cannot run for federal office or vote for federal politicians as long as they reside in their native land.

The distribution of wealth and power was another concern of early republicanism. Unlike their rival Alexander Hamilton, the Virginia Federalists agreed with such republican theorists as Aristotle, Machiavelli, and Harrington that republics could only survive so long as there were no great disparities in wealth. A strong middle class prevents the ravenous aristocracy from plundering the nation or the desperate poor from turning to rebellion. Jefferson was particularly proud of eliminating the aristocratic doctrine of primogeniture in Virginia. He put this accomplishment, along with the writing of the Declaration of Independence, on his tombstone. Jefferson considered the doctrine of keeping all landed wealth within the hands of the first-born son to be anti-republican because

of its "hereditary" principle. Jefferson approved of civil juries because local jurors would act more harshly toward the wealthy whenever they abuse their power. Jefferson and Madison admired the virtuous yeoman farmer for his financial and political independence. Thus, the phasing out of federal estate and gift taxes, part of the overall shifting of the tax burden from the rich to the middle class and the poor, is a sign

Thus, the phasing out of federal estate and gift taxes, part of the overall shifting of the tax burden from the rich to the middle class and the poor, is a sign that this country is drifting away from its republican heritage towards an imperial culture dominated by a few powerful, decadent courtiers, now known as lobbyists, who seek more and more wealth and power at the expense of the average citizen. The hereditary principle is redefining our political culture.

that this country is drifting away from its republican heritage towards an imperial culture dominated by a few powerful, decadent courtiers, now known as lobbyists, who seek more and more wealth and power at the expense of the average citizen. The hereditary principle is redefining our political culture.

Early republicanism also emphasized virtue. Citizens were not just economically independent; they also were well-informed, courageous individuals who actively participated in the political culture. But the current society, profoundly influenced by a few organs of mass media owned by the wealthy, obsesses on consumerism and entertainment. Nasty political advertisements reinforce the beliefs that politics are hopelessly corrupt and that the best solution is withdrawal. The national news programs consist of a mixture of MTV and "The Triumph of the Will." Instead of whipping up hysteria after the terrorist attacks, our leaders should be telling us that anyone of us—civilians and soldiers—may die during the

war against terrorism but all of us must demonstrate civic courage by maintaining our dignity, our culture, and our political rights.

So what does this brief history—which could easily be expanded into several volumes with numerous additional examples—tell us about our current culture? We need to return to semantics. People use such politically important words as "empire" and "re-

public" in several different ways. Sometimes, the word is purely descriptive. Thus, President Bush is correct when he says we are not an empire—if one limits the concept of empire to expansion of formal boundaries. So long as we have free elections, freedom of movement, and free speech, we preserve our basic Madisonian republican structure. If one requires an emperor as a necessary part of an empire, our Constitution provided a compromise: permitting the electorate to choose their emperor, at least in terms of foreign policy, every four years. But that President remains accountable through impeachment. The second cluster of usages is more empirical and thus more debatable. Many people will dispute Condoleezza Rice's claim that we are not imperial since we do not seek to control other people. The United States has devised many means of informal domination that extend its power far beyond its formal borders. Many see the military conquest and occupation of Iraq as a reversion to old-style impe-

rialism. The third cluster of meanings is more "emotive"; one often associates power, dominion, and glory with the word "empire." It seems highly unlikely that early American leaders precluded such motives from their thinking; they were fully aware of what they called "the lust for dominion." Madison did not think men were angels. The next cluster of meanings focuses on the institutions and culture of empires and republics: to what degree is the country militaristic, dominated by the wealthy, the powerful, and the decadent? This issue is probably the most important domestic political question of our era. The final definition of "empire" is purely normative: empires are evil forms of civilization. Obviously, most American politicians and citizens do not characterize their country this way.



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In addition to THE IMPERIAL REPUBLIC, recent publications include "The Individual, the Corporation, the State" in THE CAMBRIDGE COMPANION TO NOAM CHOMSKY (forthcoming) and "The Eleventh Amendment Cases: Going too Far with Judicial Neofederalism" in the Loyola Los Angeles Law Review (2000). He can be reached at 216-687-2269 or by email at james.wilson@law.csuohio.edu.

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Overall, five themes emerge from this survey:

- 1.** From its moment of origin, The United States has aggressively expanded its power. A large percentage of the electorate has usually supported this quest for empire. Thus, President Bush tapped into deep roots by acting so aggressively toward Iraq.
- 2.** To justify their actions, American leaders have always invoked such inspirational norms as patriotism, republicanism, democracy, and individual rights. But it is impossible to separate those more noble aspirations from the usual, tawdrier political motives of increasing the wealth and power of one's nation, one's political party, and even one's friends and family. Like the rest of us, our leaders are motivated by a wide range of beliefs and desires.
- 3.** The President has enormous discretion, barely tempered by law, to implement foreign policy. President Bush's decision to seek Congressional authorization prior to invasion reinforces the desirable constitutional convention established by his father, who obtained Congressional approval to drive Iraq out of Kuwait. But there is no real legal recourse if a sitting President ignores either Congress or the United Nations. The battle is primarily political. Congress can use its War, Appropriations, and even Impeachment powers to rein in a reckless President who is abusing his or her emperor-like powers.
- 4.** The Nation needs to preserve the Machiavellian approach that aggressively honors and protects the fundamental rights of citizens.
- 5.** There are several advantages in defining our country as a "republican empire." First, it is historically accurate. Second, it reminds us that in some ways the United States has not been exceptional. It has used all the tools of empire—violence, betrayal, and propaganda—to advance its ambitions. But it has been extraordinarily successful and has been, at least until recently, exceptionally able to expand its citizens' freedoms. Last year, the Supreme Court decided to protect private, consensual sexual behavior. The nation has extended equality of citizenship within its geographical boundaries and maintained a middle class that Aristotle believed is such a crucial part of a stable republic. Sometimes this nation has also extended basic human rights abroad, but too often it has been a counter-revolutionary force all too eager to ally itself with tyranny. Acknowledging the tension between empire and republic forces us to wrestle with the ambiguities and uncertainties that seem to be a permanent part of the human condition. Finally, the imperial theme enables us to perceive ourselves a bit more the way much of the rest of the world sees us: as a powerful nation that has done much good, but also done quite a bit of evil.