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You Say You Want a (Nonviolent) Revolution,  
Well Then What? Translating Western Thought,  
Strategic Ideological Cooptation, and Institution  
Building for Freedom for Governments Emerging  
Out of Peaceful Chaos

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I. INTRODUCTION

We all want to change the world. And when others, like nonviolent revolutionaries, start to change the world, everyone wants in on the change—whether it is those in favor of promoting the liberal values shared in most Western democracies or those espousing radical tyrannical or authoritarian control. Each wants to influence what kind of change becomes entrenched after a regime disruption. With nonviolent revolution in particular, displaced governments leave a power and governance vacuum waiting to be filled. Such vacuums are particularly susceptible to what this Article will call “strategic ideological cooptation.” Following the regime disruption, peaceful chaos transitions into a period in which it is necessary to structure and order the emergent governance scheme. That period in which the new government scheme emerges is particularly fragile when growing from peaceful chaos because nonviolent revolutions tend to be

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decentralized, unorganized, unsophisticated, and particularly vulnerable to co-optation.

Recognizing each of these observed conditions, those with preferences for the direction of such structuring and ordering must understand that they are in competition with others with similar self-interested desires. Both sides in that competition have an incentive to take advantage of the opportunity to co-opt the chaos and strategically position their own ideological preferences in the new government structure. The events beginning in 2011 that have been popularly named the “Arab Spring” provide some useful examples<sup>1</sup> for testing the concepts of influence, soft power, and strategic ideological cooptation discussed in this Article. In countries like Egypt, Tunisia, and other parts of the 2011 Arab Spring, for example, it has been speculated that radical Islamic interest groups seek to gain optimal placement in the developing regime that will emerge. The West cannot ignore that fact. It is not only in the interest of the United States and the outsiders in the West and elsewhere to see these post-nonviolent revolution nations transition to a democracy, but it is also in the interest of those nations themselves.<sup>2</sup> If the West fails to position itself to control not just the hearts and minds of the people in these nonviolent movements but also to influence the wisdom and reason driving the architects of the emerging, replacement regimes, the West will lose an opportunity to strategically co-opt the ideological positioning of the new regimes. As a countervailing “interest group,” Westerners can use their soft power to (a) provide a force that moderates the power of the radical interest groups that will undoubtedly seek to influence the emerging regimes themselves; or (b) win the battle for strategic ideological cooptation by advancing arguments in favor of classical liberal thought that will consume the minds and guide the actions of the replacement leaders.

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<sup>1</sup> “Arab Spring” is a popular term that groups a number of protests, revolutions, and (largely democratic) transitional movements designed in large part as efforts to overthrow ruling regimes in a number of nations in the Middle East and Northern Africa that began in December 2010 with the self-immolation of Mohamed Bouazizi in Tunisia. For an excellent short summary of the events collectively dubbed the Arab Spring and developments through the end of 2011, see Catherine Solymon, *Revolutions in Progress*, MONTREAL GAZETTE, Dec. 17, 2011, at B3, available at <http://www.montrealgazette.com/news/Revolutions+progress/5875590/story.html>. The term actually appears to have been applied to policies of the Bush Administration in Iraq and elsewhere as early as 2005. See Charles Krauthammer, Editorial, *What's Left? Shame.*, WASH. POST, Mar. 18, 2005, at A23. But it did not take hold in terms of “flowering” activities until the series of events in late 2010 and early 2011. For one of the earliest articles dubbing this series of events as the Arab Spring, see Marc Lynch, *Obama's “Arab Spring”?*, FOREIGN POL’Y (Jan. 6, 2011, 8:44 AM), [http://mideast.foreignpolicy.com/posts/2011/01/06/obamas\\_arab\\_spring](http://mideast.foreignpolicy.com/posts/2011/01/06/obamas_arab_spring). For those seeking a general background and contemporaneous coverage of the Arab Spring in its birth and infancy, see an issue of *Foreign Affairs* with a series of articles dedicated to the Arab Spring. *The New Arab Revolt*, FOREIGN AFF., May–June 2011, at 2, 2–54.

<sup>2</sup> Scott Shane, *Balancing U.S. Policy on an Ally in Transition*, N.Y. TIMES, Nov. 21, 2011, at A1 (“The outcome of the political turmoil in Egypt, by far the most populous country in the Arab world, is of enormous consequence to the United States. It will set an influential precedent for smaller countries in the region, determine whether the Muslim Brotherhood’s brand of Islam is compatible with democracy and decide the future of relations with Israel.”).

This Article examines the concept of the West and radicalism as competing interest groups in the battle for the strategic ideological cooptation of nonviolent revolutions. It makes a case that the West should exploit soft power mechanisms in an attempt to win this battle. As stated in past work,<sup>3</sup> there is a tremendous opportunity for soft power influence in such situations, and one mechanism is the infusion of translations of primary texts of Western legal thought as a means of such soft power to shape societies emerging from nonviolent revolutions.<sup>4</sup>

This Article explains that, because the West does not claim a monopoly on the mechanism of soft power, it should anticipate and position itself and its ideas in such battles. Perhaps one of the most important ways in which the West must arm itself is with an effective arsenal of translated works of political wisdom. Radicals cannot be the only ones with a corpus of understandable and accessible learning material for emerging institutions. Translations of fundamental and foundational matters of classical liberal thought, particularly regarding the role of the State and the individual in political systems and governance structures, are effective soft power mechanisms that must be deployed in countries and regions suffering power vacuums after nonviolent revolutions.

This Article examines each of these points in turn. It also focuses on contrasting the utility of instant communication, technology, social networking, and the like with deeper transmissions of knowledge. It concludes that the experience and wisdom of this thought can only be effectively communicated and transmitted through primary texts and books on the development of a rule of law. Finally, it describes public translation programs, like the Arabic Book Program,<sup>5</sup> along with a general discussion of private translation projects that at-

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<sup>3</sup> Donald J. Kochan, *The Soft Power and Persuasion of Translations in the War on Terror: Words and Wisdom in the Transformation of Legal Systems*, 110 W. VA. L. REV. 545 (2008). This Article is, in part, a sequel to (but not a repeat of) my 2008 *West Virginia Law Review* article. It explains that work in the context of nonviolent revolution specifically. It builds on, and references, that article to explain soft power and translations as influencing factors in nonviolent revolution generally, and it is directed toward advancing revolutionary movements rather than combating terrorism. This Article also focuses more deeply on the utility of translations to the development of institutions in newly disrupted regimes and guidance for emerging legal systems from historical lessons in the creation of past democracies. Finally, unlike its predecessor, this Article introduces criticism of existing translations programs in operation and introduces for the first time the theory of strategic ideological cooptation.

<sup>4</sup> *Id.* at 553. As I concluded in the 2008 article:

Translations of books and other materials that have shaped our own political evolution, that have formed our traditions, and that have contributed to our political and economic progress in the United States seem to be logical tools of soft power. Populating anti-American societies with these documents—ready for consumption, i.e. readable because translated—is a functional use of soft power.

*Id.*

<sup>5</sup> See *infra* Part VII.

tempt to strategically educate and communicate fundamental Western theories and principles on governance, the rule of law, and individual rights.

Whatever your position on what you prefer to emerge in regimes saddled with chaos after nonviolent revolutions, you must understand that those holding competing preferences will undoubtedly engage in strategic ideological cooptation. External influence peddling is inevitable. If proponents of one viewpoint fail to engage in the battle for influence, or unilaterally withdraw from it, their viewpoint is at a strategic disadvantage and the opposing viewpoint is likely to steer the chaos toward a structure in its own image.

Admittedly, this author believes that the West *should* engage in such activities of soft power influence. Moreover, this Article works under the assumption that Western liberal legal and philosophical thought has high utility and value, and it should be promoted and adopted in countries emerging out of peaceful chaos. Here, this Article uses the term “liberal” in the traditional sense characterized by the effective usage of the term described by Ludwig von Mises in his seminal work *Human Action: A Treatise on Economics*:

I employ the term “liberal” in the sense attached to it everywhere in the nineteenth century and still today in the countries of continental Europe. This usage is imperative because there is simply no other term available to signify the great political and intellectual movement that substituted free enterprise and the market economy for the precapitalistic methods of production; constitutional representative government for the absolutism of kings or oligarchies; and freedom of all individuals from slavery, serfdom, and other forms of bondage.<sup>6</sup>

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<sup>6</sup> LUDWIG VON MISES, *HUMAN ACTION: A TREATISE ON ECONOMICS*, at vii (Bettina Bien Graves ed., Fox & Wilkes 4th rev. ed. 1996) (1949). Niall Ferguson offers the following explanation of the structures critical to Western liberal governments:

Western civilization is more than just one thing; it is a package. It is about political pluralism (multiple states and multiple authorities) as well as capitalism; it is about freedom of thought as well as the scientific method; it is about the rule of law and property rights as well as democracy. Even today, the West still has more of these institutional advantages than the Rest. . . . Of course Western civilization is far from flawless. . . . Yet this Western package still seems to offer human societies the best available set of economic, social and political institutions – the ones most likely to unleash the human creativity capable of solving the problems the twenty-first century world faces. . . . The big question is whether or not we are still able to recognize the superiority of that package.

NIALL FERGUSON, *CIVILIZATION: THE WEST AND THE REST* 323–24 (2011).

Each and all of those basic tenets underlay classical Western liberal thought—limited constitutional government, markets, individual liberty, the rule of law, and institutions that support those concepts.<sup>7</sup>

The primary point of this Article is to underscore the reality that in the political economy of influence examined herein is a beneficial understanding and blueprint for anyone wishing to situate her own preferred philosophical tendencies in the structure of an emerging government. Only history can tell what will actually happen in the wake of the Arab Spring, for example. But this Article's insights should neither be seen as limited to those events nor dependent upon the ultimate direction those events will take.

History is still making itself in that area of the world, and the legacy of the Arab Spring has many years before it will be defined. It would be impossible to write an Article such as this and be current with the reader if the Article were dependent on current events. So, while I may turn to current events at times to add context to the broader concepts, my hope is that the reader will not narrow her eyes to the point of believing the observations irrelevant due to the passage of time.

Ultimately, I do not pretend that the injection of influence is easy. It involves complicated mechanics on the ground to accomplish the creation of stable and limited governmental institutions. And although it is not the focus of this Article, a corollary discussion must be undertaken about the implementation stages of any guided transformation. Filled with unique cultural and societal realities, the trenches of institutional reform are far too complicated to believe that the proposal of ideas and forms for governmental institutions alone can transform them. Barriers abound especially if one believes that Western-style democracies should be a model for non-Western societies.

Part II of this Article describes the importance of Western legal thought as influential to the development of emerging societies, including a particular emphasis on the importance of institution building within such societies. It contends that democratic election and/or the recognition of rights, although integral to the overall advancement of such societies, cannot flourish without the development of key institutions of limited governance.

Part III describes the existence of a vacuum, or void, in societies emerging out of peaceful chaos within which a competition for power and influence is inevitable. Such a power vacuum will be filled with some form of authority, and the existence of the void becomes both a promising opportunity for advancement as well as a dangerous occasion for anti-democratic regimes to gain control.

Part IV explains the concept of a marketplace of ideas, in which ideas will compete for superior positioning and acceptance. Whenever a vacuum of

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<sup>7</sup> It is not the purpose of this Article to defend that preference or explain its choice. Indeed, despite these preferences and biases in favor of Western-type regimes, the concepts of competition for strategic ideological cooptation examined in the Article apply regardless of any outcome preference.

power exists, the competition for control will be, in part, a competition of ideas. Part V continues within that marketplace to explain that external powers have the capacity to exercise soft power influence by offering their ideas and values as commodities for consumption and during any vacuum that influence becomes ever more important. Part V describes the theories and real impact of soft power within foreign affairs.

Part VI collects all of the previous states of affairs and explains the theory of strategic ideological cooptation. At its core, strategic ideological cooptation requires that any external power wishing to influence events in societies emerging out of peaceful chaos must accept the fact that multiple, competing interests will try to co-opt any society in transition, and unless that power wishes to cede that transition to an opposing ideology, that power itself must engage in cooptation. As Part VII explains, one method that the United States and similarly aligned interests can use to begin that engagement in strategic ideological cooptation is the support for translations of classical Western legal and philosophical thought into Arabic. This last Part then examines existing translation programs for their deficiencies and suggests a dramatic increased focus on strengthening and expanding such programs.

## II. WESTERN LEGAL THOUGHT AND THE IMPORTANCE OF INSTITUTION BUILDING FOR FREEDOM

When faced with the potential for nonviolent revolutions to lead to transitions toward democratic governments—the subject of the symposium that generated this Article<sup>8</sup>—we must at least ask a rather basic question: what does “democracy” mean? There is a substantial amount of literature about the benefits of democracy, and this Article adopts the assumption that the promotion of democracy is generally desirable, especially when grounded in concepts of Western liberalism involving institutions of limited government and the protection of basic rights.<sup>9</sup> After a nonviolent revolution, this type of democracy is hardly a given. There is a risk that (1) democratic elections do not follow the nonviolent revolution and instead some nondemocratic regime emerges, or (2) democracy emerges, but the outcome of the democratic choice is not a liberal regime. We must remember that democracy—loosely defined as some form of voting rights and an ability to elect and remove leaders and presumably also vote directly on some issues—itself does not guarantee any particular form of government, any particular types of institutions, or even the protection of basic rights, including the protection of minorities.

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<sup>8</sup> West Virginia Law Review Symposium: Civil Resistance and the Law: Nonviolent Transitions to Democracy (Nov. 10, 2011).

<sup>9</sup> See, e.g., Sean M. Lynn-Jones, *Why the United States Should Spread Democracy* (Belfer Ctr. for Sci. & Int'l Aff., Harvard Univ., Discussion Paper No. 98-07, 1998), available at [http://belfercenter.ksg.harvard.edu/publication/2830/why\\_the\\_united\\_states\\_should\\_spread\\_democracy.html](http://belfercenter.ksg.harvard.edu/publication/2830/why_the_united_states_should_spread_democracy.html).

The hope, however, is that democracy will exist in form and that liberalism will have some place in the emerging regimes in substance as well. To get there, those with an interest in influencing the outcome toward these Western values must push both the liberal values in limited institutions as well as the liberal concept of rights. There is a good case to be made that the Western liberal legal and philosophical thought and the types of institutions that developed in the West can serve as valuable examples of success to the world. As Niall Ferguson, the Laurence A. Tisch Professor of History at Harvard University, has explained:

Looking at the world today, four centuries on, no one could possibly doubt that the dominant force in Western civilization is the United States of America. Until very recently, Latin America has lagged far behind Anglo-America. How and why did that happen? . . . [I]t was an idea that made the crucial difference between British and Iberian America – an idea about the way people should govern themselves. Some people make the mistake of calling that idea ‘democracy’ and imagining that any country can adopt it merely by holding elections. In reality, democracy was the capstone of an edifice that had at its foundation the rule of law – to be precise, the sanctity of individual freedom and the security of private property rights, ensured by representative, constitutional government.<sup>10</sup>

Institution-building first and foremost—and, therefore, providing materials to emerging regimes to guide their development of institutions—becomes key because without the proper institutions, a society cannot build on or sustain other parts of the Western-democratic experience. Ferguson offers the following question: “Can a non-Western power really hope to benefit from downloading Western scientific knowledge, if it continues to reject that other key part of the West’s winning formula: the third institutional innovation of private property rights, the rule of law and truly representative government?”<sup>11</sup> Ferguson is correct to answer his own question in the negative. And any assistance in institution building, especially helping guide the architecture of the institutions, is at a premium when a country emerging out of peaceful chaos must establish a government.<sup>12</sup> The fundamental components of the Western liberal legal and politi-

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<sup>10</sup> FERGUSON, *supra* note 6, at 97.

<sup>11</sup> *Id.* at 95.

<sup>12</sup> Jack Goldstone, a professor at George Mason University’s School of Public Policy, who underscored the importance of influence on institution building in post-Arab Spring, states: “What the revolutionaries need from outsiders is vocal support for the process of democracy, a willingness to accept all groups that play by democratic rules, and a positive response to any requests for technical assistance in institution building.” Jack A. Goldstone, *Understanding the Revolutions of 2011: Weakness and Resilience in Middle Eastern Autocracies*, FOREIGN AFF., May–June 2011, at 8, 16.

cal structure are essential to progress toward freedom, wealth, stability, and overall true development of a constitutionally-responsible and limited government. These are the types of ideas that must be injected in the regime development process during a transition should the West wish to influence the outcome.

While rights talk often takes center stage at times of governmental transition and regime overthrow, the discussion (at least in the media and most immediate public discourse) of the *legal structures* that can or should emerge after a nonviolent disruption of existing regimes is often wanting. Particularly concerning is the focus on rights-based rhetoric when it is *not* also accompanied by a concentration on the development of *legal institutions*.

Even as people discuss constitution building, the rights-based guarantees become a central focus of discussion—including particularly the rights of minorities and voting rights. These are indeed important, but their protection can only be guaranteed if the institutional structures of government are themselves limited in their *powers*. At the very least, there must be a respect for the powers/rights combination in any debate on transforming regimes emerging out of peaceful chaos. Too little attention is paid to the inherent institutional limits on governmental powers, the need to enumerate powers such that they are properly defined and limits capable of being enforced.

This is a debate that the United States had to deal with in its own formation. A well-known founding debate was over whether a Bill of Rights was even necessary.<sup>13</sup> Founders such as Alexander Hamilton initially believed that a Bill of Rights was indeed both unnecessary and dangerous.<sup>14</sup> They felt it was unnecessary because a strong enumerated-powers doctrine—the idea that government could exercise no more power than granted and was not authorized to impede liberties in the first place—should be enough to constrain the government from infringing basic liberties.<sup>15</sup> In this view, the protection of rights is a happy externality from limits on power. They felt it was dangerous because the enumeration of some rights—such as in the Bill of Rights—could be seen as exclusive, and a presumption could emerge that so long as the government did not violate an enumerated right that its actions were authorized or legitimate.<sup>16</sup>

Too often, at least in public discourse, we use the language of rights rather than the language of power and institutional limits on power.<sup>17</sup> Yet, classical liberal or Western thought placed primary focus on the necessary limits on *legitimate* governmental power. Constraints on legitimate state action—limits

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<sup>13</sup> For a rather detailed discussion and list of citations on the debate over the necessity or non-necessity of a Bill of Rights, see, for example, Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979, 1032 n.340, 1044 nn.393–94 (2011).

<sup>14</sup> See, e.g., THE FEDERALIST NO. 84 (Alexander Hamilton).

<sup>15</sup> See, e.g., *id.*

<sup>16</sup> See, e.g., *id.*

<sup>17</sup> See generally, e.g., MARY ANN GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE (1991).

on the sphere of decision making we deem governmental in the first place—must have a larger sense of priority than they appear to be given in modern debates about the transformations after civil resistance displaces old regimes. These are the types of ideas that must be transmitted and become the products the West can offer.<sup>18</sup> The next few sections will discuss the marketplace in which that product can be sold—first describing the vacuum which creates a demand for ideas that can, in fact, have a lasting impact on a yet unshaped political structure, followed by a description of how a marketplace for ideas operates and how ideas compete for favor therein. Finally, it will discuss how soft power can be used to put Western ideas before the consuming publics in transitioning societies and how anyone wishing to help shape the transition and fill the vacuum must strategically co-opt any existing transition movements with their own ideological preferences and the intellectual support for those ideas.

### III. THE VACUUM, THE VOID, AND THE COMPETITION

Quite often, the winners in a nonviolent revolution are united by their opposition to an existing regime, but otherwise are disorganized and disunited in their concept of the replacement governing system or leadership.<sup>19</sup> As a result, nonviolent revolutions are especially prone to the creation of a power vacuum. Immediately following the nonviolent revolution, a void develops in the internal power structure.<sup>20</sup> This void then waits to be filled. The unsettled society can go in many directions.<sup>21</sup> It is here where the competitors in the marketplace of ideas (and hence the marketplace or competition for control) must stake their claims and hope to persevere over others. Individuals and collectives alike struggle with uncertainties and can fall prey to regimes that promise stability and certain-

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<sup>18</sup> As to the relative advancement of civilizations and the development of societies that depend on the choice of institutions, see FERGUSON, *supra* note 6, at 11, 21 (stating that “[t]he key, it becomes ever more apparent, lies with institutions,” and later describing “above all” institutions as one of the distinct “killer applications” that has allowed the West to flourish over the East).

<sup>19</sup> For example, this disunity has proven itself quite evident in the post-Arab Spring Egypt. See David D. Kirkpatrick, *Islamists Claim Egypt’s Mandate in Early Voting*, N.Y. TIMES, Dec. 1, 2011, at A1 (“Poorly organized and internally divided, the liberal parties could not compete with Islamists disciplined by decades as the sole opposition to Mr. Mubarek.”).

<sup>20</sup> See, e.g., Adrian Hamilton, *A Symbolic Vote for the Middle East World*, INDEPENDENT (London), Oct. 21, 2011, at 40, available at <http://www.independent.co.uk/opinion/commentators/adrian-hamilton/adrian-hamilton-a-symbolic-vote-for-the-middle-east-2373752.html>. Hamilton explains that “[y]ou can overthrow a government but replacing a system is not that simple,” and that in Tunisia, for example, after the overthrow, “there have been a succession of street protests and riots as people have complained at the lack of progress in bringing change and jobs, and as groups of every sort have struggled to find a place in the vacuum of power.” *Id.*

<sup>21</sup> Jack L. Goldsmith & Eric A. Posner, *Moral and Legal Rhetoric in International Relations: A Rational Choice Perspective*, 31 J. LEGAL STUD. (SPECIAL ISSUE) S115, S128 (2002) (describing rational choice theories in relation to competing control for the ideological alliances when “a revolution brings a new government to power in the third world”).

ty over reform.<sup>22</sup> There is a risk that the people in Arab countries that are emerging from nonviolent revolutions will choose, yet again, stability over reform.<sup>23</sup> In fact, such choices have already appeared to play out somewhat in the early stages of Egypt's post-Arab Spring parliamentary elections.<sup>24</sup> Nonetheless, there is strong evidence that persons in the Arab world are open to the idea that stability and security can be achieved in an alternative, liberal way.<sup>25</sup>

The Arab world and the Middle East have seen their fair share of power vacuums, which have most often been filled with fundamentalist or extremist regimes.<sup>26</sup> Too often, the resulting replacement regime replicates the repression of the displaced.<sup>27</sup> The former Soviet Bloc countries faced their own transitional hurdles, where the hopes of democracy and capitalism failed to take immediate hold and where many still struggle to attain more liberal-style governance even

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<sup>22</sup> Janet Cherry, *The Authority Vacuum*, 401 FORTNIGHT 12, 12 (2001) (using South Africa and Northern Ireland as examples, explaining that in transitions, “vacuums of authority” emerge giving an opportunity for “strong local networks, sometimes controlled by, or with links to, paramilitaries” to gain power especially as they fill a need for crime control and stability); Megan A. Fairlie, *Affirming Brahimi: East Timor Makes the Case for a Model Criminal Code*, 18 AM. U. INT’L L. REV. 1059, 1061–62 (2003) (describing how voids in governance can lead to civil war and greater oppression); *Filling the Vacuum*, 5 J. PALESTINE STUD. 185, 185 (1976) (describing vacuum of authority problems in Palestine leading to greater control by extremist groups).

<sup>23</sup> Liz Alderman, *Wealthy Nations Move To Bolster Arab Democracy*, N.Y. TIMES, May 28, 2011, at A1 (explaining that economic uncertainty is showing a risk of loss of confidence in political democratic change, and “[r]esentment of the coastal elite [in Tunisia] runs high, and some say they feel so disappointed they have soured on participating in the democratic process”); Andrew S. Reynolds, Op-Ed., *Egypt’s Doomed Election*, N.Y. TIMES, Nov. 23, 2011, at A31 (“It may be true that the military wants an impotent new Parliament, but when liberals resort to supporting the tools of dictators, the future is bleak.”).

<sup>24</sup> Reynolds, *supra* note 23 (“The threat of electoral defeat has even made some liberals sympathetic to the military’s attempt to dominate the constitution-writing process. They are so fearful of Muslim Brotherhood dominance that they would rather have secular strongmen in control than democratically elected Islamists.”).

<sup>25</sup> Anthony Shadid & David D. Kirkpatrick, *Promise of Arab Uprisings Is Threatened by Divisions*, N.Y. TIMES, May 22, 2011, at A1 (noting that, while repressive regimes have been justified in the past on the basis of security and stability, “the essence of the protests in the Arab Spring is that people can imagine an alternative”).

<sup>26</sup> See, e.g., James G. McGann, *Pushback Against NGOs in Egypt*, 10 INT’L J. NOT-FOR-PROFIT L. 29, 40–41 (2008) (“As the hobbling of civil society has left a gap in the realm of popular expression in the Middle East, many countries, Egypt included, have seen the rise of a new ideology to fill that void—Islamism. . . . The role of Islamism in Egypt in the future will be of great importance . . . as more Islamist movements seek expression of their aims through civil society.”); Saad Eddin Ibrahim, *Islam Can Vote, If We Let It*, N.Y. TIMES, May 21, 2011, at A13 (“Whether we are in fact seeing an ‘Arab spring’ or a mirage depends on where you stand. Many in the Middle East, having been betrayed in the past, cannot be blamed for fearing that this is an illusion, and remembering other spring stirrings of democracy—like Budapest in 1956, Prague in 1968 and Tiananmen Square in 1989—that were brutally crushed while the world looked on.”).

<sup>27</sup> Anthony Shadid, *After Arab Revolts, Reigns of Uncertainty*, N.Y. TIMES, Aug. 25, 2011, at A1 (explaining the aftermath of “Iran’s revolution a generation ago” that “was followed by a grinding war with Iraq, the birth of Hezbollah in Lebanon and the politicization of Shiite Muslims across the Persian Gulf”).

today.<sup>28</sup> One thing we have learned from the Central and Eastern European examples is that a true legal transformation does indeed require ideological outreach that helps to transform the people. As Haynes explains:

The Berlin Wall fell in 1989, heralding abrupt and often violent revolutions throughout central and eastern Europe. As new governments established themselves and their ideals, the central and eastern European countries began the slow and cumbersome transition from state run legal institutions to institutions based on a particular blend of democratic principles. As their governments changed, the people of central and eastern Europe began to raise political and theoretical questions regarding the formulation of a new set of social values in these emerging democracies. Unfortunately, in establishing new governments after the overthrow of communism, most people in central and eastern Europe have not understood that “they had to vote not only against communism, but more precisely for other politicians, and for other ideologies.” *This ideological vacuum demonstrates that transforming a legal system from one that addresses state concerns to one based on democratic ideals is simply not enough to transform a society, for the people also must be transformed.*<sup>29</sup>

We can learn much from this history about post-revolutionary obstacles and opportunities.<sup>30</sup>

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<sup>28</sup> See, e.g., Thomas E. Carbonneau, *Arbitral Justice: The Demise of Due Process in American Law*, 70 TUL. L. REV. 1945, 1963–64 (1996) (discussing the demise of the Soviet Union and the emerging geopolitical order explaining that in the early days “the hope [was] that commerce and the incentive for profit will fill the void and provide solutions to the complex problems that were left in the aftermath of the revolution,” but “[t]he creative energies of politics, ideology, and culture appear immobilized by the enormity of the tasks that lie ahead”); Jane Perlez, *Uprising or Coup? Romanians Ask 5 Years Later*, N.Y. TIMES, Dec. 25, 1994, at 3 (explaining that Communists continue to rule Romania, five years after violent overthrow of Communist Government of Nicolae Ceausescu; many Romanians now feel their “revolution . . . was derailed and prevented from reaching an anti-Communist resolution. . . . [T]wo second-tier Communist Party officials . . . forged an alliance with the army and remnants of the secret police to fill the void left by Mr. Ceausescu’s overthrow.”).

<sup>29</sup> Emily Stewart Haynes, *Mediation as an Alternative to Emerging Postsocialist Legal Institutions in Central and Eastern Europe*, 15 OHIO ST. J. ON DISP. RESOL. 257, 259–60 (1999) (emphasis added) (citations omitted).

<sup>30</sup> Michael Kakutani, *Upheaval and Hope in a Land of Turmoil*, N.Y. TIMES, Aug. 2, 2011, at C1 (reviewing ROBIN WRIGHT, *ROCK THE CASBAH* (2011)) (“[I]n the end, Ms. Wright believes that ‘Tunisians, Egyptians, Libyans, Yemenis, Bahrainis, Jordanians, Moroccans and many others’ are part of a broader historical pattern that includes the collapse of Communism in the Soviet Union and Eastern Europe, and the end of military dictatorships in Central and Latin America.”).

The space left by nonviolent revolution is unique because it can be filled with almost anything. The united force that created the space was a desire for change from the status quo and hope for a replacement that is better. When faced with this “anything is better than what we have” mentality, there is opportunity for influence on the meaning of “better.” There is room to arm those seeking to define “better” with the intellectual means and teachings to understand, obtain, and transmit the ideas that form the foundation of the “better.” At the same time, some societal members already came to their revolutionary moments with any number of different preconceptions of the “better.” There too, democracy and the transmission of ideas can help to foster the development of those desires or concepts as well as in some instances challenge them. Violent revolutions often result in immediate replacement regimes that are not matters of choice, but instead are installed by hard power; or the violent revolutions never end and there is continued violence that drowns out the ability to focus the society’s reflection on competing ideas. It is the peaceful nature of the nonviolent transition that makes soft power uniquely powerful in the wake of such nonviolent transitions because there is a moment to think, a moment to reflect, and a reflective pause for a more gradual evolution of government. Elections, for example, take time, deliberation, and can create a discourse that provides a window of opportunity for ideas from outside to infiltrate the formation of the new regime.

With this insight, one can see the importance of strategic ideological cooptation in this transformative struggle. It becomes a means for influencing society and peoples based on fundamental principles regarding governance and enduring legal institutions rather than simply terms and labels. It educates peoples on the reasons for and bases of the legal systems endorsed in the theories of Western thought.<sup>31</sup> It allows them to choose what system of governance and what legal institutions that they prefer (bottom up), rather than to have choices made for them (top down).<sup>32</sup>

The fate of Egypt and other nations<sup>33</sup>—including what kinds of governments will emerge post-revolution—remains uncertain after the Arab

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<sup>31</sup> Myint Zan, *Of Consummation, Matrimonial Promises, Fault, and Parallel Wives: The Role of Original Texts, Interpretation, Ideology and Policy in Pre- and Post-1962 Burmese Case Law*, 14 COLUM. J. ASIAN L. 153, 160 (2000) (stating that law can shape an emerging country’s ideology as much as its ideology can shape its law).

<sup>32</sup> *Vacuum Fillers in Conflict*, 3 ECON. & POL. WEEKLY 314, 314 (1968) (describing the failures of models where outside states like the United States have attempted to place their own preferred authorities into power).

<sup>33</sup> Iraq, too, has faced and still faces its own obstacles to the formation of government, although one can argue that its current status is not the product of a nonviolent revolution given U.S. military intervention. Tim Arango, *Bottoms Up for Democracy*, N.Y. TIMES, Apr. 17, 2011, § 4, at WK1 (describing Iraq as “a volatile laboratory for testing how Islamic a democracy can be, and vice versa”); George Packer, *Dreaming of Democracy*, N.Y. TIMES, Mar. 2, 2003, § 6 (Magazine), at 44 (discussing the difficulties of transition in Iraq in a post-Hussein world and agreeing with David L. Phillips’ deep skepticism about a “new politics” and the move to democracy there). Transitions that occur due to internal violence or external foreign interventions often have difficult

Spring.<sup>34</sup> There are clear and evident voids waiting to be filled.<sup>35</sup> “As with all the revolutions, the fall of the leaders will be seen as the easiest step in a long, rocky and wrenching struggle to build anew.”<sup>36</sup> The competition for power will be substantial and diverse as newly revolutionized Arab countries seek to establish new governing structures.<sup>37</sup>

In Egypt and other nations that experienced the Arab Spring, there are still risks that all that seemed gained will be lost as elections<sup>38</sup> and movements toward establishing new governments face obstacles and challenges.<sup>39</sup> Indeed,

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transitions that may or may not leave open the possibility to influence the formation of the new regime but they are certainly less open and malleable. While these differences are important, they are beyond the scope of this Article.

<sup>34</sup> The situation on the ground in Egypt is ever-changing and as of this writing, despite some initial steps including voting for elected positions, much remains in flux. See Anthony Shadid, *Post-Uprising, A New Battle*, N.Y. TIMES, Nov. 27, 2011, at A1. Shadid describes the ongoing events to “shape the orders that follow” from overthrown regimes throughout the region:

No one expected the Arab revolts to be a simple march ahead, but rarely have things seemed so much in flux, with more potential for fragmentation, bloodshed and disarray. While many analysts describe the disturbances as an inevitable reckoning with the legacy of dictatorship, others worry the region may face years of unrest before systems emerge to replace the stagnant, American-backed order that held sway for so long.

*Id.* See also Editorial, *Egypt's Elections*, N.Y. TIMES, Nov. 16, 2011, at A34 (describing the Egyptian election prospects as troubled especially as compared to successful elections in Tunisia); David D. Kirkpatrick & Liam Stack, *Violence in Cairo Pits Thousands Against Police*, N.Y. TIMES, Nov. 20, 2011, at A1 (describing the new mid-November riots against the military council which was exhibiting no clear signs it would cede power and was attempting to prolong and/or make permanent its power and status); Hannah Seligson, *Arab Spring, Start-Up Summer?*, N.Y. TIMES, July 17, 2011, § 3, at BU1 (“The revolt now known as the Arab Spring placed Egypt on an uncertain course. After years of corruption, its hidebound economy is reeling. Tourism and investment have plunged. Mass unemployment – which fed Egyptians’ anger – has worsened and protests in Tahrir Square continue.”).

<sup>35</sup> Shadid & Kirkpatrick, *supra* note 25, at A1 (“But even activists admit that the region so far has no model that enshrines diversity and tolerance without breaking down along more divisive identities.”).

<sup>36</sup> Shadid, *supra* note 27, at A1; see also Shadid, *supra* note 34, at A1 (“The universal celebration of revolts in Egypt and Tunisia has given way to a more complicated picture.”).

<sup>37</sup> Alderman, *supra* note 23 (“In Tunisia, too, old leftist parties are trying to come back, and parts of the country’s strong labor movement are stepping up their demands or returning to radical roots.”); Shadid, *supra* note 27, at A1 (“‘We’re heading toward the unknown,’ said Talal Atrissi, a political analyst in Lebanon. ‘The next era will witness battles and conflicts between actors inside countries bent on crushing each other and proving their existence on the political scene. . . . It will be full of challenges, large and severe.’”).

<sup>38</sup> Reynolds, *supra* note 23 (“Egypt, the largest and most important country to overthrow its government during the Arab Spring, is careening toward a disastrous parliamentary election that begins on Nov. 28 and could bring the country to the brink of civil war.”).

<sup>39</sup> See, e.g., David D. Kirkpatrick & Steven Lee Myers, *U.S. Hones Warnings to Egypt as Military Stalls Transition*, N.Y. TIMES, Nov. 17, 2011, at A1 (discussing administration concerns that “the failure to move to civilian control [in Egypt] could undermine the defining revolt of the Arab Spring”).

some believe that there will be a “prolonged back-and-forth” between competing interests in Egypt that guarantees any transition to democracy there will be difficult and long.<sup>40</sup>

The Arab Spring has created power vacuums with an uncertain and as yet unpredictable end result.<sup>41</sup> The instability in the affected countries is evident.<sup>42</sup> “Unlike at the start of [2011], when the revolutionary momentum seemed unstoppable, uncertainty is far more pronounced today, as several countries face the prospect of stalemate, sustained conflict or power vacuums that may render them ungovernable.”<sup>43</sup> The multitude and diversity of voices makes it very difficult to predict the powers that will ultimately gain control as these countries settle after their nonviolent revolutions.<sup>44</sup> After the recent Arab uprisings—particularly in Egypt and Tunisia—there is a vibrant debate ongoing about what structures will emerge and “attention has largely turned inward, as activists deliberate what kind of state will emerge.”<sup>45</sup>

There is a substantial risk that non-liberal, at best, and perhaps extremist groups, at worst, will fill the power vacuum, and the resultant regimes will stray from democratic and liberal principles.<sup>46</sup> The competition for governance in

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<sup>40</sup> *Id.* (describing events as “a kind of prolonged back-and-forth that some noted reflected a true, if messy, democratic process taking root”).

<sup>41</sup> David E. Sanger, *Half a Doctrine Will Have To Do*, N.Y. TIMES, May 22, 2011, § 4, at WK3 (“But this next chapter is a gamble of a different kind. Even seemingly democratic revolutions create power vacuums, and the governments that arise can be unpredictable. Egypt’s popular uprising may yet produce a duly-elected government subservient to the military. The Bush administration pressed for elections in the Palestinian territories and was astounded when Hamas emerged a victor.”).

<sup>42</sup> Shadid & Kirkpatrick, *supra* note 25, at A1 (“[I]n the past weeks, the specter of divisions—religion in Egypt, fundamentalism in Tunisia, sect in Syria and Bahrain, clan in Libya—has threatened uprisings that once seemed to promise to resolve questions that have vexed the Arab world since the colonialism era.”).

<sup>43</sup> Shadid, *supra* note 27, at A1 (discussing the “perilous” change since the Arab Spring and stating that “[n]o uprising is alike, but Libya’s complexities echo in the revolts in Bahrain, Syria and, most of all, Yemen, suggesting that the prolonged transition of Arab countries to a new order may prove as tumultuous to the region as Egypt’s moment was stirring”).

<sup>44</sup> Shadid & Kirkpatrick, *supra* note 25, at A1 (“In an arc of revolts and revolution, that idea of a broader citizenship is being tested as the enforced silence of repression gives way to the cacophony of diversity.”).

<sup>45</sup> Anthony Shadid & David D. Kirkpatrick, *In Arab World, Now a Footnote*, N.Y. TIMES, May 3, 2011, at F1.

<sup>46</sup> Mohamed Ayoob, *The Future of Political Islam: The Importance of External Variables*, 81 INT’L AFF. 951, 951 (2005) (“Much has been said and written about the potential of political Islam—or Islamism, as it has now come to be called—to influence significantly the future of Muslim societies and polities around the world. However, most analyses of political Islam that explicitly try to assess its future potential concentrate on what are considered its innate characteristics as a political ideology with the capacity to mobilize its adherents (commonly referred to as Islamists) for purposes of regime change or social transformation or both.”). *But see* Ibrahim, *supra* note 26 (“[W]hile this Islamic trend [in new elections] can no longer be ignored, neither should it be a source of panic to Western policy makers and pundits.”); Michael Slackman & Mona El-Naggar,

Yemen, for example, includes militant Islam and demonstrates that outside regional sources such as Saudi Arabia are seeking to enter the influence game themselves in support of the Islamists.<sup>47</sup> Competition from non-liberal groups like the Muslim Brotherhood<sup>48</sup> is inevitable and indeed already occurring in Egypt and elsewhere in the Middle East.<sup>49</sup> The decisive victory of the Muslim Brotherhood and the Salafis in the first round of parliamentary elections in Egypt establishes that fact.<sup>50</sup> These Islamist groups are “fairly well organized and popular,” whether because of home court advantage, ethnic solidarity, promise of stability, comfort level, theocratic tendencies in society, or otherwise.<sup>51</sup> At the end of 2011, a *Washington Post* editorial took a very pessimistic

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*A Radical Revolution*, N.Y. TIMES, Sept. 11, 2011, § 15, at F24 (arguing that the fear of radical Muslim powers entering the political process is misplaced).

<sup>47</sup> Shadid, *supra* note 27, at A1 (“The most puritanical Islamists, known by their shorthand as Salafists, have emerged as a force in Egypt, Libya, Syria and elsewhere, with suspicions that Saudi Arabia has encouraged and financed them.”).

<sup>48</sup> See Kirkpatrick, *supra* note 19, at A1 (describing the ideological divergence between the liberal groups and the Islamist groups like the Muslim Brotherhood and Salafis vying for power). The Muslim Brotherhood has a religious mission, sees a strong role for Islam in any government structure, and embraces theocratic control and stricter limits on freedoms—unlike the more liberal groups advocating a more secular democratic regime resembling Western-styled institutions and values. See Hannah Allam, *After Year of Arab Revolution*, NEWSDAY, Jan. 22, 2012, at A13, describing the contrast:

In Egypt, the Muslim Brotherhood may have taken pains to prevent the uprising from appearing Islamist-influenced, but there’s no question about the role of religion in the aftermath. Millions of Egyptian voters bought into the Muslim Brotherhood’s key slogan, “Islam is the solution,” devastating liberal activists, who’d advocated a more secular democratic model. That frustration is shared in other Arab nations where liberal young revolutionaries who galvanized the rebellions find themselves marginalized as the better-organized Islamists slide into vacant leadership posts.

See also Eric Trager, *The Unbreakable Muslim Brotherhood: Grim Prospects for a Liberal Egypt*, FOREIGN AFF., Sept.–Oct. 2011, at 114 (describing the post-revolt transition in Egypt and providing a detailed background of the Muslim Brotherhood as an organization and in its agenda); *Egypt Marks Year of Freedom*, DAILY EXPRESS (London), Jan. 25, 2012, at 8, available at <http://www.express.co.uk/posts/view/297910/Egypt-celebrates-a-year-of-freedom> (“Groups like the Muslim Brotherhood and their liberal and secular rivals differ over the goals of the revolution and the strategy to achieve them, in particular the relationship with the country’s interim military leaders.”).

<sup>49</sup> Arango, *supra* note 33, at WK1 (describing the inevitability of Islamic parties including the Muslim Brotherhood playing a part in elections in Iraq, Egypt, Tunisia and elsewhere); David Ignatius, *A Year of Leaders Lost in the Fog*, WASH. POST, Dec. 30, 2011, at A17 (“And what about radical Islam? The paradox of 2011 was that al-Qaeda, the leading terrorist edge, seemed on the verge of defeat with the death of bin Laden, while the political face of the Muslim Brotherhood was ascendant in Tunisia, Egypt and Syria—not to mention Turkey, which seemed to be bidding in 2011 for neo-Ottoman status, with Obama as facilitator and sometime apologist.”).

<sup>50</sup> See Kirkpatrick, *supra* note 19, at A1.

<sup>51</sup> Ibrahim, *supra* note 26, at A13 (explaining that in recent elections in the Arab world, “the theocrats made compelling cases for their own visions” and “Islamists tend to be fairly well orga-

view of the ascendancy of Western-style democratic values in Arab Spring nations:

This was a year riven with contradictions: The citizen movement that took flight in Tunisia as the Arab Spring ended up empowering Muslim political groups across the map, to the point that some secular Arabs worry it's now an "Islamist Winter," freezing the rights of women and minorities. In Egypt, a military that began the year as the protesters' ally ended it as their enemy; the Tahrir Square uprising wobbled unsteadily at year-end, often seeming to be adding another depressing chapter to Crane Brinton's "The Anatomy of Revolution," a classic study of how such revolts go off track.<sup>52</sup>

There is no doubt that the Arab Spring shows some signs of failure if one judges success as Western-style democracy. The situation is at least still precarious and demonstrates an area still susceptible to external influence for good or bad and one that would benefit from the infusion of more foundational legal and philosophical material that can make the case for liberal governance.

From all the evidence, it seems clear that it remains an open question how the dominoes will fall in the Arab world after the 2011 uprisings.<sup>53</sup> Vali Nasr, a Professor at Tufts University, cautions that we should be highly skeptical that Arab nations emerging from peaceful uprisings will resolve their new governing structures in favor of Western-style liberal values because of their history:

The Arab Spring is a hopeful chapter in Middle Eastern politics, but the region's history points to darker outcomes. There are no recent examples of extended power-sharing or peaceful transitions to democracy in the Arab world. When dictatorships crack, budding democracies are more than likely to be greeted by violence and paralysis. Sectarian divisions—the bane of many Middle Eastern societies—will then emerge, as competing groups settle old scores and vie for power.<sup>54</sup>

For that reason, those interested in shaping the change and the institutions of change that are chosen cannot sit on the sidelines; they must engage with the

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nized and popular," but concluding that their inclusion is better than exclusion, which could fuel more militant opposition).

<sup>52</sup> Ignatius, *supra* note 49, at A17.

<sup>53</sup> Shadid & Kirkpatrick, *supra* note 25, at A1 ("[T]he question of identity may help determine whether the Arab Spring flowers or withers. Can the revolts forge alternative ways to cope with the Arab world's variety of clans, sects, ethnicities and religions?").

<sup>54</sup> Vali Nasr, Op-Ed., *If the Arab Spring Turns Ugly*, N.Y. TIMES, Aug. 28, 2011, § 4, at SR4.

competition that is already seeking to co-opt the revolutionary forces in the Arab world in favor of Islamism and non-liberal structures.<sup>55</sup> After the Arab Spring and for a long time to come, factions will compete for control in the states emerging from peaceful chaos.<sup>56</sup> But there is a great deal of hope and optimism among the Arab people that after the post-revolutionary dust settles countries like Egypt, Tunisia, and others will emerge more free and democratic.<sup>57</sup> People in these countries want change.<sup>58</sup> But evidence suggests that positive change toward Western-style democracy faces substantial obstacles and opposition. For example, in the Arab world today, many anti-democratic factions are already engaged in the competition for control of the emerging governing structures.<sup>59</sup> Thus, those interested in providing support for the democratic idea and the freedom agenda cannot wait back or unilaterally disengage lest they lose the battle of ideas to those who do engage. Any interested party must make entry into the marketplace of ideas and challenge the anti-democratic forces that get footholds.

#### IV. EMERGING MARKETPLACES OF IDEAS

Power vacuums and voids emerge after nonviolent revolutions.<sup>60</sup> This Part explains the importance and power of ideas in filling those voids.

As part of our foreign policy effort, the United States has an interest in providing information on Western-style governance and its foundations—including principles of limited government and the respect for liberty to individuals in societies—to those nations in the throes of or emerging from nonviolent

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<sup>55</sup> *Id.* (“The Middle East is in the midst of historic change. Washington can hope for a peaceful and democratic future, but we should guard against sectarian conflicts that, once in the open, would likely run their destructive course at great cost to the region and the world.”).

<sup>56</sup> Kakutani, *supra* note 30 (reviewing Middle East reporter Robin Wright’s 2011 book, *ROCK THE CASBAH*, and explaining that “[a]s for nations that have experienced the sudden collapse of authoritarian rule, Ms. Wright goes on, they confront delicate transitions in which ‘conflicting demands for both social justice and economic growth’ will have to be balanced, and political predators—including members of old ruling parties and Islamist extremists—will try to take advantage of public frustration with the pace of change. Lasting political and social transformation will be further complicated in many countries by high levels of unemployment, a pervasive lack of education and sectarian and ethnic divisions.”).

<sup>57</sup> Ibrahim, *supra* note 26, at A13 (“For me, however, something about events of the past few months feels new and irreversible. Too many people in too many places—Egypt, Iran, Lebanon and elsewhere—are defying their oppressors and taking risks for freedom.”); Shadid & Kirkpatrick, *supra* note 25, at A1 (“Across the Arab world, there is a renewed sense of a collective destiny that echoes the headiest days of Arab nationalism in the 1950s and ‘60s and perhaps even transcends it.”).

<sup>58</sup> Kakutani, *supra* note 30 (“‘The drive,’ she concludes, ‘to be part of the 21st century—rather than get stuck in the status quo of the 20th century or revert to the ways of the 7th century—now consumes the Islamic world.’”).

<sup>59</sup> Ignatius, *supra* note 49, at A17.

<sup>60</sup> See *supra* Part III.

revolution.<sup>61</sup> Even President Barack Obama in his January 24, 2012, State of the Union Address seemed to hint at this type of influence being critical, including in countries and areas like those involved in the Arab Spring.<sup>62</sup> Obama proclaimed, for example, that “[o]ur success in this new and changing world will require reform, responsibility, and innovation. It will also require us to approach that world with a new level of engagement in our foreign affairs.”<sup>63</sup> He further acknowledged that the United States “must defeat determined enemies . . . [a]nd America’s moral example must always shine for all who yearn for freedom and justice and dignity.”<sup>64</sup> Finally, after referencing Sudan and Tunisia, Obama opined that persons everywhere should be receptive to the basic values of freedom shared by all, exclaiming that “[w]e must never forget that the things we’ve struggled for, and fought for, live in the hearts of people everywhere.”<sup>65</sup> Obama’s statements hardly reflect anything new in terms of the fairly-consistent rhetorical theme of American foreign policy, but his pronouncements underscore that ideas certainly should have a role in United States foreign policy today. Such efforts should be designed with the goal that individuals in transitioning societies will choose these foundations for the formation of their new regimes.<sup>66</sup> It is in every nation’s self-interest to attempt to enter the competition for the accepted paradigm in transitioning countries. As one author has succinct-

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<sup>61</sup> Consider, for example, the mission statement of the Under Secretary of Public Diplomacy and Public Affairs at the U.S. State Department:

The mission of American public diplomacy is to support the achievement of U.S. foreign policy goals and objectives, advance national interests, and enhance national security by informing and influencing foreign publics and by expanding and strengthening the relationship between the people and government of the United States and citizens of the rest of the world.

*Under Secretary of Public Diplomacy and Public Affairs*, U.S. STATE DEP’T, <http://www.state.gov/r/> (last visited Feb. 18, 2012).

<sup>62</sup> Barack Obama, President of the U.S., State of the Union Address at the U.S. Capitol (Jan. 24, 2012) (transcript available at <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* Obama further stated the U.S. policy of support for democratic movements:

Recent events have shown us that what sets us apart must not just be our power—it must also be the purpose behind it. In south Sudan—with our assistance—the people were finally able to vote for independence after years of war. . . . And we saw that same desire to be free in Tunisia, where the will of the people proved more powerful than the writ of a dictator. And tonight, let us be clear: The United States of America stands with the people of Tunisia, and supports the democratic aspirations of all people.

*Id.*

<sup>66</sup> See Peter H. Brietzke, *Globalization, Nationalism, and Human Rights*, 17 FLA. J. INT’L L. 633, 643 (2005) (“Cultural appeal is a ‘soft’ power: the force of ideas and ideals, which operates subtly by influencing others to support the United States of their own free will.”).

ly stated the matter, “humans ignore at their peril efforts to find ways to develop and articulate universal values.”<sup>67</sup>

In the face of political struggles, ideas and ideological visions play pivotal roles in the development of society. Thomas Sowell has explained that “social visions . . . of the world have consequences that spread through society and reverberate across the years, or even across generations or centuries.”<sup>68</sup> The societal discourse is affected as alternative visions compete for dominance in the marketplace of ideas:

The role of rationally articulated ideas may be quite modest in its effect on a given election, a legislative vote, or an action of a head of state. Yet the atmosphere in which such decisions take place may be dominated by a particular vision—or by a particular conflict of visions. Where intellectuals have played a role in history, it has not been so much by whispering words of advice into the ears of political overlords as by contributing to the vast and powerful current of conceptions and misconceptions that sweep human action along.<sup>69</sup>

He who can provide the most appealing vision for the transition after a nonviolent revolution can indeed have a transformative impact.

The Arab world again provides a forum for discussion. There has been an ongoing “battle for the minds” of the Arab world and recent events only heighten the importance of that battle.<sup>70</sup> Ideas do indeed have consequences<sup>71</sup> and the spread of ideas could take hold and resonate with a people searching for guidance after a nonviolent revolution. Western ideas have seen some success (and some failures) in the “battle for the minds” of peoples in transition.<sup>72</sup> For example, the United States has a long and mixed history of attempts to shape the political order in countries facing regime change or in societies particularly vulnerable to change.<sup>73</sup> Whether through hard conflict, development and aid, or the

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<sup>67</sup> John E. Noyes, *The United States, the Law of the Sea Convention, and Freedom of Navigation*, 29 SUFFOLK TRANSNAT'L L. REV. 1, 22 (2005).

<sup>68</sup> THOMAS SOWELL, *A CONFLICT OF VISIONS: IDEOLOGICAL ORIGINS OF POLITICAL STRUGGLES* 7 (Basic Books rev. ed. 2007) (1987).

<sup>69</sup> *Id.* at 8.

<sup>70</sup> Darlene Superville, *U.S. Still Tongue-Tied When it Comes to Speaking Arabic: Lack of Language Skills Hampers American Efforts*, CHI. TRIB., Nov. 21, 2003, at 38, available at 2003 WLNR 15330934 (“[T]his [is a] battle for the minds of this very important part of the world.” (quoting Edward Djerejian, a former U.S. ambassador to Syria and Israel)).

<sup>71</sup> See generally RICHARD M. WEAVER, *IDEAS HAVE CONSEQUENCES* (1984).

<sup>72</sup> ALEXANDER T.J. LENNON, *THE BATTLE FOR HEARTS AND MINDS* 26, 179, 260 (2003).

<sup>73</sup> Consider, for example, the proxy wars fought between democracy and communism throughout the Cold War. See generally ALAN AXELROD, *THE REAL HISTORY OF THE COLD WAR: A NEW LOOK AT THE PAST* 113 (2009) (“As the Cold War actually unfolded, however, it spawned a series of proxy wars, in which the United States and the Soviet Union (and later, the People’s

support of coups and insurrections, both the United States and Soviet Union during the Cold War, for example, sought to implant their own political imprint on nations throughout the world to gain a strategic advantage in both numbers and geographical position.<sup>74</sup> But one can generally look to the Cold War and the former Soviet Union and see that it was the triumph of the ideals of freedom and markets that ultimately tore down the walls of communism.<sup>75</sup>

The Cold War is but one example of the critical nature of ideas and their role in the geopolitical marketplace. In relation to ideas, it is really a matter of supply and demand, production output, and consumption. When a consuming public demands or wants more information and more material upon which to develop their own ideas or institutions, such materials should be produced and supplied to those consumers. Anyone choosing not to provide their product to the demanding marketplace will, of course, not have their product consumed and not profit from that consumption. Competitors who choose to supply will obviously and conversely have their product consumed, and those demanding the product will not even know that another product exists. The party who chose to offer the product will profit from their ideas being consumed and will also marginalize competing ideas because they maintain a monopoly on the supply of ideas.

Consider a manufacturing analogy. Major geopolitical powers and major schools of thought are the producers of a commodity—ideas—and seek a consumer base. In the case of nonviolent revolutions and strategic ideological

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Republic of China) avoided fighting each other directly by using third-party—usually Third World—nations as battlefields.”); ANN HIRONAKA, NEVERENDING WARS 104 (2005) (“Scholars have branded many Third World civil wars as ‘proxy wars’—conflicts that were an expression of the larger Cold War hostilities between the United States and the Soviet Union.”); ANDREW A. WIEST & M.K. BARBIER, STRATEGY AND TACTICS INFANTRY WARFARE 119 (2002); Thomas J. Bellows, *Proxy War in Indochina*, 7 ASIAN AFF. 13 (1979); Steven R. David, *Saving America From the Coming Civil Wars*, 78 FOREIGN AFF., Jan.–Feb. 1999, at 103, 104; Kenneth D. Heath, *Could We Have Armed the Kosovo Liberation Army? The New Norms Governing Intervention in Civil War*, 4 UCLA J. INT’L L. & FOREIGN AFF. 251, 278 (2000) (“After the onset of the Cold War, the U.S. and Soviet Union engaged in numerous ‘proxy wars’ by way of internal conflicts in other states such as Vietnam and Afghanistan. Even then, however, the superpowers usually justified their interventions abroad in the traditional language of the nonintervention norm . . . .”); Janice Gross Stein, *Proxy Wars: How Superpowers End Them: The Diplomacy of War Termination in the Middle East*, 35 INT’L J. 478 (1980). *But see* Balakrishnan Rajagopal, *Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination*, 49 WM. & MARY. L. REV. 1347, 1352–53 (2008) (discussing developments of program-based intervention as a type of proxy war).

<sup>74</sup> FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (2006).

<sup>75</sup> *See generally id.* (describing the triumph of capitalism, free markets, individual liberty, and limited government as evident in, among other things, the collapse of the Soviet Union). United States foreign policy should be equally concerned with the spread of Western values even after communism has left center stage. *See id.* at 45–46. In fact, it is arguably even more important that the United States concern itself with the spread of anti-Western extremism which is more volatile and less predictable than the enemy that was communism. *Id.* Nonetheless, hard proxy wars in their traditional form have less of a place in dealing with regimes emerging into peaceful chaos like those just completing an uprising. *See id.*

cooptation, the strategy for the producer is to convince the target market that the product or commodity is the right one for them. The challenge is to sell the product.

The populations in countries or territories during and immediately after a nonviolent revolution are particularly ripe consumer markets ready for new ideological products and susceptible to marketing efforts designed to promote the adoption of an alternative political product.<sup>76</sup> There is much work to be done on the part of the members of these societies before any real change, especially positive change, will result after a nonviolent revolution and cement itself into the governing structures. And during this time, there is much work to be done by those who wish to penetrate these societies with their ideas as the societies struggle with their transformative processes.

The fact that a revolution starts as a nonviolent revolution with seemingly democratic tendencies hardly makes it a foregone conclusion that it will result in something peaceful, democratic, respectful of human rights, or otherwise liberal in the classic use of that term. In fact, quite the opposite may result. Idealistic notions of democratic triumph in nonviolent revolutions fail to recognize the intellectual deficit that may exist in many newly “free” countries. It may remain unrecognized that it is still necessary to develop a legal system that can support and sustain these concepts of liberty and democratic values.

The marketplace for ideas is dominated by the concept of competition just as any other market.<sup>77</sup> I believe it is useful to describe the process in terms of the character of the stages involved. Ideas compete for a consuming market with the hopes that the consumer will buy the product/idea in the first instance

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<sup>76</sup> See JOSEPH S. NYE, JR., *THE PARADOX OF AMERICAN POWER: WHY THE WORLD’S ONLY SUPERPOWER CAN’T GO IT ALONE* 8–9 (2003) (discussing the use of ideas to attract and emulate forms); Peter H. Brietzke, *Globalization, Nationalism, and Human Rights*, 17 *FLA. J. INT’L L.* 633, 643 (2005) (discussing the persuasive nature of soft power influence).

<sup>77</sup> Justice Oliver Wendell Holmes made this point about the power of competition in the marketplace of ideas as follows:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

*Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). See also Joseph Blocher, *Institutions in the Marketplace of Ideas*, 57 *DUKE L.J.* 821, 824 (2008) (“Free speech, in Holmes’s framework, is worthy of constitutional protection precisely because—like the free flow of goods and services—it creates a competitive environment in which good ideas flourish and bad ideas fail.”); Yoav Hammer, *Advertisements and the Public Discourse in a Democracy*, 5 *LAW & ETHICS HUM. RTS.* 259, 266 (2011) (“Alluding to Adam Smith’s ideas about the benefits of a free market of commodities, Holmes argued that truth is what emerges from competition in a ‘marketplace of ideas.’”). See generally Lillian R. BeVier, *The Invisible Hand of the Marketplace of Ideas*, in *ETERNALLY VIGILANT: FREE SPEECH IN THE MODERN ERA* 232 (Lee C. Bollinger & Geoffrey R. Stone eds., 2002) (examining favorably the marketplace concept for ideas).

(exposure stage), use the product/idea (utility stage), will be satisfied with the idea (longevity of utility stage), become a repeat customer and want to buy the product again (multiplication stage), spread the word about the product to other consumers (word of mouth multiplication of impact stage), and expand upon or innovate upon the idea (sustaining and transformative stage). Soft power efforts can be made to introduce and strengthen the adoption of ideas at each and every one of these stages.

The emergence of a stable democratic regime with respect for individual rights is hardly inevitable. In every nation emerging from a nonviolent revolution, there is soft power and ideological competition from within and without. Those factions already within the region will be attempting to co-opt the revolution for their own objectives, and advocates of democracy from within the region or without will face domestic rivals whether it is Islamists in the Arab world, socialists in Latin America, or the like. Often those interest groups within the country will have a leg up on the ability to influence the movement, and these may very well be non-liberal groups. The competition from outside the country includes all other interested parties, whether it is the United States, China, or some other foreign power.

In an ideal world—despite, or perhaps because of, all of this competition—we would see a true market emerge where the best product wins the ideological battle. Geopolitics is incapable of being so fair. At most, each interested party can only hope to try their hardest and get a place for their product on the shelf at the market. We certainly know that the customer cannot buy a product that is not offered or, more precisely, one that the manufacturer fails to market and, therefore, the consumer does not know its merits. The principle of strategic ideological cooptation is to position oneself in the competitive marketplace of ideas and to present ideas that will win that marketplace. If the societies have an opportunity to consume those ideas, then the better principles, it is hoped, will overcome competing theories on their own strength. But one cannot compete if they do not inject their ideas and give them exposure.

Those advocating for one direction of ideological development can hope to win at market. What they must know at the very least is that the one way to ensure losing is to never enter that marketplace leaving it dominated by opposing views.

With the growth of nonviolent revolutions, there is a great deal of uncertainty, but also opportunity. Steering the train in the aftermath of a nonviolent revolution can be done by a good conductor, a neutral conductor, or a destructive conductor. There is an opportunity for those in the United States and in liberal democracies everywhere to compete for the conductor's seat and to take the train down the tracks toward limited government, individual rights, and free markets. But those in favor of liberal democracy must at least try to get on and direct the train. The United States and its ideological allies must recognize that opposing ideological forces will certainly get control if the Western liberal ideas are not there to push out the alternative paradigms or theories of governance.

Nonviolent revolutions quite often leave power vacuums that must be filled. It is naïve to think that there will not be attempts to fill these vacuums from individuals and groups as repressive as the displaced regimes or perhaps even more so. It is dangerous to believe that the emerging governments will be friendly or cooperative with the Western world. With all of the attendant risks associated with a power vacuum, the United States and others interested in promoting liberalism in these merging societies must enter the competition. They must recognize that others will be attempting to co-opt a seemingly peaceful movement for their own ultimate means of power. A realistic perspective demands that we engage the vacuum as much as our enemies would. As we walk a political and diplomatic tightrope in the Arab region, promoting ideas and using soft power based on the goal of strategic ideological cooptation is the type of influence approach least likely to backfire.<sup>78</sup>

Ideas, in fact, embody the very concept of nonviolence. One of the reasons that ideas are so powerful is because no one can have a monopoly on them. Unlike money or guns, they cannot be misdirected.<sup>79</sup> They cannot be appropriated exclusively by any power. Ideas are free. Ideas are not finite objects but instead entirely replicable. As such, it seems particularly apt to consider following nonviolent revolutions with a focus on nonviolent intervention. Ideas are freely transferable with only gain in the transfer—never loss. Once consumed, ideas become a record upon which actions and decisions must be judged. And, once consumers become invested in a product, they tend to be loyal. On that last point of ideological entrenchment, a word of caution screams out. Bad ideas, once entrenched, are difficult to get rid of. Thus, in a society still malleable and impressionable, it is important for anyone engaged in the competition to enter early and solidify their consumer market. Getting a customer to switch brands is always harder than getting them to choose a brand in the first instance. Time is of the essence in the face of nonviolent revolutions for the right ideas to get to the right people who will position themselves to implement those ideas for the right result.

## V. USING SOFT POWER IN THE IDEOLOGICAL MARKETPLACE

The concept of soft power focuses on the strength and influence that a nation can project in the world on the basis of their ideas, models, and example. As I explained in my earlier work, “[s]oft power is the means of leveraging

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<sup>78</sup> Steven Lee Myers, *Arab Hopes, U.S. Worries*, N.Y. TIMES, Sept. 18, 2011, at A1 (“In the process, diplomats worry, the actions of the United States could even nudge the Arab Spring toward radicalism by angering newly enfranchised citizens of democratic nations.”).

<sup>79</sup> Alderman, *supra* note 23 (“There is a fear, shared by both the American administration and democracy activists, that plunking down large dollar pledges upfront would risk funneling money into the hands of institutions, including the Egyptian military, which could misuse or simply siphon it off.”).

popularity, power, prestige, prosperity, envy, enlightenment, and experience to affect foreign nations and foreign policy.”<sup>80</sup>

Soft power of persuasion has the capacity to induce others to change their behaviors. But soft power can be used with good or ill effect. That is why the recognition of a soft power competition and the need to win becomes so critical. Once we understand that there is a global marketplace of ideas, where ideas compete and ideologies vie for privileged position, the exertion of soft power is critical for any self-interested nation.<sup>81</sup>

Joseph Nye is widely considered the originator of the term “soft power” and has written extensively on the subject for more than fifty years.<sup>82</sup> Soft power has come to be recognized as an effective means of shaping global policy and extending influence.<sup>83</sup> In his 1955 text, Nye describes it as an alternative to hard power interventionist mechanisms:

“[H]ard power” is the ability of the United States to conduct foreign policy and achieve its wishes on the world stage through means of force, force projection, threats, and implied threats. “Soft power” is the ability of the United States to achieve these

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<sup>80</sup> Kochan, *supra* note 3, at 553.

<sup>81</sup> See Harvey Rishikof, *Framing International Rights with a Janusism Edge—Foreign Policy and Class Actions—Legal Institutions as Soft Power*, 2003 U. CHI. LEGAL F. 247, 251 (2003). “Soft power involves the ability to influence action through the institutionalization of the value of liberty, human rights, and democracy.” *Id.* at 275. See also JOSEPH S. NYE, JR., *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* 60–61 (2004) (claiming that the attractiveness of the United States depends in part on the values, substance, and style of U.S. foreign policy).

<sup>82</sup>INDERJEET PARMAR & MICHAEL COX, *SOFT POWER AND U.S. FOREIGN POLICY: THEORETICAL, HISTORICAL AND CONTEMPORARY PERSPECTIVES* 12–13 (2010) (“During the past two decades Nye has developed and advocated the use of the concept of soft power in a number of academic and non-academic publications. Broadly speaking, his efforts were a great success, as soft power became a widely known concept in international relations (IR) literature and elsewhere.”).

<sup>83</sup> See generally ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 4 (2005) (discussing soft power); Robert O. Keohane & Joseph S. Nye, Jr., *Power and Interdependence in the Information Age*, FOREIGN AFF., Sept.–Oct. 1998, at 81, 86 (defining “soft power”); Joseph S. Nye, Jr., *Changing Nature of World Power*, 105 POL. SCI. Q. 177, 181 (1990) (describing soft power as co-optive behavior and indirect influence); Joseph S. Nye, Jr., *The Velvet Hegemon: How Soft Power Can Help Defeat Terrorism*, FOREIGN POL’Y, May–June 2003, at 74; Joseph S. Nye, Jr., *A Dollop of Deeper American Values: Why “Soft Power” Matters in Fighting Terrorism*, WASH. POST, Mar. 30, 2004, at A19. On United States soft power influence, see Stephen G. Brooks & William C. Wohlforth, *American Primacy in Perspective*, FOREIGN AFF., July–August 2002, at 20–33, and Bill Emmott, *A Survey of America’s World Role*, ECONOMIST, June 29, 2002, at 3–28. But see PAUL M. KENNEDY, *THE RISE AND FALL OF GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500 TO 2000* (Vintage Books 1989) (1987); IMMANUEL WALLERSTEIN, *THE DECLINE OF AMERICAN POWER* (2003).

same goals by powers of persuasion or envy or other emotions felt by those countries that are the target of U.S. policy.<sup>84</sup>

More recently, Nye has further elaborated on the concept and refined it somewhat—describing the interrelationships between soft power traditionally understood and public diplomacy to inscribe a “smart power” permutation on the concept, which is defined as a combination of soft power and hard power.<sup>85</sup> For purposes of this Article, only the soft power component will be considered. To be sure, however, soft power and hard power are not mutually exclusive, and by advocating soft power, this Article takes no position on various hard power strategies of influence in the nations or regions herein discussed.

Part of the allure of soft power rests in its enduring effects as ideas and values become accepted and embedded in a new society<sup>86</sup> and the fact that it creates new connections and development of similarities based on newly shared values.<sup>87</sup> Moreover, soft power is generally less likely to face resistance than hard power intervention.<sup>88</sup>

Very importantly, in relation to nonviolent revolutions in areas where perhaps the United States has not been historically held in the highest regard,<sup>89</sup> the best exertions of soft power are those that take the words “influence” and “persuasion” seriously—resting on the force of the ideas themselves rather than

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<sup>84</sup> JOSEPH S. NYE, JR., BOUND TO LEAD 1–20, 220–36 (1955); see also Paul Schiff Berman, *Seeing Beyond the Limits of International Law*, 84 TEX. L. REV. 1265, 1293 (2006) (reviewing JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005)) (“[I]t is difficult to see how a state could hope to further its long-term interests without being able to convince others to follow certain policies simply through the power of persuasion and moral authority.”).

<sup>85</sup> Joseph S. Nye, Jr., *Public Diplomacy and Soft Power*, 616 ANNALS AM. ACAD. POL. & SOC. SCI. 94, 94–96 (2008) (explaining his theories of soft power, smart power, and public diplomacy) [hereinafter Nye, *Public Diplomacy*]; see also Joseph S. Nye, Jr., *The Future of American Power: Dominance and Decline in Perspective*, FOREIGN AFF., Nov.–Dec. 2010, at 2.

<sup>86</sup> Mark A. Drumbl, *Guantanamo, Rasul, and the Twilight of Law*, 53 DRAKE L. REV. 897, 918 (2005) (“[S]oft power, . . . is more relevant to the multigenerational and multioperational war on terrorism than to war as we traditionally have understood it.”).

<sup>87</sup> See THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 101–11 (2000) (examining Western pressures on non-Western countries to conform and adopt political and economic values of the West); Joseph S. Nye, Jr., *The Misleading Metaphor of Decline*, ATLANTIC MONTHLY, Mar. 1990, at 86 (“What is needed is increased investment in ‘soft power,’ the complex machinery of interdependence, rather than in ‘hard power’—that is, expensive new weapons systems.”).

<sup>88</sup> Diane F. Orentlicher, *Unilateral Multilateralism: United States Policy Toward the International Criminal Court*, 36 CORNELL INT’L L.J. 415, 430 (2004) (“Persuasion through soft power is more likely than coercion to produce enduring policy successes [because] . . . persuasion through soft power is likely to draw less resistance than deployment of hard power.”).

<sup>89</sup> Lionel Barber, *America’s Soft Power Needs Hard Work*, FIN. TIMES, July 22, 2005, at 19 (“Anti-Americanism is deeper and broader than at any time in modern history, [and it] is most acute in the Muslim world . . .”); Kirkpatrick & Myers, *supra* note 39, at A1 (“At the same time, the United States’ standing in public opinion in Egypt and around the region continues to suffer because of decades of support for undemocratic governments like the military-backed system that controlled Egypt . . .”).

on lectures or other paternalistic means for the introduction of the ideas into a society.<sup>90</sup> It is a matter of attraction and acceptance by the target audience.<sup>91</sup> And, the changes in today's world—including the proliferation of nonviolent revolutionary movements—underscore the already clear need for a vigorous focus on soft power as part of United States foreign policy.<sup>92</sup> There must be recognition of this synergy between soft power interventions and nonviolent regime change. It is likely that those engaged in nonviolent change are more reflective, thoughtful, patient, and willing to use ideas as weapons. Assuming those things are true, it is not surprising that societies engaged in nonviolent change may be more receptive to soft power intervention so long as it is based on the provision of ideas with their own organic, persuasive power that they can freely adopt rather than ideas imposed by an artificial force.

It is, indeed, a soft power competition in which other countries are engaged and a practice that matters worldwide. In addition to more localized concerns like competing ideologies in the Middle East, there is worldwide competition for influence. For example, China, often touted as the emerging dominant economic and political superpower, understands the influence of soft power to spread its own values to other nations. China is beginning to recognize the ability to compete on the geopolitical stage through soft power influence.<sup>93</sup> None-

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<sup>90</sup> See, e.g., David A. Perez, *America's Cuba Policy: The Way Forward A Policy Recommendation for the U.S. State Department*, 13 HARV. LATINO L. REV. 187, 191 (2010) (discussing the influence of U.S. soft power in Latin America and stating that "Washington will have to not only strengthen its existing relationships in the region, but also win over new allies, who look to us for 'ideas and solutions, not lectures'" (quoting RICHARD L. ARMITAGE & JOSEPH S. NYE, JR., CTR. FOR STRATEGIC & INT'L STUDIES, CSIS COMMISSION ON SMART POWER: A SMARTER, MORE SECURE AMERICA 5 (2007), available at [http://www.csis.org/files/media/csis/pubs/071106\\_csissmartpowerreport.pdf](http://www.csis.org/files/media/csis/pubs/071106_csissmartpowerreport.pdf))).

<sup>91</sup> JOSEPH S. NYE, JR., THE PARADOX OF AMERICAN POWER: WHY THE WORLD'S ONLY SUPERPOWER CAN'T GO IT ALONE 9 (2002) ("Soft power is not merely the same as influence, though it is one source of influence . . . . Soft power is also more than persuasion or the ability to move people by argument. It is the ability to entice and attract. And attraction often leads to acquiescence or imitation."); see also ROBERT O. KEOHANE & JOSEPH S. NYE, JR., POWER AND INTERDEPENDENCE: WORLD POLITICS IN TRANSITION 220 (Longman 4th ed. 2011) (positing a comprehensive explanation of the mechanics driving world affairs—power politics on one hand and complex interdependence on the other).

<sup>92</sup> Ernest J. Wilson III, *Hard Power, Soft Power, Smart Power*, 616 ANNALS AM. ACAD. POL. & SOC. SCI. 110, 110–11 (2008) ("As we look toward the future, soft power calculations should figure far more prominently in the design of American national security and foreign policies.").

<sup>93</sup> Young Nam Cho & Jong Ho Jeong, *China's Soft Power: Discussions, Resources, and Prospects*, 48 ASIAN SURV. 453, 453 (2008) ("[China's] recognition of soft power and its application to national policies is an important factor in explaining China's rapidly increasing influence in Asia."); James F. Paradise, *China and International Harmony: The Role of Confucius Institutes in Bolstering Beijing's Soft Power*, 49 ASIAN SURV. 647, 647 (2009) ("China is setting up Confucius Institutes around the world to spread its language and culture and to increase collaboration with foreign academic institutions. The institutes could increase China's 'soft power' and help it project an image of itself as a benign country."); Yiwei Wang, *Public Diplomacy and the Rise of Chinese Soft Power*, 616 ANNALS AM. ACAD. POL. & SOC. SCI. 257, 267–68 (2008). "The rise of Chinese soft power invites world concern. Many scholars anticipate competition between China

theless, the quality and maturity of a nation's soft power product matters—one author, for example, posits that “development of China's soft power is still in an early stage” and “China lacks some of the crucial elements of soft power such as the attractiveness of its political values.”<sup>94</sup>

If the United States wishes to project influence that encourages adoption of Western legal values in countries emerging from peaceful chaos, it will need to direct its soft power of persuasion toward that effort. And it should understand that the desired end result is to co-opt the movement to the point that it reflects the Western thought on limited government and individual liberty that is so vital in liberal democracies.

## VI. STRATEGIC IDEOLOGICAL COOPTATION

Apart from “hard power,” military intervention, or economic intervention, what this Article dubs “strategic ideological cooptation” calls for the recognition of power vacuums and intellectual deficits of Western legal thought in the Arab world and other areas where nonviolent revolutions exist. There is, therefore, a need to be “on the ground” with the ideas and principles that can direct nascent and emerging nations toward positive political ends grounded in the concepts of liberty and limited government, along with the related free markets that can be fostered by the same.<sup>95</sup>

Although not using the term “strategic ideological cooptation,” Nye's theories of soft power support the general use of soft power in this regard. He discusses attraction, acceptance, and the resultant cooptation that can occur with soft power:

Soft power is the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment. A country's soft power rests on its resources of culture, values, and policies . . . . One can affect others' behavior in three main ways: threats of coercion (“sticks”), inducements and payments (“carrots”), and attraction that makes others want what you want. A country may obtain the outcomes it wants in world politics because other countries want to follow it, admiring its values, emulating its example, and/or aspiring to its level of prosperity and openness. In this sense, it is important to set the agenda and attract others in world politics, and not only to force

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and the United States over their competing soft power. Joseph Nye Jr. (2005) anxiously pointed to the decline of American soft power and the rise of Chinese soft power.” *Id.* at 267.

<sup>94</sup> Paradise, *supra* note 93, at 650.

<sup>95</sup> See NATHAN ROSENBERG & L.E. BIRDZELL, JR., HOW THE WEST GREW RICH: THE ECONOMIC TRANSFORMATION OF THE INDUSTRIAL WORLD 332–34 (1986) (describing the relationships between Western legal and limited government institutions with markets and wealth generation in the West).

them to change through the threat or use of military or economic weapons. This soft power—getting others to want the outcomes that you want—co-opts people rather than coerces them.<sup>96</sup>

Taking this idea of cooptation as perhaps the most effective soft power outcome, we should identify strategic areas where it should be focused and then attempt to shape the ideological development in such areas by making others want to develop governance and legal regimes based on Western liberal thought. This will involve the dissemination of materials teaching Western legal thought and other efforts to build social capital that will increase the receptiveness of emerging societies to that thought.<sup>97</sup>

Strategic ideological cooptation recognizes the existence of a soft power competition where those with non-parallel views will engage in counter-cooptation strategies as well as active cooptation efforts based on their own ideological preferences. Self-interested and strategic nations or groups will all have an incentive to engage in this soft power battlefield of ideas.

What I am suggesting is rational and radical at the same time. It requires that any individual recognize that movements are susceptible to cooptation. Rather than cry foul when your opposition co-opts a movement and makes it something of their own under the mask and guise of something more organic or spontaneous, anyone interested in affecting the post-revolutionary development of a regime should try to co-opt the movement herself. We must accept the reality that no movement can survive in some pure, organic form. Stage one of the revolution may not be orchestrated but subsequent parts must be. At their most embryonic stages, nonviolent revolutions are still susceptible to influence and direction.

Each group has an interest in taking advantage of the opportunity to co-opt the chaos and strategically position their own ideological preferences in the emerging government structures. Alexis de Tocqueville made the point well that the circulation of ideas has exponential influence: “Feelings and opinions are recruited, the heart is enlarged, and the human mind is developed only by the reciprocal influence of men upon one another.”<sup>98</sup> The United States or other Western interests must enter the competition and exert the soft power influence of their classical thought. It must take the opportunity to strategically co-opt the ideological positioning of the new governing regimes. Understanding that interest groups adverse to Western interests will be positioning themselves to co-opt these movements, Westerners can use their soft power to provide a countervail-

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<sup>96</sup> Nye, *Public Diplomacy*, *supra* note 85, at 94–95.

<sup>97</sup> LARRY DIAMOND, *DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION* 18–19 (1999). According to Diamond, democracy requires “systematic, grassroots efforts to build social capital and cultivate democratic networks, norms, and expectations.” *Id.* at 238.

<sup>98</sup> 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 132 (Francis Bowen ed., Henry Reeve trans., Cambridge 1862) (1840).

ing force that moderates the power of the radical interest groups and seeks to win the contest for strategic ideological cooptation.

#### VII. TRANSLATIONS AS A TOOL FOR MECHANIZATION OF STRATEGIC IDEOLOGICAL COOPTATION

There are many mechanisms for soft power influence and engagement in strategic ideological cooptation. If the goal is to influence the emerging regimes by persuading them with the thought that formed the foundations for existing Western legal structures, then that thought must get in the hands of the nonviolent revolutionaries and it must be capable of being understood, i.e., it must be translated. In my 2008 article, I launched a substantial defense of soft power and the role of translations in it. As defended and explained there, “a lack of translation is endemic to the industry of ineffective communication,” and we need to overcome the voids that exist between our ideas and others’ understanding in order to transform foreign policy so that “key Western values . . . become accepted by other countries and societies.”<sup>99</sup> The exportation of ideas is critical to strategic positioning and needs a higher level of attention.

The West does not claim a monopoly on the mechanism of soft power; it should anticipate and position itself and its ideas in such battles. Perhaps one of the most important ways in which the West must arm itself is with an effective arsenal of translated works of political wisdom. Radicals cannot be the only ones with a corpus of understandable learning material for emerging institutions. Translations of fundamental and foundational matters of classical liberal thought, particularly regarding the role of the State vis-à-vis the individual in political systems and governance structures, are effective soft power mechanisms that must be deployed in countries and regions suffering power vacuums after nonviolent revolutions.

In order to mechanize strategic ideological cooptation and use our soft power of persuasion, the fundamentals of Western legal thought must be made available to societies during, and when emerging out of, nonviolent revolutions. That means that primary source documents—primarily books—that set forth the foundations of limited government, individual liberty, and market economies must be translated and then distributed in the Arab world—as elsewhere where we have seen and may see nonviolent revolutions, including Africa, Asia, and Latin America. Ferguson has contended that, “At its core, a civilization is the texts that are taught in its schools, learned by its students, and recollected in times of tribulation.”<sup>100</sup> Translated texts are critical to competing against others that seek to influence the minds of individuals in these developing post-revolutionary systems. This is especially true when the opposing viewpoints have the strategic advantage of being local in the region, being more familiar or

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<sup>99</sup> Kochan, *supra* note 3, at 560.

<sup>100</sup> FERGUSON, *supra* note 6, at 324.

acceptable as having been created organically within the local societies, and are using source documents originally in Arabic.

If the West wishes to encourage transitions that end in more democratic, Western-like regimes, then the West must bring their ideas to the attention of those impressionable societies to co-opt the minds and affections of those individuals and persuade them of the rightness of governing principles that dominate the more liberal governments in the West. As one influential study concluded, “[t]he most important potential contribution to strategic success in public diplomacy will come through books.”<sup>101</sup>

It is this use of soft power with strategic cooptation as the goal and translation as one of the means that can best guard against the rise of anti-liberal regimes after a nonviolent revolution. As Nye suggests, such efforts are best achieved through soft power and its public diplomacy cohort: “Public diplomacy is an instrument that governments use to mobilize these resources to communicate with and attract the public of other countries, rather than merely their governments. Public diplomacy tries to attract by drawing attention to these potential resources through broadcasting, subsidizing cultural exports, arranging exchanges, and so forth.”<sup>102</sup>

Translations are a great resource in such public diplomacy. An author espousing “Canada’s Soft Power” got it right when he echoed the importance of translations to soft power, stating that “[a]nother often-overlooked instrument of cultural diplomacy is the role played by translation. Translation is often ignored as a tool in public diplomacy, even though it is probably one of the most effective ways of conveying one’s culture to another society.”<sup>103</sup> The U.S. State Department has explained that “translation lies at the heart of any cultural diplomacy initiative; some misunderstandings between peoples may be resolved through engagement with each other’s literary and intellectual traditions.”<sup>104</sup>

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<sup>101</sup> THE ADVISORY GRP. ON PUB. DIPLOMACY FOR THE ARAB AND MUSLIM WORLD, CHANGING MINDS WINNING PEACE: A NEW STRATEGIC DIRECTION FOR U.S. PUBLIC DIPLOMACY IN THE ARAB & MUSLIM WORLD 39 (2003).

<sup>102</sup> Nye, *Public Diplomacy*, *supra* note 85, at 95. *But see* Manuel Castells, *The New Public Sphere: Global Civil Society, Communication Networks, and Global Governance*, 616 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 91 (2008). Castells posits:

The implicit project behind the idea of public diplomacy is not to assert the power of a state or of a social actor in the form of “soft power.” . . . The aim of the practice of public diplomacy is not to convince but to communicate, not to declare but to listen.

*Id.*

<sup>103</sup> EVAN H. POTTER, BRANDING CANADA: PROJECTING CANADA’S SOFT POWER THROUGH PUBLIC DIPLOMACY 112–13 (2009).

<sup>104</sup> U.S. DEP’T OF STATE, CULTURAL DIPLOMACY: REPORT OF THE SUBCOMMITTEE ON CULTURAL DIPLOMACY: THE LINCHPIN OF PUBLIC DIPLOMACY 12 (2005), *available at* <http://www.state.gov/documents/organization/54374.pdf>.

Despite the recognized utility of translations, however, the volume and frequency of translation is appalling in the Arab World.<sup>105</sup> Translation universally needs more attention, and the translation of Western works into Arabic is especially in need of help due to the extremely small amount of translated material available in Arabic. The Arab world is currently at a critical juncture embroiled in transitional movements that need such intellectual stock.<sup>106</sup>

The United States and other Western political systems have developed from some common foundational theories of governance and rights. Wisdom available from the great thinkers on these systems should be available for consumption in any society in a transition to a new government. From these works, there is much to learn and the possibility of synthesis emerges in which the works can be adopted and adapted to new situations and new societies. After all, that is a process that was followed in the West as well, with the great thinkers of Western democracies learning from the lessons of the past and borrowing inspiration, understanding, and ideas after studying and synthesizing great ancient works, like works from ancient Greece, to develop their ideas. Those in transitional countries can benefit from the use and synthesis<sup>107</sup> of Western works in the same manner.

We cannot compete in the marketplace of ideas if the potential consumers of the product—our foundational documents and philosophical expositions regarding constitutional democracy, liberty, and the rule of law—cannot read and understand the product. “Words can bridge gaps, exhort truths, invite debate, and expose failures in governmental systems (each of them).”<sup>108</sup> It may seem cliché, but there truly is a battle for the hearts and minds of democratic revolutionaries afoot in these emerging regimes.

The transmission of translated ideas can and should take many forms. Books, films, radio, the Internet, and other media can all serve as mechanisms for exporting ideas. Ultimately, the mode of transmission is less relevant than the substance and nature of the content being transmitted, and there are few reasons not to take advantage of the least-cost and easiest-access mechanisms

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<sup>105</sup> *Id.*

<sup>106</sup> A professor of American history of the University of Michigan has opined that there has been a failure of transmitting American ideas through Arabic translations. “What is not available in Arabic is startling. American political thought is almost completely absent. You *cannot* go into a bookstore and get Jefferson, Franklin, Adams, Lincoln, Susan B. Anthony, John Dewey, W. E. B. Dubois, or Martin Luther King.” Juan Cole, *Americana In Arabic Challenge To*, INFORMED COMMENT: THOUGHTS ON THE MIDDLE EAST, HISTORY AND RELIGION (Apr. 17, 2006), <http://www.juancole.com/2006/04/americana-in-arabic-challenge-to.html>. See also JUAN COLE, *ENGAGING THE MUSLIM WORLD* (Palgrave Macmillan rev. ed. 2010) (elaborating on Arabic-speaking countries’ perspectives toward the U.S.).

<sup>107</sup> The works themselves are important but how they are used is equally important. There is at least an argument to be made that those in transitioning countries should adapt these works and through synthesis make them their own.

<sup>108</sup> Kochan, *supra* note 3, at 563.

available. But as explained in more detail in my earlier work,<sup>109</sup> there is something special and powerful about books. In addition, I contend that the classics of Western legal and philosophical thought are best consumed as originally written and as originally packaged. There is substance in a book and there is depth and context in complete works. Books do not require access to electronics or an Internet infrastructure, which may be especially lacking in poorer societies or countries with large rural populations. As recent Google and Twitter controversies illustrate, technology is also susceptible to being blocked, censored, or co-opted by authoritarian regimes in power. Hard books need to make it past physical barriers, but once in a country, books cannot be turned off with the flick of a switch.

These unique qualities of books cannot be duplicated by e-mails, tweets, or Facebook contact alone. The power of ideas to spur desires for reform is a necessary predicate to seeing any revolution through to the end. So, while social media may help organize individuals, create networks, and coordinate protest, they neither generate the thirst for reform nor provide the substance necessary to build the institutions that will protect the freedoms movements desire.

While these emerging technologies and social networks no doubt increase the connections between peoples and bridge some of the communication divides, they are not the best tools for the provision of educational content and cannot be substitutes for the generation of substantive understanding and thought necessary to build institutions toward the protection of freedoms. Blogs, Wikipedia, and other information-based sites are somewhat more valuable than the truncated information that can be provided through social media mechanisms, but these are often the equivalent of Cliff's Notes analyses or are otherwise overly summarized. They lack the heft and completeness of original, primary texts. The classics of Western thought are books. Technology, of course, can nonetheless help with the transmission of translated books through e-book functions, and this should be encouraged as much as hard copy transmissions when such electronic access and means to view the materials are readily and consistently available. Any programs that can bring substantive classics of thought should be encouraged and developed both by the United States, other governments, and even private organizations.

One of the only public programs designed to bring translated works to the Arab World is the Arabic Book Program at the U.S. State Department.<sup>110</sup> It is more than twenty-five years old, but the Arabic Book Program has been a minor soft power player and there is little evidence that there is a commitment to change its direction, strengthen its mandate, or increase its budget. The ABP primarily operates out of the embassies in Cairo, Amman, and the U.S. Consulate General's office in Jerusalem. As the State Department explains, the objective is "translating into Arabic, publishing and distributing selected books from

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<sup>109</sup> *Id.* at 559–69.

<sup>110</sup> U.S. DEP'T OF STATE, *supra* note 104.

American writers in various areas, including economics, management sciences, politics, humanities, arts, and the environment.”<sup>111</sup>

I revisited the issue of translations in a February 17, 2011, *Wall Street Journal* opinion editorial,<sup>112</sup> where I set out the case for a robust translations program in the face of recent developments in Egypt and the rest of the Arab world and criticized the direction of the Arab Book Program in this function. There are two primary problems with the Arabic Book Program. First, it is not a very ambitious program in and of itself. Second, where resources do exist, the State Department spends them on book translations with limited utility in shaping political thought.

First, the Arabic Book Program is not substantial. A March 2010 State Department Inspector General Report stated that the Cairo and Amman embassies operate the book translation program “that serves its own and other missions in the region,” but “the program is relatively small, translating 6 to 10 titles each year” and a title selection committee only “meets every six months.”<sup>113</sup> This is hardly a rigorous production schedule and demonstrates that the commitment of the State Department to the translations project is minor (and always has been). The program has produced over one hundred titles, but not all are still available.<sup>114</sup>

Quality is also an issue. Despite a stated intention to do so, the Arabic Book Program has not always prioritized its limited resources on primary source documents of political philosophy or books that constitute expositions on basic principles that can assist struggling nations with liberty-enhancing governance. To its credit, the Program has translated things like *The Federalist Papers*, Paine’s *Common Sense*, and Tocqueville’s *Democracy in America*, but even these are not regularly listed as in stock.<sup>115</sup> The translated titles listed as in stock, however, include things like the *Joy Luck Club*, among other “light” works.<sup>116</sup> Classics have not been the norm at the program even when it has translated books on government or history. They have generally chosen lesser known text-

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<sup>111</sup> *Arabic Book Program*, AMMAN-JORDAN EMBASSY OF THE U.S., <http://jordan.usembassy.gov/abp.html> (last visited Feb. 22, 2012).

<sup>112</sup> Donald J. Kochan, Op-Ed., *Reading Adam Smith in Arabic*, WALL ST. J., Feb. 17, 2011, at A17.

<sup>113</sup> U.S. DEP’T OF STATE & THE BD. OF GOVERNORS OFF. OF INSPECTOR GEN., REPORT OF INSPECTION: EMBASSY AMMAN, JORDAN, REP. NO. ISP-1-1035A, at 26 (2010), *available at* <http://oig.state.gov/documents/organization/140644.pdf>.

<sup>114</sup> *Arabic Book Program*, *supra* note 111. *See also Arabic Book Program*, CAIRO-EGYPT EMBASSY OF THE UNITED STATES, [http://egypt.usembassy.gov/pa/rbo\\_.html](http://egypt.usembassy.gov/pa/rbo_.html) (last visited Mar. 18, 2012). The State Department website has changed rather substantially several times in the past several years. Currently, it is very difficult to find any comprehensive information about the Arabic Book Program or its current catalog without substantial searching within the websites at the Cairo and Jordan embassies.

<sup>115</sup> *Titles in Stock*, AMMAN-JORDAN EMBASSY OF THE U.S., [http://jordan.usembassy.gov/abp\\_titles\\_stock.html](http://jordan.usembassy.gov/abp_titles_stock.html) (last visited Feb. 22, 2012).

<sup>116</sup> *Id.*

book-like materials when they approach those subjects.<sup>117</sup> And, while textbooks or cultural books may have some value and may even be more accessible to some readers, they do not achieve the same effect as would foundational, primary texts about the policies, principles, and philosophies necessary to build and sustain a Western-style liberal regime.

Notably missing from the Arabic Book Program, for example, are translations of John Locke's second *Treatise of Government*, Montesquieu's *Spirit of the Laws*, or other classics of Western liberal thought by those or other authors. Searching their collections, you will not find Adam Smith's *The Wealth of Nations*, but you will find a book called *The Natural Wealth of Nations: Harnessing the Market for the Environment* originally published in English by the World Watch Institute.<sup>118</sup> There are no biographies of the Founding Fathers except Franklin, but one can find a translated version of President Obama's *Dreams From My Father*.<sup>119</sup> Regardless of whether some audiences may seem more receptive to current events or current people, efforts should be made to pick the most powerful historical examples, especially those that helped build a nation out of revolution, rather than a popular current political figure. Major constitutional texts like Joseph Story's *Commentaries on the Constitution* have not been translated, either.

Recently, political attention was paid to the idea of translation of classic political texts as a diplomatic tool. Senator Ron Johnson took the aforementioned op-ed<sup>120</sup> to the March 2, 2011, Senate Appropriations Committee Hearing on the State Department Budget and questioned Secretary of State Hillary Clinton directly and specifically about it. He asked:

It's also important what information we convey. And there's a pretty interesting article in the Wall Street Journal by Donald Kochan . . . talking about the Arabic book program. And his complaint—I can typify it as a complaint—was that we were translating books into Arabic, Who Pays the Price? The Socio-cultural Context of the Environmental Crisis, The Joy Luck Club. Are we—are we going to concentrate on providing the types of information that will actually help them build democracies, actually help them build a strong economic system?<sup>121</sup>

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<sup>117</sup> See *id.* (review of book catalog over various searches).

<sup>118</sup> *Environment*, CAIRO-EGYPT EMBASSY OF THE UNITED STATES, <http://egypt.usembassy.gov/pa/rbbooks/env-28.html> (last visited Mar. 18, 2012).

<sup>119</sup> *U.S. Society, Values & Literature*, CAIRO-EGYPT EMBASSY OF THE UNITED STATES, <http://egypt.usembassy.gov/pa/rbbooks/soc-54.html> (last visited Mar. 18, 2012).

<sup>120</sup> Kochan, *supra* note 112, at A17.

<sup>121</sup> See 2011 WLNR 4165274. See also *Webcast of Hearing on FY 2012 State Department Budget*, U.S. SENATE COMMITTEE ON APPROPRIATIONS (Mar. 2, 2011),

Secretary Clinton's answer to the Senator's question shows that my criticisms of the Arabic Book Program fell on deaf ears. Clinton defended the policies on the Arabic Book Program without seeming to understand the misdirected priorities when one focuses on fiction and progressive multiculturalism rather than foundational Western governing values and the importance of exposure to primary texts of Western legal, philosophical, and economic thought. There may, in fact, be some utility in translating fiction and cultural works but that should not be the focus and should not proceed at the expense of translating works of classic Western legal and political thought when faced with finite funding and when a choice must be made regarding the allocation of those resources.

First, Secretary Clinton defended a focus on fiction:

You know, Senator, I believe—and this may be—I'm a child of the Cold War—I believe our cultural exports, properly presented, are powerful incentives for democracy-building because what it does is free people's minds. You know, there's that famous book—I think it's called *Reading Lolita in Tehran*, where it's really subversive to read fiction and literature. I talk to a lot of the people who were behind the Iron Curtain, they told me our music kept their spirits up, our poetry. We used to do a lot in sending American artists around the world.<sup>122</sup>

Fiction books may have a place, but not if they are translated while classics of political philosophy remain non-translated and therefore inaccessible. If the budget were unlimited, perhaps some fiction would be appropriate but not without first emphasizing the translation of the works of political and philosophical thought that can help these emerging regimes truly grasp the foundational elements of Western liberal regimes.

Secretary Clinton then proceeded to focus *not* on the importance of time-tested greats of Western legal philosophy but instead on the type of cultural and fiction books that “inculcate the aspiration of the human soul”:

So I agree, teaching democracy is important, but how do you teach democracy? I don't think if you just lectured somebody that necessarily is the best way. But if you inculcate the aspiration of the human soul, where people want to be free, they want to think their own thoughts, as these young tech people in

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<http://appropriations.senate.gov/webcasts.cfm?method=webcasts.view&id=c91f7c92-b06a-4923-a661-4305d6375508> (at minute 117:06).

<sup>122</sup> *Webcast of Hearing on FY 2012 State Department Budget*, *supra* note 121 (at minute 117:37).

Tahrir Square did, you know, they were not—they were living democracy by expressing themselves.<sup>123</sup>

Secretary Clinton then conceded that perhaps some political “nuts and bolts” should also be part of the State Department’s book mission but it seemed far afield from endorsing the works of political thought and philosophy. Her focus seemed instead to lean towards “how to print a ballot”-type issues:

So I think we have to do both. I think we have to do a better job of getting America’s message, our values across, and we have to do a better job in the nuts and bolts about, how do you put together a political party? How do you run an election? How do you put together a free and independent judiciary?

So I think it has to be both, in order to be really breaking through to people in ways—especially young people today, who are in our own country sometimes hard to figure out how best to, you know, reach and touch and teach, I think it’s true worldwide. We’ve got to be creative.<sup>124</sup>

However one interprets Secretary Clinton’s non-answer answer, it is at least fair to say that she did not embrace the criticism regarding the limited translations of classical Western legal and philosophical texts, the misguided focus of finite resources to the materials most directly related to the development of governmental regimes through those types of translations, or the need for emboldened dissemination of translated primary texts of classical liberal and Western political philosophy and legal thought.

As the Center for Arts and Culture lamented in 2003, “there should be a much greater selection of translations into certain languages, most notably Arabic. Presently less than 400 English books per year are translated into Arabic, a lamentably small number.”<sup>125</sup> Little has changed since that time; there needs to be a stepped-up effort in response to this dearth of translated material. And, as stated earlier, the concern must be greater than a dearth of works on art and culture. The concern should additionally and especially focus on the dearth in the area of political and legal philosophy.

In Egypt and elsewhere, translated words and ideas can be our soft power infantries that help others find the same paths that those same words led us to traverse. The ability to communicate across languages is obviously fundamental in today’s interconnected world, and operations on the international

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<sup>123</sup> *Id.* (at minute 118:20).

<sup>124</sup> *Id.* (at minute 118:45).

<sup>125</sup> CYNTHIA P. SCHNEIDER, CTR. FOR ARTS & CULTURE, DIPLOMACY THAT WORKS: ‘BEST PRACTICES’ IN CULTURAL DIPLOMACY 13 (2003), available at [http://ccges.apps01.yorku.ca/old-site/IMG/pdf/03\\_Schneider.pdf](http://ccges.apps01.yorku.ca/old-site/IMG/pdf/03_Schneider.pdf).

stage rely on translations to accomplish effective exchange.<sup>126</sup> Translation is an essential component in cross-cultural communication.<sup>127</sup> And, this reality is certainly true in the language of law.<sup>128</sup> Law—and the transplantation of legal systems and concepts—cannot be effective if it cannot be translated and understood.<sup>129</sup> Yet, despite its importance, access to translated material of any kind is overall quite limited in this world.<sup>130</sup> It is important to recognize that translation is not easy,<sup>131</sup> but the costs are worth paying and the task is worth pursuing correctly, given the dearth of shared knowledge that will result without it. With technological advances, furthermore, it is becoming easier to translate and the excuses for the failure to translate documents fewer.<sup>132</sup> In fact, although only limited public and private resources have been dedicated to translations as a diplomatic tool across the years, our little bit of experience shows that the transaction costs are low.<sup>133</sup> Finally, there is a historic thirst to read and understand

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<sup>126</sup> See, e.g., Lori Tansey Martens, *Writing an Effective Global Code*, INT'L BUS. ETHICS REV., Spring–Summer 2005, at 13 (“For U.S.-based multinational companies, translating materials is a particularly important step in gaining acceptance for the code by international employees.”).

<sup>127</sup> Christian Fügen et al., *Simultaneous Translations of Lectures and Speeches*, 21 MACHINE TRANSLATION 209, 211 (2007) (“With advancing globalization, effective cross-cultural communication is rapidly becoming an essential part of modern life.”).

<sup>128</sup> See Heather Schoenfeld, *Mass Incarceration and the Paradox of Prison Conditions Litigation*, 44 LAW & SOC'Y REV. 731, 735 (2010). “The contention that ‘law is a language into which other languages must be continuously translated’ holds true in reverse: implementation requires the translation of the language of law into other languages, including the language of compliance, social policy, and politics.” *Id.* (quoting James Boyd White, *Imagining the Law*, in THE RHETORIC OF LAW 29–55 (Austin Sarat & Thomas Kearns eds., 1996)).

<sup>129</sup> See Ginevra Peruginelli, *Accessing Legal Information Across Boundaries: A New Challenge*, 37 INT'L J. LEGAL INFO. 276, 285–87 (2009) (discussing the importance of translation, especially legal translation, for international law and the effectiveness of international organizations).

<sup>130</sup> Fügen et al., *supra* note 127, at 211 (“To provide access to other languages unimpeded, however, requires translation, but due to the enormous cost of human translation, only a small fraction of text documents are presently translated and only a handful of human spoken encounters are actually interpreted, if they even take place at all as a result of the separation.”).

<sup>131</sup> See Kate Maclean, *Translation in cross-cultural research: an example from Bolivia*, 17 DEV. PRAC. 785, 785 (2007) (“Language is the conceptual scheme through which reality is viewed . . . . Translation and the understanding of translators’ deliberations, dilemmas, and decisions is an essential part of cross-cultural, qualitative research.”).

<sup>132</sup> GEOFFREY PIGMAN, CONTEMPORARY DIPLOMACY 117 (2011) (“The advance of technology has had significant cross-cutting effects upon the problem of how diplomats overcome the specific problem of how to communicate and understand one another across different languages.”).

<sup>133</sup> THE ADVISORY GRP. ON PUB. DIPLOMACY FOR THE ARAB AND MUSLIM WORLD, CHANGING MINDS WINNING PEACE: A NEW STRATEGIC DIRECTION FOR PUBLIC DIPLOMACY IN THE ARAB & MUSLIM WORLD 40 (2003) (describing existing book translation programs as “small in scope” but “largely successful” and describing costs as “strikingly reasonable when one considers the benefits of the translation”).

that has always led humans to seek translations even if difficult and even if imperfect.<sup>134</sup>

There also should be a greater effort for private and non-profit groups to fill voids in available translations and to assist in distribution, especially in light of the failings of the public program at the Arabic Book Program. It should be a priority that is consistent with the goals of many groups' already-stated objectives and goals. A few efforts exist. In my earlier work, two projects were noted: Dar Emar, a non-profit publishing house that has translated many Western works into Arabic<sup>135</sup> and the Global Americana project.<sup>136</sup> Another non-profit effort not previously mentioned is the translations program at the Atlas Economic Research Foundation, which has put forth a substantial effort to translate works of classical liberalism and market capitalism into a variety of languages including Arabic.<sup>137</sup> Meanwhile, the West can learn through translation too and make efforts to read the works of other nations and cultures.<sup>138</sup>

Existing translation projects must be directed toward classics of Western legal thought, and the resources available for translations must be increased at the public and private level. New projects must emerge to increase the volume, quality, and distribution of these fundamental legal materials to the people in areas emerging from nonviolent revolutions that are both thirsty for and in need of legal, political, and economic direction. Such materials will be vital to assist in the transformation of these societies toward freedom. And translations are a key mechanism by which we might accomplish the goals of strategic ideological cooptation.

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<sup>134</sup> Cf. John McGowan, *Review: Finding Our Tongues*, 31 WILSON Q. 107, 108 (2007) ("The ceaseless re-translation of the classics—Shakespeare, Montaigne, Goethe, and the rest—testifies to 'the desire to translate' despite all the obstacles and the self-conscious acknowledgment of inevitable inadequacy.").

<sup>135</sup> Michael J. Zwiebel, *Why We Need to Reestablish the USIA*, MIL. REV., Nov.–Dec. 2006, at 26, 31.

<sup>136</sup> See GLOBAL AMERICANA INSTITUTE, <http://www.globam.org> (last visited Feb. 22, 2012) ("[Our mission is to] translate important books by great Americans and about America into Arabic, and to subsidize their publication so that they can be bought inexpensively.").

<sup>137</sup> See ATLAS NETWORK, [www.atlasnetwork.org](http://www.atlasnetwork.org) (last visited Feb. 22, 2012).

<sup>138</sup> PAUL ST-PIERRE & PRAFULLA C. KAR, IN TRANSLATION: REFLECTIONS, REFRACTIONS, TRANSFORMATIONS 191 (2007) ("[T]ranslation lies at the heart of any cultural diplomacy initiative; some misunderstandings between peoples may be resolved through engagement with each other's literary and intellectual traditions; the poverty of insight displayed by American policy makers and pundits in their view of other lands may in some cases be mediated by contact, in translation, with thinkers from abroad." (quoting U.S. DEPT. OF STATE, CULTURAL DIPLOMACY: THE LINCHPIN OF PUBLIC DIPLOMACY: REPORT OF THE SUBCOMMITTEE ON CULTURAL DIPLOMACY 12 (2005), available at <http://www.state.gov/documents/organization/54374.pdf>)).

## VIII. CONCLUSION

“Words and ideas are the soft power infantry”<sup>139</sup> that should be deployed to assist those engaged in nonviolent revolution and those emerging from such revolutions who are seeking guidance and direction in the formation of replacement governing structures. This is true as a general matter. And specifically and currently, the Arab Spring presents new challenges but also fresh possibilities for American diplomacy—there is an opportunity to be exploited here.<sup>140</sup> It is a critical time to define American influence in the region.<sup>141</sup>

At this time of unrest and transition in the Arab world, the United States’ capacity to communicate core values of democracy and rights is at a premium. Our capability to translate them into Arabic is a necessity. There is a critical need for the infusion of Western legal thought into nations that by circumstance are in need of direction. Regimes may be transformed toward limited government and other Western-like values or instead tilt toward extremist regimes.

There is a need for reinvigorated attention to exposing the Arab world to the fundamental texts of political and philosophic thought that lay at the foundation of the system of limited governance and individual rights embraced in the United States and other Western countries. The export of ideas may be the most valuable commodity the United States has to offer. Today, there is far too little attention paid to the dearth of English-to-Arabic translations and transmissions of key ideas in books regarding governance and rights.

We are in a competition for influence and persuasion. Every side in the current situation has available the weaponry of words. The better principles can prevail on the basis of their strength. But the effort must be made to transmit the information, and to do so in an understandable manner.

Translations of books and other materials that have shaped our own political evolution, that have formed our traditions, and that have contributed to our political and economic progress in the United States are logical tools of soft power. We should populate societies in countries emerging from nonviolent revolutions with these texts—ready for consumption because they are readable as translated. In that manner, the West can begin to engage in strategic ideological cooptation by employing its soft power and persuasive authority.

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<sup>139</sup> Kochan, *supra* note 3, at 569.

<sup>140</sup> Myers, *supra* note 78, at A1 (“While the popular uprisings of the Arab Spring created new opportunities for American diplomacy, the tumult has also presented the United States with challenges—and worst-case scenarios—that would have once been almost unimaginable.”).

<sup>141</sup> *Id.* (“[Arab Spring may] sweep aside, or at least diminish, American influence in the region.”).