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#### Statutory Restrictions include one of 5 things—they aren’t those

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### AND—The Aff isn’t topical—relying on treaties to create restrictions aren’t statutory or judicial

YOO 2—Professor of Law, School of Law, University of California, Berkeley [John C. Yoo, RESPONSE ESSAY: Rejoinder: Treaty Interpretation and the False Sirens of Delegation, California Law Review, July, 2002, 90 Calif. L. Rev. 1305]

Professor Van Alstine's argument, however, turns on the assumption that Congress also enjoys equally sweeping power to delegate rulemaking power to the federal judiciary. He claims that if Congress can delegate such power to the judiciary by statute, then the treatymakers must similarly be able to delegate it by treaty. n174 However, the underlying assumption is flawed. Delegation of rulemaking power by Congress to the judiciary differs from delegation to the executive in several crucial respects. First, unlike the executive branch, the judiciary cannot claim to be democratically accountable. n175 Second, the judiciary does not possess technocratic expertise in specific regulatory areas, at least not in the way contemplated by Chevron v. NRDC. n176 Since Congress's delegation power is not what Professor Van Alstine presumes it to be, the analogy between Congress and the treatymakers fails.

Regardless of whether such broad statutory delegation to the judiciary is constitutionally appropriate, Professor Van Alstine makes a fundamental error when he equates delegations by statute to delegations by treaty. As its placement in Article II suggests, and as I have argued above, the treaty power is an executive power and was widely understood as such during the Framing period. n177 Professor Van Alstine cannot demonstrate that an executive power has ever been delegated outside the executive branch. Perhaps the closest he could come would be Morrison v. Olson, n178 in which the Court upheld the exercise of prosecutorial power by an independent counsel who could be removed only for cause. Yet, even in that case, the Court emphasized that the independent counsel continued to be an executive-branch official responsible to the Attorney General and the President. n179 As far as I know, there is no example where any branch has successfully delegated part of the executive power to another branch of government and, certainly, no example where such power was delegated to the judicial branch. Delegations, when they occur, run in only one direction, from Congress to either the executive branch or, in limited circumstances, to the courts.

#### Vote neg for Predictable Limits—allowing treaties creates new topics in a new literature base—destroying preparedness.

### 1NC CP—Amendment

#### Congress should propose and three fourths of the states should ratify an amendment to the United States Constitution clarifying that the “Charming Betsy” Canon makes treaties ratified by the United States a restriction on the war powers authority of the President of the United States in the area of indefinite detention.

#### The CP is predictable and solves the whole case—4 other amendments have been expressly crafted to overturn Supreme Court decisions, this proves its real world

#### Amendments are vital to social change—they produce societal debates on rights that can culminate in a social consensus and permanent norm

Vermeule 4—Adrian, professor of law at the University of Chicago [“Constitutional Amendments and the Constitutional Common Law,” September, http://www.law.uchicago.edu/academics/publiclaw/resources/73-av-amendments.pdf]

We must account for the costs of decisionmaking as well as the quality of decisions. A simple view would be that the formal amendment process is too costly to serve as the principal means, or even as an important means, of constitutional updating, just as periodic constitutional conventions are too costly to be practical. Dennis Mueller denies this view. He suggests instead that the decision costs of the formal amendment process are decision benefits: The U.S. Constitution contains broad definitions of rights, and the task of amending their definitions to reflect changes in the country’s economic, social and political characteristics has been largely carried out by the Supreme Court. While this method of updating the Constitution’s definition of rights has helped to prevent them from becoming hopelessly out of date, it has failed to build the kind of support for the new definitions of rights that would exist if they had arisen from a wider consensual agreement in the society. The bitter debates and clashes among citizens over civil rights, criminal rights and abortion illustrate this point. . . . Although [alternative procedures for constitutional amendment] may appear to involve greater decision-making costs, they have the potential for building consensus over the newly formulated definitions of rights.82 On this view, it is an illusion that constitutional common law incurs lower decision costs in the long run, even if a given change may be more easily implemented through adjudication in the short run. Although at any given time it is less costly to persuade five Justices to adopt a proposed constitutional change than to obtain a formal amendment to the same effect, the former mode of change incurs higher decision costs over time, because common-law constitutionalism allows greater conflict in subsequent periods. A benefit of formal amendments, then, is to more effectively discourage subsequent efforts by constitutional losers to overturn adverse constitutional change. Precisely because the formal amendment process is more costly to invoke, formal amendments are more enduring than are judicial decisions that update constitutional rules;83 so losers in the amendment process will less frequently attempt to overturn or destabilize the new rules, in subsequent periods, than will losers in the process of common-law constitutionalism. This point does not necessarily suppose that dissenters from a given amendment come to agree with the enacting supermajority’s judgment, only that they accept the new equilibrium faute de mieux. Obviously more work might be done to specify these intuitions, but it is at least plausible to think that the simplest view, on which formal amendments incur decisionmaking costs that exceed their other benefits, is untenably crude. The overall picture, rather, is a tradeoff along the following lines. Relative to common-law constitutionalism, the Article V process requires a higher initial investment to secure constitutional change. If Mueller is right, however, constitutional settlements produced by the Article V process will tend to be more enduring over time than is judicial updating, which can be unsettled and refought at lower cost in subsequent periods.

#### Precedent for war powers deliberation now. It will check US militarism—turns the aff

**Hunter 8/31**/13 - Chair of the Council for a Community of Democracies [Robert E. Hunter (US ambassador to NATO (93-98) and Served on Carter’s National Security Council as the Director of West European Affairs and then as Director of Middle East Affairs, “Restoring Congress’ Role In Making War,” Lobe Log, August 31, 2013, pg. http://www.lobelog.com/restoring-congress-role-in-making-war/

But the most remarkable element of the President’s statement is the likely precedent he is setting in terms of engaging Congress in decisions about the use of force, not just through “consultations,” but in formal authorization. This gets into complex constitutional and legal territory, and will lead many in Congress (and elsewhere) to expect Obama — and his successors — to show such deference to Congress in the future, as, indeed, many members of Congress regularly demand.

But seeking authorization for the use of force from Congress as opposed to conducting consultations has long since become the exception rather than the rule. The last formal congressional declarations of war, called for by Article One of the Constitution, were against Bulgaria, Romania, and Hungary on June 4, 1942. Since then, even when Congress has been engaged, it has either been through non-binding resolutions or under the provisions of the [War Powers Resolution of November 1973](http://www.policyalmanac.org/world/archive/war_powers_resolution.shtml). That congressional effort to regain some lost ground in decisions to send US forces into harm’s way was largely a response to administration actions in the Vietnam War, especially the [Tonkin Gulf Resolution](https://www.mtholyoke.edu/acad/intrel/pentagon3/ps12.htm) of August 1964, which was actually prepared in draft before the triggering incident. The War Powers Resolution does not prevent a president from using force on his own authority, but only imposes post facto requirements for gaining congressional approval or ending US military action. In the current circumstances, military strikes of a few days’ duration, those provisions would almost certainly not come into play.

There were two basic reasons for abandoning the constitutional provision of a formal declaration of war. One was that such a declaration, once turned on, would be hard to turn off, and could lead to a demand for unconditional surrender (as with Germany and Japan in World War II), even when that would not be in the nation’s interests — notably in the Korean War. The more compelling reason for ignoring this requirement was the felt need, during the Cold War, for the president to be able to respond almost instantly to a nuclear attack on the United States or on very short order to a conventional military attack on US and allied forces in Europe.

With the Cold War now on “the ash heap of history,” this second argument should long since have fallen by the wayside, but it has not.  Presidents are generally considered to have the power to commit US military forces, subject to the provisions of the War Powers Resolution [WPR], which have never been properly tested. But why? Even with the 9/11 attacks on the US homeland, the US did not respond immediately, but took time to build the necessary force and plans to overthrow the Taliban regime in Afghanistan (and, anyway, if President George W. Bush had asked on 9/12 for a declaration of war, he no doubt would have received it from Congress, very likely unanimously).

As times goes by, therefore, what President Obama said on August 29, 2013 could well be remembered less for what it will mean regarding the use of chemical weapons in Syria and more for what it implies for the reestablishment of a process of full deliberation and fully-shared responsibilities with the Congress for decisions of war-peace, as was the historic practice until 1950. This proposition will be much debated, as it should be; but if the president’s declaration does become precedent (as, in this author’s judgment, it should be, except in exceptional circumstances where a prompt military response is indeed in the national interest), he will have done an important and lasting service to the nation, including a potentially significant step in reducing the excessive militarization of US foreign policy.

There would be one added benefit: members of Congress, most of whom know little about the outside world and have not for decades had to take seriously their constitutional responsibilities for declaring war, would be required to become better-informed participants in some of the most consequential decisions the nation has to take, which, not incidentally, also involve risks to the lives of America’s fighting men and women.

#### Dismantling war powers using the COURTS undermines deliberation. Our link is unique

**Broughton 1** – Asst Attorney General of Texas [[Broughton, J. Richard](http://www.heinonline.org.proxy.library.emory.edu/HOL/LuceneSearch?specialcollection=&terms=creator%3A%22Broughton,%20J.%20Richard%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search&base=js&all=true&solr=true) (LL.M., with distinction, Georgetown University Law Center), “What Is It Good For--War Power, Judicial Review, and Constitutional Deliberation,” Oklahoma Law Review, Vol. 54, Issue 4 (Winter 2001), pp. 685-726]

Judicial abstention from war powers disputes can mitigate the effects of the judicial overhang by encouraging Congress and the President to think more seriously about constitutional structure."' In the Vietnam era, for example, Congress enacted the War Powers Resolution to assert its own constitutional prerogatives only after the courts had consistently refused to intervene. Perhaps this was no accident. Without resort to the judiciary, Congress was forced to take responsibility for using its Article I powers in its own defense. Whatever the other flaws of the War Powers Resolution, it at least represents Congress's assertiveness in attempting to define the boundaries of constitutional war power, as the Constitution provides. (Wther Congress got it right is a separate matter, beyond the scope of this article.) Similarly, rather than resort to the courts to challenge the constitutionality of the Resolution, presidents since Nixon have simply deployed troops at their discretion, forcing Congress to either authorize the action, reject such authorization, withdraw funding, or, perhaps as a last resort, impeach the President. Thus, the modem trend of cases leaving war powers controversies to the political branches has produced somewhat more responsible political institutions, though much work must still be done to truly effectuate the Constitution's vision of prudent and reasoned constitutional discourse among the Congress and the White House.' In keeping therefore with constitutional history and design, political actors best serve republican government when they give careful attention to constitutional boundaries and constitutional weapons in the course of adopting military and foreign policy. Political actors will be more likely to do so if they have only themselves, and not the courts, to do the work.

IV. Conclusion

There is much we can learn from Madison and Marshall, statesmen who understood the value of prudent constitutional reasoning to the practical governance of a large republic. Importantly, not all such reasoning occurs in the courts, nor should it. Those matters not "of a judiciary nature," in Madison's words, must find resolution in other fora. Controversies between Congress and the President regarding the Constitution's allocation of war powers are among this class of disputes. This is not to say that courts must leave all cases involving foreign affairs to the vicissitudes of political institutions; the Constitution explicitly vests the judiciary with authority over admiralty and maritime cases, as well as cases affecting ambassadors, public ministers, and consuls, all of which may invariably touch upon foreign relations. War powers disputes are constitutionally unique, however, because the Constitution itself commits the resolution of those disputes to legislators and the chief executive. The courts have, for the most part, appropriately left these disputes where they belong, in the hands of the political branches. Through the doctrine of justiciability, courts have helped to preserve the separation of powers by recognizing both the limits on their Article In authority and the broa prerogatives that the Constitution grants to political actors who are charged with making and effecting American military and foreign policy. By continuing this trend, as the District of Columbia Circuit did in Campbell, the judiciary can encourage deliberation about constitutional structure in the political branches, as Madison and Marshall envisioned. Pg. 724-725

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#### Nuclear deal with Iran coming. Obama is holding off new sanctions from congress that would torpedo the deal – its all about politics.

CBS NEWS 11 – 13 – 13 Obama administration seeks time from Congress for Iran diplomacy, <http://www.cbsnews.com/8301-250_162-57612230/obama-administration-seeks-time-from-congress-for-iran-diplomacy/>

The Obama administration is pleading with Congress to allow more time for diplomacy with Iran, but faces sharp resistance from Republican and Democratic lawmakers determined to further squeeze the Iranian economy and wary of yielding any ground in nuclear negotiations.

Back from a week of nuclear talks in Geneva and tense consultations with nervous Middle East allies, Secretary of State John Kerry arrived Wednesday on Capitol Hill to join Vice President Joe Biden in presenting the administration's case to their ex-colleagues in the Senate on Wednesday and ask them to hold off on a package of new, tougher Iran sanctions under consideration.

Kerry told reporters as he arrived for the briefing that new sanctions "could be viewed as bad faith by the people we are negotiating with. It could destroy the ability to be able to get an agreement. And it could actually wind up setting us back in dialogue that has taken 30 years to be able to achieve."

Still, Kerry added, "nothing is agreed until everything is agreed here."

"The fact is, you know, we didn't put sanctions in place for the sake of sanctions; we did it to be able to negotiate, and to negotiate a final agreement," he said. "What we have negotiated, we believe, is a very strong protocol which will restrict Iran's ability to be able to grow its program."

A House committee, meanwhile, held a hearing to vent its frustration with Kerry and an Obama administration they believe should adopt a far tougher line with Tehran.

"The Iranian regime hasn't paused its nuclear program," said Rep. Ed Royce, a Republican and the House Foreign Affairs Committee chairman. "Why should we pause our sanctions efforts as the administration is pressuring Congress to do?"

President Obama's disagreement with many if not most members of Congress concerns tactics, not substance: Each wants to stop Iran from reaching the capacity to produce nuclear weapons, and even hard-line hawks say they'd prefer diplomacy to U.S. military intervention. Almost everyone recognizes that Washington and its partners will have to offer some relief from the punitive measures that have crippled Iran's economy in exchange for concrete Iranian actions to roll back and dismantle elements of the nuclear program.

But the road map for achieving what has been a central U.S. foreign policy goal for more than a decade is hotly politicized, with fierce debate over the parameters and sequencing of any deal. The Obama administration has offered Iran an initial opportunity to recoup some of the billions of dollars in frozen overseas assets if it begins the process, while insisting that the most severe restrictions would remain in place until Tehran conclusively eliminates fears that it is trying to assemble an atomic arsenal. Some legislators worry Obama is moving too quickly.

Iran maintains that its uranium enrichment is for energy production and medical research, not for any covert military objective. But until the recent election of President Hassan Rouhani, it refused to compromise in talks with world powers.

Responding to Rouhani's promise of flexibility, Obama has staked significant international credibility on securing a diplomatic agreement. His telephone chat with Rouhani in September was the first direct conversation between U.S. and Iranian leaders in more than three decades. The unprecedented outreach has angered U.S. allies such as Israel and Saudi Arabia. And lawmakers are deeply skeptical.

"This is a decision to support diplomacy and a possible peaceful resolution to this issue," White House press secretary Jay Carney told reporters Tuesday. "The American people justifiably and understandably prefer a peaceful solution that prevents Iran from obtaining a nuclear weapon, and this agreement, if it's achieved, has the potential to do that. The American people do not want a march to war."

The administration sees itself on the cusp of a historic breakthrough, so much so that Obama hastily dispatched Kerry to Switzerland last week for the highest-level nuclear negotiations to date. The talks broke down as Iran demanded formal recognition of what it says is its right to enrich uranium for peaceful purposes, and as France sought stricter limits on Iran's ability to make nuclear fuel and on its heavy water reactor to produce plutonium, according to diplomats.

Still, officials said significant progress was made. The U.S., Britain, China, France, Germany, Iran and Russia will send top nuclear negotiators back to Geneva next week to see whether they can push the ball forward.

And on Wednesday, Obama spoke by telephone with French President Francois Hollande. The two countries "are in full agreement" on Iran, the White House said in a statement.

However, the administration is worried Congress could make an agreement more difficult.

Kerry and top U.S. nuclear negotiator Wendy Sherman hope to persuade members of the Senate Banking Committee in their meeting Wednesday to hold off on additional punitive measures on the Iranian economy. After, Biden and the Treasury Department's sanctions chief, David Cohen, will join them for a separate briefing with Senate Democratic leaders.

#### The standing of the executive is the crucial internal link – key to hold off hawks in congress. Vital internal to overall US nuclear leadership

LEVERETT 11 – 7 – 13 Profs of International Relations – Penn State & American University [Flynt Leverett and Hillary Mann Leverett, America’s Moment of Truth on Iran , <http://iranian.com/posts/view/post/23789>]

America’s Iran policy is at a crossroads. Washington can abandon its counterproductive insistence on Middle Eastern hegemony, negotiate a nuclear deal grounded in the Nuclear Non-Proliferation Treaty (NPT), and get serious about working with Tehran to broker a settlement to the Syrian conflict. In the process, the United States would greatly improve its ability to shape important outcomes there. Alternatively, America can continue on its present path, leading ultimately to strategic irrelevance in one of the world’s most vital regions—with negative implications for its standing in Asia as well.

U.S. policy is at this juncture because the costs of Washington’s post-Cold War drive to dominate the Middle East have risen perilously high. President Obama’s self-inflicted debacle over his plan to attack Syria after chemical weapons were used there in August showed that America can no longer credibly threaten the effective use of force to impose its preferences in the region. While Obama still insists “all options are on the table” for Iran, the reality is that, if Washington is to deal efficaciously with the nuclear issue, it will be through diplomacy.

In this context, last month’s Geneva meeting between Iran and the P5+1 brought America’s political class to a strategic and political moment of truth. Can American elites turn away from a self-damaging quest for Middle Eastern hegemony by coming to terms with an independent regional power? Or are they so enthralled with an increasingly surreal notion of America as hegemon that, to preserve U.S. “leadership,” they will pursue a course further eviscerating its strategic position?

The proposal for resolving the nuclear issue that Iran’s foreign minister, Javad Zarif, presented in Geneva seeks answers to these questions. It operationalizes the approach advocated by Hassan Rohani and other Iranian leaders for over a decade: greater transparency on Iran’s nuclear activities in return for recognizing its rights as a sovereign NPT signatory—especially to enrich uranium under international safeguards—and removal of sanctions. For years, the Bush and Obama administrations rejected this approach. Now Obama must at least consider it.

The Iranian package provides greater transparency on Tehran’s nuclear activities in two crucial respects. First, it gives greater visibility on the conduct of Iran’s nuclear program. Iran has reportedly offered to comply voluntarily for some months with the Additional Protocol (AP) to the NPT—which it has signed but not yet ratified and which authorizes more proactive and intrusive inspections—to encourage diplomatic progress. Tehran would ratify the AP—thereby committing to its permanent implementation—as part of a final deal.

Second, the package aims to validate Iran’s declarations that its enrichment infrastructure is not meant to produce weapons-grade fissile material. Iran would stop enriching at the near-20 percent level of fissile-isotope purity needed to fuel the Tehran Research Reactor and cap enrichment at levels suitable for fueling power reactors. Similarly, Iran is open to capping the number of centrifuges it would install—at least for some years—at its enrichment sites in Natanz and Fordo.

Based on conversations with Iranian officials and political figures in New York in September (during Rohani and Zarif’s visit to the UN General Assembly) and in Tehran last month, it is also possible to identify items that the Iranian proposal almost certainly does not include. Supreme Leader Ayatollah Seyed Ali Khamenei has reportedly given President Rohani and his diplomats flexibility in negotiating a settlement—but he has also directed that they not compromise Iran’s sovereignty. Thus, the Islamic Republic will not acquiesce to American (and Israeli) demands to suspend enrichment, shut its enrichment site at Fordo, stop a heavy-water reactor under construction at Arak, and ship its current enriched uranium stockpile abroad.

On one level, the Iranian package is crafted to resolve the nuclear issue based on the NPT, within a year. Iran’s nuclear rights would be respected; transparency measures would reduce the proliferation risks of its enrichment activities below what Washington tolerates elsewhere. On another level, though, the package means to test America’s willingness and capability to resolve the issue on this basis. It tests this not just for Tehran’s edification, but also for that of other P5+1 states, especially China and Russia, and of rising powers like India and South Korea.

America can fail the Iranian test in two ways. First, the Obama administration—reflecting America’s political class more broadly—may prove unwilling to acknowledge Iran’s nuclear rights in a straightforward way, insisting on terms for a deal that effectively suborn these rights and violate Iranian sovereignty.

There are powerful constituencies—e.g., the Israel lobby, neoconservative Republicans, their Democratic “fellow travelers,” and U.S.-based Iran “experts”—that oppose any deal recognizing Iran’s nuclear rights. They understand that acknowledging these rights would also mean accepting the Islamic Republic as an enduring entity representing legitimate national interests; to do so, America would have to abandon its post-Cold War pretensions to Middle Eastern hegemony.

Those pretensions have proven dangerously corrosive of America’s ability to accomplish important objectives in the Middle East, and of its global standing. Just witness the profoundly self-damaging consequences of America’s invasion and occupation of Iraq, and how badly the “global war on terror” has eviscerated the perceived legitimacy of American purposes in the Muslim world.

But, as the drama over Obama’s call for military action against Syria indicates, America’s political class remains deeply attached to imperial pretense—even as the American public turns away from it. If Washington could accept the Islamic Republic as a legitimate regional power, it could work with Tehran and others on a political solution to the Syrian conflict. Instead, Washington reiterates hubristic demands that President Bashar al-Assad step down before a political process starts, and relies on a Saudi-funded “Syrian opposition” increasingly dominated by al-Qa’ida-like extremists.

If Obama does not conclude a deal recognizing Iran’s nuclear rights, it will confirm suspicions already held by many Iranian elites—including Ayatollah Khamenei—and in Beijing and Moscow about America’s real agenda vis-à-vis the Islamic Republic. It will become undeniably clear that U.S. opposition to indigenous Iranian enrichment is not motivated by proliferation concerns, but by determination to preserve American hegemony—and Israeli military dominance—in the Middle East. If this is so, why should China, Russia, or rising Asian powers continue trying to help Washington—e.g., by accommodating U.S. demands to limit their own commercial interactions with Iran—obtain an outcome it does not actually want?

America can also fail Iran’s test if it is unable to provide comprehensive sanctions relief as part of a negotiated nuclear settlement. The Obama administration now acknowledges what we have noted for some time—that, beyond transitory executive branch initiatives, lifting or even substantially modifying U.S. sanctions to support diplomatic progress will take congressional action.

During Obama’s presidency, many U.S. sanctions initially imposed by executive order have been written into law. These bills—signed, with little heed to their long-term consequences, by Obama himself—have also greatly expanded U.S. secondary sanctions, which threaten to punish third-country entities not for anything they’ve done in America, but for perfectly lawful business they conduct in or with Iran. The bills contain conditions for removing sanctions stipulating not just the dismantling of Iran’s nuclear infrastructure, but also termination of Tehran’s ties to movements like Hizballah that Washington (foolishly) designates as terrorists and the Islamic Republic’s effective transformation into a secular liberal republic.

The Obama administration may have managed to delay passage of yet another sanctions bill for a few weeks—but Congressional Democrats no less than congressional Republicans have made publicly clear that they will not relax conditions for removing existing sanctions to help Obama conclude and implement a nuclear deal. If their obstinacy holds, why should others respect Washington’s high-handed demands for compliance with its extraterritorial (hence, illegal) sanctions against Iran?

Going into the next round of nuclear talks in Geneva on Thursday, it is unambiguously plain that Obama will have to spend enormous political capital to realign relations with Iran. America’s future standing as a great power depends significantly on his readiness to do so.

#### Plan kills Obama’s agenda

KRINER 10—Assistant professor of political science at Boston University [Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, pg. 276-77]

One of the mechanisms by which congressional opposition influences presidential cost-benefit calculations is by sending signals of American disunity to the target state. Measuring the effects of such congressional signals on the calculations of the target state is always difficult. In the case of Iraq it is exceedingly so, given the lack of data on the non-state insurgent actors who were the true “target” of the American occupation after the fall of the Hussein regime. Similarly, in the absence of archival documents, such as those from the Reagan Presidential Library presented in chapter 5, it is all but impossible to measure the effects of congressional signals on the administration’s perceptions of the military costs it would have to pay to achieve its objectives militarily.

By contrast. measuring the domestic political costs of congressional opposition, while still difficult, is at least a tractable endeavor. Chapter 2 posited two primary pathways through which congressional opposition could raise the political costs of staying the course militarily for the president. First, high-profile congressional challenges to a use of force can affect real or anticipated public opinion and bring popular pressures to bear on the president to change course. Second, congressional opposition to the president’s conduct of military affairs can compel him to spend considerable political capital in the military arena to the detriment of other major items on his programmatic agenda. On both of these dimensions, congressional opposition to the war in Iraq appears to have had the predicted effect.

#### US/Iran war & Iranian prolif

WORLD TRIBUNE 11 – 13 – 13 [Obama said to suspend Iran sanctions without informing Congress, <http://www.worldtribune.com/2013/11/13/obama-said-to-suspend-iran-sanctions-without-informing-congress/>]

The administration has also pressured Congress to suspend plans for new sanctions legislation against Iran. The sources said the White House effort has encountered resistance from both Democrats and Republicans, particularly those in the defense and foreign affairs committees.

“I urge the White House and the Senate to learn from the lessons of the past and not offer sanctions relief in return for the false hopes and empty promises of the Iranian regime,” Rep. Ileana Ros-Lehtinen, chairwoman of the House Middle East and North Africa Subcommittee, said. “Instead, new rounds of sanctions must be implemented to gain further leverage because any misstep in calculations at this juncture will have devastating and irreversible consequences that will be difficult to correct retroactively.”

On Nov. 12, the White House warned that additional sanctions on Iran would mean war with the United States. White House press secretary Jay Carney, in remarks meant to intensify pressure on Congress, said sanctions would end the prospect of any diplomatic solution to Iran’s crisis.

“The American people do not want a march to war,” Carney said. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options then do we and our allies have to prevent Iran from acquiring a nuclear weapon?”

Still, the Senate Banking Committee has agreed to delay any vote on sanctions legislation until a briefing by Secretary of State John Kerry on Nov. 13. The sources said Kerry was expected to brief the committee on the P5+1 talks in Geneva that almost led to an agreement with Teheran.

“The secretary will be clear that putting new sanctions in place would be a mistake,” State Department spokeswoman Jen Psaki said on Nov. 12. “We are still determining if there’s a diplomatic path forward. What we are asking for right now is a pause, a temporary pause, in sanctions.”

#### Iran war escalates

White, July/August 2011 (Jeffrey—defense fellow at the Washington Institute for Near East Policy, What Would War With Iran Look Like, National Interest, p. <http://www.the-american-interest.com/article-bd.cfm?piece=982>)

A U.S.-Iranian war would probably not be fought by the United States and Iran alone. Each would have partners or allies, both willing and not-so-willing. Pre-conflict commitments, longstanding relationships, the course of operations and other factors would place the United States and Iran at the center of more or less structured coalitions of the marginally willing. A Western coalition could consist of the United States and most of its traditional allies (but very likely not Turkey, based on the evolution of Turkish politics) in addition to some Persian Gulf states, Jordan and perhaps Egypt, depending on where its revolution takes it. Much would depend on whether U.S. leaders could persuade others to go along, which would mean convincing them that U.S. forces could shield them from Iranian and Iranian-proxy retaliation, or at least substantially weaken its effects. Coalition warfare would present a number of challenges to the U.S. government. Overall, it would lend legitimacy to the action, but it would also constrict U.S. freedom of action, perhaps by limiting the scope and intensity of military operations. There would thus be tension between the desire for a small coalition of the capable for operational and security purposes and a broader coalition that would include marginally useful allies to maximize legitimacy. The U.S. administration would probably not welcome Israeli participation. But if Israel were directly attacked by Iran or its allies, Washington would find it difficult to keep Israel out—as it did during the 1991 Gulf War. That would complicate the U.S. ability to manage its coalition, although it would not necessarily break it apart. Iranian diplomacy and information operations would seek to exploit Israeli participation to the fullest. Iran would have its own coalition. Hizballah in particular could act at Iran’s behest both by attacking Israel directly and by using its asymmetric and irregular warfare capabilities to expand the conflict and complicate the maintenance of the U.S. coalition. The escalation of the Hizballah-Israel conflict could draw in Syria and Hamas; Hamas in particular could feel compelled to respond to an Iranian request for assistance. Some or all of these satellite actors might choose to leave Iran to its fate, especially if initial U.S. strikes seemed devastating to the point of decisive. But their involvement would spread the conflict to the entire eastern Mediterranean and perhaps beyond, complicating both U.S. military operations and coalition diplomacy.

### 1NC K

#### Liberal institutionalism is an imperial ideology disguised by the language of science. Liberal institutionalism requires the elimination of non-liberal forms of life to achieve national security

Tony SMITH Poli Sci @ Tufts 12 [*Conceptual Politics of Democracy Promotion* eds. Hobson and Kurki p. 206-210]

Writing in 1952, Reinhold Niebuhr expressed this point in what remains arguably the single best book on the United States in world affairs, The Irony of American History. 'There is a deep layer of Messianic consciousness in the mind of America,' the theologian wrote. Still, 'We were, as a matter of fact, always vague, as the whole liberal culture is fortunately vague, about how power is to be related to the allegedly universal values which we hold in trust for mankind' (Niebuhr 2008: 69). 'Fortunate vagueness', he explained, arose from the fact that 'in the liberal version of the dream of managing history, the problem of power is never fully elaborated' (Niebuhr 2008: 73). Here was a happy fact that distinguished us from the communists, who assumed, thanks to their ideology, that they could master history, and so were assured that the end would justify the means, such that world revolution under their auspices would bring about universal justice, freedom , and that most precious of promises, peace. In contrast, Niebuhr could write: On the whole, we have as a nation learned the lesson of history tolerably well. We have heeded the warning 'let not the wise man glory in his wisdom, let not the mighty man glory in his strength.' Though we are not without vainglorious delusions in regard to our power, we are saved by a certain grace inherent in common sense rather than in abstract theories from attempting to cut through the vast ambiguities of our historic situation and thereby bringing our destiny to a tragic conclusion by seeking to bring it to a neat and logical one ... This American experience is a refutation in parable of the whole effort to bring the vast forces of history under the control of any particular will, informed by a particular ideal ... [speaking of the communists] All such efforts are rooted in what seems at first glance to be a contradictory combination of voluntarism and determinism. These efforts are on the one hand excessively voluntaristic, assigning a power to the human will and the purity to the mind of some men which no mortal or group of mortals possesses. On the other, they are excessively deterministic since they regard most men as merely the creatures of an historical process. (Niebuhr 2008: 75, 79) The Irony of American History came out in January 1952, only months after the publication of Hannah Arendt's The Origins of Totalitarianism, a book that reached a conclusion similar to his. Fundamentalist political systems of thought, Arendt (1966: 467-9) wrote, are known for their scientific character; they combine the scientific approach with results of philosophical relevance and pretend to be scientific philosophy . .. Ideologies pretend to know the mysteries of the whole historical process—the secrets of the past, the intricacies of the present, the uncertainties of the future—because of the logic inherent in their respective ideas ... they pretend to have found a way to establish the rule of justice on earth ... All laws have become laws of movement. And she warned: Ideologies are always oriented toward history .... The claim to total explanation promises to explain all historical happenings ... hence ideological thinking becomes emancipated from the reality that we perceive with our five senses, and insists on a ' truer' reality concealed behind all perceptible things, dominating them from this place of concealment and requiring a sixth sense that enables us to become aware of it. ... Once it has established its premise, its point of departure, experiences no longer interfere with ideological thinking, nor can it be taught by reality. (Arendt 1966: 470) For Arendt as for Niebuhr, then, a virtue of liberal democracy was its relative lack of certitude in terms of faith in an iron ideology that rested on a pseudoscientific authority that its worldwide propagation would fulfill some mandate of history, or to put it more concretely, that the United States had been selected by the logic of historical development to expand the perimeter of democratic government and free market capitalism to the ends of the earth, and that in doing so it would serve not only its own basic national security needs but the peace of the world as well. True, in his address to the Congress asking for a declaration of war against Germany in 1917, Wilson had asserted, 'the world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty.' (Link 1982: 533). Yet just what this meant and how it might be achieved were issues that were not resolved intellectually—at least not before the 1990s. Reinhold Niebuhr died in 1971, Hannah Arendt in 1975, some two decades short of seeing the 'fortunate vagueness' Niebuhr had saluted during their prime be abandoned by the emergence of what can only be called a ' hard liberal internationalist ideology', one virtually the equal of Marxism- Leninism in its ability to read the logic of History and prescribe how human events might be changed by messianic intervention into a world order where finally justice, freedom , and peace might prevail. The authors of this neo-liberal, neo-Wilsonianism: left and liberal academics. Their place of residence: the United States, in leading universities such as Harvard, Yale, Princeton, and Stanford. Their purpose: the instruction of those who made foreign policy in Washington in the aftermath of the Cold War. Their ambition: to help America translate its 'unipolar moment' into a 'unipolar epoch' by providing American leaders with a conceptual blueprint for making the world safe for democracy by democratising the world, thereby realizing through 'democratic globalism' the century-old Wilsonian dream—the creation of a structure of world peace. Their method: the construction of the missing set of liberal internationalist concepts whose ideological complexity, coherence, and promise would be the essential equivalence of MarxismLeninism, something most liberal internationalists had always wanted to achieve but only now seemed possible. Democratic globalism as imperialism in the 1990s The tragedy of American foreign policy was now at hand. Rather than obeying the strictures of a ' fortunate vagueness' which might check its ' messianic consciousness', as Niebuhr had enjoined, liberal internationalism became possessed of just what Arendt had hoped it might never develop, 'a scientific character ... of philosophic relevance' that 'pretend[s] to know the mysteries of the whole historical process,' that 'pretend[s] to have found a way to establish the rule of justice on earth ' (Niebuhr 2008: 74; Arendt 1966: 470). Only in the aftermath of the Cold War, with the United States triumphant and democracy expanding seemingly of its own accord to many comers of the world—from Central Europe to different countries in Asia (South Korea and Taiwan), Africa (South Africa), and Latin America (Chile and Argentina)—had the moment arrived for democracy promotion to move into a distinctively new mode, one that was self-confidently imperialist. Wilsonians could now maintain that the study of history revealed that it was not so much that American power had won the epic contest with the Soviet Union as that the appeal of liberal internationalism had defeated proletarian internationalism. The victory was best understood, then, as one of ideas, values, and institutions—rather than of states and leaders. In this sense, America had been a vehicle of forces far greater than itself, the sponsor of an international convergence of disparate class, ethnic, and nationalist forces converging into a single movement that had created an historical watershed of extraordinary importance. For a new world, new ways of thinking were mandatory. As Hegel has instructed us, 'Minerva's owl flies out at dusk' , and liberal scholars of the 1990s applied themselves to the task of understanding the great victories of democratic government and open market economies over their adversaries between 1939 and 1989. What, rather exactly, were the virtues of democracy that made these amazing successes possible? How, rather explicitly, might the free world now protect, indeed expand, its perimeter of action? A new concept of power and purpose was called for. Primed by the growth of think-tanks and prestigious official appointments to be 'policy relevant' , shocked by murderous outbreaks witnessed in the Balkans and Central Africa, believing as the liberal left did that progress was possible, Wilsonians set out to formulate their thinking at a level of conceptual sophistication that was to be of fundamental importance to the making of American foreign policy after the year 2000.6 The jewel in the crown of neo-liberal internationalism as it emerged from the seminar rooms of the greatest American universities was known as ' democratic peace theory'. Encapsulated simply as ' democracies do not go to war with one another', the theory contended that liberal democratic governments breed peace among themselves based on their domestic practices of the rule of law, the increased integration of their economies through measures of market openness, and their participation in multilateral organisations to adjudicate conflicts among each other so as to keep the peace. The extraordinary success of the European Union since the announcement of the Marshall Plan in 1947, combined with the close relations between the United States and the world's other liberal democracies, was taken as conclusive evidence that global peace could be expanded should other countries join ' the pacific union ', ' the zone of democratic peace'. A thumb-nail sketch cannot do justice to the richness of the argument. Political scientists of an empirical bent demonstrated conclusively to their satisfaction that 'regime type matters ', that it is in the nature of liberal democracies to keep the peace with one another, especially when they are integrated together economically. Theoretically inclined political scientists then argued that liberal internationalism could be thought of as ' non-utopian and non-ideological ', a scientifically validated set of concepts that should be recognized not only as a new but also a dominant form of conceptual ising the behaviour of states (Moravcsik 1997). And liberal political philosophers could maintain on the basis of democratic peace theory that a Kantian (or Wilsonian) liberal world order was a morally just goal for progressives worldwide to seek so that the anarchy of states, the Hobbesian state of nature, could be superseded and a Golden Age of what some dared call 'post-history' could be inaugurated (Rawls 1999). Yet if it were desirable that the world's leading states be democratised, was it actually possible to achieve such a goal? Here a second group of liberal internationalists emerged, intellectuals who maintained that the transition from authoritarian to democratic government had become far easier to manage than at earlier historical moments. The blueprint of liberal democracy was now tried and proven in terms of values, interests, and institutions in a wide variety of countries. The seeds of democracy could be planted by courageous Great Men virtually anywhere in the world. Where an extra push was needed, then the liberal world could help with a wide variety of agencies from the governmental (such as the Agency for International Development or the National Endowment for Democracy in the United States) to the non-governmental (be it the Open Society Institute, Human Rights Watch, Amnesty International, or Freedom House). With the development of new concepts of democratic transition, the older ideas in democratization studies of 'sequences' and ' preconditions' could be jettisoned. No longer was it necessary to count on a long historical process during which the middle class came to see its interests represented in the creation of a democratic state, no longer did a people have to painfully work out a social contract of tolerance for diversity and the institutions of limited government under the rule of law for democracy to take root. Examples as distinct as those of Spain, South Korea, Poland, and South Africa demonstrated that a liberal transformation could be made with astonishing speed and success. When combined, democratic peace theory and democratic transition theory achieved a volatile synergy that neither alone possessed. Peace theory argued that the world would benefit incalculably from the spread of democratic institutions, but it could not say that such a development was likely. Transition theory argued that rapid democratisation was possible, but it could not establish that such changes would much matter for world politics. Combined, however, the two concepts came to be the equivalent of a Kantian moral imperative to push what early in the Clinton years was called ' democratic enlargement' as far as Washington could while it possessed the status of the globe's sole superpower. The result would be nothing less than to change the character of world affairs that gave rise to war—international anarchy system and the character of authoritarian states—into an order of peace premised on the character of democratic governments and their association in multilateral communities basing their conduct on the rule of law that would increasingly have a global constitutional character. The arrogant presumption was, in short, that an aggressively liberal America suddenly had the possibility to change the character of History itself toward the reign of perpetual peace through democracy promotion. Enter the liberal jurists. In their hands a 'right to intervene' against states or in situations where gross and systematic human rights were being violated or weapons of mass destruction accumulated became a 'duty to intervene' in the name of what eventually became called a state 's 'responsibility to protect.' (lCISS 200 I). The meaning of 'sovereignty' was now transformed. Like pirate ships of old, authoritarian states could be attacked by what Secretary of State Madeleine Albright first dubbed a 'Community of Democracies', practicing ' muscular multilateralism' in order to reconstruct them around democratic values and institutions for the sake of world peace. What the jurists thus accomplished was the redefinition not only of the meaning of sovereignty but also that of 'Just War'. Imperialism to enforce the norms a state needed to honor under the terms of its 'responsibility to protect' (or 'R2P' as its partisans liked to phrase it) was now deemed legitimate. And by moving the locus of decision-making on the question of war outside the United Nations (whose Security Council could not be counted on to act to enforce the democratic code) to a League, or Community, or Concert of Democracies (the term varied according to the theorist), a call to arms for the sake of a democratising crusade was much more likely to succeed.

#### This drive to destroy non-liberal ways of life will culminate in extinction

Batur 7 [Pinar, PhD @ UT-Austin – Prof. of Sociology @ Vassar, *The Heart of Violence: Global Racism, War, and Genocide*, Handbook of The Sociology of Racial and Ethnic Relations, eds. Vera and Feagin, p. 441-3]

War and genocide are horrid, and taking them for granted is inhuman. In the 21st century, our problem is not only seeing them as natural and inevitable, but even worse: not seeing, not noticing, but ignoring them. Such act and thought, fueled by global racism, reveal that racial inequality has advanced from the establishment of racial hierarchy and institutionalization of segregation, to the confinement and exclusion, and elimination, of those considered inferior through genocide. In this trajectory, global racism manifests genocide. But this is not inevitable. This article, by examining global racism, explores the new terms of exclusion and the path to permanent war and genocide, to examine the integrality of genocide to the frame-work of global antiracist confrontation. GLOBAL RACISM IN THE AGE OF “CULTURE WARS” Racist legitimization of inequality has changed from presupposed biological inferiority to assumed cultural inadequacy. This defines the new terms of impossibility of coexistence, much less equality. The Jim Crow racism of biological inferiority is now being replaced with a new and modern racism (Baker 1981; Ansell 1997) with “culture war” as the key to justify difference, hierarchy, and oppression. The ideology of “culture war” is becoming embedded in institutions, defining the workings of organizations, and is now defended by individuals who argue that they are not racist, but are not blind to the inherent differences between African-Americans/Arabs/Chinese, or whomever, and “us.” “Us” as a concept defines the power of a group to distinguish itself and to assign a superior value to its institutions, revealing certainty that **affinity with “them” will be harmful to its existence** (Hunter 1991; Buchanan 2002). How can we conceptualize this shift to examine what has changed over the past century and what has remained the same in a racist society? Joe Feagin examines this question with a theory of systemic racism to explore societal complexity of interconnected elements for longevity and adaptability of racism. He sees that systemic racism persists due to a “white racial frame,” defining and maintaining an “organized set of racialized ideas, stereotypes, emotions, and inclinations to discriminate” (Feagin 2006: 25). The white racial frame arranges the routine operation of racist institutions, which enables social and economic repro-duction and amendment of racial privilege. It is this frame that defines the political and economic bases of cultural and historical legitimization. While the white racial frame is one of the components of systemic racism, it is attached to other terms of racial oppression to forge systemic coherency. It has altered over time from slavery to segregation to racial oppression and now frames “culture war,” or “clash of civilizations,” to legitimate the racist oppression of domination, exclusion, war, and genocide. The concept of “culture war” emerged to define opposing ideas in America regarding privacy, censorship, citizenship rights, and secularism, but it has been globalized through conflicts over immigration, nuclear power, and the “war on terrorism.” Its discourse and action articulate to flood the racial space of systemic racism. Racism is a process of defining and building communities and societies based on racial-ized hierarchy of power. The expansion of capitalism cast new formulas of divisions and oppositions, fostering inequality even while integrating all previous forms of oppressive hierarchical arrangements as long as they bolstered the need to maintain the structure and form of capitalist arrangements (Batur-VanderLippe 1996). In this context, the white racial frame, defining the terms of racist systems of oppression, enabled the globalization of racial space through the articulation of capitalism (Du Bois 1942; Winant 1994). The key to understanding this expansion is comprehension of the synergistic relationship between racist systems of oppression and the capitalist system of exploitation. Taken separately, these two systems would be unable to create such oppression independently. However, the synergy between them is devastating. In the age of industrial capitalism, this synergy manifested itself imperialism and colonialism. In the age of advanced capitalism, it is war and genocide. The capitalist system, by enabling and maintaining the connection between everyday life and the global, buttresses the processes of racial oppression, and synergy between racial oppression and capitalist exploitation begets violence. Etienne Balibar points out that the connection between everyday life and the global is established through thought, making global racism a way of thinking, enabling connections of “words with objects and words with images in order to create concepts” (Balibar 1994: 200). Yet, global racism is not only an articulation of thought, but also a way of knowing and acting, framed by both everyday and global experiences. Synergy between capitalism and racism as systems of oppression enables this perpetuation and destruction on the global level. As capitalism expanded and adapted to the particularities of spatial and temporal variables, global racism became part of its legitimization and accommodation, first in terms of colonialist arrangements. In colonized and colonizing lands, global racism has been perpetuated through racial ideologies and discriminatory practices under capitalism by the creation and recreation of connections among memory, knowledge, institutions, and construction of the future in thought and action. What makes racism global are the bridges connecting the particularities of everyday racist experiences to the universality of racist concepts and actions, maintained globally by myriad forms of prejudice, discrimination, and violence (Balibar and Wallerstein 1991; Batur 1999, 2006). Under colonialism, colonizing and colonized societies were antagonistic opposites. Since colonizing society portrayed the colonized “other,” as the adversary and challenger of the “the ideal self,” not only identification but also segregation and containment were essential to racist policies. The terms of exclusion were set by the institutions that fostered and maintained segregation, but the intensity of exclusion, and redundancy, became more apparent in the age of advanced capitalism, as an extension of post-colonial discipline. The exclusionary measures when tested led to war, and genocide. Although, more often than not, genocide was perpetuated and fostered by the post-colonial institutions, rather than colonizing forces, the colonial identification of the “inferior other” led to segregation, then exclusion, then war and genocide. Violence glued them together into seamless continuity. Violence is integral to understanding global racism. Fanon (1963), in exploring colonial oppression, discusses how divisions created or reinforced by colonialism guarantee the perpetuation, and escalation, of violence for both the colonizer and colonized. Racial differentiations, cemented through the colonial relationship, are integral to the aggregation of violence during and after colonialism: “Manichaeism [division of the universe into opposites of good and evil] goes to its logical conclusion and dehumanizes” (Fanon 1963:42). Within this dehumanizing framework, Fanon argues that the violence resulting from the destruction of everyday life, sense of self and imagination under colonialism continues to infest the post-colonial existence by integrating colonized land into the violent destruction of a new “geography of hunger” and exploitation (Fanon 1963: 96). The “geography of hunger” marks the context and space in which oppression and exploitation continue. The historical maps drawn by colonialism now demarcate the boundaries of post-colonial arrangements. The white racial frame restructures this space to fit the imagery of symbolic racism, modifying it to fit the television screen, or making the evidence of the necessity of the politics of exclusion, and the violence of war and genocide, palatable enough for the front page of newspapers, spread out next to the morning breakfast cereal. Two examples of this “geography of hunger and exploitation” are Iraq and New Orleans.

#### The alternative is to question the framing of restricting the presidency in terms of retaining U.S. international influence in law. Debating the rhetorical *frame* for war-fighting decisions is the only way to address the source of war-fighting abuses.

Jeremy ENGELS Communications @ Penn St. AND William SAAS PhD Candidate Comm. @ Penn ST. 13 [“On Acquiescence and Ends-Less War: An Inquiry into the New War Rhetoric” *Quarterly Journal of Speech* 99 (2) p. 230-231]

The **framing** of public discussion facilitates acquiescence in contemporary wartime: thus, both the grounds on which war has been **justified** and the ends toward which war is **adjusted** are **bracketed** and hence made infandous. The rhetorics of acquiescence bury the grounds for war under nearly impermeable layers of political presentism and keep the ends of war in a state of **perpetual flux** so that they cannot be **challenged**. Specific details of the war effort are excised from the public realm through the rhetorical maneuver of ‘‘occultatio,’’ and the authors of such violence\*the president, his administration, and the broader national security establishment\*use a wide range of techniques to displace their own responsibility in the orchestration of war.28 Freed from the need to cultivate assent, acquiescent rhetorics take the form of a status update: hence, President Obama’s March 28, 2011 speech on Libya, framed as an ‘‘update’’ to Americans ten days after the bombs of ‘‘Operation Odyssey Dawn’’ had begun to fall. Such post facto discourse is a new norm: Americans are called to acquiesce to decisions already made and actions already taken. The Obama Administration has obscured the very definition of ‘‘war’’ with euphemisms like ‘‘limited kinetic action.’’ The original obfuscation, the ‘‘war on terror,’’ is a perpetually shifting, ends-less conflict that denies the very status of war. How do you dissent from something that seems so overwhelming, so inexorable? It’s hard to hit a perpetually shifting target. Moreover, as the government has become increasingly secretive about the details of war, crucial information is kept from citizens\*or its revelation is branded ‘‘treason,’’ as in the WikiLeaks case\*making it much more challenging to dissent. Furthermore, government surveillance of citizens cows citizens into quietism. So what’s the point of dissent? After all, this, too, will pass. Thus even the most critical citizens come to rest in peace with war. The confidence game of the new war rhetoric is one of perpetually shifting ends. In this ‘‘post-9/11’’ paradigm of war rhetoric, citizens are rarely asked to harness their civic energy to support the war effort, but instead are called to passively cede their wills to a greater Logos, the machinery of ends-less war. President Obama has embodied the dramatic role of wartime caretaker more adeptly than his predecessor, repeatedly exhorting citizens to ‘‘look forward’’ rather than to examine the historical grounds upon which the present state of ends-less war was founded and institutionalized.29 All the while, that forward horizon is constantly being reshaped\*from retribution, to prevention, to disarmament, to democratization, to intervention, and so on, as needed. What Max Weber called ‘‘charisma of office’’\*the phenomenon whereby extraordinary political power is passed on between charismatically inflected leaders\*is here cast in bold relief: until and unless the grounds of the new war rhetoric are meaningfully represented and unapologetically challenged, ends-less war can only continue unabated.30 War rhetoric is a mode of display that aims to dispose audiences to certain ways and states of being in the world. This, in turn, is the essence of the new war rhetoric: authorities tell us, don’t worry, we’ve got this, just go about your everyday business, go to the mall, and take a vacation. What we are calling acquiescent rhetorics aim to disempower citizens by cultivating passivity and numbness. Acquiescent rhetorics facilitate war by shutting down inquiry and deliberation and, as such, are anathema to rhetoric’s nobler, democratic ends. Rhetorical scholars thus have an important job to do.We must bring the objective violence of war out into the open so that all affected by war can meaningfully question the grounds, means, and ends of battle.We can do this by describing, and demobilizing, the rhetorics used to promote acquiescence. In sum, we believe that by making the seemingly uncontestable contestable, rhetorical critics can and should begin to invent a pedagogy that would reactivate an acquiescent public by creating space for talk where we have previously been content to remain silent.

#### Small momentum and change in language is the basis for large-scales social change.

Princen 10—Thomas Princen School of Natural Resources and Environment @ Michigan [*Treading Softly* p. 50-53]

A Crisis People won't change until there's a crisis. They're stuck in their ways. They're comfortable. They won't do anything, even with daily reports of melting ice and starving children. That's just human nature-selfish, greedy, short-sighted. It is true that when there is a crisis people come together. When the town floods, everyone pitches in to stack sandbags and evacuate the elderly. But to conclude that people will only act when there's a crisis defies logic-and a whole lot of history. I will give an example of such history, but first let's put the general point right up front: Fundamental social change starts with (1) a few committed people, (2) new understandings, and (3) small acts that eventually confront the structures of power. And for motive, fundamental change draws on people's basic need for meaning, engagement, and fairness. Take slavery. For the great bulk of human history, across cultures, from India and China to Europe and the Americas and Africa, slavery was a perfectly normal practice. Indeed, it was an institution-a set of widely shared norms and principles, rules and procedures. And what people back then shared-rulers and commoners alike-was the idea that some people, by virtue of birth or race or nationality, would be slaves. That's just the way it was, and everyone knew it; it was beyond questioning. Always has been, always will be. Then a dozen shopkeepers and clergy got together in a print shop in London in 1787 and said, in effect, no more; this is wrong; it must stop. So they set about gathering information on what was really happening on slave ships and on the plantations. They distributed brochures and pamphlets and lectured across England and abroad. And they introduced legislation in Parliament and lobbied parliamentarians. Maybe most significantly, they systematically undercut arguments defending the normalcy and necessity of slavery-the economic arguments (the British Empire and all who depend on it around the world will collapse), the political arguments (this is just an attempt by the opposition party to take control of the government), the moral arguments (the slaves rejoice when they leave the Dark Continent).1 Today we take the abolition of slavery to be perfectly reasonable, moral, inevitable. But notice that for the early abolitionists, there was no crisis: They were quite comfortable. Their country was riding high. Life was good. Those shopkeepers and clergy and a few noblemen simply concluded that slavery was wrong. Others might have foreseen slavery's demise due to economic trends or movements for democracy and individual rights. But for much of this early history of abolition, there was no crisis. Instead, a few people acquired new understandings, took a strong moral stance, and confronted power. They took on one of the most pervasive, most accepted, most "necessary" structures in human history-slavery. And they did not back down when defenders ridiculed them, when some claimed that the economy would collapse and people would be thrown out of work, that the empire required it. The abolitionists spoke truth to power. And the truth was that Britain and the world as a whole would do quite well without slavery. In fact, if one accepts the maxim that slavery degrades slave and slaveholder alike, Britain and the world did better without slavery. But notice: there was nothing normal or inevitable, and certainly nothing moral, about slavery. Today there is nothing normal or inevitable about unending growth on a finite planet. There is nothing normal or inevitable about 10 percent of the world's population holding 85 percent of global household wealth 2 while a billion or two struggle day to day just to survive. There is nothing normal or inevitable about knowingly degrading ecosystems, permanently extinguishing entire species, causing irreversible changes in climate, or dislocating millions of people by failing to stop the resultant rise in sea levels. And there is nothing normal or inevitable about justifying all this in the name of "economic growth" or "progress" or "consumer demand" or "efficiency" or "jobs" or "return on investment" or "global competitiveness." So yes, many people in advanced industrial countries are comfortable. They appear unlikely to change until a crisis affects them personally. They have done well by the current structures, economic and political. But just a bit of reflection, a glimmer of foresight, a glance at the biophysical trends, not to mention at financial trends where mounting debt threatens the entire confidence game, and the path's end point is clear: collapse. All the market forces and technological wizardry will not change some basic facts: we have one planet, one set of ecosystems, and one hydrologic cycle; and each of us has just one brain, one body, and one lifetime. Limits are real. If the current system cannot continue on one planet, just as slavery could not continue with trends in democracy and free markets and religious rights and human rights, then the action is with those with a bit of foresight, those with a vision of a different way of living on the planet, of living with nature, not against nature. The action is with those who can accept limits indeed, embrace them. So readers of this book, I assume, may be comfortable, but they are not content. They are looking ahead, they are concerned, they are looking for change. And they know that a fundamental shift is inevitable. They know that all systems, from organisms to ecosystems, from household economies to global economies, have limits. They are the ones preparing the way, laying the groundwork, devising the principles and, yes, the technologies and markets that will allow everyone to live within immutable ecological constraints. They are the ones making sure the sand and the sandbags are on hand so that others can pitch in when the time comes. They are the ones building the compost piles, collecting the information, experimenting with new forms of community, speaking truth to power. The others, the people who need a crisis to act, are not the leaders. They will eventually act, to be sure; they will act when personally threatened. But they will need guidance. They will need role models, concrete examples, opportunities to engage and do good as they protect themselves. And they will need enabling language. That's where the real leaders come in. And now is the time to prepare-not when the crisis hits home and hits hard. So make no mistake, some people will act when there's a crisis. But many others will be getting ready now. These are the concerned and committed, the "moral entrepreneurs" who are already discovering that acting now is very satisfying, very engaging. It's hard, yet at times quite simple.

### 1NC—Warming

#### Carbon colonialism. The global climate regime relies on an imperialist epistemology. Carbon management that standardizes life and the natural world under inaccessible and domineering institutions.

Paterson and Stripple 7—\*Matthew Paterson Poli Sci @ Ottawa and \*\*Johannes Stripple, PhD Poli Sci Lund (Sweden) [*The Social Construction of Climate Change* ed. Mary Pettenger p. 162-163]

While it is easy to conceive of the sink issue as being produced by the master discourse on territorial sovereignty, the sink issue also illustrates a kind of rule over space that has more to do with the imperial than with the international. There are, in general, two sides of the imperial argument, which invoke both recent debates on the "new imperialism" in IR (e.g. Cox 2004) and debates emanating from Hardt and Negri's (2000) "Empire" thesis. Writings on the "new imperialism" are mostly about debating US power and the extent to which world order is imperial rather than hegemonic (e.g. ikenberry 2004), while "Empire" is the claim that the world is indeed imperial, but that it is not an American empire but nevertheless a single logic of rule. Important for the interpretation of sinks here, is that Empire is best seen less in terms of a reterritorializing logic in the aftermath of September 11th, as a reorganizing of the deterritorializing logic of globalization through the combination of a single overarching set of rules to govern the global economy, and the application of military force to sustain that rule (see in particular Coward's 2005 interpretation of Hardt and Negri). The construction of sinks as nationally territorial spaces is nevertheless undertaken with the understanding that the management of such sinks serves a universal order. The management of sinks through the Clean Development Mechanism in the Kyoto Protocol makes possible the reterritorialized control of the South by the North. However, the responsibility and authority over the "sink-spaces" (e.g. plantations and management of trees) are far from clear. In this sense, areas of carbon sinks bear a family resemblance with other cases of control over distant subordinate places, such as "debt-for-nature swaps" (Laferrière 1994), military bases (Johnson 2004), tourist resorts (Gossling 2002), economic processing zones (Abbott 1997) or by "supporting bioprospecting in biodiversity rich, postcolonial territories" (Eckersley 2004, 249). In this vein, Dalby notes that environmentalists "have frequently promoted the establishment of protected spaces, parks and the control of populations in manners that nonetheless replicate the practices of empire" (Dalby 2002, 8-9). Of course, this differs from earlier British and French territorializations in that the official politics is not imperial, but the similarities are still there. In Fogel's (2004) analysis, the imperial argument acquires another twist. Fogel holds advisory scientists within the IPCC and other climate related institutions accountable for the idea of forests as "empty" and available space. She cites the US Department of Energy experts who have called for "the intensive management and/or manipulation of a significant fraction of the globe's biomass" (Fogel 2004, 110). Fogel sees the emerging culture of carbon management as contributing to a mechanistic "global gaze" that moves to standardize and enroll both people and the natural world into largely inaccessible global institutions. Fogel's view on the emerging sink discourse is reminiscent of the way that Hardt and Negri (2000) have captured governmentalities under the age of the fragmented, fluid and foundationless Empire. As Dalby summarizes the condition: "Sovereignty is bleeding away from states in some amorphous series of rules, regulations and shared procedures that exceed the mandates of states and set the terms for incorporation of many institutions and peoples into an amorphous but powerful arrangement they simply term 'Empire" (Dalby 2002, 1-2).An imperial rendering of the sink issue highlights that an emergent global culture of carbon management puts the world's entire biosphere under one type of rule. This "epistemological empire," while still being fragmented and fluid, has the potential to order the world so that the Earth's biosphere becomes one undivided territory. This section has shown how the transformation of the global carbon cycle into national sinks is produced through a discourse on territoriality, indeed, this transformation is not surprising as it fits into a historic lineage of Western political imagination that envisions the environment as part of the sovereign state system in the form of "natural resources." The sink issue also illustrates practices of environmental governance that might be called "imperial," that is to say, understood both as reterritorialized control over the South by the North and as the establishment of an epistemological empire of carbon management and control.

#### Universal framing of climate change eliminates political response in favor technological management. Their framing prevents changes in distribution and consumption required to cope with climate change.

Swyngedouw 10—Erik Swyngedouw, Geography @ Manchester [“Apocalypse Forever?: Post-political populism and the spectre of climate change” *Theory, Culture, and Society* 27 (2-3) p. 216-219]

The Desire for the Apocalypse and the Fetishization of CO2 It is easier to imagine the end of the world than to imagine the end of capitalism. (Jameson, 2003: 73) We shall start from the attractions of the apocalyptic imaginaries that infuse the climate change debate and through which much of the public concern with the climate change argument is sustained. The distinct millennialist discourse around the climate has co-produced a widespread consensus that the earth and many of its component parts are in an ecological bind that may short-circuit human and non-human life in the not too distant future if urgent and immediate action to retrofit nature to a more benign equilibrium is postponed for much longer. Irrespective of the particular views of Nature held by different individuals and social groups, consensus has emerged over the seriousness of the environmental condition and the precariousness of our socio-ecological balance (Swyngedouw, forthcoming). BP has rebranded itself as ‘Beyond Petroleum’ to certify its environmental credentials, Shell plays a more eco-sensitive tune, eco-activists of various political or ideological stripes and colours engage in direct action in the name of saving the planet, New Age post-materialists join the chorus that laments the irreversible decline of ecological amenities, eminent scientists enter the public domain to warn of pending ecological catastrophe, politicians try to outmanoeuvre each other in brandishing the ecological banner, and a wide range of policy initiatives and practices, performed under the motif of ‘sustainability’, are discussed, conceived and implemented at all geographical scales. Al Gore’s evangelical film An Inconvenient Truth won him the Nobel Peace price, surely one of the most telling illustrations of how eco - logical matters are elevated to the terrain of a global humanitarian cause (see also Giddens, 2009). While there is certainly no agreement on what exactly Nature is and how to relate to it, there is a virtually unchallenged consensus over the need to be more ‘environmentally’ sustainable if disaster is to be avoided; a climatic sustainability that centres around stabilizing the CO2 content in the atmosphere (Boykoff et al., forthcoming). This consensual framing is itself sustained by a particular scientific discourse.1 The complex translation and articulation between what Bruno Latour (2004) would call matters of fact versus matters of concern has been thoroughly short-circuited. The changing atmospheric composition, marked by increasing levels of CO2 and other greenhouse gases in the atmosphere, is largely caused by anthropogenic activity, primarily (although not exclusively) as a result of the burning of fossilized or captured CO2 (in the form of oil, gas, coal, wood) and the disappearance of CO2 sinks and their associated capture processes (through deforestation for example). These undisputed matters of fact are, without proper political intermediation, translated into matters of concern. The latter, of course, are eminently political in nature. Yet, in the climate change debate, the political nature of matters of concern is disavowed to the extent that the facts in themselves are elevated, through a short-circuiting procedure, on to the terrain of the political, where climate change is framed as a global humanitarian cause. The matters of concern are thereby relegated to a terrain beyond dispute, to one that does not permit dissensus or disagreement. Scientific expertise becomes the foundation and guarantee for properly constituted politics/ policies. In this consensual setting, environmental problems are generally staged as universally threatening to the survival of humankind, announcing the premature termination of civilization as we know it and sustained by what Mike Davis (1999) aptly called ‘ecologies of fear’. The discursive matrix through which the contemporary meaning of the environmental condition is woven is one quilted systematically by the continuous invocation of fear and danger, the spectre of ecological annihilation or at least seriously distressed socio-ecological conditions for many people in the near future. ‘Fear’ is indeed the crucial node through which much of the current environmental narrative is woven, and continues to feed the concern with ‘sustainability’. This cultivation of ‘ecologies of fear’, in turn, is sustained in part by a particular set of phantasmagorical imaginaries (Katz, 1995). The apocalyptic imaginary of a world without water, or at least with endemic water shortages, ravaged by hurricanes whose intensity is amplified by climate change; pictures of scorched land as global warming shifts the geopluvial regime and the spatial variability of droughts and floods; icebergs that disintegrate around the poles as ice melts into the sea, causing the sea level to rise; alarming reductions in biodiversity as species disappear or are threatened by extinction; post-apocalyptic images of waste lands reminiscent of the silent ecologies of the region around Chernobyl; the threat of peak-oil that, without proper management and technologically innovative foresight, would return society to a Stone Age existence; the devastation of wildfires, tsunamis, diseases like SARS, avian flu, Ebola or HIV, all these imaginaries of a Nature out of synch, destabilized, threatening and out ofcontrol are paralleled by equally disturbing images of a society that continues piling up waste, pumping CO2 into the atmosphere, deforesting the earth, etc. This is a process that Neil Smith appropriately refers to as ‘nature-washing’ (2008: 245). In sum, our ecological predicament is sutured by millennial fears, sustained by an apocalyptic rhetoric and representational tactics, and by a series of performative gestures signalling an overwhelming, mind-boggling danger, one that threatens to undermine the very coordinates of our everyday lives and routines, and may shake up the foundations of all we took and take for granted. Table 1 exemplifies some of the imaginaries that are continuously invoked. Of course, apocalyptic imaginaries have been around for a long time as an integral part of Western thought, first of Christianity and later emerging as the underbelly of fast-forwarding technological modernization and its associated doomsday thinkers. However, present-day millennialism preaches an apocalypse without the promise of redemption. Saint John’s biblical apocalypse, for example, found its redemption in God’s infinite love. The proliferation of modern apocalyptic imaginaries also held up the promise of redemption: the horsemen of the apocalypse, whether riding under the name of the proletariat, technology or capitalism, could be tamed with appropriate political and social revolutions. As Martin Jay argued, while traditional apocalyptic versions still held out the hope for redemption, for a ‘second coming’, for the promise of a ‘new dawn’, environmental apocalyptic imaginaries are ‘leaving behind any hope of rebirth or renewal . . . in favour of an unquenchable fascination with being on the verge of an end that never comes’ (1994: 33). The emergence of newforms of millennialism around the environmental nexus is of a particular kind that promises neither redemption nor realization. As Klaus Scherpe (1987) insists, this is not simply apocalypse now, but apocalypse forever. It is a vision that does not suggest, prefigure or expect the necessity of an event that will alter history. Derrida (referring to the nuclear threat in the 1980s) sums this up most succinctly: . . . here, precisely, is announced—as promise or as threat—an apocalypse without apocalypse, an apocalypse without vision, without truth, without revelation . . . without message and without destination, without sender and without decidable addressee . . . an apocalypse beyond good and evil. (1992: 66) The environmentally apocalyptic future, forever postponed, neither promises redemption nor does it possess a name; it is pure negativity. The attractions of such an apocalyptic imaginary are related to a series of characteristics. In contrast to standard left arguments about the apocalyptic dynamics of unbridled capitalism (Mike Davis is a great exemplar of this; see Davis, 1999, 2002), I would argue that sustaining and nurturing apocalyptic imaginaries is an integral and vital part of the new cultural politics of capitalism (Boltanski and Chiapello, 2007) for which the management of fear is a central leitmotif (Badiou, 2007). At the symbolic level, apocalyptic imaginaries are extraordinarily powerful in disavowing or displacing social conflict and antagonisms. As such, apocalyptic imaginations are decidedly populist and foreclose a proper political framing. Or, in other words, the presentation of climate change as a global humanitarian cause produces a thoroughly depoliticized imaginary, one that does not revolve around choosing one trajectory rather than another, one that is not articulated with specific political programs or socio-ecological project or revolutions. It is this sort of mobilization without political issue that led Alain Badiou to state that ‘ecology is the new opium for the masses’, whereby the nurturing of the promise of a more benign retrofitted climate exhausts the horizon of our aspirations and imaginations (Badiou, 2008; Žižek, 2008). We have to make sure that radical techno-managerial and socio-cultural transformations, organized within the horizons of a capitalist order that is beyond dispute, are initiated that retrofit the climate (Swyngedouw, forthcoming). In other words, we have to change radically, but within the contours of the existing state of the situation—‘the partition of the sensible’ in Rancière’s (1998) words, so that nothing really has to change.

#### Warming is irreversible – consensus of most qualified scientists

Romm 3-18 [Joe, PhD in Physics from MIT, Senior Fellow at American Progress, editor of Climate Progress, former acting assistant secretary of energy for energy efficiency and renewable energy in 1997, “The Dangerous Myth that Climate Change is Reversible,” http://theenergycollective.com/josephromm/199981/dangerous-myth-climate-change-reversible]

The CMO (Chief Misinformation Officer) of the climate ignorati, Joe Nocera, has a new piece, “A Real Carbon Solution.” The biggest of its many errors comes in this line:¶ A reduction of carbon emissions from Chinese power plants would do far more to help reverse climate change than — dare I say it? — blocking the Keystone XL oil pipeline.¶ Memo to Nocera: As a NOAA-led paper explained 4 years ago, climate change is “largely irreversible for 1000 years,” with permanent Dust Bowls in Southwest and around the globe (if we don’t slash emissions ASAP).¶ This notion that we can reverse climate change by cutting emissions is one of the most commonly held myths — and one of the most dangerous, as explained in this 2007 MIT study, “Understanding Public Complacency About Climate Change: Adults’ mental models of climate change violate conservation of matter.”¶ The fact is that, as RealClimate has explained, we would need “an immediate cut of around 60 to 70% globally and continued further cuts over time” merely to stabilize atmospheric concentrations of CO2 – and that would still leave us with a radiative imbalance that would lead to “an additional 0.3 to 0.8ºC warming over the 21st Century.” And that assumes no major carbon cycle feedbacks kick in, which seems highly unlikely.¶ We’d have to drop total global emissions to zero now and for the rest of the century just to lower concentrations enough to stop temperatures from rising. Again, even in this implausible scenario, we still aren’t talking about reversing climate change, just stopping it — or, more technically, stopping the temperature rise. The great ice sheets might well continue to disintegrate, albeit slowly.¶ This doesn’t mean climate change is unstoppable — only that we are stuck with whatever climate change we cause before we get desperate and go all WWII on emissions. That’s why delay is so dangerous and immoral. I’ll discuss this further below the jump.¶ First, though, Nocera’s piece has many other pieces of misinformation. He leaves people with the impression that coal with carbon capture and storage (CCS) is a practical, affordable means of reducing emissions from existing power plants that will be available soon. In fact, most demonstration projects around the world have been shut down, the technology Nocera focuses on would not work on the vast majority of existing coal plants, and CCS is going to be incredibly expensive compared to other low-carbon technologies — see Harvard stunner: “Realistic” first-generation CCS costs a whopping $150 per ton of CO2 (20 cents per kWh)! And that’s in the unlikely event it proves to be practical, permanent, and verifiable (see “Feasibility, Permanence and Safety Issues Remain Unresolved”).¶ Heck, guy who debated me on The Economist‘s website conceded things are going so slowly, writing “The idea is that CCS then becomes a commercial reality and begins to make deep cuts in emissions during the 2030s.” And he’s a CCS advocate!!¶ Of course, we simply don’t have until the 2030s to wait for deep cuts in emissions. No wonder people who misunderstand the irreversible nature of climate change, like Nocera, tend to be far more complacent about emissions reductions than those who understand climate science.¶ The point of Nocera’s piece seems to be to mock Bill McKibben for opposing the idea of using captured carbon for enhanced oil recovery (EOR): “his answer suggests that his crusade has blinded him to the real problem.”¶ It is Nocera who has been blinded. He explains in the piece:¶ Using carbon emissions to recover previously ungettable oil has the potential to unlock vast untapped American reserves. Last year, ExxonMobil reportedthat enhanced oil recovery would allow it to extend the life of a single oil field in West Texas by 20 years.¶ McKibben’s effort to stop the Keystone XL pipeline is based on the fact that we have believe the vast majority of carbon in the ground. Sure, it wouldn’t matter if you built one coal CCS plant and used that for EOR. But we need a staggering amount of CCS, as Vaclav Smil explained in “Energy at the Crossroads“:¶ “Sequestering a mere 1/10 of today’s global CO2 emissions (less than 3 Gt CO2) would thus call for putting in place an industry that would have to force underground every year the volume of compressed gas larger than or (with higher compression) equal to the volume of crude oil extracted globally by [the] petroleum industry whose infrastructures and capacities have been put in place over a century of development. Needless to say, such a technical feat could not be accomplished within a single generation.”¶ D’oh! What precisely would be the point of “sequestering” all that CO2 to extract previously “ungettable oil” whose emissions, when burned, would just about equal the CO2 that you supposedly sequestered?¶ Remember, we have to get total global emissions of CO2 to near zero just to stop temperatures from continuing their inexorable march toward humanity’s self-destruction. And yes, this ain’t easy. But it is impossible if we don’t start slashing emissions soon and stop opening up vast new sources of carbon.¶ For those who are confused on this point, I recommend reading the entire MIT study, whose lead author is John Sterman. Here is the abstract:¶ ¶ Public attitudes about climate change reveal a contradiction. Surveys show most Americans believe climate change poses serious risks but also that reductions in greenhouse gas (GHG) emissions sufficient to stabilize atmospheric GHG concentrations or net radiative forcing can be deferred until there is greater evidence that climate change is harmful. US policymakers likewise argue it is prudent to wait and see whether climate change will cause substantial economic harm before undertaking policies to reduce emissions. Such wait-and-see policies erroneously presume climate change can be reversed quickly should harm become evident, underestimating substantial delays in the climate’s response to anthropogenic forcing. We report experiments with highly educated adults–graduate students at MIT–showing widespread misunderstanding of the fundamental stock and flow relationships, including mass balance principles, that lead to long response delays. GHG emissions are now about twice the rate of GHG removal from the atmosphere. GHG concentrations will therefore continue to rise even if emissions fall, stabilizing only when emissions equal removal. In contrast, results show most subjects believe atmospheric GHG concentrations can be stabilized while emissions into the atmosphere continuously exceed the removal of GHGs from it. These beliefs-analogous to arguing a bathtub filled faster than it drains will never overflow-support wait-and-see policies but violate conservation of matter. Low public support for mitigation policies may be based more on misconceptions of climate dynamics than high discount rates or uncertainty about the risks of harmful climate change.

#### No risk of extinction.

Lomborg 8—Director of the Copenhagen Consensus Center and adjunct professor at the Copenhagen Business School [Bjorn, “Warming warnings get overheated,” The Guardian, August 15, 2008, http://www.guardian.co.uk/commentisfree/2008/aug/15/carbonemissions.climatechange]

These alarmist predictions are becoming quite bizarre, and could be dismissed as sociological oddities, if it weren't for the fact that they get such big play in the media. Oliver Tickell, for instance, writes that a global warming causing a 4C temperature increase by the end of the century would be a "catastrophe" and the beginning of the "extinction" of the human race. This is simply silly. His evidence? That 4C would mean that all the ice on the planet would melt, bringing the long-term sea level rise to 70-80m, flooding everything we hold dear, seeing billions of people die. Clearly, Tickell has maxed out the campaigners' scare potential (because there is no more ice to melt, this is the scariest he could ever conjure). But he is wrong. Let us just remember that the UN climate panel, the IPCC, expects a temperature rise by the end of the century between 1.8 and 6.0C. Within this range, the IPCC predicts that, by the end of the century, sea levels will rise 18-59 centimetres – Tickell is simply exaggerating by a factor of up to 400. Tickell will undoubtedly claim that he was talking about what could happen many, many millennia from now. But this is disingenuous. First, the 4C temperature rise is predicted on a century scale – this is what we talk about and can plan for. Second, although sea-level rise will continue for many centuries to come, the models unanimously show that Greenland's ice shelf will be reduced, but Antarctic ice will increase even more (because of increased precipitation in Antarctica) for the next three centuries. What will happen beyond that clearly depends much more on emissions in future centuries. Given that CO2 stays in the atmosphere about a century, what happens with the temperature, say, six centuries from now mainly depends on emissions five centuries from now (where it seems unlikely non-carbon emitting technology such as solar panels will not have become economically competitive). Third, Tickell tells us how the 80m sea-level rise would wipe out all the world's coastal infrastructure and much of the world's farmland – "undoubtedly" causing billions to die. But to cause billions to die, it would require the surge to occur within a single human lifespan. This sort of scare tactic is insidiously wrong and misleading, mimicking a firebrand preacher who claims the earth is coming to an end and we need to repent. While it is probably true that the sun will burn up the earth in 4-5bn years' time, it does give a slightly different perspective on the need for immediate repenting. Tickell's claim that 4C will be the beginning of our extinction is again many times beyond wrong and misleading, and, of course, made with no data to back it up. Let us just take a look at the realistic impact of such a 4C temperature rise. For the Copenhagen Consensus, one of the lead economists of the IPCC, Professor Gary Yohe, did a survey of all the problems and all the benefits accruing from a temperature rise over this century of about approximately 4C. And yes, there will, of course, also be benefits: as temperatures rise, more people will die from heat, but fewer from cold; agricultural yields will decline in the tropics, but increase in the temperate zones, etc. The model evaluates the impacts on agriculture, forestry, energy, water, unmanaged ecosystems, coastal zones, heat and cold deaths and disease. The bottom line is that benefits from global warming right now outweigh the costs (the benefit is about 0.25% of global GDP). Global warming will continue to be a net benefit until about 2070, when the damages will begin to outweigh the benefits, reaching a total damage cost equivalent to about 3.5% of GDP by 2300. This is simply not the end of humanity. If anything, global warming is a net benefit now; and even in three centuries, it will not be a challenge to our civilisation. Further, the IPCC expects the average person on earth to be 1,700% richer by the end of this century.

### 1NC Charming Betsy

#### International law extends colonial domination. Each definition of civil international conduct requires an unciviled other from the periphery.

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This book argues that colonialism was central to the constitution of international law and sovereignty doctrine. In developing this argument, I focus on the rhetoric of the ‘civilizing mission’ that was such an indispensable part of the imperial project. This mission furthered itself by postulating an essential difference -- what might be termed a ‘cultural difference’ -- between the Europeans and non-Europeans, the Spanish and the Indians, the civilized and the uncivilized. This basic distinction has been **reproduced**, in a **supposedly** **non-imperial world**, in the distinctions that play such a decisive role in contemporary international relations: the divisions between the developed and developing, the premodern and the post-modern and now, once again, the civilized and the barbaric. My argument is that the ‘civilizing mission’, the maintenance of this dichotomy -- variously understood in different phases of the history of international law -- combined with the task of bridging this gap, provided international law with a dynamic that shaped the character of sovereignty -- and, more broadly, of international law and institutions. Vitoria’s formulation of the problem of cultural difference, and his attempts to resolve it, occur at the very beginnings of the modern discipline of international law. The problem of cultural difference, then, antedated the problem of how order is maintained among sovereign states, the problem that has preoccupied the discipline since at least the Peace of Westphalia and the emergence of the modern state system. Indeed, it could be argued that the Peace of Westphalia was precisely an attempt to resolve this problem of difference, the internecine warfare resulting from religious divisions within Europe. Sovereignty, I argue, did not precede and manage cultural differences; rather, sovereignty was forged out of the confrontation between different cultures and, at least in the colonial confrontation, the appropriation by one culture of the powerful terms ‘sovereignty’ and ‘law’. Perhaps, then,Westphalia and the model of colonial sovereignty structured by the ‘civilizing mission’ that I have sketched here might be understood as two different responses to the same problem of cultural difference. My argument is that the traditional focus on the problem of order among sovereign states commences its inquiries by assuming the existence of a sovereign Europe. It therefore lacks the conceptual apparatus to interrogate fundamental characteristics of the colonial encounter, the construction of the non-European society as primitive violent, uncivilized and therefore non-sovereign. Sovereignty is formulated in such a way as to exclude the non-European; following which, sovereignty can then be deployed to identify, locate, sanction and transform the uncivilized. This is the series of manoeuvres, the reflex, that I have termed the ‘dynamic of difference’. Consequently, it is primarily in the peripheries, in the non-sovereign, non-European world that sovereignty is completely unfettered, directed and controlled only by its ingenuity in **constructing the uncivilized** in **ever more innovative ways** which then call for new elaborations, applications and refinements in sovereignty. The unique operation of sovereignty doctrine in the colonial encounter suggests that it is seriously misleading to think of sovereignty as emerging in Europe and then extending -- stable, imperial in its reach and control, unaltered, sovereign -- into the colonial world. The **creation** of international law in its necessarily **endless drive towards universality** is based on the compelling **invocation of this ‘other’.** The drive is necessarily endless, I have argued, because even while seeking to create a universal system it generates the difference that makes this task impossible and, further, because these imperial projects inevitably provoke rebellion and opposition. Pioneering Third World jurists have attempted to transform the old, Eurocentric, international law into an international law responsive to the needs, the interests and the histories of the developing world. In the 1960s and 1970s these jurists, while formulating a very powerful anti-colonial stand, adopted the strategy of asserting similarities with the European world -- claiming, for example, that traditional Asian and African societies had formulated certain principles which were also fundamental principles of international law. More recently, developing country jurists have relied on the rhetoric of ‘difference’ in intense debates regarding, for example, human rights and cultural relativism. They assert their uniqueness and insist on the need for international law to acknowledge and accommodate this. The point of this book is that **whatever the claims made**, whether the Third World is characterized as different, similar, or a combination of the two, it must contend with the history of international law that is sketched here, a history in which international law continuously disempowers the non-European world, even while sanctioning intervention within it -- as when Vitoria characterizes the Indians as ‘infant’, thereby simultaneously diminishing the Indians and justifying their subjection to Spanish tutelage. The underlying premise of my argument is that the **structure of sovereignty**, the identity of sovereignty, no less than the identity of an individual or a people, is formed by its history, its origins in and engagement with the colonial encounter. But sovereignty doctrine, I have argued, is formidably ingenious in concealing this intimate relationship. Indeed, international law remains **oblivious** to its **imperial structures** even when continuing to reproduce them, which is why the traditional history of international law regards imperialism as a **thing of the past.** My attempt, then, is to illuminate the processes, the barely visible thoroughfares by which this colonial history insinuates itself into the discipline with enduring and far-reaching effect. This colonial history shapes the underlying structure of sovereignty doctrine; it creates within sovereignty doctrine juridical mechanisms in the form, for example, of sources doctrine, personality doctrine, consent doctrine and so forth, which resist any challenge being made to the colonial past and sovereignty’s role within it. The New International Economic Order (NIEO) constituted the most important international law initiative taken by the developing world in attempting to remedy colonial inequities. Its attempted negation by traditional international law demonstrated how the juridical mechanisms created by the colonial encounter continue to operate in the present. Traditional sources doctrine was deployed to oppose Third World formulations of new standards of compensation, for example. Principles of ‘consent’ were used to argue that colonial societies, in becoming sovereign, independent, states had in effect agreed to abide by the given rules of customary international law that they played no role in formulating; and that they had, furthermore, surrendered any right to question the effects or the character of the sovereignty they were now privileged to enjoy. It is in this way that the legal doctrines of the nineteenth century -- and the relations of inequality they created -- continue to affect the present, for these economic inequalities remain in place, and these doctrines impede current attempts to seek reparations for colonial exploitation. My argument, however, is not only that the colonial origins of international law have, in this way, an impact on the present. Rather, as I attempt to show in chapter 6 on the WAT, on many of the occasions on which international law seeks to institute a new order it reproduces, in effect, the colonial structures of international law. It is for this reason, I have argued, that striking parallels exist between the legal worlds of Vitoria and the present, the twenty-first century, as it proceeds towards an uncertain future. The colonial origins of the discipline are re-enacted whenever the discipline attempts to **renew itself, reform itself**. At one level, then, the old doctrines created to further colonialism are difficult to reform; at another level, new international law doctrines somehow reproduce the structure of the ‘civilizing mission’, as I have attempted to show in my examination of such ostensibly new initiatives as ‘good governance’. In other cases, the re-emergence of a very old doctrine, such as preemptive self-defence (PESD), deployed to create a new international law, appears rather to simply reproduce the structure of the ‘civilizing mission’ once again. The further conclusion I draw from this last example is that the techniques and methods of imperialism are never consecutive, as it were: that is, all the techniques and methods of imperialism continue to co-exist in the present and, in given circumstances, may easily be resurrected. The ‘new’ form of Empire that Hardt and Negri, for example, describe co-exists with very old forms of empire; the postmodern methods of control and management co-exist with nineteenthcentury ideas of sovereignty, sixteenth-century notions of self-defence. It is as though the different layers of imperialism continue to co-exist within the discipline in the manner suggested by Freud -- drawing on Darwin -- when outlining his model of the mind in Civilization and Its Discontents: But have we a right to assume the survival of something that was originally there, alongside of what was later derived from it? Undoubtedly. There is nothing strange in such a phenomenon, whether in the mental field or elsewhere. In the animal kingdom we hold to the view that [as] the most highly developed species we have proceeded from the lowest; and yet we find all the simple forms still in existence today.2 Sovereignty may be likened not only to Freud’s model of the mind, but to a domestic constitution which, while regulating everyday political and economic affairs, also contains within itself the special powers required to deal with states of emergency. International law is in a permanent state of emergency; it could not be otherwise, over the centuries, given that international law has endlessly reached out towards universality, expanding, confronting, including and suppressing the different societies and peoples it encountered. At the peripheries, then, sovereignty was continuously demarcating and policing these boundaries, applying and reinventing the emergency powers which incorporated, excluded and normalized the uncivilized, hence enabling **conventional sovereignty** to **appear** to operate **unperturbed**, stable and following its own course. International law can maintain its coherence and play its classic role of regulating state behaviour only by carefully defining the cultural sphere, the civilized world, in which it operates. Thus the colony, the primitive, is always and everywhere within sovereignty doctrine, if only because it must be excluded and managed. The history of the relationship between the centre and periphery which is outlined here is particularly relevant to the peoples of the developing world; for it is a history which they have endured, of which they have been the victims. This is the history, these are the structures, which the peoples of the Third World must confront in attempting to use international law to pursue their goals. But this is not merely the history of the Third World in international law because, in the final analysis, the First and the Third World, the colonizer and the colonized, are too intimately linked to permit the maintenance of such a distinction. International law, like sovereignty, like the colonial relationship itself, is indivisible. My attempt here, then, is not in any way to supplant completely the ‘Westphalian model’ of sovereignty, but rather in sketching a model of imperial sovereignty, to suggest the extraordinarily complex ways in which the two models relate to each other. Principles of international law, like rules in general, inevitably have disparate and unpredictable effects on differently situated people. There is nothing in the least coincidental, however, about the debilitating impact of many of the classic doctrines of international law on Third World countries. My simple point is that these doctrines were created for the explicit purpose of excluding the colonial world, or else, are based on an exclusion which has already been effected -- as when positivist jurists dismiss the state practice of the uncivilized Eastern states as irrelevant to the formulation of international law. This exclusion, and the imperialism which it furthers, constitute in part the primordial and essential identity of international law.

#### International legal restriction on detention validates the imperial *structure* of the law even by changing its content.

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The use of international law in progressive discourse, then, may shift opinion along the way, but seems ultimately to be theoretically disingenuous or self-defeating. There have been attempts to theorise the 'space' opened up by law, focusing on law's dialectic and the radical appropriation of its categories. Though 'the founding violence persists in law, so does the founding dream that things might be otherwise'/1 so 'finding a utopian dimension to inhere in law may be truly radical'.22 One of the most intriguing, though opaque, of these attempts is by Peter Fitzpatrick.23 Fitzpatrick acknowledges that law's 'determinate content' will respond to 'the demands of predominant power', but holds that such law can still 'pose a ruptural challenge' to 'imperium' by virtue of its 'constituent ethics'- 'an insistence on equality, freedom, and impartiality within law, and an insistence on a regardful community of law'.24 That community and those ethics are not simply posited, but are, it is argued, the result of the fact that law inevitably presumes its own transgression, some of those transgressions fundamentally challenging law's precepts, thereby implying a certain ethical landscape of law itself. Though of considerably more theoretical precision than the various liberal lullabies about the nobility of the rule of law, this negatively derived 'community of law' cannot ultimately, I would argue, be mobilised against the imperial actuality of law, for two main reasons. One is that even the seemingly obviously fundamental violations are not so clear as Fitzpatrick seems to think. He holds for example that the US's notorious incarceration of 'enemy combatants' in Guantanamo Bay is a '[v]iolation which would negate or undermine the very hold of law and its processes' and thereby 'mark a divide between law and empire'.25 In fact, of course, the US is adamant that '[b]oth international law and the US constitution sanction the detention':26 the pararneters of even supposedly fundamental transgressions are not self-evident but as indeterminate as the rest of law. More importantly, the fact is that even where Fitzpatrick's 'ethics of the existent within law' are deemed to have been transgressed, even perhaps candidly by those with power, it is by no means beyond the dialectical virtuosity of those violators to claim that such breaches are necessary to protect the very values being breached (it is this sort of thinking that lay behind the famous, perhaps-apocryphal but all-too-credible pronouncement of an American officer in Vietnam that 'we had to destroy the village to save it'). Concretely, This underlines states' erosion of human rights in anti-terrorism legislation: to protect 'core values of democratic states ruled by law' those democratic states enact laws that undermine those core valuesY An example of a common international legal argument that takes such a shape is the discourse surrounding reprisals activity: 'Reprisals are illegitimate acts of warfare, not for the purpose of indicating abandonment of the laws of war, but, on the contrary, to force compliance to those laws.'28 Such 'bad dialectics' flourish easily even at the level of the fundamental juridical units of international law: [T]he conventional rules associated with Westphalian sovereignty ... can be violated through coercion .... The goal of those interventions ... has been ... to establish a stable polity that would, in the long run, conform with those very same rules.29 Given the flexibility of international law, it is questionable whether the appropriation of its categories- such as, say, a radical focus on the equality of states as a rebuke to concrete inequality - can be systematically progressive, let alone fundamentally emancipatory///

. If a space is opened, it is at the same time always-already closing- after all, the principle of equality is also part of the self-legitimation of the actually-existing international system. Some subversive appropriations are ignorable, and where not, they are reappropriable. At a systemic level, for example, the demand of the developing countries for equitable global distribution, encapsulated in the New International Economic Order (NIEO) of the 1970s, was couched in international law's terms, such as those of 'self-determination'.30 However, today's neoliberal international reality, as one textbook rather mildly puts it, 'does not at all seem to be the [NIEO's] radically restructured one'.31 The claim that 'the less powerful' have been able 'to improve their positions in the international political order via the idea of international law' is deeply unconvincing, not only theoretically but empirically.32 The demands for a new global political economy remain legitimate and urgent: the question is, though, just what the NIEO movement gained by couching its demands in terms of international law.33

#### No modeling of US

**Law & Versteeg 12**—Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that foreign courts cite the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our empirical analysis shows that the content of the U.S. Constitution is becoming increasingly atypical by global standards. Over the last three decades, other countries have become less likely to model the rights-related provisions of their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global constitutionalism, the U.S. Constitution appears instead to be losing its appeal as a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not.

If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or more attractive competitor; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism///

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With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution.

Another possibility is that America’s capacity for constitutional leadership is at least partly a function of American “soft power” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power.

There are also factors specific to American constitutionalism that may be reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275

It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as out of date and out of line with global practice.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document.

Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have little reason to follow the Supreme Court’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.

One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286

Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass.

Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an increasingly peripheral role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

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### AT: Case O/W Int’l Law

#### International law survival impacts are an ideological smokescreen.

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The rule of law's new advocates Traditionally, of course, in mainstream conservative and liberal traditions, it has been widely held that one of the best hopes for international peace is the rule of law (or as it is often rendered, the Rule of Law).45 The iniquities and instability of the international system are obvious, and the rule of law is often seen as the best defence against them. It can 'protect the weaker states against the superiority of the larger powers':46 and in an era of nuclear weapons, 'the rule of law is our only alternative to mass destruction'.47 Such views are still expressed today.48 Recently, however, defence of the rule of law has been deployed by a more critical modern project, known variously as 'cosmopolitan democracy',49 'global governance', 5° 'democratic governance', 51 but that I follow Peter Gowan in terming 'liberal cosmopolitanism'.52 This is the most sophisticated recent reformulation of what one might call the international juridical project. Though of course the various writers associated with this approach do not speak with one voice,53 certain general arguments can be made about their radical liberal analyses and suggested reformulations of international society. [T]his discourse says that the Western liberal-democratic states are able to, and indeed are and must be understood above all as, spreading across the whole globe liberal-democratic values and regimes. We thus have the prospect of a globe which is entirely liberalised and democratised, and ... this transformation of the globe will bring with it a new kind of world order - a cosmopolitan world order - going beyond the old Westphalian world order which was characterised by the absolute rights of states .... [T]his school of thought, which doesn't necessarily spell out all of its premises, is basically saying that this is the way we're moving ... and we should join this and get involved.54 In this approach, 'Rawls' philosophical conception of the Law of Peoples joins more empirical theories of political globalization'.55 With its 'great stress on the importance of law and judicial systems',56 the defence, extension and implied evolution of the rule of law itself is centrally important to the liberalcosmopolitan project. David Held, for example, considers that the rule of law must 'involve a central concern with distributional questions and matters of social justice'Y [A] basis might be established for the UN Charter system to generate political resources of its own, and to act as a politically independent decisionmaking centre. Thus, the UN could take a vital step towards shaking off the burden of the much-heard accusation that it operates 'double standards', functioning typically on behalf of the North and West ... if the UN gained the means whereby it could begin to shake off this heritage, an important step could also be taken towards establishing and maintaining the 'rule of law' and its impartial administration in international affairs.58 A central criticism of this liberal-cosmopolitanism is its failure to see the continuities of political - imperial - power. As Callinicos puts it: [T]he mere fact of institutional proliferation [held to be key to the new structures of politics and power] tells us nothing about the actual relations of power that subsist among these networks of 'global governance'. To a large extent the institutions and regimes welcomed by Held, McGrew and their colleagues as the avatars of 'cosmopolitan democracy' have served further to institutionalize the American hegemony.59 Gowan makes a similar point with a detailed analysis of the specifics of American policy vis-a-vis Yugoslavia during the 1990s.60 He concludes that '[t]he NATO war against Serbia on Kosovo was the consolidation of the US's political victory in Europe. Human rights and liberal-cosmopolitan rhetoric and the Hague Court were instruments of power-politics'.61 In this critique, liberal-cosmopolitanism is 'the ideological form of a peculiar kind of imperial expansion'.62 This indicates certain shifts in capitalism and imperialism. 'Excavating the material forces underlying this would require the decoding of economic globalisation.'6

### Turns Case—Conflict/Stability

#### The affirmative produces and empty and oppressive form of stability. Liberal rule of law promotes cooptation by local and international elites.

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From a methodological perspective, an understanding of peace based upon orthodox debates in international relations focuses upon states and the institutions of governance. The individual and group perspectives of peace are overlooked, creating "empty states" and a "virtual peace"s in which inhabitants may have rights, but they are unenforceable and undermined by a lack of opportunities. These are controlled by officials and elites. International relations theory prioritizes research methods designed to access the " international" (i.e. diplomats, elites, officials, institutions, militaries and their strategies) so there is little wonder that these oversights occur. The liberal peace results in institutions and frameworks but does not directly affect the individual, in the short to medium term at least. This is because the liberal peace is transferred by force, coercion, conditionality or dependency by outsiders. Even in cases where the liberal peace has been consensually installed the picture is still problematic. The ethos of liberal society is individualism in the context of universal institutions, but one of its key weaknesses has been that such institutions take on a life of their own. They become disconnected from their contractual subjects and prey to co-option by elites or the technocratic decision-making processes of distant external actors. In a liberal peacebuilding context, this problem is accentuated because its focus on building a state necessitates top-down activities. Post-conflict polities andstates exaggerate the flaws of the liberal system from whence they are transferred—and also point to partition or secession and to violence as plausible modes of opposition. In effect, peace-as-governance became the post- Cold War objective and liberal norm in conflict zones around the world. Conflicts provided an opportunity for an epistemic community of states, donors, agencies, international financial institutions and non-governmental organizations (NGOs) to intervene to direct these reforms according to the general peace building consensus. Governance is both a key tool and a key objective in this theoretical and policy concurrence on the liberal peace. Governance reform reflects the liberal mode for the redistribution of power, prestige and "rules and rights embodied in the system" led by a hegemonic actor. 9 Thus, the balance of power, hegemony and constitutionalism 10 converge in the liberal peace, allowing for enforcement, 11 hegemonic governance or coercive domination,12 a sustainable order,1 3 and agreed constitutional rights and limitations.14 This produces a hybrid where realism offers a peace existing in a basic level of order and liberal approaches offer a complex process that constructs a much more ambitious universal form of peace. The liberal peace that has replaced the Cold War is an institutionalized peace-as-governance, run by dominant actors such as the United States, the United Nations and the World Bank. The multilevel and multidimensional liberal governance framework is, of course, hierarchical, and it is open to co-option by its dominant sponsors and donors, as it has often now been accused of. But perhaps just as significantly, and as with the Kosovan project for statehood, local actors also have considerable agency to insert their own agendas into the project, especially if they can find support amongst the international community. Many liberal peacebuilding operations are based upon high levels of local consent, at least initially, though this often dissipates as expectations of social justice are not met. Thus, although the liberal governance framework significantly advances the notion of peace, it still encompasses major exclusions, based upon the workings of its economy, its cultural and identity assumptions and the capacity of hegemons to undermine some of its processes. In particular, the tendency towards the incorporation of a neo-liberal economic system has undermined many of the benefits that the liberal peace offered in its earlier, post-war, welfarist version. In addition, where the liberal peace is imposed externally in conflict or post-conflict zones, it tends towards a neo-colonial, or at best trusteeship, form of peace. Finally, it tends to construct a form of peace bounded by territorial sovereignty, therefore re-creating states. Foucault's critique is apt: we "live in an era of 'governmentaJity'" 15 in which peace is produced by sovereign governments, states and theirinstitutions operating in a traditional top-down manner. Non-state, nonofficial forms of governance have also become important at the civil society level in constructing the liberal peace through a form of biopower,16 in which actors are empowered and enabled to intervene in the most private aspects of human life as their contribution to the development of the liberal peace. Liberal governance is driven by dominant states and their institutions, and its direction, represented as neutral, objective and benevolent for the most part, is at the same time often also accused of in effect maintaining insidious practices of intervention in host and recipient communities. 17 It equates good governance with equitable development and neo-liberal economic policy and political reform, and results in a relationship of conditionality between its agents and recipients. 18

### 2NC K Prior

#### Legitimacy is a weapon for the national-security apparatus. Legal restrictions enable the U.S. to wage more precisely regulated and brutal forms of war.

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Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

### Laws of War Links

#### The Laws of War create a high-tech low-tech divide that justifies imperial warfare. Powerful states face lower compliance costs and gain legitimacy.

Thomas SMITH Gov’t & Int’l Affairs @ South Florida 2 [“The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence” *Int’l Studies Quarterly,* 46, p. 355-356]

As Adam Roberts ~1993–94:134! has noted, strategic and legal analyses of armed conflict have tended to follow separate paths. Comparing two leading surveys, Peter Paret’s Makers of Modern Strategy ~1986! and Michael Howard et al.’s The Laws of War ~1994!, one is reminded of what historians call “tunnel history,” in which each discipline draws on its own traditions and assumptions, sealed off from contact with other fields. Fortunately, the wall dividing law and strategy is beginning to crumble. This is due to the changing character of conflict as well as new directions in the study of law. The Cold War effectively severed the fields, thwarting moderation in means and paralyzing international legal institutions. Over the past decade, however, innovations in conventional weapons, rising ethnic and substate violence, and ensuing debate over intervention have raised a number of issues that bridge law and strategy. Students of international law have grown more politically reflective as well through the International Relations0 International Law and Critical Legal Studies movements.1 This marriage of disciplines has been particularly revealing with regard to the law of war, or “humanitarian law.”2 The two main instruments of modern humanitarian law, the Geneva Laws, the legal protections afforded specific classes of people in wartime; and the Hague Laws, which govern the overall methods of combat, have long faced political critiques. Many students of international relations echo the tragic words of Cicero: “in time of war, the law falls silent.” Many international lawyers, too, recognize the precariousness of humanitarian law amid the rigors of war. As Hersch Lauterpacht noted in a canonical commentary ~1953:382!, “if international law is, in some ways, at the vanishing-point of law, the law of war is, perhaps even more conspicuously, at the vanishing-point of international law.” Recent history, however, seems to refute the tragic view. Far from disappearing over the horizon, the law of war is invoked more frequently than ever, and, in the area of human rights and war crimes, is expanding via statute and enforcement. At the same time, the United States and its allies practice a new style of legal warfare—what Schmitt ~1998! called “Bellum Americanum”— that hinges on precision-guided bombs, standardized targeting, accepted levels and types of collateral damage, and high bomber flight altitudes. Once considered obstacles to the war effort, military lawyers have been integrated into strategic and tactical decisions, and even accompany troops into battle. Never has the conduct of war been so legalistic. The argument advanced here is that the law of war has flourished at the cost of increased artificiality and elasticity. Law has successfully shaped norms and practices in the areas of warfare furthest from hi-tech tactics. Strides have been made, for example, in the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, and the 1997 Convention on the Prohibition of Anti-Personnel Mines. For hi-tech states, these are relatively low-cost laws. But when modern military necessity calls, the law of war has legitimized violence, not restrained it. New military technology invariably has been matched by technical virtuosity in the law. New legal interpretations, diminished ad bellum restraints, and an expansive view of military necessity are coalescing in a regime of legal warfare that licenses hi-tech states to launch wars as long as their conduct is deemed just. The new law of war burnishes hi-tech campaigns and boosts public relations, even as it undercuts customary limits on the use of force and erodes distinctions between soldiers and civilians. Modern warfare has dramatically reduced the number of direct civilian deaths, yet the law sanctions infrastructural campaigns that harm long-term public health and human rights.

#### Legal restraint on conduct of war codifies right of powerful states to pursue war.

Thomas SMITH Gov’t & Int’l Affairs @ South Florida 2 [“The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence” *Int’l Studies Quarterly,* 46, p. 357-359]

More thoroughgoing skeptics of the school of Critical Legal Studies claim that international legal institutions are molded to serve the interests of dominant states. Just as international law in the nineteenth century buttressed the European Concert system and, later, imperialism, law continues to confer privileges on powerful countries ~Gathii, 1998!. This is a far cry from legalists and realists dutifully debating the utility of international law under anarchy. Critical theorists find law very effective, but contend that the logic and coherence we ascribe to law actually mirror political interests. Law shapes the popular perception of an act by imbuing it with the “psychic trappings” of legality, reinforcing a chimera of shared values and international society and cultivating a sense of obligation to the “civilized” order. The law lends an air of naturalness or inevitability to the existing hierarchy of power, wealth, and moral capital. These inequalities are then “reinscribed” into the law ~af Jochnick and Normand, 1994a:57!. Much of critical legal theory targets the symbiosis between international law and state sovereignty. As Phillip Trimble has noted ~1990:833!, “A quick look at the ‘rules’ of international law shows why governments love @it#. . . . @I#nternational law confirms much more power and authority than it denies.” It codifies sovereignty, upholds territorial and border controls, economic, regulatory and tax sovereignty, control over airspace, sea-lanes, natural resources, offshore and continental shelves, and so on. As globalization blurs the line between domestic and foreign politics, much of international law maintains the separateness of these spheres, denying standing to nonstate actors, and smuggling reasons of state and particular conceptions of legitimacy into seemingly universal rules. The same can be said of any international organization or legal regime that pits the interests of sovereign states against the aspirations of cosmopolitans and NGOs. The use of law to validate the practices of sovereign states is perhaps most clear with regard to the laws of war. In a critical history of humanitarian law, Chris af Jochnick and Roger Normand argue ~1994a:50–51! that the “structured impotence” and “permissive language” of black-letter laws of war have lent a “façade of legitimacy” to existing wartime practices. “The laws of war//

have been formulated deliberately to privilege military necessity at the cost of humanitarian values.” The Lieber Code ~1863!, adopted during the American Civil War and the first formal inventory of rules of engagement, set the tone: “To save the country is paramount to all other considerations” ~Art. 5!; “Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable” ~Art. 15!; “The more vigorously wars are pursued, the better it is for humanity” ~Art. 29!. af Jochnick and Normand conclude ~1994a:55! that legal warfare has not been more humane than illegal warfare. Progress in humanitarian law is a fiction. “The development of a more elaborate legal regime has proceeded apace with the increasing savagery and destructiveness of modern war.” Legalism also has undermined customary restraint in favor of technical compliance. Rosalyn Higgins ~1994! and others have noted that international law is not merely a set of rules, but is also the bearer of a normative culture. Not so the law of war, which is construed in a highly technical fashion that risks subverting its own purpose. Jean Pictet’s standard treatment defines humanitarian law as that “branch of public international law which owes its inspiration to a feeling for humanity and which is centered on the protection of the individual” ~Beigbeder, 1999:1!. Lauterpacht held ~1953:363–364! that “rules of warfare are not primarily rules governing the technicalities and artifices of a game. They evolved or have been expressly enacted for the protection of actual or potential victims of war.” “We shall utterly fail to understand the true character of the law of war unless we are to realize that its purpose is almost entirely humanitarian in the literal sense of the word, namely to prevent or mitigate suffering and, in some cases, to rescue life from the savagery of battle and passion. This, and not the regulation and direction of hostilities, is its essential purpose.” Laws of War: The State of the Art Since the mid-nineteenth century, humanitarian law has focused almost exclusively on the regulation and direction of hostilities as religious canons, moral philosophy, and chivalry. These have been replaced by black letter law, military discipline, rules of engagement, and “operational law” overseen by battlefield and war room lawyers. The dean of just war scholars James Turner Johnson notes ~1981:71! that nothing has been more harmful than this technical turn to the “intimate and inseparable relationship” between morality and laws of war. The Withering of Jus Ad Bellum Nowhere is this technical turn clearer than in the decline of “philosophical” rules about going to war ~ jus ad bellum! and the rise of procedural rules about conduct in war ~ jus in bello!. As witnessed by the debate over NATO’s intervention in Yugoslavia in 1999, jus ad bellum has not vanished. But it has been on the wane since the Renaissance, eroded by the secularization and positivism that mark “the new science of international law” ~ Johnson, 1975:10!. The emphasis on conduct is driven by practical reasons as well: ad bellum laws often deal with inscrutable motives and furtive planning; in bello breaches are easier to uphold and may even leave a trail of forensic evidence. One can also judge conduct even when the original legality of a conflict is in dispute. If law follows practice, the erosion of jus ad bellum should come as no surprise. There were roughly 690 cross-border military interventions between 1945 and 1991, and interveners usually managed to escape condemnation ~Reilly, 1999!. Border violations and standing aggressions have become routine. Despite universal condemnation of South Africa’s Apartheid regime, the world turned a blind eye to Pretoria’s frequent raids into Angola, Namibia, and Mozambique. Turkish troops have entered Iraq more than 57 times in the past 15 years in pursuit of Kurdish rebels. Attacks against substate targets have also been routinized. Intervention is often couched in the language of rescue. As Henkin notes, humanitarian reasons to intervene are “easy to fabricate,” and every case of intervention has been “justified on some kind of humanitarian ground” ~Kritsiotis, 1998:1021!. The burst of humanitarian law over the past decade—statutes for the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court, or ICC—has also given short shrift to jus ad bellum, especially the crime of aggression. The most comprehensive of these, the ICC Statute, targets genocide, crimes against humanity, serious breaches of the laws and customs of war, and aggression. Elements of the first three crimes are defined crisply in the Statute, which criminalizes “intentionally directing attacks against the civilian population as such” and “extensive destruction . . . of property, not justified by military necessity.”3 The statute was adopted without any elaboration of aggression. This second-class treatment probably stems from the fact that hi-tech states can adhere to the letter of in bello laws, but find jus ad bellum hazier and compliance harder to establish. The Security Council will almost certainly retain control over aggression, even though critics claim the ICC already is tipped toward Goliath states, at least members of the Security Council, whom the Statute grants an unlimited number of 12-month deferrals of the Court’s activities ~Art. 16!. The ICC Statute is also weighted toward hi-tech states in that machete murder is more likely to be criminalized than a nuclear holocaust ~weapons of mass destruction are not covered!. As it stands, the ICC poses no obstacles to modern warfare as long as civilian casualties are unintentional or indirect.4

### AT: Perm (w/Multilat)

#### The multilateral vision of American leadership is no less Orientalist—they still divide the world between liberal democracies and illiberal peoples. Rejecting the aff’s justifications is a pre-requisite for genuine change.

Richard FALK Emeritus Int’l Law @ Princeton 9 [*Achieving Human Rights* p. 52-53]

The transition to a regulated structure of world order is underway and is assured unless a catastrophic breakdown occurs, due to ecological, economic, or political collapse. That is, the Westphalian form of world order, based on the state system, while resilient, is essentially being displaced from above and below. It is not only the case that the main struggle since 9/11 is being waged by a global state on the one side and a loosely linked headless network on the other side; the impact of multi-dimensional globalization is also making borders less important in most respects (although more important in some-for instance, restricting transnational migrants). And normative developments are now associated with international accountability for gross violations of human rights and for the commission of such crimes as genocide, torture, and ethnic cleansing. Much of the literature that recognizes this emergent global governance stresses the **inevitability** of **American leadership**. The **mainstream** debate is whether this leadership will take a **cooperative**, economic form as it did in the 1990s or move in direction of the unilateralist, coercive form of the early years of the twenty-first century.36 The outcome of the November 2004 American presidential elections, together with the impact of the purported transfer of sovereignty to Iraq on June 30, 2004, as well as the anti-war outcome of the 2006 congressional elections seemed to supply a short-term answer. The main argument being made seems likely to be unaffected by a change in the elected leadership of the United States, although the 2008 presidential elections might produce some **tactical adjustments** associated with the high costs of continuing the Iraq War. **Either** foreign policy **path** is **essentially Orientalist** in the sense of building a future world order on the basis of **American interests**, **an American worldview**, and an **American model** of constitutional democracy. Neither is sensitive, in the slightest, to the ordeal of the Palestinian people, and thus bitter resentments directed at the United States will be kept alive, especially in the Arab world. International law will continue to play a double role, facilitating the pretensions of the American model of "democracy" as an expression of a commitment to the realization of international human rights and offering opponents of this model legal standards and principles by which to validate their anti-imperial, antiAmerican resistance. In my view, only a **non-Orientalist reshaping** of global governance can be beneficial for the peoples of the world and **sustainable** over time. In that process, the **de-Orientalizing** of the **normative order** is of **paramount importance**, providing positive images of accountability, participation, and justice that do not universalize the mythic or existential realities of the American experience and that draw fully upon the creative energies and cultural worldviews of the diverse civilizations that together constitute the world. Such expectations may presently seem utopian , but that is only because our horizons are now clouded by **warmongering "realists"** and **global imperialists**. To **dream freely** of a benevolent future is the only way to encourage the **moral and political imagination** of people throughout the world to take responsibility for their own future, thereby repudiating in the most decisive way the deforming impacts of Orientalism in all of its sinister forms.

### ALT—Anti-Subordination Framing

#### We should frame the question of executive power in terms of racialized harm and otherization. Refusing accommodation with values of the security state is a *precondition* for preventing racialized hierarchy.

Gil GOTT Int’l Studies @ DePaul 5 “The Devil We Know: Racial Subordination and National Security Law” Villanova Law Review, Vol. 50, Iss. 4, p. 1075-1076

Anti-subordinationist principles require taking more complete account of how enemy groups are racialized, and how they come to be constructed as outsiders and the kinds of harms that may befall them as such. Group-based status harms include those that have been inscribed in law and effectuated through state action, and those that arise within civil society, through social structures, institutions, culture and habitus. Familiarity with the processes of racialization is a necessary precondition for appreciating and remedying such injuries. Applying anti-subordinationist thinking to national security law and policy does not require arguing that only race-based effects matter, but does require affording significant analytical and normative weight to the problems of such status harms. Racial injuries require racial remedies. Foregrounding anti-subordinationist principles in national security law and policy analysis departs significantly from traditional approaches in the field. Nonetheless, arguments based in history, political theory and pragmatism suggest that such a fundamental departure is warranted. Historically, emergency-induced "states of exception" 6 that have suspended legal protections against governmental abuses have tended to be identitybased in conception and implementation. 7 Viewed from the perspective of critical political theory, the constellation of current "security threats" rests on the epochal co-production of identity-based and market-driven global political antagonisms, referred to somewhat obliquely as civilization clashes or perhaps more forthrightly as American imperialism. Pragmatically, it makes no sense to fight terrorism by alienating millions of Muslim, Arab and South Asian residents in the United States and hundreds of millions more abroad through abusive treatment and double standards operative in identity-based repression at home and in selective, preemptive U.S. militarism abroad. Such double standards undermine the democratic legitimacy of the United States both in its internal affairs and in its assertions of global leadership. Indeed, there seems to be no shortage of perspectives from which liberal legal institutions would be enjoined from embracing a philosophy of political decisionism precisely at the interface of law and security, an anomic frontier along which are likely to arise identity-based regimes of exception and evolving race-based forms of subordination. Part I analyzes accommodationist approaches that variously incorporate security-inflected logic in truncating the regulative role law plays in national security contexts. I will seek to understand the accommodationist thrust of these interventions in light of the authors' operative assumptions regarding the proper array of interests and exigencies to be balanced. I will argue that the interests of demonized "enemy groups" facing racebased status harm-Muslims, Arabs and South Asians in the United States-are ineffectively engaged through accommodationist frameworks. The decisionist impulse of these analyses, that is, the tendency to acquiesce in the outcomes of non-substantively constrained statist and/or majoritarian political process, results from an incomplete grasp of the racialization processes. In short, more race consciousness is needed in national security law and policy in order to cement substantive commitments and procedural safeguards against historical and ongoing racebased subordination through the racialization of "security threats."

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### 2NC Link—Green Growth

#### Green growth discourse rigs the game on climate policy according to the logic of economic efficiency and inequality.

Methmann 10—Chris Methmann, Research Associate @ Poli Sci Inst. Hamburg [“‘Climate Protection’ as Empty Signifier: A Discourse Theoretical Perspective on Climate Mainstreaming in World Politics” *Millennium* 39 (2) p. 364-366]

Ethics: ‘Growth and Green Work Hand in Hand’ As to the ethics of government, climate protection is justified by the logic of economic calculation.90 Only if its overall benefits exceed its costs does climate protection appear to be justified. Especially under conditions of uncertainty, this definitely narrows the scope for political action to those policies that are already established as economically efficient. It prefers so-called win-win solutions that are both economically profitable and climate-friendly.91 As a result, it privileges such policies that do not negatively affect economic growth to any significant extent. Moreover, growth often appears as an unquestioned fundamental condition for any policy. The fundamental significance that is assigned to economic growth is even embodied by the United Nations Framework Convention on Climate Change (UNFCCC) Article 3(5) obliging parties ‘to promote a supportive and open international economic system that would lead to sustainable economic growth’. Furthermore, its significance is expressed in the debates about a green new deal which emerged during the recent economic crisis.92 Unsurprisingly, the ethics of growth is also to be found in most of the documents of economic organisations. Economic growth here often appears as an unquestioned fundamental condition for acting on climate change. The problem is to ‘make a low-carbon society compatible with economic growth’93 and to meet ‘the wider ambitions foreconomic growth’.94 Two inclusive strategies incorporate economic growth into the climate discourse and turn it into a prerequisite for achieving climate protection. According to the idea that growth greens, it is argued that ‘wealthier societies demand higher environmental standards’.95 Moreover, increased economic activity offers countries the opportunity for ‘investing this growth in pollution prevention’.96 The relation of equivalence between growth and climate protection is reinforced by the idea of green growth which has in particular emerged during the economic recession at the end of the last decade. According to this storyline, ‘climate protection has a part to play in supporting the economic recovery and sustainable growth’.97 Because investing in climate-friendly technology can ‘stimulate new clean tech businesses’,98 ‘we can make going green compatible with increased prosperity’.99 In this sense, concentrating on economically profitable areas of climate protection can generate win-win situations so that ‘green and growth are working hand in hand’.100 In sum, this equivalence means it is possible that even in the face of climate change the basic social structure of economic growth is not questioned as such. The idea of green growth is particularly convincing because it also draws on other patterns of climate protection. First of all, as was found in some of the texts, the problem structure of climate change is also defined as an ‘externality problem’.101 It is one of the ‘tensions that accompany growth’,102 but obviously it is not necessarily linked to it. Rather, economic activity produces a ‘human footprint on the global climate’.103 The metaphor of a footprint implies that it can easily be cleared while the object it appears on remains more or less untouched. We just have to make sure that we walk on the ‘low greenhouse gas emission-intensive paths’104 in order not to leave footprints on the climate anymore. This externality image supports the growth articulations. Secondly, as mentioned earlier also, scientific uncertainty defends growth because we do not know for sure what its environmental consequences will be. We have to be aware that ‘economic growth can surprise us’.105 Finally, also the idea of efficient technology (which is explained below) is crucial in that it makes the transition from growth to green growth possible: ‘innovation can lead to a greener growth model’.106 Thus, the idea of greengrowth shows how the basic patterns of climate protection can be combined into more complex articulations that include the status quo in the climate protection discourse.

#### Technocratic management makes extinction inevitable—no aff proposal can solve.

Crist 7 [Eileen Crist, Associate Professor of Science and Technology in Society at Virginia Tech University, 2007, “Beyond the Climate Crisis: A Critique of Climate Change Discourse,” *Telos*, Volume 141, Winter, Available Online to Subscribing Institutions via Telos Press, p. 49-51]

If mainstream environmentalism is catching up with the solution promoted by Teller, and perhaps harbored all along by the Bush administration, it would certainly be ironic. But the irony is deeper than incidental politics. The projected rationality of a geoengineering solution, stoked by apocalyptic fears surrounding climate change, promises consequences (both physical and ideological) that will only quicken the real ending of wild nature: "here we encounter," notes Murray Bookchin, "the ironic perversity of a 'pragmatism' that is no different, in principle, from the problems it hopes to resolve."58 Even if they work exactly as hoped, geoengineering solutions are far more similar to anthropogenic climate change than they are a counterforce to it: their implementation constitutes an experiment with the biosphere underpinned by technological arrogance, unwillingness to question or limit consumer society, and a sense of entitlement to transmogrifying the planet that boggles the mind. It is indeed these elements of techno-arrogance, unwillingness to advocate radical change, and unlimited entitlement, together with the profound erosion of awe toward the planet that evolved life (and birthed us), that constitute the apocalypse underway—if that is the word of choice, though the words humanization, colonization, or occupation of the biosphere are far more descriptively accurate. Once we grasp the ecological crisis as the escalating conversion of the planet into "a shoddy way station,"59 it becomes evident that inducing "global dimming" in order to offset "global warming" is not a corrective action but another chapter in the project of colonizing the Earth, of what critical theorists called world domination.

Domination comes at a huge cost for the human spirit, a cost that may or may not include the scale of physical imperilment and suffering that apocalyptic fears conjure. Human beings pay for the domination of the biosphere—a domination they are either bent upon or resigned to—with alienation from the living Earth.60 This alienation manifests, first and [end page 50] foremost, in the invisibility of the biodiversity crisis: the steadfast denial and repression, in the public arena, of the epochal event of mass extinction and accelerating depletion of the Earth's biological treasures. It has taken the threat of climate change (to people and civilization) to allow the tip of the biodepletion iceberg to surface into public discourse, but even that has been woefully inadequate in failing to acknowledge two crucial facts: first, the biodiversity crisis has been occurring independently of climate change, and will hardly be stopped by windmills, nuclear power plants, and carbon sequestering, in any amount or combination thereof; and second, the devastation that species and ecosystems have already experienced is what largely will enable more climate-change-driven damage to occur.

Human alienation from the biosphere further manifests in the recalcitrance of instrumental rationality, which reduces all challenges and problems to variables that can be controlled, fixed, managed, or manipulated by technical means. Instrumental rationality is rarely questioned substantively, except in the flagging of potential "unintended consequences" (for example, of implementing geoengineering technologies). The idea that instrumental rationality (in the form of technological fixes for global warming) might save the day hovers between misrepresentation and delusion: firstly, because instrumental rationality has itself been the planet's nemesis by mediating the biosphere's constitution as resource and by condoning the transformation of Homo sapiens into a user species; and secondly, because instrumental rationality tends to invent, adjust, and tweak technical means to work within given contexts—when it is the given, i.e., human civilization as presently configured economically and culturally, that needs to be changed.

### 2NC Link—Global Coop

#### Belief in global cooperation’s ability to solve obscures the causes of overexploitation and creates a utopian belief in technology’s ability to solve.

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2.3 Neoliberalism: mutual over-exploitation as normative

On the other hand, we have strategies of international cooperation to establish new global governance regimes by which states can develop treaties and agreements to encourage mitigating action. It is now clear that the massive proliferation of international legal treaties designed to regulate activities impacting detrimentally on the environment and thus limit environmental degradation simply cannot be explained under the realist theoretical framework. While this seemingly vindicates neoliberal theoretical approaches which underscore the scope for rational state strategies of mutual cooperation,62 the latter are still at a loss to explain the extent to which ethical norms and values, national cultures and environmental and scientific advocacy underpin wide-ranging environmental regimes which cannot be reduced purely to state interests.63

Much of the liberal literature also explores the regressive dynamic of the energy industry and its international dimensions, though failing to escape realist assumptions about anarchy. Kaldor and her co-authors, for instance, note that conflicts can erupt in regions containing abundant resources when neopatrimonial states collapse due to competition between different ethnic and tribal factions motivated by the desire to control revenues.64 Similarly, Collier argues that the most impoverished populations inhabit the most resource-wealthy countries which, however, lack robust governance, encouraging rampant internal resource predation and therefore civil wars.65 Lack of robust governance thus facilitates not only internal anarchy over resource control, but also the illicit and corrupt activities of foreign companies, particularly in the energy sector, in exploiting these countries.66 This sort of analysis then leads to a staple set of normative prescriptions concerned largely with ways of inculcating ‘good governance’, such as transparency measures to avoid excessive secrecy under which oil companies indulge in corruption; more robust international regulation; corporate social responsibility; and cosmopolitan principles such as democratisation, political equality and freedom of civil society.67

Yet such well-meaning recommendations often do not lead to sufficiently strong policy action by governments to rein in energy sector corruption.68 Furthermore, it is painfully clear from the examples of Kyoto, Copenhagen and Cancun that international cooperative state strategies continue to be ineffective, with states unable to agree on the scale of the crises concerned, let alone on the policies required to address them. Indeed, while some modest successes were apparent in the Cancun Accord, its proposed voluntary emissions regime would still likely guarantee – according to even mid-range climate models – a global average temperature rise of 4°C or more, which would in turn culminate in many of the IPCC's more catastrophic scenarios.69

This calls into question the efficacy of longstanding recommendations – such as Klare's – that the international community develop unprecedented international mechanisms to coordinate the peaceful distribution of natural resources in the era of scarcity and environmental degradation.70 While at face value such regulatory governance mechanisms would appear essential to avoid violent conflict over depleting resources, they are posited in a socio-political and theoretical vacuum. Why is it that such potentially effective international mechanisms continue to be ignored? What are the socio-political obstacles to their implementation? Ultimately, the problem is that they overlook the structural and systemic causes of resource depletion and environmental degradation.

Although neoliberalism shares neorealism's assumptions about the centrality of the state as a unitary rational actor in the international system, it differs fundamentally in the notion that gains for one state do not automatically imply losses for another; therefore states are able to form cooperative, interdependent relationships conducive to mutual power gains, which do not necessarily generate tensions or conflict.71 While neoliberalism therefore encourages international negotiations and global governance mechanisms for the resolution of global crises, it implicitly accepts the contemporary social, political and economic organisation of the international system as an unquestionable ‘given’, itself not subject to debate or reform.72

The focus is on developing the most optimal ways of maximising exploitation of the biophysical environment. The role of global political economic structures (such as centralised private resource-ownership and deregulated markets) in both generating global systemic crises and inhibiting effective means for their amelioration is neglected. As such, neoliberalism is axiomatically unable to view the biophysical environment in anything other than a rationalist, instrumentalist fashion, legitimising the over-exploitation of natural resources without limits, and inadvertently subordinating the ‘global commons’ to the competitive pressures of private sector profit-maximisation and market-driven solutions, rather than institutional reform.73 Mutual maximisation of power gains translates into the legitimisation of the unlimited exploitation of the biophysical environment without recognition of the human costs of doing so, which are technocratically projected merely as fixable aberrations from an optimal system of cooperative progress.74 Consequently, neoliberalism is powerless to interrogate how global political economic structures consistently undermine the establishment of effective environmental regimes.

### Buell

Goes neg

the aff’s use of environmental crisis rhetoric causes eco-authoritarianism and political apathy---turns the case

**Buell 3** Frederick—cultural critic on the environmental crisis and a Professor of English at Queens College and the author of five books, *From Apocalypse To Way of Life,* pages 185-186

\*Yellow = Short

Looked at critically, then, **crisis discourse** thus suffers from a number of liabilities. First, it seems to have become a **political liability** almost as much as an asset. It calls up a **fierce and effective opposition** with its predictions; worse, its more specific predictions are all too **vulnerable to refutation by events**. It also **exposes environmentalists to being called grim doomsters** and antilife Puritan extremists. Further, concern with crisis has all too often tempted people to try to find a “**total solution**” to the problems involved— a phrase that, as an astute analyst of the limitations of crisis discourse, John Barry, puts it, is all too reminiscent of the Third Reich’s infamous “**final solution**.”55 A total crisis of society—environmental crisis at its gravest—threatens to translate despair into **inhumanist authoritarianism**; more often, however, it helps keep merely dysfunctional authority in place. It thus leads, Barry suggests, to the belief that only elite- and expert-led solutions are possible.56 At the same timeit **depoliticizes people**, inducing them to accept their impotence as individuals; this is something that has made many people today feel, ironically and/or passively, that since it makes no difference at all what any individual does on his or her own, one might as well go along with it. Yet another pitfall for the full and sustained elaboration of environmental crisis is, though least discussed, perhaps the most deeply ironic. A problem with deep cultural and psychological as well as social effects, it is embodied in a startlingly simple proposition: the worse one feels environmental crisis is, the more one is tempted to turn one’s back on the environment. This means, preeminently, turning one’s back on “nature”—on traditions of nature feeling, traditions of knowledge about nature (ones that range from organic farming techniques to the different departments of ecological science), and traditions of nature-based activism. If nature is thoroughly wrecked these days, **people need to delink from nature** and live in postnature—a conclusion that, as the next chapter shows, many in U.S. society drew at the end of the millenium. Explorations of how deeply “nature” has been wounded and how intensely vulnerable to and dependent on human actions it is can thus lead, ironically, to **further indifference** to nature-based environmental issues, not greater concern with them. But what quickly becomes evident to any reflective consideration of the difficulties of crisis discourse is that all of these liabilities are in fact bound tightly up with one specific notion of environmental crisis—with 1960s- and 1970s-style environmental apocalypticism. Excessive concern about them does not recognize that crisis discourse as a whole has significantly changed since the 1970s. They remain inducements to look away from serious reflection on environmental crisis only if one does not explore how environmental crisis has turned of late from apocalypse to dwelling place. The apocalyptic mode had a number of prominent features: it was preoccupied with running out and running into walls; with scarcity and with the imminent rupture of limits; with actions that promised and temporally predicted imminent total meltdown; and with (often, though not always) the need for immediate “**total solution**.” **Thus doomsterism was its reigning mode; eco-authoritarianism** was a grave temptation; and as crisis was elaborated to show more and more severe deformations of nature, temptation increased to refute it, or give up, or even cut off ties to clearly terminal “nature.”

### Charming betsy

#### International legal restriction on detention validates the imperial *structure* of the law even by changing its content.

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The use of international law in progressive discourse, then, may shift opinion along the way, but seems ultimately to be theoretically disingenuous or self-defeating. There have been attempts to theorise the 'space' opened up by law, focusing on law's dialectic and the radical appropriation of its categories. Though 'the founding violence persists in law, so does the founding dream that things might be otherwise'/1 so 'finding a utopian dimension to inhere in law may be truly radical'.22 One of the most intriguing, though opaque, of these attempts is by Peter Fitzpatrick.23 Fitzpatrick acknowledges that law's 'determinate content' will respond to 'the demands of predominant power', but holds that such law can still 'pose a ruptural challenge' to 'imperium' by virtue of its 'constituent ethics'- 'an insistence on equality, freedom, and impartiality within law, and an insistence on a regardful community of law'.24 That community and those ethics are not simply posited, but are, it is argued, the result of the fact that law inevitably presumes its own transgression, some of those transgressions fundamentally challenging law's precepts, thereby implying a certain ethical landscape of law itself. Though of considerably more theoretical precision than the various liberal lullabies about the nobility of the rule of law, this negatively derived 'community of law' cannot ultimately, I would argue, be mobilised against the imperial actuality of law, for two main reasons. One is that even the seemingly obviously fundamental violations are not so clear as Fitzpatrick seems to think. He holds for example that the US's notorious incarceration of 'enemy combatants' in Guantanamo Bay is a '[v]iolation which would negate or undermine the very hold of law and its processes' and thereby 'mark a divide between law and empire'.25 In fact, of course, the US is adamant that '[b]oth international law and the US constitution sanction the detention':26 the pararneters of even supposedly fundamental transgressions are not self-evident but as indeterminate as the rest of law. More importantly, the fact is that even where Fitzpatrick's 'ethics of the existent within law' are deemed to have been transgressed, even perhaps candidly by those with power, it is by no means beyond the dialectical virtuosity of those violators to claim that such breaches are necessary to protect the very values being breached (it is this sort of thinking that lay behind the famous, perhaps-apocryphal but all-too-credible pronouncement of an American officer in Vietnam that 'we had to destroy the village to save it'). Concretely, This underlines states' erosion of human rights in anti-terrorism legislation: to protect 'core values of democratic states ruled by law' those democratic states enact laws that undermine those core valuesY An example of a common international legal argument that takes such a shape is the discourse surrounding reprisals activity: 'Reprisals are illegitimate acts of warfare, not for the purpose of indicating abandonment of the laws of war, but, on the contrary, to force compliance to those laws.'28 Such 'bad dialectics' flourish easily even at the level of the fundamental juridical units of international law: [T]he conventional rules associated with Westphalian sovereignty ... can be violated through coercion .... The goal of those interventions ... has been ... to establish a stable polity that would, in the long run, conform with those very same rules.29 Given the flexibility of international law, it is questionable whether the appropriation of its categories- such as, say, a radical focus on the equality of states as a rebuke to concrete inequality - can be systematically progressive, let alone fundamentally emancipatory.

If a space is opened, it is at the same time always-already closing- after all, the principle of equality is also part of the self-legitimation of the actually-existing international system. Some subversive appropriations are ignorable, and where not, they are reappropriable. At a systemic level, for example, the demand of the developing countries for equitable global distribution, encapsulated in the New International Economic Order (NIEO) of the 1970s, was couched in international law's terms, such as those of 'self-determination'.30 However, today's neoliberal international reality, as one textbook rather mildly puts it, 'does not at all seem to be the [NIEO's] radically restructured one'.31 The claim that 'the less powerful' have been able 'to improve their positions in the international political order via the idea of international law' is deeply unconvincing, not only theoretically but empirically.32 The demands for a new global political economy remain legitimate and urgent: the question is, though, just what the NIEO movement gained by couching its demands in terms of international law.33

#### Each iteration of international law condemns colonialism and promises this time will be different. The civilizing mission is built into the structure of international law.

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Positivism and the nineteenth century are an integral part of the contemporary discipline. Simplifying considerably, the nineteenth century could be said to embody a particular set of attitudes and methods. It posits an essentialist dichotomy between the non-European and the European; it characterizes relations between these entities to be inherently antagonistic; it establishes a hierarchy between these entities, suggesting that one is advanced, just and authoritative while the other is backward, violent and barbaric; it asserts that the only history which may be written of the backward is in terms of its progress towards the advanced; it silences the backward and denies it any subjectivity or autonomy; it assumes and promotes the centrality of the civilized; and it **contemplates no other approaches** to the problems of society than those which have been **formulated by the civilized**. Many of these elements are evident in the work of prominent international relations scholars from Samuel Huntington’s influential argument regarding the ‘clash of civilizations’, to Francis Fukuyama’s assertions as to the ‘end of history’. There is a real danger, furthermore, that the important work being done on the distinction between liberal and non-liberal states could embody and reproduce many of the elements and attitudes of the nineteenth century. The nineteenth century may be with us not merely because of conceptual affinities, but because of historical coincidence. Powerful arguments have been made since the collapse of communism that we have arrived at the ‘end of history’ -- that a particular set of ideas, basically those of Western liberalism, provide an **authoritative answer** to the question of what political and economic arrangements are best for mankind. It would appear that the supremacy of Western ideas has been established more powerfully and emphatically now than at any other time since the late nineteenth century. And, as in the late nineteenth century, adoption of the Western systems of democracy and economic liberalization appear to offer the only feasible alternative to states around the globe, whether in Asia, Africa or Eastern Europe. Whatever the differences in legal status and international law since then and now, the present resembles the late nineteenth century in that basic respect. More generally, the nineteenth century offers us an example of a far broader theme: the importance of the existence of the ‘other’ for the progress and development of the discipline itself. Seen from this perspective, the nineteenth century is both distinctive and conventional. Its method, its focus and its techniques are in many respects unique. But in another respect, the nineteenth century is simply one example of the nexus between international law and the civilizing mission. The same civilizing mission was implemented by the vocabulary of naturalism in sixteenth-century international law. Arguably, furthermore, the succeeding paradigm of international law developed in the inter-war period, the paradigm of **pragmatism**, was similarly preoccupied with furthering the civilizing mission **even as it condemned** nineteenth-century positivism for being formalist and colonial. Thus the only thing unique about the nineteenth century is that it explicitly adopted the civilizing mission and reflected its goals in its very vocabulary. The more alarming and likely possibility is that the civilizing mission is inherent in one form or another in the principal concepts and categories which govern our existence: ideas of modernity, **progress, development, emancipation and rights**. I have argued that because sovereignty was shaped by the colonial encounter, its exercise often reproduces the inequalities inherent in that encounter. But the further and broader point is that sovereignty is a flexible instrument which readily lends itself to the powerful imperatives of the civilizing mission, in part because it is through engagement with that mission that sovereignty extends and expands its reach and scope. This is why the essential structure of the civilizing mission may be reconstructed in the very contemporary vocabulary of **human rights**, governance and economic liberalization. In this larger sense, then, the nineteenth century is both a very distinctive, and yet entirely familiar, part of international law.