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**plantext**

***The United States Congress should require a declaration of war for any decision to use or deploy armed forces against a nation-state in circumstances likely to lead to an armed attack.***

***Congress should define “armed attack” as: The use of force of a magnitude that is likely to produce serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property.***

**Contention 1: Wars of Choice**

***First - Commitment trap --- lack of congressional war power causes presidential utterances to become de facto strategy --- this locks us into unnecessary conflicts***

**Brookings Institution** 6-20-20**13**, The Road to War: Presidential Commitments and Congressional Responsibility, <http://www.brookings.edu/events/2013/06/20-war-presidential-power>, jj

**Ever since WWII**, Kalb said that “**history has led us into conflicts that we don’t understand” because presidents do not seek approval from Congress for declarations of war**. ***The country has reached a point now where “presidential power is so great, words out of his mouth become policy for the United States***.” **Kalb used the Syrian civil war and** President **Obama’s “red line” policy as an example of how a president’s words become strategy for the United States**. Kalb argued **that this presidential “flexibility” in foreign policy decision-making has repeatedly led the country into one misguided war to the next such as the Vietnam and Iraq wars**. ***To nullify these poor decisions***, Kalb believes that ***formal congressional declarations of war will help “trigger the appreciation for the gravity of war*” and assist in “unifying the nation” behind a strategic military intervention, resulting in more positive outcomes for the United States**. ¶ He concluded his remarks by noting that ***declarations of war by Congress are “stark commitments*,” and statements by the president of the United States must be thoroughly discussed to make well-informed decisions that will be in the best interest of the American people**. **Conflicts must be understood before the decision is made to send American troops to war, and presidents of the United States should converse with Congress before taking any military action.**

***Second - Groupthink – Comprehensive analysis proves absent sustained congressional involvement in war-making – unnecessary interventions are inevitable***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

II. The Causes of War

**In beginning to think about how to improve the legal constraints on the resort to war, it is essential to consider the causes of international armed conflict**. n10 The question of what causes war is the subject of a massive amount of re-search and debate, stretching back literally thousands of years. n11 **The focus of the various theories on the causes of war range from the individual decision makers, through small-group dynamics, the structure of the state itself, all the way to the structure and operation of the international system of states**. n12 Thucydides, whose analysis of the Peloponnesian War is one of the earliest studies of the subject known to us, set the stage with a complex explanation for the causes of that war that included the individual attributes of decision makers, the nature and structure of the leading city-states, and the nature of the interstate system itself. n13 Kenneth Waltz continues this classification by defining the three levels as "Images": the individual or human level ("Image I"), the level of the state structure or organization ("Image II"), and the level of the international system ("Image III"). n14 And despite the differing theories, disagreements, and areas of emphasis, there is a widely shared acceptance that all three Images play a role in explaining the causes of war, albeit to varying degrees [\*617] depending on one's theoretical perspective. n15 While it is not necessary for us to examine the various theories in detail, it will be helpful to get a flavor for some of the more important ideas as they relate to each of the three Images, as I will refer back to these ideas to support the argument for the proposed Model.

A. Image I--The Level of the Individual

**There are a wide variety of theories, and indeed a number of different sublevels within the Image I--the individual level--perspective on the causes of war. Some of these focus on aspects such as human nature itself and the inherent aggression of ~~man~~**. n16 **But the theories that relate to both the psychology of decision makers, and a number of systemic problems in small-group decision making are of greatest significance for the argument being advanced here**. **Beginning with individual psychology, one set of theories focus on the personality traits that are common among those who tend to reach the highest offices of government as factors that contribute to unsound judgments regarding the use of armed force**. **Empirical studies suggest that a number of traits that tend to be overrepresented in national leaders--such as au-thoritarian and domineering tendencies, introversion** (which is perhaps counter-intuitive, but Hitler and Nixon are both prime examples of this trait), **narcissism, and high-risk tolerance--also tend to correlate with much higher levels of con-frontation and the use of force to resolve conflicts**. n17

Psychological theories also focus on problems of misperception. **There is powerful evidence that people are prone to systematic patterns of misperception, and that such misperception in government leaders contributes significantly to irrational decisions**. n18 In particular, **decision makers frequently form strong hypotheses regarding the intentions** [\*618] **and capabilities of potential adversaries, and there is a strong tendency to then dismiss or discount information that is inconsistent with the hypothesis, and to interpret ambiguous information in a manner that is consistent with and reinforces the hypothesis**. n19 **Such misperception often constitutes a significant factor in the path to war**. n20

Another set of theories that relate to the Image I causes of war focus not on the individual alone, but on how deci-sions are made within groups and organizations. Contrary to the expectation that government agencies generally operate in accordance with rational choice theory, **studies suggest that group decision making is often characterized by dynamics that can lead to irrational and suboptimal decisions**. One such characteristic is excessive "incrementalism" and "satisfycing"--the tendency to make small incremental policy shifts, coupled with the sequential analysis of options and adoption of the first acceptable alternative, a process captured in the aphorism "the good is the enemy of the best." n21 **A second theory suggests that the dynamic of competing bureaucratic and departmental interests--interests which are often inconsistent with the larger national interest, but which nonetheless command greater loyalty and mobilize greater effort among department or division members--subvert the decision-making process**. n22 **Moreover, each department will itself approach the decision making within the constraints of its own perspectives and mindsets, standard operating procedures, and capabilities. This is the famous "where you stand is where you sit" explanation of internal government politics**, n23 **often referred to as the** [\*619] "**bureaucratic politics model**." n24 For **example, the senior representatives of the U.S. Air Force, with obviously vested interests, strongly argued in favor of the continued strategic bombing of North Vietnam in 1967, even though the Secretary of Defense and others in the Nixon administration had determined that it was at best pointless and at worst counterproductive**. n25

**Finally, there is the phenomenon known as "*groupthink***." n26 **This theory suggests that some decision-making groups--particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfi-dence, and a shared world view or value system--suffer from a deterioration in their capacity to engage in critical analysis during the decision-making process**. n27 **Decision-making groups that suffer from groupthink are particularly vulnerable to the kind of systemic misperception discussed above, but they suffer from other weaknesses as well, all stemming from a failure to challenge received wisdom, consider alternate perspectives, or bring to bear exogenous criteria or modalities in assessing policy options**. n28

These theories do not, of course, explain all of the problems in decision making in all situations. Groupthink and the bureaucratic politics model generally do not operate at the same time in the same groups. But **the studies of each of these phenomena suggest that these systemic patterns can be a significant factor in the less-than-rational and suboptimal decision making about the use of armed force.** **And these theories together show the importance of introducing exogenous criteria for assessing the merit of competing policy options, and the kinds of checks and balances that might lessen the probability that these tendencies could affect the decision to go to war.** [\*620]

B. Image II--The Level of the State

**The causes of war also operate at the level of the state itself. Again, there is an extensive range of theoretical ex-planations for the causes of war that focus on factors at the state level, but those that are central to Image II relate to the actual structure or form of the government of the state**. n29 **The essential idea is that some forms of government are inherently less prone to wage war than others**. **This idea has been central to liberal theories of the state and international relations since the beginning of the eighteenth century, with the argument that liberal democratic states are less inclined to initiate wars than autocratic or other nondemocratic states**. These arguments were founded upon a number of strands of liberal political theory, including the nature of individual rights within democracies and the manner in which respect for such rights would influence how the state would behave within the international society. n30 They also drew upon liberal ideas about the influence of capitalist economies, arguing that laissez-faire capitalist systems would operate to reduce the incentives for war in liberal democratic states. n31 But **perhaps the most important argument among these liberal claims, is that the very structure of government, both in terms of its leaders being representative of and directly accountable to an electorate, and the separation of political power between the executive and a more broadly representative legislature, would operate to reduce the likelihood that such governments would embark on military adventures**. n32

Rousseau and Madison both wrote about the ramifications of the democratic structure of the state on the propensity for war. n33 But it was Immanuel Kant who developed the argument most fully in the eighteenth century with his [\*621] short work Perpetual Peace: A Philosophical Sketch. n34 Writing at a time when there were less than a handful of fledgling democratic "republics" in the world, n35 **Kant argued that a perpetual peace would result from the spread of the republican form of government among the nations of the world and the development of a form of pacific federation among these free states**. n36 His argument thus straddled the second and third images, and I will return to discuss his overall theory more fully below when we turn to consider Image III. But one of his arguments for why republics would be inherently less likely to wage war is still very much at the heart of current liberal theories relating to Image II. His point was that, **in the kind of republic he envisioned, the consent of citizens would be required for decisions to go to war**. **Those who would "call[] down on themselves all the miseries of war," not only fighting and dying in the conflict but also paying for it and suffering the resulting debt, would be much less likely to agree to such an adventure than the heads of state in other kinds of political systems such as monarchies, who can "decide on war, without any significant reason**." n37

As we will see, Kant himself did not argue that the development of democratic structures within any given state would be sufficient to prevent it from going to war, and his theory of perpetual peace also rested on the requirement that the republican form of government be also spread throughout the international system. Indeed, **one of the problems with liberal theories that rely upon governmental structure as an explanation for the cause of war is that the extensive empirical research and analysis on the subject suggest that liberal democracies are almost as prone to engaging in war as nondemocratic states, at least as against nondemocratic countries**. n38 **Some have tried to argue that liberal democracies nonetheless do not initiate wars to the same degree, and thus** [\*622**] are inherently less aggressive than other forms of government, but even that claim is very difficult to sustain from the perspective of traditional international law conceptions of aggression and self-defense**. n39

What has emerged from this line of research, however, is the widely accepted proposition that liberal democracies do not commence wars against other liberal democracies. The so-called "democratic peace" encompasses both this empirical fact and the principle said to explain it. n40 While there remains some residual debate over the validity of the principle, n41 persuasive evidence suggests that, with the possible exception of two instances of armed conflict between what might be considered democratic states, there have been no wars between liberal democracies during the period between 1816 and 1965. n42 The assertion has been made, and often cited, that the democratic peace is close to being an empirical law in international relations. n43

**There is less agreement over the best explanation for the democratic peace. There are two main theoretical posi-tions: (1) normative and cultural explanations, and (2) institutional and structural constraints**. n44 The normative-cultural explanations argue that the shared norms of democracies, and particularly the shared adherence to the rule of law and commitment to peaceful dispute resolution internally, inform and influence the approach of democratic governments to [\*623] resolving disputes that may arise as between democracies. Moreover, there is a shared respect for the rights of other people who live in a similar system of self-government. These shared beliefs, norms and expectations tip the cost-benefit analysis toward peaceful resolution of disputes when they arise as among democracies. n45

**The structural-institutional advocates argue that the elements of the liberal democratic legal and political system operate to constrain the government from commencing armed conflicts**. **This is entirely in line with the insights of earli-er writers such as Madison, Kant, and Cobden, regarding the lower likelihood of war when representatives of those who will pay and die for the war are deciding, since it is more politically risky for democratic leaders to gamble the blood and treasure of the nation in war unless it is clearly viewed by the public as being necessary**. n46 **The arguments are also based in part on the broader idea that structural checks and balances typical of democratic systems, and the operation of certain other institutional features of deliberative democracy, will reduce the incidence of war**. n47 We will return to some of these arguments in more detail below.

***Third - Lack of public awareness about war power issues allows uninhibited intervention***

**Druck ’12**, Judah A. Druck, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013; Notes Editor, Cornell Law Review, Volume 98, November, 2012¶ Cornell Law Review¶ 98 Cornell L. Rev. 209, NOTE: DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLO-GY-DRIVEN WARFARE, Lexis, jj¶

The War Powers Resolution in the Era of Technology-Driven Warfare

A. Why an Unconstrained Executive Matters Today

**If public scrutiny acts as a check on presidential action by pressuring Congress into enforcing domestic law** (namely, the WPR), **then that check has weakened given the increased use of technology-driven warfare abroad**. n135 As a result, **fewer checks on presidential military actions exist, implying that we will see more instances of unilateral presidential initiatives**. **But if the new era of warfare removes the very issues associated with traditional warfare, should we be con-cerned about the American public's increasing numbness to it all? The answer is undoubtedly yes.**

**First, from a practical standpoint, the psychology surrounding mechanized warfare makes it easier for the United States to enter hostilities initially**. n136 **Without having to worry about any of the traditional costs of war (such as a draft, rationing, casualties, etc.), the triggers that have historically made the public wary of war are now gone**. **When ma-chines, rather than human beings, are on the front lines, the public** (and, as a result, politicians and courts) **will not act to stop the continued use of drones. In other words, people will simply stop caring about our increased actions abroad**, regardless of their validity, constitutionality, or foreign harm.

But again one must wonder: should we care? After all, even if we increase the number of military conflicts abroad, the repercussions hardly seem worth worrying about. For example, worrying that WPR violations will cause significant harm to the United States seems somewhat misplaced given the limited nature of technology-driven warfare. Granted, this style of warfare might make it easier to enter hostilities, but the risk of subsequent harm (at least to the United States) is low enough to mitigate any real danger. Furthermore, even if the effects of warfare might become increasingly dulled, any use of force that would eventually require traditional, Vietnam-esque types of harms as the result of technology-driven warfare would in a sense "wake up the populace" in order to check potentially unconstitutional action. n137 [\*232] Thus, if our level of involvement requires machines and only machines, why worry about a restrained level of public scrutiny?

The answer is that **a very real risk of harm exists nonetheless. War by its very nature is unpredictable**. n138 Indeed, **one of the major grievances concerning the war in Vietnam was that we ended up in a war we did not sign up for in the first place**. n139 ***The problem is not the initial action itself but the escalation***. Therefore, **while drone strikes might not facially involve any large commitment, the true threat is the looming possibility of escalation**. n140 **That threat exists in the context of drones, whether because of the risk of enemy retaliation or because of a general fear that an initial strike would snowball into a situation that would require troops on the ground**. n141 **In both cases, an apparently harmless initial action could eventually unravel into a situation involving harms associated with traditional warfare**. n142 Worse yet, even if that blowback was sufficient to incentivize the populace and Congress to mobilize, the resulting involvement would only occur after the fact. n143 **If we want restraints on presidential action, they should be in place before the United States is thrown into a war, and this would require public awareness about the use of drones**. n144 As such, **whether it is unforeseen issues arising out of the drones themselves** n145 **or unforeseen consequences stemming from what was ostensibly a minor military undertaking, there is reason to worry about a** [\*233**] populace who is unable to exert any influence on military actions, even as we shift toward a more limited form of warfare**. n146

Another issue associated with a toothless WPR in the era of technology-drive warfare involves humanitarian con-cerns. If one takes the more abstract position that the public should not allow actions that will kill human beings to go unchecked, regardless of their legality or underlying rationale, then that position faces serious pressure in the era of technology-driven warfare. As the human aspect of warfare becomes more attenuated, **the potential humanitarian costs associated with war will fade out of the collective consciousness, making it easier for the United States to act in potentially problematic ways without any substantial backlash**. Rather than take note of whom we target abroad, for example, **the numbing effect of technology-driven warfare forces the public to place "enormous trust in our leaders" despite the fact that good faith reliance on intelligence reports does not necessarily guarantee their accuracy**. n147 Accordingly, **as the level of public scrutiny decreases, so too will our ability to limit unwarranted humanitarian damage abroad**. n148 **At the very least, some dialogue should occur before any fatal action is taken; yet, in the technology-driven warfare regime, that conversation never occurs.** n149

***Finally – these wars escalate – miscalc alone triggers the impact***

**Crowe**, writer for the International Press Service, January 20**06** (Naman, “How to avoid nuclear war,” http://www.ipsfeatures.com/Menu/Naman/2006/1-23-06%20how%20to%20avoid%20nuclear%20war.htm)

**History has moved us into the nuclear age, an age more dangerous and threatening to the continued existence of life itself on this planet than anyone could have ever conceived of or imagined before the birth of the atomic bomb**. We are only 60 years into this age, which is the same age as myself, and yet **the reality of nuclear war and the destruction of all life is speeding toward us and picking up speed so fast it could happen almost any day now**. **The only way to avoid this is to change our direction as nations of people around the world, united in the same cause - the survival of the human race**. **This cannot be achieved by a single nation such as America deciding that it will be the Supreme Commander-in-Chief, deciding what nations should have nuclear weapons and what nations shouldn't, deciding that it has the supreme right and duty to overturn any sovereign nation that it determines to turn over and change it's government and force it to yield to its will**, even if it has to overrule the United Nations itself, disregard International Law and become the LAW, the Jesus Figure, the God Figure, the Supreme Ruler, the Commander-in-Chief of the World. **This kind of thinking**, as represented by the Christian, Conservative, Right Wing Neocon Republicans, Chicken Hawks and Bushites, **can only speed up the process which is leading us to world-wide destruction**. **That is not the proper direction if we want to bring about peace and avoid a nuclear collision**. The proper direction is through peace. The final question is do we as a people have the ability to really look at the details and see the truth, or do we continue our blind race into the black face of that fast approaching and final good night. **There are times when nations have to defend themselves from actual attack and actual for-real, bona fide, serious, not-made-up threats of actual attack**. There are times when the attackers win and kill the weak and take over nations and rule over the people, the way Hitler did to Poland and other nations. **But that doesn't make it right, nor does it naturally follow that it therefore gives the sole surviving superpower, America, the right to break International Law and attack a nation which is not a threat to it and has not harmed it and is too weak to be a threat to any other nation**. **It doesn't follow that the superpower’s executive branch has the right to lie and deceive the Congress and the people of America and the world in order to carry out an evil and illegal power grab through war and the slaughter of tens of thousands for no just reason.** Regime change is not a just reason. No nation, not even all the nations of the world combined, has a right to attack and take over another nation for the sole purpose of regime change. Regime change, for the purpose of removing Saddam Hussein and changing the government of Iraq into a Democracy, was the sole purpose behind President George W. Bush’s illegal attack on Iraq which has resulted in the deaths of unknown thousands, maybe as much as 100,000 Iraqi people.

***High tempo interventions draw in outside powers***

**Friedman 11** – George Friedman, President of Stratfor Global Forecasting, “What Happened to the American Declaration of War?”, Stratfor, 3-29, http://www.stratfor.com/weekly/20110328-what-happened-american-declaration-war

An Increasing Tempo of Operations

All of this came just before **the *U***nited ***S***tates **emerged as the world's single global power** -- a global empire -- that by definition **would be waging war at an *increased tempo*, from Kuwait, to Haiti, to Kosovo, to Afghanistan, to Iraq, and so on in an *ever-increasing number* of operations**. And now in Libya, we have reached the point that even resolutions are no longer needed.

It is said that **there is no precedent for fighting al Qaeda**, for example, because it is not a nation but a subnational group. Therefore, Bush could not reasonably have been expected to ask for a declaration of war. But there is precedent: Thomas Jefferson asked for and received a declaration of war against the Barbary pirates. This authorized Jefferson to wage war against a subnational group of pirates as if they were a nation.

**Had Bush requested a declaration of war on al Qaeda** on Sept. 12, 2001, I suspect **it would have been granted overwhelmingly, and the public would have understood that the *U***nited ***S***tates **was now at war for as long as the president thought wise**. The president would have been free to carry out operations as he saw fit. Roosevelt did not have to ask for special permission to invade Guadalcanal, send troops to India, or invade North Africa. In the course of fighting Japan, Germany and Italy, it was understood that he was free to wage war as he thought fit. In the same sense, a declaration of war on Sept. 12 would have freed him to fight al Qaeda wherever they were or to move to block them wherever the president saw fit.

Leaving aside the military wisdom of Afghanistan or Iraq, **the legal and moral foundations would have been clear** -- so long as the president as commander in chief saw an action as needed to defeat al Qaeda, it could be taken. Similarly, as commander in chief, Roosevelt usurped constitutional rights for citizens in many ways, from censorship to internment camps for Japanese-Americans. Prisoners of war not adhering to the Geneva Conventions were shot by military tribunal -- or without. In a state of war, different laws and expectations exist than during peace. Many of the arguments against Bush-era intrusions on privacy also could have been made against Roosevelt. But Roosevelt had a declaration of war and full authority as commander in chief during war. Bush did not. He worked in twilight between war and peace.

One of the dilemmas that could have been avoided was the massive confusion of whether the United States was engaged in hunting down a criminal conspiracy or waging war on a foreign enemy. If the former, then the goal is to punish the guilty. If the latter, then the goal is to destroy the enemy. Imagine that after Pearl Harbor, FDR had promised to hunt down every pilot who attacked Pearl Harbor and bring them to justice, rather than calling for a declaration of war against a hostile nation and all who bore arms on its behalf regardless of what they had done. The goal in war is to prevent the other side from acting, not to punish the actors.

The Importance of the Declaration

**A declaration of war**, I am arguing, **is an *essential aspect* of war fighting particularly for the republic when engaged in frequent wars**. It achieves a number of things. First, **it holds both Congress and the president equally responsible for the decision, and does so unambiguously**. Second**, it affirms to the people that their lives have now changed and that they will be bearing burdens**. Third, **it gives the president the political and moral authority** he needs **to wage war** on their behalf **and forces everyone to share** in the **moral responsibility** of war. And finally, **by submitting it to a political process, *many wars might be avoided***. When we look at some of our wars after World War II it is not clear they had to be fought in the national interest, nor is it clear that the presidents would not have been better remembered if they had been restrained. **A declaration of war *both frees and restrains* the president**, as it was meant to do.

I began by talking about the American empire. I won't make the argument on that here, but simply assert it. What is most important is that the republic not be overwhelmed in the course of pursuing imperial goals. The declaration of war is precisely the point at which imperial interests can overwhelm republican prerogatives.

There are enormous complexities here. ***Nuclear war* has not been abolished. The *U***nited ***S***tates **has treaty obligations to the *U***nited ***N***ations **and other countries. Covert operations are essential, as is military assistance, both of which can lead to war**. I am not making the argument that constant accommodation to reality does not have to be made. I am making the argument that the **suspension of Section 8** of Article I as if it is possible to amend the Constitution **with a wink and nod represents a *mortal threat*** to the republic. If this can be done, what can't be done?

My readers will know that I am far from squeamish about war. I have questions about Libya, for example, but I am open to the idea that it is a low-cost, politically appropriate measure. But I am not open to the possibility that quickly after the commencement of hostilities the president need not receive authority to wage war from Congress. And I am arguing that neither the Congress nor the president has the authority to substitute resolutions for declarations of war. Nor should either want to. Politically, this has too often led to disaster for presidents. Morally, committing the lives of citizens to waging war requires meticulous attention to the law and proprieties.

**As** our **international power and interests *surge*, it would seem reasonable that** our **commitment to republican principles would surge**. These commitments appear inconvenient. They are meant to be. **War is a serious matter, and presidents and** particularly **Congresses *should be inconvenienced* on the road to war**. Members of **Congress should not** be able to **hide behind ambiguous resolutions** only to turn on the president during difficult times, claiming that they did not mean what they voted for. **A vote on a declaration of war** ends that. It also ***prevents a president from acting as king* by default**. Above all, it prevents the public from pretending to be victims when their leaders take them to war. **The possibility of war will *concentrate* the mind of a distracted public *like nothing else***. It turns voting into a life-or-death matter, a tonic for our adolescent body politic.

***Independently, the aff breaks imperialism, militarism and aggressive foreign policy***

**Fisher ’05**, LOUIS FISHER, Specialist with the Law Library, The Library of Congress. Ph.D., New School for Social Research, 1967; B.S., College of William and Mary, 1956, Indiana Law Journal¶ Fall, 2005¶ 81 Ind. L.J. 1199, Lost Constitutional Moorings: Recovering the War Power, LEXIS, jj

**The initiation of U.S. military operations in Iraq flowed from a long list of miscalculations, false claims, and misjudgments, both legal and political. Errors of that magnitude were not necessary or inevitable. Military conflict could have been delayed**, perhaps **permanently, had the responsible political leaders performed their constitutional duties with greater care, reflection, integrity, and commitment to constitutional principles**. Adding to the failures of elected officials were decades of irresponsible and misinformed statements by federal judges, academics, law reviews, and the media.¶ **Although the Iraq War that began in 2003 was orchestrated by the Republican Party and the Bush administration, their miscalculations built upon a half century of violations of constitutional principles over the war power**. **Democratic Presidents led the country to war against North Korea** (President Harry Truman), North **Vietnam** (President Lyndon Johnson), **and Serbia** (President Bill Clinton). **Republican neoconservatives beat the drums for war against Iraq, but Democratic academics did the same for Korea**. **The dominant theme in American foreign policy since World War II has been a bellicose spirit that champions the use of military force, boasts the virtues of "American exceptionalism," stands ready to fight "evil" anywhere** (**whether Soviet Communism or Islamic fundamentalism), and regularly attacks opponents of war as unpatriotic and unmanly**. **That these forces led to torture by U.S. soldiers at Abu Ghraib or CIA "black sites" should come as no surprise. They are the natural results of concentrated power, political arrogance, and ideological fervor.**

**Contention 2: Cult of the Presidency**

***Politics is ceded to the president now --- Americans believe the president will solve all problems --- that ensures an unrestrained imperial president --- only increasing public deliberation on the presidency allows a reinvigoration of politics***

Gene **Healy ‘09** is an American political pundit, journalist and editor. Healy is a Vice President at the libertarian think tank Cato Institute, as well as a contributing editor to Liberty magazine. Cult of the Presidency : America's Dangerous Devotion to Executive Power. Washington, DC, USA: The Cato Institute, 2009. p 2-3. http://site.ebrary.com/lib/wayne/Doc?id=10379710&ppg=12 Copyright © 2009. The Cato Institute. All rights reserved.

Nearly six years earlier, September 11 had inspired similar rhetorical excess, but with far greater consequence. The week after the attacks, President Bush invoked America’s ‘‘responsibility to history’’ and declared that we would ‘‘answer these attacks and rid the world of evil .’’ 5 A mission that vast would seem to require equally vast powers. And the Bush administration has made some of the broadest assertions of executive power in American history: among them, the power to launch wars at will, to tap phones and read e-mail without a warrant, and to seize American citizens on American soil and hold them for the duration of the War on Terror— in other words, perhaps forever— without ever having to answer to a judge. Those assertions have justifiably given rise to fears of a new Imperial Presidency. Yet, many of the same people who condemn the growing concentration of power in the executive branch also embrace a virtually limitless notion of presidential responsibility. **Today, politics is as bitterly partisan as it’s been in three decades, and the Bush presidency is at the center of the fight. But amid all the bitterness, it’s easy to miss the fact that, at bottom, both Left and Right agree on the boundless nature of presidential responsibility. Neither Left nor Right sees the president as the Framers saw him: a constitutionally constrained chief executive with an important, but limited job: to defend the country when attacked, check Congress when it violates the Constitution, enforce the law— and little else**. Today, for conservatives as well as liberals, it is the president’s job to protect us from harm, to ‘‘grow the economy,’’ to spread democracy and American ideals abroad, and even to heal spiritual malaise— whether it takes the form of a ‘‘sleeping sickness of the soul,’’ as Hillary Clinton would have it, or an ‘‘if it feels good, do it’’ ethic, as diagnosed by George W. Bush. 6 **Few Americans find anything amiss in the notion that it is the president’s duty to solve all large national problems and to unite us all in the service of a higher calling. The vision of the president as national guardian and redeemer is so ubiquitous that it goes unnoticed**. Is that vision of the presidency appropriate for a self-governing republic? Is it compatible with limited, constitutional government? The book you’re holding argues that it is not. **Americans’ unconfined conception of presidential responsibility is the source of much of our political woe and some of the gravest threats to our liberties. If the public expects the president to deal with all national problems, physical or spiritual, then the president will seek— or seize— the power necessary to handle that responsibility. We’re right to fear the growth of presidential power. But the Imperial Presidency is the price of making the office the focus of our national hopes and dreams.**

***Deliberation about war powers is key to check the unitary executive --- policy relevant debate about war powers decision-making is critical to hold the government accountable for their hypocrisy --- only engaging specific proposals and learning the language of the war-machine solves***

Ewan E. **Mellor** – European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference 20**13**, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, online

**This section of the paper considers** more generally **the need for** just war **theorists to engage with policy debate about the use of force**, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. **It draws on John Kelsay’s conception of just war thinking as being a social practice**,35 **as well as on** Michael **Walzer’s understanding of the role of the social critic in society**.36 It argues that **the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.**”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “**good just war thinking involves continuous and complete deliberation**, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 **This is important as it highlights the need for** just war **scholars to engage with the ongoing operations in war and the specific policies that are involved**. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. **Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”**40 **in terms of being able to discuss it and judge it in moral terms**.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. **The** just war **theorist, as a social critic, must be involved with his or her own society and its practices**. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 **the** just war **theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted**.42 **It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to**¶ **demonstrate its hypocrisy and to show the gap that exists between its practice and its values**.43 **The tradition** itself provides a set of values and principles and, as argued by Cian O’Driscoll, **constitutes a “language of engagement” to spur participation in public and political debate.**44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 **By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis**.¶ **Engaging with the reality of war requires recognising that war is**, as Clausewitz stated, **a continuation of policy**. **War**, according to Clausewitz, **is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued**.47 ***Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship***.48 ***This engagement must bring*** just war ***theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers***, **however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power**. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition **the policy-makers will be forced to account for their decisions and justify them in just war language**. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 **it is incumbent upon** just war **theorists to ensure that the public are informed and are capable of holding their political leaders to account**. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, **it is precisely because it is “our country” that we are “especially obligated to criticise its policies**.”51

***Without deliberation about the presidency, progressive politics is impossible --- conservative social movements will inevitably engage the presidency --- the left can only be effective by recognizing that politics flows through the presidency --- the global uniquely shapes the local in this context***

Institutional focus is key – any other starting point ignores the primacy of the presidency to American politics ---

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**This article analyzes the often fraught yet sometimes productive relationship between the modern presidency and social movements**. Although the presidency-social movement nexus is fraught with tension, ***collaboration between the White House and social activists was indispensable to the important changes that occurred during the second half of the twentieth century***. **Focusing especially on** Lyndon **Johnson's uneasy but critical relationship to the civil rights movement** and Ronald Reagan's enlistment of the Christian Right into the Republican Party, **we trace the emergence of a novel form of politics since the 1960s that joins executive prerogative, grassroots insurgency, and party polarization**. **Johnson's efforts to leverage presidential power to advance civil rights played a critical role in recasting the relationship between national administration and social movements**, one that paved the way for a national conservative offensive. The relationship forged between Johnson and the civil rights movement has echoes in the similar joining of the Reagan presidency and the Christian Right, an executive-insurgency alliance that instigated the transformation of the Republican Party and spurred the development a new presidency-centered party system by the end of the 1980s.

**This article explores the relationship between the modern presidency and social movements, an uneasy but critical alliance in the quest for both liberal and conservative reform during the past half-century**. Focusing on Lyndon Johnson's relationship to the civil rights movement and Ronald Reagan's collaboration with the Christian Right, **we explore the idea**, born of the Progressive era, **that the presidency is inherently disposed to ally itself with major reform movements**. **Presidency scholars, like many citizens, regularly perceive occupants of the Oval Office as leading agents of change in a labyrinthine political system that can be difficult to navigate**. Social movement scholars, in turn, associate social and political transformation with organized, collective insurgencies of ordinary people motivated by common purposes or social solidarities. By definition, social movements are, to borrow James Jasper's words, "conscious, concerted, and relatively sustained efforts by organized groups ... to change some aspect of their society by using extra-institutional means" (1999, 5).

**Although both presidents and social movements have played leading roles in the development of major legal and policy innovation over the course of American political development, the respective literatures on executive power and insurgency rarely intersect**. **Salutary efforts to probe the subject tend to emphasize the inherent conflict between a centralizing institution tasked with conserving the constitutional order and grassroots associations dedicated to structural change** (e.g., see Riley 1999; Sanders 2007). **To be sure, the relationship between presidents and insurgents is fraught with tension; nonetheless, it has significant formative potential given the ambition and capacity of both actors under opportune conditions to transform the political order**. For all of their differences, ***the ambitions and work of presidents and movements are sometimes complementary rather than antagonistic.***

Our central point is that the emergence of **the modern presidency recasts in important ways the relationship between executive power and social movements**. Constrained by constitutional norms, the separation and division of powers, and a decentralized party system, the disruptive potential of executive power was often limited until the twentieth century. **With the advent of the modern presidency during the Progressive era**, however, **the White House was more likely to challenge the existing order of things**. To be sure, modern executives regularly have shied away from close relationships with controversial social movements and sometimes openly attacked them (Tichenor 1999, 2007). Nonetheless, ***the consolidation of the modern presidency during the New Deal realignment invested the executive with powers and public expectations that made it a critical agent of social and economic reform*** (Milkis 1993). **Once the White House became the center of growing government commitments, its occupants were more likely to profess support for the same high ideals that prominent social movements in their camps championed** (Miroff 1981,14).

**The idea that the executive office might act as a spearhead for social justice-a rallying point for democratic reform movements-reached a critical juncture during the Johnson presidency**. **The nation received glimpses of the transformational possibilities of presidential-movement collaborations during the presidencies of Theodore Roosevelt, Woodrow Wilson, Franklin Roosevelt, Harry Truman, and John F. Kennedy**. But they also demonstrated the deep conflicts of interest and ideology that inherently divided presidents and movements. **Only with Lyndon Johnson was the full panoply of modern presidential powers-political, administrative, and rhetorical-deployed on behalf of insurgent interests and demands**. Johnson claimed broad authority to transform domestic policy on his own terms at a time when Congress and parties were subordinate to a "modern" presidency at high tide and a national administration unprecedentedly expansive. This also was a period when the civil rights movement's ability to blend and balance disruptive collective action and conventional political pressure was at its zenith. Consequently, **Johnson and the civil rights movement formed a more direct, combustible, and transformative relationship than was true of previous collaborations between presidents and social movements** (Milkis and Tichenor 2011). **The result was both a historic body of civil rights reforms** and enormous political fallout for Johnson and the Democratic Party.

**A little more than a decade later, a new executive-insurgency alliance spurred a national conservative offensive**. Like Johnson, Reagan commanded a strong and active presidency that reshaped national law and policy commitments, but he sought to deploy modern executive power to achieve conservative objectives. Some of these purposes, most notably a more aggressive anti-Communist agenda and the protection of "family values," required the expansion rather than the rolling back of national governmental responsibilities. Moreover, by the time Ronald Reagan became president, cultural forces unleashed by the Great Society had created a more polarized political environment. **Reagan's contribution to the development of a decidedly right of center modern Republican Party, pledged to advance issues of critical importance to Christian conservatives, made the GOP an attractive venue for the forging a strong bond between the White House and Christian Right**. As we shall see, **the fact that Christian conservatives were less suspicious of executive power than civil rights activists had been might have diminished the Christian Right's reformist potential**. **Yet with their impressive march through American political institutions, these religious movement activists joined with Reagan in advancing a more centralized, polarized, and programmatic party system that defied national consensus and enduring reform, and appeared to issue, instead, a rancorous struggle between conservatives and liberals for control of the modern executive office.**

The two cases examined in this article thus shed light on important developments in American politics. Johnson's alliance with the civil rights movement and Reagan's ties with the Christian right mark critical episodes in the confluence of executive prerogative and insurgency that both infused politics with moral fervor and sharpened conflict between liberals and conservatives. By the end of the 1980s, these new strains had formed into a novel form of party politics that joined presidential prerogative, grassroots mobilization, and partisan polarization. We seek to take account of this transformation of American politics in the conclusion, suggesting that the **critical, tense alliances presidents have forged with social movements over the past half-century have advanced reforms and visions of an alternative political order**-but at the risk of weakening the means of common deliberation and public judgment, the very practices that nurture a civic culture.

***We must engage the presidency --- focus on purely local politics contributes to the decline of liberalism and resurgence of conservative moments***

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For a time, **LBJ's "careful practicality" and moral leadership made him an indispensable ally of the civil rights movement**. His greatest strength as majority leader of the Senate had been personal persuasion, a talent he now used to convince the Senate Republican leader, Everett Dirksen, to endorse the 1964 civil rights bill and enlist moderate Republicans in the cause. This support came with a price. Dirksen insisted on compromises that reduced the power of the Equal Employment Opportunity Commission (EEOC) and limited the authority of the Justice Department to bring suits against businesses to those situations in which a clear "pattern and practice" of discrimination existed.3 These compromises addressed moderate Republicans' distaste for overlapping bureaucracies and excessive litigation, as well as their desire to protect northern and western businesses from intrusive federal agencies. Still, the principal objective of the civil rights bill-eliminating entrenched segregation in the South-was preserved.¶ Dirksen's support of the civil rights bill also followed from the senator's perception, confirmed by the president's successful southern tour, that public opinion had turned in favor of civil rights. Investing the power and prestige of his office in a cause and a movement, Johnson persuaded Dirksen and most members of Congress that civil rights reform could no longer be resisted. As Dirksen put it, paraphrasing Victor Hugo's diary, "No army is stronger than an idea whose time has come."4 Johnson signed the Civil Rights Act on July 2, 1964.¶ **Throughout the fight for this legislation, Johnson drew strength from and collaborated with civil rights leaders, even seeking their support for his decision not to delay signing the bill until Independence Day**.5 More controversially, most civil rights activists accepted the compromise that the Johnson White House struck with Mississippi Freedom Democratic Party (MFDP) at the 1964 Democratic Convention, which included seating of the regular Mississippi delegation.6 In return, the deal included the symbolic gesture of making MFDP delegates honored guests at the convention, with two of its members seated as special delegates at large, and a prohibition of racial discrimination in delegate selection at the 1968 convention. The Student Nonviolent Coordinating Committee (SNCC) and the Committee of Racial Equality (CORE) assailed the White House for sacrificing the MFDP's moral cause on the altar of expediency. But the MFDP, through its lawyer Joseph Rauh, joined King and most moderate civil rights leaders in swallowing the compromise.7 Not only were southern states threatening to walk out of the convention if the regular Mississippi delegation was purged, but Johnson and Democratic leaders also warned civil rights leaders that an unruly convention would cost the party the support of several border states and deprive Democrats of a chance to win a historic landslide-and a mandate for further reform.8¶ Just as important, Johnson's support for a nondiscrimination rule would have enormous long-term consequences for the Democratic Party. Previously, state parties had sole authority to establish delegate selection procedures. Johnson's proposed solution to the MFDP compromise established the centralizing principle that henceforth the national party agencies would decide not only how many votes each state delegation got at the national convention, but also would enforce uniform rules on what kinds of persons could be selected (Milkis 1993, 210-16). 9¶ Having gained credibility with civil rights leaders during the first critical year of his presidency, **Johnson solidified an alliance with them during the dramatic prelude to the 1965 voting rights legislation that ultimately enfranchised millions of African Americans**. New archival materials, specifically the Johnson Tapes, clarify that **Johnson did not want to go slow after the 1964 act. LBJ not only pushed aggressively to continue the advance of civil rights, but also seemed to welcome the movement's ability to disrupt politics-as-usual and to spur action**. On January 15, 1965, for instance, Johnson put in a call to King urging more grassroots protest that would increase pressure on Congress by dramatizing "the worst conditions [of blacks being denied the vote] that you can run into . . . If you can take that one illustration and get it on the radio, get on the television, get it in the pulpits, get it in the meetings-every place you can-then pretty soon the fellow who didn't do anything but drive a tractor would say, 'Well, that is not right- that is not fair.'¶ Johnson later might have had second thoughts about this importunity, since King and civil rights activists would take direct action in Selma, Alabama, that aroused massive resistance from local police and state troopers as well as national demonstrations in support of the marchers, some of which were directed at the president for not taking immediate action to avert the violence. Nonetheless, when King sought his public endorsement of the Selma campaign, Johnson championed the demonstrators' cause despite the efforts of White House aides to shield him from public involvement in the crisis. "I should like to say that all Americans should be indignant when one American is denied the right to vote ... all of us should be concerned with the efforts of our fellow Americans to register to vote in Alabama," Johnson said. "I intend to see that the right [to vote] is secured for all our citizens."11¶ In March of 1965, as the crisis in Selma worsened, Johnson delivered his famous voting rights message to Congress. His speech warned that the enactment of the voting rights bill was but one front in a larger war that must include not just federal laws to throw open the "gates of opportunity," but also affirmative action against ignorance, ill health, and poverty that would enable individual men and women to "walk through those gates." As he memorably closed, "Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome" (Johnson 1965a).¶ LBJ had not won over southern congressmen, most of whom slumped in their seats as the joint session erupted in applause. Yet he had triumphed where FDR failed- without embroiling himself in an enervating purge campaign against conservative Democrats, as Roosevelt had in 1938, he joined civil rights activists to discredit southern resistance to racial justice.12 Dr. King, watching the speech on television in Montgomery, Alabama, was moved to tears. As he wrote of the historical address, "President Johnson made one of the most eloquent, unequivocal, and passionate pleas for human rights ever made by a President of the United States. . . . We had the support of the President in calling for immediate relief of the problems of the disinherited people of our nation (King 1998, 288).¶ Even more skeptical civil rights activists, who had refused to acquiesce to the 1964 MFDP compromise, were moved by Johnson's fervent support of what one of his startled advisors called "radical" changes in the federal government's support of voting rights.14 SNCC President John Lewis acknowledged that on this night LBJ was "a man who spoke from his heart, a statesman, a poet."" The following week, CORE's James Farmer led a march to the White House to express civil rights activists' support for the president's efforts. "When President Johnson said 'we shall overcome' he joined the civil rights revolution," Farmer told the marchers "Now it's up to you and me to keep him in it-to keep him and our friends in Congress moving. If we let up the pressure, they let up the progress.'"5¶ Although most activists appreciated Johnson's support in achieving historic reforms, tensions within the civil rights movement threatened to sever its critical but uneasy ties with his White House. Indeed, in contrast to moderate civil rights leaders, more radical insurgents loathed White House leadership and their views increasingly gained a hold over the movement. Johnson's civil rights sermon won little praise from radical civil rights activists in Alabama like James Foreman, the field secretary for SNCC. As far as radical SNCC dissidents were concerned, Johnson's speech was little more than a "tinkling, empty symbol." As he told reporters, "Johnson spoiled a good song that day" (Lewis with D'Orso 1998, 340).¶ Social Protest and the Limits of White House Leverage¶ Toward the end of 1965, the energy and resources committed to the Great Society began to suffer, threatened by Johnson's preoccupation with the Vietnam War. The war also fatally wounded his relationship with the civil rights movement. Even moderate civil rights leaders like King became visible participants in the antiwar movement. King saw the Vietnam War not only as morally indefensible, but also as a growing commitment that would divert resources needed to address problems of poverty at home. As the schisms in the civil rights movement deepened along with the administration's involvement in Vietnam, Johnson became the target, rather than the ally, of civil rights activists.¶ In late November, White House aide Hayes Redmon lamented the antiwar efforts of civil rights activists. "I am increasingly concerned over the involvement of civil rights groups with anti-war demonstrators," he wrote in a memo to White House aide Bill Moyers. "The anti-Vietnam types are driving the middle class to the right. This is the key group that is slowly being won over to the civil rights cause. Negro leadership involvement with anti-Vietnam groups will set their programs back substantially."16 King's opposition became public in September of 1965, infuriating Johnson and exposing the inherent conflict between the interests of the president and civil rights movement. Like Kennedy, Johnson deferred to Federal Bureau of Investigation (FBI) Director J. Edgar Hoover's use of telephone wiretaps and hotel room microphones to discredit King on national security grounds.17¶ Johnson had tried to renew ties with King a few weeks before the civil rights leader publicly voiced opposition to his administration. In August, soon after race riots broke out in Watts, he called King to express his continued support for civil rights and to question him about rumors that he opposed Johnson's Vietnam policy.1" Trying in vain to meet the demands of spiraling civil rights militancy, the president urged King to take seriously and to help publicize a recent commencement address the president had given on June 4 at Howard University (Kotz 2005, 353). The speech proclaimed that "freedom was not enough" and that the time had come to "seek . . . not just equality as a right and a theory but equality as a fact and as a result." LBJ told King that it demonstrated his administration's commitment to address the most stubborn forces sustaining racial inequality.'9 The Howard University speech was arguably the boldest rhetorical presidential challenge to racial injustice since Lincoln's second inaugural. And yet, he complained, civil rights activists had in large part greeted it with a deafening silence. Johnson also urged the civil rights leader to support the administration on Vietnam, telling King, "I want peace as much as you do if not more so," because "I'm the fellow who had to wake up to 50 marines killed."20¶ King acknowledged that Johnson's Howard University speech was "the best statement and analysis of the problem" he had seen and that "no president ever said it like that before."21 Nonetheless, King and other movement leaders refused to lavish praise publicly on the Howard University address, concerned that associating too closely with Johnson might weaken their standing in the civil rights community. As David Carter has written, "in this period of growing polarization it had become increasingly clear to civil rights leaders, and ultimately even to the President and his staff, that a White House blessing of a leader was tantamount to a curse" (2001, 320).¶ Indeed, King was the least of the administration's problems. As the civil rights movement trained its eye on the poverty-stricken ghettos of large northern cities, King lost influence to more militant leaders who were better attuned than he to the frustrations and rage of young urban blacks (Mann 1996, 480). "Black power" advocates like Stokely Carmichael, newly elected head of SNCC, and Floyd McKissick of CORE, were not only dissatisfied with the achievements of the Johnson administration's civil rights program, but they also were contemptuous of its objective of racial integration. The growing militancy of black America erupted during the summer of 1966 as urban riots swept across the nation. In the wake of these developments, the moderately conservative middle class, as the White House feared, grew impatient with reform. The administration's string of brilliant triumphs in civil rights was snapped. Its 1966 civil rights bill, an open housing proposal, fell victim to a Senate filibuster. Johnson's leadership of the civil rights movement was a great asset to him in 1964, but it was a political liability by the summer of 1966.¶ From the start of his presidency, Johnson had recognized that his alliance with the civil rights movement risked substantial Democratic losses in the South. The president's encouraging visit to Georgia gave him hope that he would be forgiven by white southerners; this was the very purpose of his appeal to conscience. But the elections of November 1966 confirmed the South was not in a forgiving mood. Three segregationist Democrats-Lester Maddox in Georgia, James Johnson in Arkansas, and George P. Mahoney in Maryland-won their party's gubernatorial nomination. In Alabama, voters ratified a caretaker administration for Lurleen Wallace, since her husband, George, was not permitted to succeed himself. George Wallace, dubbed the "prime minister" of Alabama, had by 1966 emerged as a serious threat to consummate the North-South split in the Democratic Party, either by entering the 1968 presidential primaries or running as a third party candidate. The gubernatorial race in California, where former movie star Ronald Reagan handily defeated the Democratic incumbent Edmund G. Brown, revealed that conservative insurgency was not limited to southern Democrats.¶ In the wake of the civil rights crisis of 1966, Johnson no longer met with civil rights leaders. Instead, he followed Attorney General Nicholas Katzenbach 's advice to send a number of his younger aides to various cities to meet with young black leaders. The attorney general's suggestion was the origin of ghetto visits that White House aides made throughout 1967; a dozen or so visited troubled black areas in more than 20 major cities. On the one hand, the ghetto visits revealed the extent to which the modern presidency sought to assume important tasks once carried out by intermediary political associations like political parties. Rather than relying on local party leaders for information about their communities, Johnson asked his aides to live in various ghettos and then report directly to him about the state of black America. Local public officials and party leaders, even Chicago's powerful boss Richard Daley, were not told of the ghetto visits, lest they take umbrage at someone from the White House rooting about their home territories.¶ On the other hand, these visits marked the declining significance of the modern presidency as the leading agent of liberal reform-a symptom of its "extraordinary isolation."22 This isolation was accentuated by the evolution of the civil rights movement, whose more militant leaders, representing an oppositional culture that tended to withdraw rather than bestow legitimacy on reigning institutions, gained ascendancy in urban ghettos. The Johnson White House struggled to understand why young urban blacks, as one aide put it, "were against just about every leader (Negro and white) . . . except [black power advocates like] Stokely Carmichael."23 The awkward presence of these Johnson aides-mostly white, mostly from small towns and cities in the Midwest and Southwest-spending a week, sometimes a weekend, in volatile ghetto environments such as Harlem and Watts was, as a leading participant put it, a "unique attempt by the President to discover what was happening in urban ghettos and why."24 Aides were not sent to organize or manipulate or steer, but solely to gain a sense of the ideas, frustrations, and attitudes at the basis of the riots.¶ The ghetto reports apparently helped persuade Johnson to respond to the riots by intensifying his efforts to expand civil rights and war on poverty programs.The administration continued to push for an open-housing bill that was enacted after King's assassination. In 1968, LBJ also submitted and Congress passed the most extensive and most expensive public housing legislation in American history. Finally, Johnson continued to support the White House's Office of Economic Opportunity, even though its sponsorship of Community Action Programs (CAPs), requiring "the maximum feasible participation of residents of the areas and groups involved," was reportedly having a disruptive influence in many cities and was the target of bitter complaints from local party leaders. LBJ seethed privately about the "revolutionary" activity that some CAPs were fomenting, but he never repudiated them publicly and continued to support federal funds for neighborhood organizations. CAPs were the administration's final, frail hope that it could benefit from the transformative energy of a movement over which it rapidly lost influence.26¶ Political Failure and Enlightened Administration¶ **Against the general norm that presidents are repressive or indifferent in their response to the demands of insurgent groups, Johnson's uneasy collaboration with the civil rights movement shows how an ambitious president and social activists can form an alliance in the service of enduring reform**. Although this fusion of presidential power to a movement for social justice was short lived, **the fragile partnership made possible the most dramatic civil rights legislation since the Reconstruction era**. **Without the work of civil rights leaders and activists in mobilizing demonstrations that elicited the violent reaction of segregationists and aroused strong sympathy in the country, no civil rights revolution would have been possible. At the same time,** **without Johnson's willingness to support, indeed, to take advantage of the opportunity that civil rights direct action provided, the landmarks laws of 1964 and 1965 might never have been enacted.**¶ Johnson's singularly determined fusion of executive power to a social movement eventually imploded. As early as 1965, it became clear that Johnson's effort to become a leader of the civil rights movement suffered from his attempt to manage all the other responsibilities that the modern presidency pulls in its train. Since Theodore Roosevelt, reformers and ambitious presidents had endeavored to reconstruct the executive office so that its constitutional mandate to "preserve, protect and defend the Constitution" might be rededicated as a vantage point for social and economic change. But Johnson's explosive relationship with the civil rights movement cast serious doubt on the "Progressive era conceit that the presidency is inherently disposed to ally itself with movements for reform and liberation" (Skowronek and Glassman 2007, 7). In the end, the Great Society revealed both the untapped potential for cooperation between the modern presidency and social movements and the inherent tensions between "high office" and insurgency that made such collaboration so difficult. The tasks of the modern presidency-the domestic and international responsibilities that constrained the "steward of the public welfare"-necessarily limited the extent to which Johnson could become a trusted leader of the social movements that arose during the 1960s.¶ By 1968, Johnson, the self-fashioned agent of a political transformation as fundamental as any in history, had become a hated symbol of the status quo, forced into retirement lest he contribute further to the destruction of the liberal consensus. As he privately told Hubert Humphrey in the spring of 1968, "I could not be the rallying force to unite the country and meet the problems confronted by the nation ... in the face of a contentious campaign and the negative attitudes towards [me] of the youth, Negroes, and academics."27¶ LBJ thus saw the mantle of leadership pass to the likes of Eugene McCarthy, whose pioneering grassroots organization drove the president from the field in 1968, and George McGovern, the Democratic nominee for president in 1972. The "McGovern Democrats," who took control of the Democratic Party in the wake of the fractious 1968 presidential contest, followed the progressive tradition of scorning partisanship-of desiring a direct relationship between presidential candidates and grassroots activists. In this respect, the expansion of presidential primaries and other changes in the nomination politics initiated by the McGovern-Fraser reforms were the logical extension of the modern presidency. But these reformers, champions of a "new politics," rejected notions of popular presidential leadership that prevailed during the Progressive era and New Deal eras (Ceaser 1979; Miroff 2007). **Viewing the president as the agent rather than the steward of the public welfare, new politics liberals embraced the general ideas current in the late 1960s that social movements should direct presidential politics and governance.**¶ **Even as McGovern's insurgent presidential campaign was an electoral disaster, the legislation conceived by the ephemeral alliance between Johnson and the civil rights movement built a national administrative apparatus that had staying power in American political life**. The 1964 and 1965 civil rights reforms empowered the federal bureaucracy-especially the Department of Justice, the Department of Health, Education, and Welfare, and the newly formed EEOC-to assist the courts in creating parallel enforcement mechanisms for civil rights. These proved effective. For example, in four years the Johnson administration accomplished more desegregation in southern schools than the courts had in the previous 14.¶ As historians like Hugh Davis Graham have chronicled, "new theories of compensatory justice and group rights" given prominent expression in LBJ's Howard University Address were deftly advanced by "new social regulators" in the EEOC (Graham 1990, Chapter IX). Despite the late-1960s political demise of the Great Society, the EEOC staff, aided by supporters in other executive agencies and the federal courts, was able to expand the EEOC's power far beyond the original constraints of Title VII of the act. The text of Title VII explicitly sought to limit findings of discrimination by requiring evidence of intent. EEOC staffers argued that racial disparities in the composition of a labor force were ample proof of discrimination, whether intended or not. Seizing authority on its own accord, the EEOC collected data from tens of thousands of employers in order to analyze entire industries. Only a couple of years after Johnson left office, the federal courts deferred to EEOC guidelines, tossing aside Title VII's original dictates in favor of an "effects based definition of discrimination" that went beyond the goal of equal treatment to that of equal results (Graham 1990, 250). A "quiet revolution" had occurred in national administration, one that dismantled the compromise that Dirksen and moderate Republicans extracted in 1964.¶ Similarly, as Richard Valelly has documented, an "extended Voting Rights Act" emerged from an institutional partnership between the Justice Department and the courts. **The alliance between bureaucratic discretion and legal activism expanded the 1965 statute from the commitment to free African Americans from discriminatory practices, such as literacy tests, to a more capacious program that promoted minority office holding, regulated nonsouthern states and local jurisdictions that had discriminated against the voting rights of racial minorities, and freed regulators and plaintiffs from having to demonstrate intentional discrimination in seeking remedies for low levels of minority representation and electoral participation** (Valelly 2004, chap. 9)-**These**¶ **administrative and legal efforts appeared to give institutional form to hard-won victories achieved by Johnson and civil rights activists**. At the same time, the securing of what Valelly has called a "second reconstruction" tended to isolate civil rights activists. LBJ paid dearly for the alienation of the social movements from the White House; just as surely, ***the civil rights movement and the other social protest movements it inspired paid a price for their rejection of presidential leadership***. The 1960s unleashed new forces and new expectations that could not be quelled by the election of Nixon. Indeed, it was the 1970s rather than the 1960s when affirmative action and many other civil rights measures became a real presence in American society. **And yet, even as they continued to look to the national government to solve the problems thrown up by an industrial-and postindustrial-order, the public interest groups that emerged during the 1970s** (which evolved from the social movements of the 1960s) **distrusted presidential leadership and bureaucratic agencies, and sought to protect social policy from unfriendly executive administration** (Melnick 2005). **Teaching Americans both to expect more from the government and to trust it less, the Great Society was the fulcrum on which decline of liberalism and the rise of conservatism tilted.**¶ **Johnson's willingness to embrace the civil rights movement and its reform agenda transcended narrow, cautious self-interest. Indeed, his wholehearted support for far-reaching civil rights defied the careful distance that most presidents maintained vis-à-vis social movements**. As we shall see, Reagan and his political allies developed an alliance with Christian Conservatives that was arbitrated by a reconstructed Republican Party. Consequently, he would be much less exposed in his relationship with the Religious Right than Johnson had been in seeking to leverage the civil rights revolution.

***\*Only emphasizing policy relevance checks multiple existential threats***

**Walt ’05**, Stephen M. Walt, Kennedy School of Government, Harvard University, Annu. Rev. Polit. Sci. 2005. 8:23–48, THERELATIONSHIPBETWEEN THEORY AND¶ POLICY IN INTERNATIONALRELATIONS,¶ doi: 10.1146/annurev.polisci.7.012003.104904, <http://www.ic.ucsc.edu/~rlipsch/Pol272/Walt.theory.pdf>, jj

**The need for powerful theories that could help policy makers design effective**¶ **solutions would seem to be apparent as well. The unexpected emergence of a**¶ **unipolar world, the rapid expansion of global trade and ﬁnance, the challenges**¶ **posed by failed states and global terrorism, the evolving human rights agenda**,¶ **the spread of democracy, concerns about the global environment, the growing**¶ **prominence of nongovernmental organizations**, etc., **present policy makers with problems that cry out for new ideas**. **These phenomena**—and many others—**have**¶ **all been objects of sustained scholarly inquiry, and** **one might expect policy makers**¶ **to consume the results with eagerness and appreciation**.¶ **Yet despite the need for well-informed advice about contemporary international**¶ **problems, and the energy and activity being devoted to studying these questions**,¶ **there has long been dissatisfaction with the contributions of IR theorists** (Morgenthau 1958, Tanter & Ullman 1972). According to former diplomat David Newsom, “**much of today’s scholarship** [on international issues] **is either irrelevant or**¶ **inaccessible to policymakers...much remains locked within the circle of esoteric**¶ **scholarly discussion**” (Newsom 1995–1996, p. 66). Another observer declares that¶ “the higher learning about international relations does not loom large on the intellectual landscape. Its practitioners are not only rightly ignored by practicing¶ foreign policy ofﬁcials; they are usually held in disdain by their fellow academics¶ as well” (Kurth 1998, p. 29). The veteran U.S. statesman Paul Nitze described theory and practice as “harmonic aspects of one whole,” but he believed that “most¶ of what has been written and taught under the heading of ‘political science’ by¶ Americans since World War II...has also been of limited value, if not counterproductive as a guide to the conduct of actual policy” (Nitze 1993, p. 15). Similarly,¶ George (2000) reports that policy makers’ eyes “would glaze as soon as I used the¶ word theory.” Nor is the problem unique to the United States, as indicated by the¶ Chief Inspector of the British diplomatic service’s comment that he was “not sure¶ what the academic discipline of IR—if indeed there be such a thing as an academic¶ discipline of IR—has to contribute to the practical day-to-day work of making and¶ managing foreign policy” (Wallace 1994).

***\*That’s specifically true of presidential powers --- effective presidential scholarship key to address a litany of issues***

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**Presidential power is increasingly intertwined with the most basic and dire challenges of American governance and political economy**. ***The study of the presidency has rarely been more important***; **its repertoire of theory and methods positions scholars to take on the challenge**.

**Contention 3: Solvency**

***Requiring prior congressional approval of conflict is vital to revitalizing democratic accountability – it fosters deliberation that breaks down group-think and ensures better decision-making***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

Turning to the second element of the Model--the provision that would require legislative approval of decisions to use force--there is of course considerable theoretical support for such a constitutional structure. As we have already discussed, the concept dates back at least to the development of the American Articles of Confederation, and the war powers provisions of the U.S. Constitution continues to be a model of the principle. It is also one of the central issues in the war powers debate that has been raging in the United States for over a hundred years. But much of the modern debate in the United States is over the precise meaning and exact scope of the war powers provisions of the U.S. Constitution, and the particulars of many of those arguments need not concern us [\*680] here. n257 As we have already reviewed, however, **the primary motive of many of the drafters of the U.S. Constitution, as expressed most clearly by Madison, was to reduce the likelihood of war**. n258 **And the theoretical arguments of Madison, Kant, and others in support of such a separation of powers related to both the domestic objectives of the state: putting an important check on the state's rush to war and increasing the democratic accountability of the process of deciding on war; and the broader goals of reducing the incidence of war generally in the international system**. In this sense, the arguments in support of this element of the Model again relate to the causes of war at both the domestic level and the international level.

The starting point is the insight that **requiring legislative approval of executive decision making on the use of force will likely reduce the risk of rash decisions to go to war for the wrong reasons**. This argument was initially advanced by Madison and Kant, among others, and indeed can be traced all the way back to Thucydides. n259 Madison and John Jay both argued **that the executive is more likely to be motivated by parochial self-interest and narrow perspectives, and thus more likely to enter into armed conflict than the legislature**. n260 Madison further argued that there ought to be a separation between those who are charged with the conduct of war, as the President is as the Commander in Chief, and those who have the authority to decide on the commencement of war. n261 But **the argument becomes more compelling when unpacked and explained in a little more detail, with the support of more modern theory. We need to explore the question of how exactly the legislative involvement improves decision making or** [\*681] **engages the causes of war in a manner that would reduce the incidence of war.**

It is helpful to begin by recalling the functions of legislatures. n262 In addition to passing legislation, **the legislature in virtually all liberal democracies**, whether parliamentary or presidential in structure, **performs the core functions of representation, oversight, and control over government expenditure.** n263 **Representation and oversight in particular are important to the argued benefit of legislative involvement in the decision to use force**. **Both functions are tied to the core notions of democratic accountability and to deliberative democracy, which overlap in important ways**. **Democratic accountability is understood to include the idea that the people who are likely to be impacted by decisions ought to be able to participate in the decision making. Participation in this sense means not only having some expectation that the collective will of constituents will be taken into consideration in the decision-making process, but that the public debate and deliberation that is part of the parliamentary process of decision making will also serve the vital function of informing constituents and affording them some sense of access to the decision-making process**. n264

**Obviously, this process of debate and information exchange is also at the heart of ideas of deliberative democracy**. The perspective here, though, is not so much on the importance of making the process accountable to and representative of the people, but on the extent to which the **very process of deliberation among the representatives of disparate stake-holders and interests will result in the generation of sounder judgments**. **The argument is that the process results in better decisions due to the attenuation of extreme positions, the canvassing of a wider range of perspectives and sources of information, and the vigorous public interrogation of reasons** [\*682] **and motives underlying proposals**. n265 More specifically, theories of deliberative democracy hold that **the deliberative process**, of which the parliamentary debate and decision-making process is a key feature, **actually involves the transformation of preferences through the consideration of the justifications offered by various perspectives, rather than merely serving as a means by which society can aggregate preferences**. n266

**The oversight function of legislatures also feeds into both these aspects of democracy, in that the employment of specialized committees to engage in public inquiries into policy choices or proposed courses of action, provides a deeper level of deliberation that ensures a more thorough interrogation of policy justifications and the underlying information upon which policy proposals are based**. **Senate committee hearings during the Vietnam War illustrate how such oversight can reveal important information underlying policy debates, which in turn can influence public opinion and better inform the policy preferences of the representatives of the people**. In 1967, the Senate Armed Services Committee held hearings on the escalation of the strategic bombing of North Vietnam. After the representatives of the Joint Chiefs, and in particular the Chief of the Air Force, had testified before the committee on the necessity of the continued strategic bombing, Secretary of Defense Robert S. McNamara stunned the committee, the government, and the public by testifying that the bombing was entirely ineffective. n267

**The performance of these functions of the legislature, to the extent that they are permitted or required to operate in the decision-making process on the use of force, engage the domestic causes of war in important ways**. The fuller realization of the representative and oversight functions--serving as they do to both incorporate the will of the broader population and to arguably contribute to the arrival at sounder judgments through the deliberative process--would result in those structural aspects of democratic states that comprise the Image II factors most related to the causes of the "democratic [\*683] peace," being brought to bear more directly on the decision-making process. In other words, the structure would thus more perfectly reflect the theoretical ideal that is part of the structural explanations of the democratic peace. n268

**The institutional structure of the decision-making process created by the Model's separation of powers element would also affect the political costs of going to war** in a manner that would further engage the Image II causes of war. **Absent an overwhelming or obvious threat, the procedural requirements to obtain the support of the majority of the legislature would impose significant political costs upon the executive**. n269 The structure would effectively create a sliding scale, in the sense that **the greater the threat or the more obvious the case for war--such as the use of force in self-defense against an ongoing armed attack--the lower the costs would be in obtaining legislative approval**. Converse-ly, **the more tenuous the case for engaging in armed conflict, the more** [\*684] **politically costly it would be to win over the majority of the legislature for support.** This is precisely the kind of structural characteristic that reduces the Image II causes of war.

**The second element of the Model would also engage the** Image I **causes of war, which include particular psycho-logical traits that are common in many executive officers, systemic problems of misperception among decision makers, and the irrational behavior of small-group decision making reflected in "groupthink" and the "bureaucratic politics model" of decision making**. n270 **The risks that such tendencies could lead to irrational or suboptimal decisions to use armed force would be reduced, in the case of each of these particular phenomenon, by spreading the decision-making process more widely through the inclusion of the legislative body**. **The requirement to obtain legislative approval, bringing to bear the core functions of deliberative democracy on the decision-making process, such that a wider set of perspectives and criteria are brought to the process, as well as a more public interrogation of reasons and rationales, would significantly reduce the potential for these potential features of government decision making to manifest themselves in the form of unsound or dangerous decisions regarding the use of force.** n271

***Redefining hostilities in the WPR boosts congressional involvement, checks intervention, and stops circumvention***

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**Congress should strengthen the WPR regime by defining hostilities in a manner that links hostilities to the scope and intensity of a use of force, irrespective of the attendant threat of U.S. casualties**. **Without defining hostilities, Con-gress has ceded to the President the ability to evade the trigger and the limits of the WPR**. **The President's adoption of a definition of hostilities that is tied to the threat of U.S. casualties or the presence of U.S. ground troops opens the door to long-lasting and potentially intensive operations that rely on drones** - at least beyond the sixty-day window - **that escape the WPR by virtue of drones being pilotless** (which is to say, by virtue of drones being drones). **Tying hostilities to the intensity and scope of the use of force will limit the President's ability to evade Congressional regulation of war**. **It will curtail future instances of the United States being in an armed conflict for purposes of international law but not for purposes of domestic law, as was the case in Libya**. Finally, ***a statutory definition of hostilities will provide the judiciary with a meaningful standard for determining presidential compliance with the WPR*** - assuming the future existence of a plaintiff able to surmount the various prudential doctrines that have counseled against entertaining WPR cases thus far.

***The distinction between “declaration of war” and “authorization of war” is important***

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I’m not sure that this is resonating with those that are unfamiliar with what a declaration of war means. **For most** people, **the declaration of war is a formality whereby the president makes sure that it is agreeable to the Congress that he utilizes the military**. Some might even go so far as to say it is the president “asking permission” from the Congress to do so. **By this reasoning, both** Presidents **Bush and Obama have complied**, especially considering H.J. Res. 114 (October 16, 2002). With that resolution, Congress authorized the president to use military force in the war on terror. **What is the difference between that and a declaration of war?** **The answer is both intuitive and supported by history.** **First, a “declaration” has nothing to do with “permission.”** **Neither is it the same thing as creation or initiation**. **One can only declare something that already exists.** Therefore**, a declaration of war does not create a war or initiate a war. A declaration of war is a resolution passed by Congress recognizing that the United States is already at war.**

***Redefining “hostilities” as “armed attack” solves***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

A. A Process-Based Constitutional Incorporation of Jus ad Bellum The article begins with the incorporation of the principles of jus ad bellum. The first section provides: (1) **Any decision to use armed force, or to deploy armed forces in circumstances likely to lead to the use of armed force, of a level in scale, duration, and intensity equal to that constituting an armed attack in international law, shall be made only after sufficient and demonstrable consideration of whether the proposed action is consistent with the applicable principles of international law relating to the use of armed force, as found in the United Nations Charter, other relevant treaties to which the State is a party, and the related principles of customary international law. The key elements of this section**, which require some further discussion and explanation, **are that**: (i) it incorpo-rates both conventional international law (that is, treaty law) and customary international law; (ii) it specifies the regime of law from which the principles are drawn, with reference by name to the most important governing convention (the U.N. Charter); (iii) it incorporates the relevant principles of international law by reference only, rather than explicitly stipulating the substance of those principles; (iv) it is process based rather than substantive, in the sense that it does not purport to incorporate and impose the actual prohibitions from international law, but rather it only creates an obligation for decision makers to sufficiently consider compliance with those prohibitions (and the exceptions thereto); and finally, (v) **it provides a threshold level of force that would trigger the operation of the provision, with some criteria for defining that trigger**. Beginning with the first element, there are a number of reasons underlying the decision to incorporate both treaty and customary international law. There is a wide range of approaches among constitutional democracies regarding the manner in which international law is treated within their domestic legal systems, and great variation in the extent to which there is already some constitutional provision for such treatment. This not only relates to the classic theoretical division between monist and dualist perspectives, but also relates, in practical terms, to the significant differences among [\*706] states regarding how the different forms of international law are received and the status each is af-forded within the domestic legal system. n330 The mechanisms and processes by which states incorporate (or transform, as the case may be) customary international law are typically different than those used for the incorporation of conventional international law, and many states also afford one a higher status within the domestic legal system than the other. Moreover, these differences themselves vary considerably across states, even among liberal democracies, with some such as the Netherlands placing a primacy on treaty law, n331 while others such as Germany, Austria, and Italy giving customary international law higher status. n332 States vary as well on how each of these is to be received by the domestic legal systems. n333 All of this suggests a couple of inferences. First, there are clear examples of constitutional democracies incorpo-rating within their constitutions both conventional international law and customary international law, and indeed examples of each being afforded a higher status than domestic statutes and even a national constitution. Second, given the very uneven treatment among democracies for the purposes of developing a universal model of incorporation, and given that there are principles from both a treaty and custom that are thought to be [\*707] important, the incorporation mechanism should explicitly incorporate the principles of both systems as part of the Model. That way, regardless of the more general approach within the particular constitutional system, the provision would make quite clear that the principles of both systems are being incorporated directly into the constitution for the purposes of this constraint on the use of armed force. This of course raises the question of whether there are significant differences between the principles of jus ad bel-lum to be found in conventional international law and custom. There is in fact very little difference, as the International Court of Justice went to some pains to establish in Nicaragua v. United States (Merits). n334 And the most fundamental principles of the jus ad bellum regime, the incorporation of which is central to the Model, are essentially found in Article 2(4) and Chapter VII (which includes Article 51) of the U.N. Charter. Nonetheless, it will be recalled that one of the theoretical arguments in support of adopting the Model to begin with is that the jus ad bellum regime is coming under pressure to change, leading to the possible development of new principles and new legal tests to determine their application. The extent to which there is indeed some change to the jus ad bellum regime in the near to mid-term, it is unlikely to come in the form of amendments to the U.N. Charter or the adoption of any new treaty. It is much more likely to come in the form of changes to customary international law. In such circumstances, it will be important that the Model will have been structured so as to incorporate the relevant principles of customary international law, and to require that the decision making on the use of armed force be informed by the most current developments in the law. The second element of this subsection of the provision is the manner in which it refers specifically to the principles of the jus ad bellum regime, and refers even more explicitly to a particular treaty regime, namely the U.N. Charter. This is in contrast to the option of a much broader incorporation of international law as a whole, as many national con-stitutions already have. Some of the reasons for a more narrow and specific incorporation will be obvious and were discussed earlier. n335 In addition, given fairly widespread concerns about [\*708] the legitimacy in permitting interna-tional law to trump domestic law--concerns grounded in arguments about the democratic deficiency of the international law-making process, the erosion of national sovereignty, and the negating of the democratic will of the state's citizenry--it may be considerably easier in practical terms to mobilize support for a carefully tailored provision than a blanket incorporation of international law along the lines of the Netherlands. In addition to this, however, the incorporation of specific principles or regimes of international law provides a much more fertile basis for the internal interpretation and internalization of the associated norms, which as was dis-cussed earlier is an important aspect of the process of enhancing compliance with international law according to trans-national legal process theory. Moreover, by identifying particular regimes and specifying the precise treaty from which principles are drawn, examples from a number of countries suggest that the constitutional provision will thereby create the legitimate basis for courts and other domestic institutions to consider how those principles have been interpreted by international tribunals and organizations. This can be an important factor in insuring that the principles that are incor-porated remain organically connected to the international law sources from which they were drawn. One of the best examples of this approach is the constitutional incorporation of human rights principles by a number of countries over the last few decades. For instance, Article 10(2) of the Spanish Constitution of 1978 provides that "the norms relative to basic human rights and liberties which are recognized by the constitution, shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain." n336 This has been interpreted to mean that such human rights conventions as the European Convention on Human Rights and the International Convention on Civil and Political Rights n337 have constitutional status within the Spanish legal system; or, to put it another way, the relevant provisions of those conventions have effectively been incorporated by reference into the [\*709] Constitution. n338 What is more, this incorporation by explicit reference to the conventions themselves has provided a basis for the Spanish courts to not only interpret the constitutional provisions in light of the principles in the conventions, but also to draw upon the interpretation of the relevant provisions of the conventions by international courts and other interpretative bodies. n339 The third element of this subsection of the Model relates to the manner in which the provision incorporates the principles of jus ad bellum by reference only, rather than specifying the content of those principles as part of the consti-tutional text. In other words, **the provision requires decision makers to consider the applicable principles relating to the use of force, as found in the U.N. Charter and other sources,** but it does not provide an explicit list of what those princi-ples are. An alternative approach would have been to provide a set of subsections detailing the content of each principle and rule taken from international law that decision makers had to consider before taking action. Aside from the sheer awkwardness of trying to stipulate all the relevant rules and principles, the reasons for employing the "by reference" mechanism are similar to those discussed above in relation to the importance of including general references to customary international law and treaty sources. That is, **incorporation by reference preserves the flexibility of the Model, such that the provision can essentially evolve as the underlying international law principles change over time, and it retains the organic link to those principles for purposes of interpretation**. As already discussed, that has its own inherent risks, but given the likelihood that the jus ad bellum regime will develop over the next few decades, coupled with the difficulty associated with any constitutional amendment, building in that kind of flexibility is important. An example of this approach, albeit in a regular statute rather than a constitutional context, can be found in the Alien Tort Statute in the United States, the key clause of which states that "the district courts shall have original juris-diction of any civil action by an alien for a tort only, committed in violation of [\*710] the law of nations or a treaty of the United States." n340 This does not incorporate international law norms per se, but as the Supreme Court held in Sosa v. Alvarez-Machain, the statute confers subject matter jurisdiction and creates a cause of action for the violation of the "laws of nations," which is a reference to customary international law. n341 Two advantages of the incorporation by reference are well illustrated by this example. The first is the flexibility of the legislative provision, as its content can essentially evolve over time without requiring any change to statutory lan-guage. Thus, in Sosa it was recognized that the content of the "narrow set of violations of the law of nations" today is certainly not the same as the narrow set of violations that were contemplated back in 1789 when the statute was enacted. Rather, the range of what types of violations within the law of nations was defined, but the content of those violations was not specified, and is left to be ascertained according to the current principles of customary international law. n342 Second, but very much related, is the advantage of maintaining an organic connection to the international law principles, which thus continue to be the living source of the rules. The employment of the term "in violation of the laws of nations" constituted an intermediary within the statute, or a trigger, for the application of the primary norms that are promulgated in detail somewhere else--in this instance in the sources of the laws of nations. In the sense of Hart's pri-mary and secondary rules, therefore, the reference in the statute is merely a secondary norm, and leaves the primary norm as the source of the content. n343 [\*711] As explained earlier, this retention of an organic connection with the underlying international law principles also ensures that there will be full access to the associated interpretations and understanding of those principles, including the decisions of international tribunals and organizations, as they have developed over time. This relationship tends to be lost when the contemporary understanding of customary international law rules is taken or the language of a rule is lifted from some treaty and then dropped into the text of a constitution (often in some slightly revised form). Moreover, the juxtaposition of the revised language with other provisions, severed as it is from its conceptual source, can lead to significant unintended consequences. n344 The fourth element of the subsection is that it is process-based rather than substantive in nature. In other words, the provision does not incorporate the prohibitions (and corresponding exceptions) of the jus ad bellum regime as sub-stantive clauses in the Constitution. Rather, it merely requires that the decision makers contemplating the use of force sufficiently and demonstrably consider whether the proposed action is consistent with the international law principles that have been incorporated. There are several reasons for choosing to develop the mechanism in this fashion, but they largely relate to the practical issues of implementation. It can be anticipated that there would be significant political objection in many jurisdictions to any contemplated adoption of this Model. The foundation of many of these objections, principled and otherwise, would be a resistance to the idea of incorporating international law principles to bind the hands of government on issues of national security--issues relating to self-preservation and defending "vital interests." As has already been suggested above, the arguments behind many of these objections are misplaced. But the fact remains that if the Model proposed the incorporation of the principles as binding constitutional prohibitions, which would also entail conferring upon the judiciary the power to decide whether a proposed use of force did or did not comply with the exceptions to the prohibition as a matter of both constitutional and international [\*712] law, then the volume of these objections would likely be overwhelming. Such implementation of binding prohibitions may be possible and desirable in the future, but for now a process-based model may serve as an initial and more viable step along the road to that objective. And for the reasons already discussed in the previous Part, a process-based provision will still have a significant effect. **The final element in the subsection is the initial gate-keeping mechanism, which limits the application of the pro-vision to only those decisions regarding the use of armed force that could constitute an "armed attack," as that term is understood in international law**. **This is to ensure that there is a de minimis level below which the government would not be bound by the provision.** Moreover, as will be discussed in the next section, the same trigger would apply to the other elements of the Model, thus ensuring that the various elements of the Model operate in harmony, and the domestic elements are triggered by criteria that are consistent with valid concepts in international law. **The parameters of this threshold test are not novel**. As explained briefly in the discussion of the modern system of jus ad bellum, **the occurrence of an armed attack is a condition precedent to the exercise of the right of self-defense (or, for the exercise of anticipatory or preemptive self-defense, that an armed attack is imminent, in the sense that it is irrevocably in motion**). n345 Similarly, **the current understanding in international law is that the use of force against a state must reach a certain level--or be of "sufficient gravity**," **to use the language of the U.N. Resolution on the Definition of Aggression--before it can be considered an act of aggression**. n346 **The I**nternational **C**ourt of **J**ustice **has adopted this language in holding that the use of armed force must rise to a certain level before it constitutes an "armed attack" justifying the exercise of the right of self-defense, and it is clearly well above the mere use of force that would violate the prohibition in Article 2(4) of the U.N. Charter**. n347 **Where that line is actually drawn, or what criteria are to be used to determine exactly where to draw the line, has not yet been clearly established in international law, but the principle itself has been. It is no** [\*713] **more uncertain or incapable of determination than any number of other constitutional principles**. **Dinstein suggests that an armed attack requires that the use of force must be of a magnitude that is likely to "produce serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property**." n348 **The trigger mechanisms in current constitutions, in legislation such as the War Powers Act, and proposed legisla-tion such as that in the War Powers Commission Report, are not any clearer, and what is more, they often employ terms that are not related to known and valid concepts in international law**. We have already seen that the constitutions of many countries, including that of the United States, require legislative approval of any "declaration of war." While declarations of war continue to be theoretically part of the international law on the use of force, they are no longer reflected in state practice, and are certainly no longer considered necessary to trigger the operation of the laws of war or bring into existence the legal state of war. n349 To the extent the term is interpreted to mean anything other than a formal declaration that triggers a technical state of war, it becomes highly ambiguous, as the war powers debate in the United States illustrates. **The War Powers Act lowered the threshold significantly, using as the trigger "any case in which United States Armed Forces are introduced: . . . into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances**." n350 **There is no definition of "hostilities," and so there is no indication of what scale, intensity, or duration of armed conflict that would be required to constitute "hostilities" for the purpose of the provision**. **It could arguably encompass peace-keeping operations, or the lowest-level border skirmishes, yet could potentially be interpreted to exclude such uses of force as cruise missile strikes on foreign targets.** The proposed legislation of the War Powers Commission Report, in contrast, tries to raise the threshold by requir-ing a "significant armed conflict" as a condition precedent, which is defined as being "any combat operation by U.S. armed forces [\*714] lasting more than a week or expected by the president to last more than a week." It explicitly excludes a number of activities, such as "limited acts of reprisal against terrorists or states that sponsor terrorism," "covert operations," and "missions to protect or rescue American citizens or military or diplomatic personnel abroad." n351 Again, "combat operation" remains undefined, creating uncertainty as to what precisely is contemplated. More sig-nificantly, not only does this formulation similarly employ concepts for the trigger that do not equate with the principles of jus ad bellum, but the provision also explicitly endorses unilateral executive action for purposes that could very well violate the prohibition on the use of force in international law. Reprisals, as the term is understood in international law, are illegal. n352 Covert ops and missions to protect nationals abroad would easily encompass the support provided to the Contras in Nicaragua, and the invasions of Grenada and Panama, all actions that are widely seen as having been unlawful. n353 Moreover, aside from the explicit exceptions, the threshold would not be crossed by such uses of force as extensive missile or air strikes, including strikes with nuclear weapons, so long as they would not be expected to lead to "combat" lasting more than one week. There is little apparent relationship between the requirements of international law and that which the War Powers Commission Report considered important enough to require Congressional involvement. **The trigger that is contemplated in the Model**, while it admittedly contains some uncertainty as to its precise scope, **is a concept understood in international law.** **By employing it in the Model, we ensure that the same criterion is used for both requiring consideration of international legality and for obligating the government to obtain legislative approval, and that the criterion itself is comprised of concepts taken from international law**. **It is the kind of principle that courts are in any event well accustomed to working with, and it is necessary to have some threshold to ensure that the government is able to act more freely in circumstances that would not implicate the jus ad bellum regime in interna-tional law. It is only the use** [\*715] **of force constituting an armed attack, whether legally justified or not, which is likely to escalate into an armed conflict. Armed attack, therefore, is arguably the appropriate level of force to trigger the requirement to involve the other branches of government and focus consideration on the questions of whether that use of force will comply with international law**. n354 **A final word should be said about whether the trigger makes any distinction between the use of force for individu-al self-defense and that used for other purposes, be it collective self-defense or collective security operations**. **Constitu-tional controls of some countries do make such a distinction**, as discussed in Part III. The Constitution of Denmark, for instance, provides that "except for purposes of defence against an armed attack upon the Realm or Danish forces the King shall not use military force against any foreign state without the consent of the Parliament." n355 This clearly limits the exception to the exercise of individual self-defense. **The trigger as it is employed in both this element of the Model** and in the separation of powers element to be dis-cussed next, **makes no such distinction**. **In this element, the whole point is to force the decision makers to consider whether the proposed action complies with the principles of jus ad bellum--that is, to determine whether it falls within the scope of either self-defense, individual or collective, or collective security operations authorized by the U.N. Security Council** (to state the current exceptions on the prohibition on the use of force). **It would simply beg the question to suggest that they could avoid such a requirement in the event that the contemplated use of force was to be an exercise of self-defense. Whether it is legally a case justifying self-defense is the very thing to be determined by considering compliance with international law principles. In the context of the next element of the Model, the requirement to obtain approval of the legislature, the trigger would serve the same function. Permitting the government to avoid obtaining legislative approval in the event the force is to be used for self-defense would simply create further incentives** [\*716] **for the government to manipulate the record to provide support for a claim that the action is in fact an exercise of self-defense. It would thereby defeat the very objective of having such assertions subjected to inquiry and debate in the legislature. If the case is obvious and pressing, the analysis will be easy and the approval from the legislature quickly forthcoming; if it is not easy, than there is all the more reason for having the legislature involved in the deliberations, with all the advantages that such delibera-tion brings to the exercise. In the event of an invasion or the like, there is an emergency exception**, as will be discussed in the next section. B. Separation of Powers: Legislative Approval and Judicial Review **The second element of the Model would require legislative approval of any decision to use force**, while the third element would explicitly confer jurisdiction and establish standing for judicial review of the decision-making process. Together they form the "separation of powers" component of the Model, and as such they will be considered together here. The two provisions would read as follows, allowing, of course, for the necessary changes to conform to the cir-cumstances of each jurisdiction: 2. (i) **Any decision to use armed force, or to deploy armed forces in circumstances likely to lead to the use of armed force, of a level in scale, duration, and intensity equal to that constituting an armed attack in international law, shall be approved by both houses of the legislature by a simple majority of votes cast.** (ii) **In the event of an armed attack against the territory or armed forces of the state, or other such national security emergency requiring the urgent use of armed force, making prior approval from the legislature impractical, the government may use armed force without prior approval, but shall immediately provide notice of such determination to the legislature, and it shall obtain approval from each house of the legislature in accordance with the terms of subsection (i) above within 14 days of providing such notice, failing which the executive shall cease any such use of armed force.** (iii) **The approval of any use of force by the legislature in accordance with subsections (i) and (ii) above shall also constitute a decision to use force, subject to the requirements of Section 1 above.** 3. (i) Any person may apply to a court of competent jurisdiction to obtain a declaration, injunctive relief, or dam-ages, or any other remedy that the Court may consider just and appropriate in the circumstances, for any violation of this Article. [\*717] (ii) Any person who has made application under subsection 3(i) above shall have standing so long as the issue raised is a serious issue to be tried, the person has a genuine interest in the issue, even if only as a representative of the general public, and there would be no other reasonable or effective means for the issue to be brought before the Court. Again, a number of the elements of these two sections require further explanation, namely, (i) the terms of the re-quirement for legislative approval of the use of armed force; (ii) the trigger for the provision, being the same de minimis level that was provided for in the first section of the Model; (iii) the emergency exception and ex post approval re-quirement; (iv) the fact that the approval of the legislature is a "decision to use force," thus triggering the application of the requirements of Section 1 of the same Article; (v) the provision of specific jurisdiction for judicial review, and the remedies provided for; and (vi) the creation of broad standing for applications for judicial review. The first element, legislative approval for the use of armed force, is obviously an explicit move away from a "dec-laration of war," and it does not even require that the approval be in the form of a law. But it does require "approval," expressed through a formal vote. This is in contrast to the "consultation" that is contemplated by the draft legislation proposed in the War Powers Commission Report. n356 **As discussed earlier, legislatures may have natural tendencies to avoid making difficult decisions in these kinds of situations, but that is precisely why the Model should require the ex-ecutive to work to obtain the legislature's approval**. At the same time, while in some jurisdictions such approval requires supermajorities of some form, a simple majority of votes cast should be sufficient for the purposes of a general model, albeit in both houses if the system consists of a bicameral [\*718] legislature. n357 **The requirement to obtain a majority vote in each house should be sufficient to engage the deliberative and representational features of the parliamentary process in a manner that will have an impact on the operation of the domestic causes of war**. The second element is the employment of the same trigger or threshold level of force as was used in the first sec-tion of the Article. The reasons for employing this particular concept as the threshold has already been discussed at some length in the explanation of Section 1 so will not be repeated here. **It is perhaps helpful to emphasize yet again, however, how important it is to use a concept that has real meaning in international law for the purposes of triggering the involvement of the legislature in the decision to use armed force**. n358 **Even if a provision providing for the separation of powers with respect to the use of force does not have as one of its objectives an increased compliance with international law, the principles of jus ad bellum would naturally serve as a good proxy for the kinds of armed force that are likely to both escalate conflict and attract international censure. The trigger employed in this Model is taken directly from international law, based on precisely the kind of action that is most likely to lead to wider armed conflict, which are exactly the types of action that should be subject to legislative deliberation and oversight. Moreover, it still provides the executive with significant scope for limited use of force that falls below that threshold. The third element is the emergency carve out**. As mentioned earlier, **this too is not a novel concept, and various forms of such an emergency exception with ex post approval requirements can be found in a number of constitutions, though more frequently with respect to the power to declare emergencies and thus trigger emergency powers domesti-cally**. An early example of such a mechanism can be seen in the [\*719] Constitution of France of 1791. n359 **A varia-tion on this form of emergency carve-out is also the cause of much of the controversy regarding the structure and operation of the U.S. War Powers Act of 1973. Upon closer inspection, however, the War Powers Act provisions in question are not so much an emergency carve out as the grant of a carte blanche for up to ninety days, followed by an effective legislative veto of further action if Congress does not move to approve the operation. n360 That is very different from what is contemplated by the Model.** Many of the criticisms of the War Powers Act may be quite valid, but they ought not to be extended to constitu-tional provisions that require the executive to obtain legislative approval, and which include an automatic termination mechanism in the event that approval is not obtained within a specified period following an emergency use of force. Precisely because the provision is constitutional rather than statutory, the legislature would be less able to shirk its obli-gations to take up the issue when approval is sought by the executive. And requiring the executive to overcome the difficulty of mobilizing support within the legislature is a key element of the Model. That it is difficult and costly is not a basis for criticism, but one of the virtues of the structure. If the executive cannot galvanize the legislature to approve the use of force by a simple majority, particularly where the use of force has already been undertaken in what are al-leged to be urgent circumstances, then that by itself ought to raise significant questions about both the necessity and legitimacy of the use of force in question. The fourth element of this subsection of the article specifies that any approval to use force enacted by the legisla-ture constitutes a "decision to use force" as contemplated by the provisions of section 1 of the article, thus being subject to the requirements of that section. This means that **the legislature** too, in **deliberating on the question of whether or not to approve the use of force, must sufficiently and demonstrably consider whether the use of force in question is in com-pliance with the relevant prevailing principles of international law**. This is key to the combined operation of the distinct elements of the Model, as **it is the mechanism through which the Model effectively causes the deliberative functions of** [\*720] the **legislature to engage the issues of international law compliance, and which causes the criteria of legitimacy under international law to be integrated into the deliberative process of the legislature**. **It is only by requiring both branches of government to grapple with the question of compliance with international law that the Model can ensure that this perspective will be brought to bear in a meaningful and serious fashion in the decision-making process, and that over time the international law norms will be internalized and subsequently exercise influence, in the manner contemplated by transnational process theory and the ideational strand of the liberal theories of international law compliance.**

***We don’t have to stop intervention in every instance --- just when vital national interests aren’t at stake***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

**The most fundamental objection**, grounded in the theories of Carl Schmitt, **is that it is simply not possible to de-velop effective constitutional constraints on the use of armed force, for in moments of crisis such constitutional provi-sions will be simply ignored**. n276 **This form of argument comes in a number of variations. It is reflected in the U.S. war powers debate, in which it is frequently argued that requiring Congressional approval of the use of armed force would not really provide for a sober second look, and thereby reduce the incidence of imprudent wars, because Congress would either be just as prone as the executive to patriotic fervor or other inflamed emotions in the midst of a severe crisis**. n277 An analogous form of argument, much more explicitly grounded in or responsive to the theories of Schmitt, is to be found in much of the post 9/11 theoretical literature regarding the impact of national security imperatives on the normative power of constitutional protections, and the role of the judiciary in times of national crisis or emergen-cy--what Schmitt called the moment of "exception." n278 [\*687]

David **Dyzenhaus and others have marshaled several persuasive arguments to refute the Schmittian attack on the idea, central to liberal legal theory, that the law, and more importantly the rule of law, can operate effectively in periods of emergency**. n279 Dyzenhaus draws upon the theories of Dicey to argue that **the continued operation of a thick substantive notion of the rule of law during the period of emergency is not only possible, but that cooperation among the executive, legislature, and judiciary to ensure that legal responses to the emergency comply with the rule of law is crucial to the liberal democratic idea of the state being constituted by law**. n280 **Under this theory of the liberal democratic constitution and a thick conception of the rule of law, the exception does not provide the justification for the creation of legal black holes or the suspension of constitutional constraints at all, and neither does it operate so as to necessarily create such lawlessness.** **On the contrary, it is feasible to develop constitutional provisions that can survive the exception and operate to govern the response to national security emergencies**. n281

**It is not necessary, however, to refute Schmittian theoretical arguments to defend the Model**. **This is because the Model is designed primarily to constrain conduct in the moment of true exception**. The rationales advanced to justify the use of armed force cover a broad spectrum, from protecting national interests as ephemeral as national prestige and credibility, to the desperate need to repulse a massive invasion of the homeland. **It may be true that when a state is suddenly confronted with an immediate existential threat, one that truly threatens the "life of the nation," it might be less likely that a constitutional provision prohibiting any use of armed force will effectively govern state behavior**. n282 Thus, while the war [\*688] renouncing provision of the Constitution of Japan operated effectively to constrain Japanese policy on the use of armed force even in moments of perceived crisis, the provision "would not likely have exercised much influence over national policy in the event of a Soviet invasion of Hokkaido." n283 But **the Model being developed here is not intended to prevent or even hinder the use of force in such dire circumstances.**

First, **the constitutional incorporation of principles** of jus ad bellum **being proposed here would not actually oper-ate to prohibit an appropriate response to such existential crises**. **The** jus ad bellum **regime itself provides for the exer-cise of the right to self-defense, and since most true existential threats would more than satisfy the conditions for the exercise of self-defense** in international law, **the requirement** to consider compliance with international law **would not create any constraint on government action**. **Similarly, requiring legislative approval would not operate as any constraint in such circumstances.** **So quite aside from the argument that the constitutional provisions will not operate in moments of existential crisis, this Model is neither intended to be, nor would it actually operate as, a constraint in such circumstances.**

**The Model is intended, rather, to operate as a constraint with respect to the use of force when the life of the nation is not at stake, but where "vital interests" and other such imperatives provoke calls for action**. **For the fact remains that few armed conflicts that have involved Western constitutional democracies in the last 60 years have been responsive to existential threats**. **Rather, they range from such low-level operations as the U.S. invasions of Grenada and Panama at one end of the spectrum, which were defended as being for the purpose of protecting nationals overseas**, n284 **to such larger conflicts as the Korean conflict, the Vietnam war, the first Gulf war, the Kosovo war, the Falklands war, or the invasions of Afghanistan and Iraq since 2001, all of which were justified as being exercises of collective or individual self-defense**. **None of these, however, were in response to existential threats to the Western** [\*689] **democracies cen-tral to the conflicts**. Some were consistent with international law, some were not, but with the possible exception of the invasion of Afghanistan in response to 9/11, **none was a reaction to a national security crisis of such a scale that consti-tutional provisions would likely be ignored in liberal democracies engaged in the conflicts**. n285

***Statutory restrictions work – they raise the political cost of executive circumvention***

Morris S. **Ogul 96**, Department of Political Science, University of Pittsburgh, is the author of several articles on legislative oversight, and coauthor (with William J. Keefe) of The American Legislative Process (9th ed., 1997). Reviews in American History 24.3 (1996) 524-527, “The Politics of the War Powers” Louis Fisher. Presidential War Powers . Lawrence: University Press of Kansas, 1995. xvi + 206 pp. Appendixes, bibliography, and index. $29.95., Project Muse, online, jj

In part, **these two positions can be reconciled. Recognition that presidents under specific political circumstances will in essence act unilaterally does not mean sustained tyranny is upon us**. **If congressional majorities and large segments of the public respond vigorously and negatively to specific presidential actions, political pressures will minimize the duration and impact of such actions**. Conversely if Congress and large segments of the public go along with the president, formal legal restrictions will have few decisive effects.¶ Over twenty years of experience with the War Powers Resolution (WPR) illuminates the problem. Presidents have usually claimed that they have consulted with Congress as stipulated in the WPR before committing troops to hostile zones. Few members of Congress would read the evidence that way. Presidents have notified Congress about what they were about to do while asserting that they have consulted Congress. What presidents have actually done does not conform with any normal meaning of consultation. Similarly, most presidential decisions to send troops into environments where combat is likely were reported, as required by the WPR , to the Congress. But presidents have studiously avoided reporting in the manner prescribed by the WPR, one that triggers its sixty-day cut-off provisions. [End Page 527]¶ This behavior by presidents surely leaves some critical decisions in a legal limbo. That, for good or evil, is where they actually are. What we can do is recognize that fact and act accordingly. Politics has and will govern the resolution of this issue. Whether this is desirable in principle can be debated. The realities of politics, however, have and are likely to prevail.¶ Legal restrictions sometimes cannot withstand political tides. Constitutional, limited government is not intended to work that way but it does in reality. There are few effective legal safeguards against intense and enduring political tides. Fortunately in U.S. history, such episodes have been few and relatively fleeting. **Legal restrictions** such as those specified in the War Powers Resolution have little direct, conclusive impact. They do, however, **help raise the political costs of unilateral executive actions**. **Therein lies their primary value**. Will presidents fully and freely involve Congress in decision making to send U.S. armed forces into potential or actual combat? Despite the force of Louis Fisher's account of the constitutional history of the war powers, the answer is probably not. **Will presidents carefully calculate the political costs of such initiatives? They usually will.** **Legislation designed to raise political costs may be a useful way to promote this possibility**, but Fisher places far too much weight on "solid statutory checks" (p. 205).

***Even if Congress fails --- plan triggers Court action***

**Cowan ’04**, Kelly L. Cowan, Comments Editor, Santa Clara Law Review, Volume 45; J.D. Candidate, Santa Clara University School of Law; B.A., Economics, University of Colorado., 2004¶ Santa Clara Law Review¶ 45 Santa Clara L. Rev. 99, COMMENT: RETHINKING THE WAR POWERS RESOLUTION: A STRENGTHENED CHECK ON UNFETTERED PRESIDENTIAL DECISION MAKING ABROAD, Lexis, jj

**Finally, the War Powers Resolution can become more effective if the judiciary is able to better interpret specific provisions of the statute**. n227 **Future cases must be brought by plaintiffs in such a way as to avoid dismissal on justiciable grounds, such as constituting a political question, lack of standing, or lack of ripeness**. n228 **In order to escape such dismissal, cases need to center on the meaning of the words within the statute, rather than on alleged presidential actions**. n229 [\*126] **If courts could better interpret the meaning of words within the Resolution, such as** "consult" n230 or "**hostilities**," n231 **the expectations of the president's actions would be more clearly defined. Thus, Congress would know when the president fails to meet the Resolution's requirements and could legitimately act in response to indiscretions.**

***\*\*\*Congressional authorization forces the public to internalize the costs of war which breaks down militarization***

**Zelizer 11** – Julian E. Zelizer, Professor of History and Public Affairs at Princeton University, "War Powers Belong to Congress and the President", CNN Opinion, 6-27, http://www.cnn.com/2011/OPINION/06/27/zelizer.war.powers/index.html

But **the failure of Congress to fully participate in the initial decision to use military force has enormous costs** for the nation beyond the obvious constitutional questions that have been raised.¶ **The first problem is that the U.S. now tends to go to war without having a substantive debate about the human and financial costs that the operation could entail**. **Asking for a declaration of war, and thus making Congress take responsibility for the decision, had required presidents to enter into a heated debate about the rationale behind the mission, the potential for large-scale casualties and how much money would be spent**.¶ **When presidents send troops into conflict without asking Congress for approval, it has been much easier for presidents to elude these realities.** President Lyndon Johnson famously increased the troop levels in Vietnam without the public fully realizing what was happening until after it was too late. ¶ Although **Johnson** promised Democrats when they debated the Gulf of Tonkin Resolution in 1964 that they would only have a limited deployment and he would ask them again if the mission increased, he never did. He **used the broad authority granted to him to vastly expand the operations during his presidency**. ¶ **By the end of his time in office, hundreds of thousands of troops were fighting a hopeless war in the jungles of Vietnam.** Johnson also continued to mask the budgetary cost, realizing the opposition that would emerge if legislators knew how much the nation would spend. **When the costs became clear, Johnson was forced to request a tax increase from Congress in 1967, a request which greatly undermined his support**.¶ **The second cost of presidents going to war rather than Congress doing so is that major mistakes result when decisions are made so quickly**. **When there is not an immediate national security risk involved, the slowness of the legislative process does offer an opportunity to force policymakers to prove their case before going to war.**¶ Speed is not always a virtue. **In the case of Iraq, the president started the war based on the shoddiest of evidence about WMD.** The result was an embarrassment for the nation, an operation that undermined U.S. credibility abroad. ¶ **Even in military actions that have stronger justifications, there are downsides to speed. With President Obama and the surge in Afghanistan, there is considerable evidence that the administration went in without a clear strategy and without a clear objective. With Libya, there are major concerns about what the administration hopes to accomplish and whether we are supporting rebel forces that might be connected with terrorist networks intent on harming the U.S**.¶ **The third cost has been the cheapening of the decision about using military force. In the end, the decision about whether to send human treasure and expend valuable dollars abroad should be one that is made by both branches of government and one that results from a national dialogue.** Requiring Congress to declare war forces voters to think about the decision sooner rather than later.

***\*\*\*The aff is in the direction of the alt – breaks down securitization by allowing congress to assess the threat***

**Bacevich 13** – Andrew, Professor of History and International Relations at Boston University and Ph.D. in American Diplomatic History from Princeton University, The New American Militarism, p. 209-210

**An essential step toward curbing** the new **American militarism is to redress this imbalance in war powers and to call upon the Congress to reclaim its constitutionally mandated prerogatives**. Indeed, **legislators should insist upon a strict constructionist definition of war such that any use of force other than in-direct and immediate defense of the United States should require prior congressional approval.** The Cold War is history. The United States no longer stands eyeball-to-eyeball with a hostile superpower. **Ensuring our survival today does not require,** if it ever did, **granting to a single individual the authority to unleash the American military arsenal however the perception of threats, calculations of interest, or flights of whimsy, might seem to dictate.** Indeed, given all that we have learned about the frailties, foibles, and strand obsessions besetting those who have occupied the Oval office in recent decades – John Kennedy’s chronic drug abuse, Richard Nixon’s paranoia, and Ronald Reagan’s well-documented conviction that Armageddon was drawing near, to cite three examples – **it is** simply **absurd that elevation to the presidency should include the grant of such authority**.4 **The decision to use armed force is freighted with implications,** seen and unseen, **that affect the nation’s destiny**. Our history has shown this time and again. **Such decisions should require collective approval in advance by the people’s elected representatives, as the Framers intended**. Granted, one may examine the recent past – for instance, the vaguely worded October 2002 joint resolution authorizing the use of force against Iraq – and despair of those representatives actually stirring themselves to meet their responsibilities.5 But **the errors and misapprehensions**, if not outright deceptions, **that informed the Bush administration’s case for that war** – and the heavy price that Americans subsequently paid as a result – ***show why Cold War-era deference to the will of the commander-in-chief is no longer acceptable***. If serving members of Congress cannot grasp that point, citizens should replace them by electing people able to do so.

***\*\*\*This provides vertical restraints necessary to stop intervention and independently triggers social change that challenges militarism– proves the plan and alt are compatible despite their links***

**Lobel 89** – Jules Lobel, Associate Professor of Law at the University of Pittsburgh School of Law, "Emergency Power and the Decline of Liberalism", Yale Law Journal, May, 98 Yale L.J. 1385, Lexis

**These changes would** supplement and ultimately **transform traditional separation of power restraints.** The constitutional restraints on the executive are the product of a fear of unilateral decisionmaking by any one person**. In an effective** multinational **system, unilateral United States executive power would be restrained by international political and legal processes**. Moreover**, active citizen and local participation in foreign-policy making would reduce the power of the centralized government, rendering unrestrained executive adventurism less likely.** **The legal restraints currently provided horizontally within the national government by separation of powers would be supplemented by vertical restraints imposed by international society and popular community pressures.**¶In addition, **these changes would undermine** one important basis of the emergency/normalcy dichotomy -- **the fear of other peoples. Liberal society has traditionally addressed that fear by seeking to remove it physically** by isolating ourselves, **and constitutionally by separating emergency power from the normal constitutional order**. [n246](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n246) Increased people-to-people relations between American communities and other societies is likely to change the perspective that views the other as the enemy, as will the development of a more multinational governmental structure. As Louis Hartz has noted, "the larger forces working toward a shattering of American provincialism" require "nothing less than a new level of consciousness, a transcending of irrational Lockianism, in which an understanding of self and an understanding of others go hand in hand." [n247](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n247) While tension and strains would still exist with other countries, such tensions could be resolved without resort to an "emergency" paradigm.¶ **The resulting normative vision would probably rely more on community interaction and less on fixed rules to govern our lives**. Situations would be categorized not as emergency or non-emergency, but by their particular characteristics. [n248](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n248) **Eschewing a reliance on fixed rules to order** [\*1432] **our lives requires decisionmaking that focuses on the particular consequences of the concrete alternative possibilities in discrete situations**. [n249](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n249) **Such a contextual approach views experience as concrete and multifaceted rather than universal and binary**. [n250](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n250)¶ The possibility of these transformations lies within the shadows of the present. [n251](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n251) While the bright hopes of a world government that accompanied the establishment of the United Nations have faded, Gorbachev's new perspectives, **the increasing interdependence of the world's economies, and awareness of the vulnerability of the global environment have renewed interest in multilateral institutions and cooperative approaches**. In addition, the revival of scholarly interest in citizenry participation in government [n252](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n252) has proceeded apace with an actual revival of citizen participation in foreign affairs issues. Localities have begun passing resolutions on foreign policy issues, adopting sister cities in other parts of the world, and actively refusing to cooperate with emergency plans proposed by such agencies as FEMA. [n253](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n253) Citizens across the country have engaged in acts of civil disobedience to display their disapproval of policies in Central America. [n254](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n254) Anti-nuclear activists have also taken to the streets and jails to protest the United States' continuation of the nuclear arms race. These citizen and community movements contain two important transformative aspects. First, they do provide some concrete, democratic restraint on executive usurpation of power. Secondly, by directly interacting with people whom we have been taught to fear and distrust, these movements help [\*1433] break down the fears upon which the emergency/normalcy dichotomy is premised.¶ While these efforts are on the margin of current mainstream thought on foreign affairs, one commentator argues that the "shift from pre- to post-transformation practice is more like a movement from margin to center -- a shift of attention -- than it is like a total replacement of one 'world' by another." [n255](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.9179.875429109918&target=results_DocumentContent&returnToKey=20_T18297918255&parent=docview&rand=1380826878466&reloadEntirePage=true" \l "n255) Such a perspective describes the shift from the liberal view to the relativist view in the twentieth century; possibly the current citizen's movement will move from the margin to the center in the twenty-first century.¶ The struggle to revive the dichotomies of liberal thought is therefore contradictory. On the one hand, the separation of experience into opposites allows for the development of neutral rules and political democracy. Unlike the situation existing in the Middle Ages, or under fascist government, liberalism's separation of spheres allows for the relegation of totalitarian, arbitrary government to discrete crisis periods. The weakening of these dichotomies raises a grave danger of authoritarian rule in the conduct of foreign affairs. For any restoration of the dichotomies to attempt to remedy this situation, the sense of continual, permanent crisis must be eliminated.¶ However**, the changing global and domestic context presents a possibility for transforming the liberal model by providing international and communalist restraints on governmental power. Such a solution would attempt to overcome the fears that lead to the necessity for emergency power, instead of merely limiting emergency power by means of legal rules. We must seek to revive the dichotomies of liberal thought, yet recognize that the restriction of emergency powers ultimately requires the abandonment of the dualistic model.**

***\*\*\*Institutional checks effectively limit war, are compatible with broader critique and are a pre-requisite to the alt***

Eric **Grynaviski 13**, Professor of Political Science at The George Washington University, “The Bloodstained Spear: Public Reason and Declarations of War”, International Theory, 5(2), Cambridge Journals

Conclusion

The burden of the argument, thus far, has been to show that no war is justified unless it has been justified. States have an obligation intent on war to ensure that third parties and the target are given reasons for the war, as well as a chance to respond and reason with the belligerent state. Furthermore, **without a declaration of war, war is not a last resort** and therefore belligerent states are fully responsible for the harms that wars inevitably do to the innocent.

**One broader implication of the argument for declarations of war is to relate *institutional solutions* for moral questions. Some argue that declarations of war are an old and moribund ritual, antiquated and old-fashioned**. Ian Holliday (2002, 565), noting the irregularity with which wars are declared, writes ‘we would not want to make a just war verdict hang on such a rare political practice’. **This argument is *deeply wrong***. If ***declaring war is important***, than we can and should criticize states for failing to do so. **Others might suggest** that **even if states** do **declare war, they might still lie and misrepresent their case**. Of course, **there is nothing particular to declarations** of war **that would make misrepresentations** of one's case **more likely; we are pretty good at lying now. If arguments are given publicly**, however**, it might lead to a greater degree of precision in argumentation. This precision may make misrepresentations more noticeable. Alternatively, one might suspect that requiring states to declare war is not enough. Rather than simply requiring states to make a case, we should institutionalize rules of war so that states will pay a price if the cases they make are repugnant. *These arguments, of course, do not exclude the importance of declarations*. In fact, requiring that states explain their case is *perfectly compatible* with any reasonable institutional solution to the problem of war. Some *mechanism* to ensure that states make a case is probably an *important condition for any of these schemes to work***.

**The international system likely will *not include* robust, impartial international institutions that can make enforceable decisions about war and peace in the near future. Declarations of war are a *tool* that might *actually be appropriated* by states, *especially if the public and the international community demand them*. *Half-formed cosmopolitan proposals*, while interesting thought exercises, may *deflect attention from practical measures* that can be reached here and now. Declarations may be only first steps, but they are *important* ones**. Moral arguments make a difference, even if that difference is too often small. They mattered during slavery, decolonization, and have altered citizenship policies in Israel, the Ukraine, and elsewhere (Checkel 2001; Crawford 2002). Moreover, **forcing states to explain the moral case may make unjust wars less likely by preventing executives from overselling conflicts** (Goodman 2006) **or by leading states to face hypocrisy costs if they intervene despite target states’ concessions on just cause or inflict humanitarian causalities in wars declared for humanitarian reasons** (Finnemore 2009).

A broader implication relates to public reason and just war thinking. Showing that poorly justified, undeclared wars are unjust highlights the way that public reason conditions our understanding of just war theory. This argument is not new. In the last year of his life, Cicero (1913, 37) elaborated a theory of war that emphasized discussion and persuasion. His claim, discussed above, is worth reiterating: ‘there are two ways of settling a dispute; first, by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion’. Cicero's approach to war highlights mechanisms of public diplomacy – the importance of maintaining agreements with enemies, the use of declarations of war to inform enemies of the rationale for war, and discussion and diplomacy to peacefully resolve conflict – to explain the conditions under which a resort to force is justified. Cicero's comments presaged his end; when Anthony's men executed Cicero, they cut off his hands – the device used by Cicero to write criticisms of Anthony – and nailed them to rostra (the platform in the forum where speakers could be heard).

Cicero's distinction between force and argument is central to his thinking about the conditions under which violence is justly used. After Cicero, the centrality of discussion and argument fades, disappearing by the 20th century. Consider several recent examples. Jean Bethke Elshtain (2003, 19) – a noted just war theorist – describes terrorists as groups that are unwilling to accept compromises and refuse diplomacy: ‘terrorists are not interested in the subtleties of diplomacy or in compromise solutions. They have taken leave of politics’. Michael Walzer (1977), a just war theorist often credited for the revival of moral thinking about war after Vietnam, barely mentions obligations to settle disputes through negotiation in his key text Just and Unjust Wars. More amusingly in many ways, moral philosophers often construct hypothetical examples designed to showcase the types of moral dilemmas involved in war that unrealistically exclude the possibility of successful diplomacy. David Rodin (2002, 80), for example, describes a person trapped at the bottom of a well who has to decide whether to shoot a ray gun at a fat man falling into the well above his head, knowing that if he does not shoot the ray gun he will die. Discussion with the fat man – of course – is impossible; he is falling and no longer has control over his actions.22

Modern **discussions of ethics in war** usually **discount diplomatic solutions. In doing so, they are rooted in an *extraordinarily pessimistic version of realism*, where only power and force have the ability to settle conflict**. When painting war as a solution to pressing concerns related to self-defense against terrorists who have no interest in compromise, or the rescue of populations from genocide by regimes who will take any delay as cause to continue killing innocents, diplomacy does not loom large as a central component of just war reasoning.

***\*\*\*Legal restraints on use of force are the best check against militarism —- rejecting all intervention goes too far, won’t be accepted, and risks real security threats***

**Falk 1** – Richard Falk, Professor Emeritus of International Law at Princeton University, "Defining a Just War", The Nation, 10-11, http://www.thenation.com/article/defining-just-war~~23

I. ANTIWAR/PACIFIST APPROACH **The pacifist position opposing even limited military action overlooks the nature of the threat** and is thus irrelevant to meeting the central challenge of restoring some sense of security among our citizenry and in the world generally. ¶ Also, in the current setting, unlike in the civil rights movement and the interventionist conflicts of the cold war era (especially Vietnam), **antiwar and pacifist stands possess little or no cultural resonance with the overwhelming majority of Americans**. It may be that at later stages of the war this assessment will prove to have been premature, and even now Quaker, Christian, Gandhian and Buddhist forms of pacifism offer a profound critique of wars. These critiques should be seriously heeded, since they lend weight to the the view that the use of force should be marginal and kept to an absolute minimum. Certainly the spiritually motivated pacifist witness can be both inspirational and instructive, and help to mitigate and interrogate militarist postures. ¶ **Another form of antiwar advocacy rests on a critique of the United States as an imperialist superpower or empire**. **This view also seems dangerously inappropriate in addressing the challenge posed by the massive crime against humanity committed on September 11.** **Whatever the global role of the United States--and it is certainly responsible for much global suffering and injustice, giving rise to widespread resentment** that at its inner core fuels the terrorist impulse--**it cannot be addressed so long as this movement of global terrorism is at large** and prepared to carry on with its demonic work. These longer-term concerns--which include finding ways to promote Palestinian self-determination, the internationalization of Jerusalem and a more equitable distribution of the benefits of global economic growth and development--must be addressed. Of course, much of the responsibility for the failure to do so lies with the corruption and repressive policies of governments, especially in the Middle East, outside the orbit of US influence. **A distinction needs to be drawn as persuasively as possible between inherently desirable lines of foreign policy reform and retreating in the face of terrorism**. ¶ II. LEGALIST/UN APPROACH **International treaties that deal with terrorism on civil aircraft call for cooperation in apprehending suspects and allow for their subsequent indictment and prosecution by national courts. Such laws could in theory be invoked to capture Osama bin Laden** and his leading associates and charge them with international crimes, including crimes against humanity. **A tribunal could be constituted under the authority of the United Nations**, and a fair trial could then be held that would avoid war and the ensuing pain, destruction and associated costs. The narrative of apocalyptic terrorism could be laid before the world as the crimes of Nazism were bared at Nuremberg. **But this course is unlikely to deal effectively with the overall threat**. **A public prosecution would give bin Laden** and associates **a platform to rally further support among a large constituency of sympathizers, and conviction and punishment would certainly be viewed as a kind of legal martyrdom**. **It would be impossible to persuade the United States government to empower such a tribunal unless it was authorized to impose capital punishment**, **and it is doubtful that several of the permanent members of the Security Council could be persuaded to allow death sentences.** Beyond this, **the evidence linking bin Laden to the September 11 attacks** and other instances of global terrorism **may well be insufficient to produce an assured conviction in an impartial legal tribunal,** particularly if conspiracy was not among the criminal offenses that could be charged. European and other foreign governments are unlikely to be willing to treat conspiracy as a capital crime. And it strains the imagination to suppose that the Bush Administration would relinquish control over bin Laden to an international tribunal. On a more general level, **it also seems highly improbable that the US government can be persuaded to rely on the collective security mechanisms of the UN** even to the unsatisfactory degree permitted during the Gulf War. To be sure, the UN Security Council has provided a vague antiterrorist mandate as well as an endorsement of a US right of response, but such legitimizing gestures are no more than that. For better and worse, the United States is relying on its claimed right of self-defense, and Washington seems certain to insist on full operational control over the means and ends of the war that is now under way. Such a reliance is worrisome, given past US behavior and the somewhat militaristic character of both the leadership in Washington and the broader societal orientation in America toward the use of overwhelming force against the nation's enemies. ¶ **Yet at this stage it is unreasonable to expect the US government to rely on the UN to fulfill its defensive needs. The UN lacks the capability, authority and will to respond to the kind of threat to global security posed by this new form of terrorist world war. The UN was established to deal with wars among states,** while a transnational actor that cannot be definitively linked to a state is behind the attacks on the United States. Al Qaeda's relationship to the Taliban regime in Afghanistan is contingent, with Al Qaeda being more the sponsor of the state rather than the other way around. ¶ Undoubtedly, the world would be safer and more secure with a stronger UN that had the support of the leading states in the world. The United States has for years acted more to obstruct than to foster such a transformation. Surely the long-term effects of this crisis should involve a new surge of support for a reformed UN that would have independent means of financing its operations, with its own peacekeeping and enforcement capabilities backed up by an international criminal court. Such a transformed UN would generate confidence that it could and would uphold its charter in an evenhanded manner that treats people equally. **But it would be foolish to pretend that the UN today, even if it were to enjoy a far higher level of US support than it does, could mount an effective response to the September 11 attacks**. ¶ III. MILITARIST APPROACH Unlike pacifism and legalism, **militarism poses a practical danger of immense proportions. Excessive reliance on the military will backfire badly, further imperiling the security of Americans and others**, spreading war and destruction far afield, as well as emboldening the government to act at home in ways that weaken US democracy. So far the Bush Administration has shown some understanding of these dangers, going slowly in its reliance on military action and moving relatively cautiously to bolster its powers over those it views as suspicious or dangerous, so as to avoid the perception of waging a cultural war against Islam. The White House has itself repeatedly stressed that this conflict is unlike previous wars, that nonmilitary means are also important, that victory will come in a different way and that major battlefield encounters are unlikely to occur. ¶ Such reassurances, however, are not altogether convincing. The President's current rhetoric seems to reflect Secretary of State Colin Powell's more prudent approach, which emphasizes diplomacy and nonmilitary tactics, and restricts military action to Al Qaeda and the Taliban regime. Even here, there is room for dangerous expansion, depending on how the Al Qaeda network is defined. Some maximalists implicate twenty or more countries as supporters of terrorism. Defense Secretary Donald Rumsfeld, his deputy Paul Wolfowitz and others are definitely beating the drums for a far wider war; they seem to regard the attacks as an occasion to implement their own vision of a new world, one that proposes to rid the world of "evil" and advances its own apocalyptic vision. This vision seeks the destruction of such organizations as Hezbollah and Hamas, which have only minimal links to Al Qaeda and transnational terror, and which have agendas limited mainly to Palestinian rights of self-determination and the future of Jerusalem. These organizations, while legally responsible for terrorist operations within their sphere of concerns, but also subject to terrorist provocations, have not shown any intention of pursuing bin Laden's apocalyptic undertaking. Including such groups on the US target list will surely undermine the depth and breadth of international support and engender dangerous reactions throughout the Islamic world, and possibly in the West as well. ¶ Beyond this, there is speculation that there will be a second stage of response that will include a series of countries regarded as hostile to the United States, who are in possession of weapons of mass destruction but are not currently related to global terrorism in any significant fashion. These include Iraq, Libya and possibly even Syria, Iran and Sudan. To expand war objectives in this way would be full of risks, require massive military strikes inflicting much destruction and suffering, and would create a new wave of retaliatory violence directed against the United States and Americans throughout the world. If military goals overshoot, either by becoming part of a design to destroy Israel's enemies or to solve the problem of proliferation of weapons of mass destruction, the war against global terrorism will be lost, and badly. ¶ **Just as the pacifist fallacy involves unrealistic exclusion of military force from an acceptable response, the militarist fallacy involves an excessive reliance on military force in a manner that magnifies the threat it is trying to diminish or eliminate. It also expands the zone of violence in particularly dangerous ways that are almost certain to intensify and inflame anti-Americanism**. It should be kept in mind that war occasions deep suffering, and recourse to international force should be both a last resort and on as limited a scale as possible. ¶ But there is a fourth response, which has gained support among foreign policy analysts and probably a majority of Americans. ¶ IV. LIMITING MEANS AND ENDS Unlike in major wars of the past, the response to this challenge of apocalyptic terrorism can be effective only if it is also widely perceived as legitimate. And legitimacy can be attained only if the role of military force is marginal to the overall conduct of the war and the relevant frameworks of moral, legal and religious restraint are scrupulously respected.¶ **Excessive use of force in pursuing the perpetrators of September 11 will fan the flames of Islamic militancy and give credence to calls for holy war.** What lent the WTC/Pentagon attack its quality of sinister originality was the ability of a fanatical political movement to take advantage of the complex fragility and vulnerability of advanced technology. Now that **this vulnerability has been exposed to the world, it is impossible to insure that other extremists will not commit similar acts**--even if Osama bin Laden is eliminated. ¶ **The only way to wage this war effectively is to make sure that force is used within relevant frameworks of restraint.** Excessive force can take several forms, like the pursuit of political movements remote from the WTC attack, especially if such military action is seen as indirectly doing the dirty work of eliminating threats to Israel's occupation of Palestinian territories and Jerusalem. **Excessiveness would also be attributed to efforts to destroy and restructure regimes, other than the Taliban, that are hostile to the United States but not significantly connected with either the attack or Al Qaeda**. ¶ The second, closely related problem of successfully framing a response is related to the US manner of waging war: The US temperament has tended to approach war as a matter of confronting evil. In such a view, victory can be achieved only by the total defeat of the other, and with it, the triumph of good. ¶ In the current setting, goals have not been clarified, and US leaders have used grandiose language about ending terrorism and destroying the global terrorist network. The idea of good against evil has been a consistent part of the process of public mobilization, with the implicit message that nothing less than a total victory is acceptable. What are realistic ends? Or put differently, what ends can be reconciled with a commitment to achieve an effective response? **What is needed is extremely selective uses of force**, especially in relation to the Taliban, combined with criminal law enforcement operations--cutting off sources of finance, destroying terrorist cells, using policing techniques abetted, to the extent necessary, by paramilitary capabilities. ¶ Also troubling is the Bush Administration's ingrained disdain for multilateralism and its determination to achieve security for the United States by military means--particularly missile defense and space weaponization. This unilateralism has so far been masked by a frantic effort to forge a global coalition, but there is every indication that the US government will insist on complete operational control over the war and will not be willing to accept procedures of accountability within the UN framework. ¶ The Administration has often said that many of the actions in this war will not be made known to the public. But an excessive emphasis on secrecy in the conduct of military operations is likely to make the uses of force more difficult to justify to those who are skeptical about US motives and goals, thus undercutting the legitimacy of the war. ¶ In building a global coalition for cooperative action, especially with respect to law enforcement in countries where Al Qaeda operates, the US government has struck a number of Faustian bargains. It may be necessary to enter into arrangements with governments that are themselves responsible for terrorist policies and brutal repression, such as Russia in Chechnya and India in Kashmir. But the cost of doing so is to weaken claims that a common antiterrorist front is the foundation of this alliance. For some governments the war against apocalyptic terrorism is an opportunity to proceed with their own repressive policies free from censure and interference. The US government should weigh the cost of writing blank checks against the importance of distinguishing its means and ends from the megaterrorist ethos that animated the September 11 attacks. There are some difficult choices ahead, including the extent to which Afghan opposition forces, particularly the Northern Alliance, should be supported in view of their own dubious human rights record. ¶ How, then, should legitimacy be pursued in the current context? The first set of requirements is essentially political: to disclose goals that seem reasonably connected with the attack and with the threat posed by those who planned, funded and carried it out. In this regard, the destruction of both the Taliban regime and the Al Qaeda network, including the apprehension and prosecution of Osama bin Laden and any associates connected with this and past terrorist crimes, are appropriate goals. In each instance, further specification is necessary. With respect to the Taliban, its relation to Al Qaeda is established and intimate enough to attribute primary responsibility, and the case is strengthened to the degree that its governing policies are so oppressive as to give the international community the strongest possible grounds for humanitarian intervention. We must make a distinction between those individuals and entities that have been actively engaged in the perpetration of the visionary program of international, apocalyptic terrorism uniquely Al Qaeda's and those who have used funds or training to advance more traditional goals relating to grievances associated with the governance of a particular country and have limited their targets largely to the authorities in their countries, like the ETA in Spain and the IRA in Ireland and Britain. ¶ **Legitimacy with respect to the use of force in international settings derives from the mutually reinforcing traditions of the "just war" doctrine, international law and the ideas of restraint embedded in the great religions of the world**. **The essential norms are rather abstract in character, and lend themselves to debate and diverse interpretation. The most important ideas are:** ¶ **§ the principle of discrimination: force must be directed at a military target, with damage to civilians and civilian society being incidental;** ¶ **§ the principle of proportionality: force must not be greater than that needed to achieve an acceptable military result and must not be greater than the provoking cause;** ¶ **§ the principle of humanity: force must not be directed even against enemy personnel if they are subject to capture, wounded or under control (as with prisoners of war);** ¶ **§ the principle of necessity: force should be used only if nonviolent means to achieve military goals are unavailable.** ¶ **These abstract guidelines for the use of force do not give much operational direction. In each situation we must ask: Do the claims to use force seem reasonable in terms of the ends being pursued, including the obligation to confine civilian damage as much as possible? Such assessments depend on interpretation, but they allow for debate and justification, and clear instances of violative behavior could be quickly identified. The justice of the cause and of the limited ends will be negated by the injustice of improper means and excessive ends. Only the vigilance of an active citizenry, alert to this delicate balance, has much hope of helping this new war to end in a true victory.**

# 2AC

### 2AC A2: Statutory Restrictions Fail

#### External checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### Posner and Vermuele vastly overgeneralize --- law can effectively restrain the executive

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, Spring, 2012, University of Chicago Law Review, 79 U. Chi. L. Rev. 777, Review: Binding the Executive (by Law or by Politics), Lexis, jj

A. Historical Evidence of Executive Constraint via Law

The Executive Unbound paints a n image of executive discretion almost or completely unbridled by law or coequal branch. But PV also concede that “ the pre sident can exert control only in certain [policy] areas ” (p 59). 51 They give no account, however, of what limits a President ’ s discretionary actions. To remedy that gap, this Section explores how the President has been and continues to be hemmed in by Congress and law. My aim here is not to present a comprehensive account of law as a constraining mechanism. Nor is my claim that law is always effective. Both as a practical matter and as a result of administrative law doctrine, the executive has considerable a uthority to leverage ambiguities in statutory text into warrants for discretionary action. 52 Rather, my more limited aspiration here is to show that Congress and law do play a meaningful role in cabining executive discretion than The Executive Unbound credits . I start with Congress and then turn to the effect of statutory restrictions on the presidency.¶ Consider first a simple measure of Presidents ’ ability to obtain policy change : Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish. 53 President Obama came into office, for example, promising health care reform, a cap - and - trade solution to climate change, and major immigration reform. 54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues. 55 One way of assessing presidential influence is by examining how such presidential agendas fare , and asking whet her congressional obstruction or legal impediments — which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action — is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion. ¶ Both recent experience and long - term historical data suggest presidential agenda items are rarely achieved , and that legal or institutional impediments to White House aspirations are part of the reason . In both the last two presidencies, the White House obtained at least one item on its agenda — education for Bush and health care for Obama — but failed to secure othe rs in Congress . Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his “ proposals for reconstruction [of government] . . . rejected outright. ” 56 Even in the midst of economic crisis, Congres s successfully resisted New Deal initiatives from the White House . This historical evidence suggests that the diminished success of presidential agendas cannot be ascribed solely to the narrowing scope of congressional attention in recent decades; it is a n older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more . President George W. Bush ’ s legislative agenda was “ half as large as Richard Nixon ’ s first - term agenda in 1969 – 72, a third smaller than Ronald Reagan ’ s firs t - term agenda in 1981 – 84, and a quarter smaller than his father ’ s first - term agenda in 1989 – 92. ” 57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions.¶ Supplementing this evidence of pr esidential weakness are studies of the determinants of White House success on Capitol Hill . These find that “ presidency - centered explanations ” do little work. 58 Presidents ’ legislative agendas succeed not because of the intrinsic institutional characteristi cs of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition. 59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

#### Best recent scholarship and examples prove

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, Spring, 2012, University of Chicago Law Review, 79 U. Chi. L. Rev. 777, Review: Binding the Executive (by Law or by Politics), Lexis, jj

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition. 80¶ The same point emerges more forcefully from a review of our “ fiscal constitution. ” 81 Article I, § 8 of the Constitution vests Congress with power to “ lay and collect Tax es ” and to “ borrow Money on the credit of the United States, ” while Article I, § 9 bars federal funds from being spent except “ in Consequence of Appropriations made by Law. ” 82 Congress has enacted several framework statutes to effectuate the “ powerful limitations ” implicit in these clauses. 83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization . 84¶ Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 85 requires that all funds “ received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid . . . into the treasur y of the United States. ” 86 It ensures that the executive cannot establish off - balance - sheet revenue streams as a basis for independent policy making. Second, the Anti - Deficiency Act, 87 which was first enacted in 1870 and then amended in 190 6 , 88 had the effect of cementing the principle of congressional appropriations control. 89 With civil and criminal sanctions, it prohibits “ unfunded monetary liabilities beyond the amounts Congress has appropriated, ” and bars “ the borrowing of funds by federal a gencies . . . in anticipation of future appropriations. ” 90 Finally, the Congressional Budget and Impoundment Control Act of 1974 91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. 92 It responded to President Nixon ’ s e xpansive use of impoundment. 93 Congress had no trouble rejecting Nixon ’ s claims despite a long history of such impoundments. 94 While the Miscellaneous Receipts Act and the Anti - Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed rec ord. While the Supreme Court endorsed legislative constraints on presidential impoundment, 95 President Gerald Ford increased impoundments through creative interpretations of the law. 96 But two decades later, Congress concluded the executive had too little di scretionary spending authority and expanded it by statute. 97 ¶ Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litiga tion finds evidence that the federal courts interpret fiscal laws in a more pro - government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. 98 Although the r esulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. 99¶ To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound , is that it is unclear what baseline should be used to evaluate the outcomes of executive - congressional struggles. What counts, that is, as a “win” and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part , I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. 100¶ In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda 101 and agencies jawbone their legislative masters into new funding. 102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive ’ s choice set , this at minimum i mplies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete .

### 2ac – security k on case

#### Non-unique---securitization and militarism are the status quo --- plan solves --- that’s Fisher

#### K of linear model too sweeping and wrong.

Chernoff ‘5

(Fred, Prof. of Political Science at Colgate The Power Of International Theory, p. 215)

Any theory that does not account for prediction is without empirical value for policy-makers, as Chapter 1 showed. One should seek a theory that allows for prediction, unless predictive theory can be proven illegitimate. The standards of proof for any anti-predictive argument must be very high. The Eleatics argue that change is an illusion, which conflicts with virtually all experience of the sensible world. Because of the enormous number and diversity of previously accepted truths that would have to be surrendered to accept this claim, one should demand a very high standard of proof for it. Experience does seem to support (non-point) predictions of human behavior. For example, there seems to be little problem with predictions of the behavior of individual humans such as: the hungry baby will cry some time during the night; or of states such as: France will not invade China in the coming year. Any theory that prohibits prediction will, like the metaphysics of Parmenides and Zeno, require an extraordinarily high standard of proof, because the alternative appears to be so well confirmed.

The examination of anti-predictive arguments drawn from a variety of sources (such as non-linearities, social complexity, the absence of governing regularities) showed that there is no conclusive argument against the possibility of predictive theory. And prediction indeed seems possible in international relations, albeit with certain qualifications. The foregoing has acknowledged qualifications on the predictiveness of social science theory. Predictions are probabilistic and their strength is limited by the value of observed empirical associations and by the future temporal frame (since they are less reliable as the time-frame is extended, which follows from the axioms of the probability calculus). However, the calculations produce better results than randomly chosen policies. And random policies are the alternative if one rejects the belief in rational calculation and causation on which it is based.

The review of the attacks on prediction showed the arguments to be fundamentally flawed. Either derive their conclusions by means of a straw man (an uncommonly narrow definition of ‘prediction’ that presupposes many unreasonable conditions) or the accounts supposedly inconsistent with prediction in fact allow, on closer inspection, room for prediction. For example, Chapter 5 found the scenario defined by Berstein et. al attractive, though for reasons not fully acknowledged by the authors. The method turns out to be an application of the predictive approach and not an alternative to it, as Berstein et. al claim. In Chapter 5 (pp. 135-7) Bohman’s HT account was shown to be consistent with a notion of ‘prediction’, as well.

***No impact – threat construction isn’t sufficient to cause wars and proximate causes outweigh***

**Kaufman, 9** - Prof Poli-sci and IR – U Delaware (Stuart J, “Narratives and Symbols in Violent Mobilization: The Palestinian-Israeli Case,” Security Studies 18:3, 400 – 434)

Even when hostile narratives, group fears, and opportunity are strongly present, war occurs only if these factors are harnessed. Ethnic narratives and fears must combine to create signiﬁcant ethnic hostility among mass publics. Politicians must also seize the opportunity to manipulate that hostility, evoking hostile narratives and symbols to gain or hold power by riding a wave of chauvinist mobilization. Such mobilization is often spurred by prominent events (for example, episodes of violence) that increase feelings of hostility and make chauvinist appeals seem timely. If the other group also mobilizes and if each side’s felt security needs threaten the security of the other side, the result is a security dilemma spiral of rising fear, hostility, and mutual threat that results in violence. A virtue of this symbolist theory is that symbolist logic explains why ethnic peace is more common than ethnonationalist war. Even if hostile narratives, fears, and opportunity exist, severe violence usually can still be avoided if ethnic elites skillfully deﬁne group needs in moderate ways and collaborate across group lines to prevent violence: this is consociationalism.17 War is likely only if hostile narratives, fears, and opportunity spur hostile attitudes, chauvinist mobilization, and a security dilemma.

### Presidctions good

***Predictions are methodologically sound, reflexive, and increasingly accurate.***

Ruud **van der Helm** is a Dutch policy officer on instrument development in the Aid Effectiveness and Policy Department. Futures – Volume 41, Issue 2, Pages 67-116 (March **2009**) – obtained via Science Direct

Futurists build and discuss statements on future states of affairs. When their work is challenged, they cannot defend ‘‘what may come to be’’ with robust forms of proof. They have no direct observation, can design no experiments, and cannot accumulate data sets. All the work, all the discussions of validity, have to rely on indirect reasoning based on current and past observations, experiments and data. Such reasoning is fragile and subject to considerable uncertainty. Ever since the field emerged in the 1950s and 1960s, futurists have been acutely aware of the special challenge this implies, including two most obvious consequences. First, even the most serious work is vulnerable to potentially devastating criticism. This has triggered an on-going effort of theoretical justification that has accompanied the development of the Futures field. Second, in relation to this, sound methodology is crucially important to provide support when exploring such insecure ground as professional and academic speculation on possible futures. It is not surprising that methodology has constantly been one – and often the – central concern of the field, sometimes to a point of excess. As early as 1980, De´coufle´ could warn companion futurists against the urge ‘‘to jump steps in the long and difficult progression towards the still hypothetical scientificity of conjectural work by displaying inappropriate complacency for issues of method’’. Whether or not some futurists do ‘jump steps’, the Futures field has consistently shown much reflexivity on its theoretical foundations and its methodological procedures. However, the nature of the theoretical and methodological challenges to be addressed by such reflexivity changes over time. The doctrines, the methodological resources, the knowledge-base, the organisation of discussion in the field, that once provided the basis for successfully meeting the challenges of a given era may become inadequate or irrelevant if the context comes to change in a major way. Our argument in this special issue is that such a major change in the challenges that have to be met by our field is now well under way, calling for a major re-examination and renewal of the theoretical underpinnings of futures work.1 Deepening and refining the diagnosis of the changing context of FS is of course one part of the task ahead of us. But to launch the effort, and show its necessity, let us just sketch a rough picture of the situation, by reviewing three important aspects of the development of the Futures field: (1) practical necessity and finalisation, (2) peculiarity and separation, and (3) methodology-based development. Confronted with strident criticism on the possibility and legitimacy of any serious study of future situations, the strongest argument put forward by many pioneers of the Futures field was that studying possible futures was necessary for action and decision-making. As expressed by Bertrand de Jouvenel (1964): ‘‘One always foresees, without richness of data, without awareness of method, without critique nor cooperation. It is now urgent and important to give this individual and natural activity a cooperative, organised character, and submit it to growing demands of intellectual rigor’’. This has proved a decisive basis for the development of the field, fromthe1960s to thep resent day. It has led to a situation where most works on futures are legitimised through their connection to business management, to public decision-making, or both. The success of foresight in the recent years is an illustration of the strength of this covenant between futures methodology and the needs of long-term, strategic, management and policy. The downside of thus using the contribution to decision-making as the main theoretical justification and as the backbone of methodological design in futures work has been, and is now, a constant weakening of the effort to explore and develop other bases for theoretical foundation and methodological development. Although many such avenues have been opened, they have not been explored very far, because the evaluation of new methods has been based on their adequacy in serving studies designed for the preparation of decision-making, or of collective action.

### K

#### Methodological changes don’t shape reality

Roth 2000 (Brad R., Assistant Professor of Legal Studies and Political Science and Adjunct Professor of Law, Wayne State University, “Governmental Illegitimacy And Neocolonialism: Response To Review By James Thuo Gathii”, Michigan Law Review, May, 98 Mich. L. Rev. 2056, Lexis)

"Critical" scholars frequently seem to imagine that, in struggling against the methodological norms of their disciplines, they are struggling against the very structure of the power relations that exploit and repress the poor and weak - the metaphor being, in their minds, somehow transubstantiated into reality. The result is, all too often, an  [\*2057]  illusory radicalism, rhetorically colorful but programmatically vacuous. The danger is that a fantasized radicalism will lead scholars to abandon the defense of the very devices that give the poor and weak a modicum of leverage, when defense of those devices is perhaps the only thing of practical value that scholars are in a position to contribute. [3](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97#n3) My main problem with Gathii's critique, then, is not (as he might imagine) that it is political, but that it is politically dysfunctional. More specifically, for all of Gathii's anticolonial posturing, my book is, I insist, far more effectively anticolonial than is his critique of it. I. The Law and Politics of Governmental Illegitimacy Professor Gathii is fully justified in subjecting Governmental Illegitimacy in International Law to an essentially political critique, for the book, like all legal scholarship, has political implications - in this case, designedly so. [4](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97#n4) This is not to say, as "critical" scholars sometimes seem to imply, that law or legal scholarship is reducible to ordinary politics. Law is a purposive project, and thus not exclusively an empirical phenomenon; "law as it is" cannot be wholly separated from "law as it ought to be." [5](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n5" \t "_self) The purposes that drive the project, however, must be demonstrably immanent in social reality, not merely superimposed according to the predilections of the jurist; the jurist's task, at once creative and bounded, is to render a persuasive account of how those immanent purposes bind powerful actors to worthy projects  [\*2058]  (such as the self-determination of Third-World peoples) that they would not otherwise be inclined to undertake. [6](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n6" \t "_self) That legal scholarship impress those who are not natural political allies is the test, not only of its scholarly merit, but also of its political merit; that friends may be disappointed is of far lesser significance. This task is not to everyone's taste, and some in the academy have devoted their considerable talents to discrediting the project of legal reasoning, as conventionally understood. [7](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n7" \t "_self) But their efforts, though often of great intellectual sophistication, are profoundly misguided. In their zeal to "unmask" law's legitimation of exercises of power, they fail to appreciate that law can legitimate such exercises only insofar as it simultaneously constrains them. Power holders seeking the imprimatur of legality can benefit only to the extent that they accept its limits, for violation of the limits necessarily reverses the process of legitimation. [8](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n8" \t "_self) To deny such a relationship between legitimation and constraint is to assert that putative legal limits are a remarkably effective ruse - that legal rhetoric, rather improbably, fools most of the people all of the time. (Presumably, the power holders are not thought to be fooling themselves, since if the constraints, though objectively illusory, seem real enough to them, the rule of law would be a reality in political terms even if a chimera in philosophical terms.) On the other  [\*2059]  hand, if law does constrain as well as legitimate the exercise of power, to neglect that point is to miss an important political opportunity. [9](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n9" \t "_self) Thus, Governmental Illegitimacy in International Law, in developing legal grounds for limiting the intervention of foreign powers in the internal affairs of weak states, is highly conventional in its method, except in one important respect. Because there has only recently come into being an international law of the internal character of domestic political systems, there is no tradition in international law scholarship of interpreting the relevant practices and pronouncements of states in light of the diversity of political principles and power arrangements that have been efficacious in the international community. The task of legal interpretation in this area implicates the fields of political theory and comparative politics; without an understanding of the political ideals and structures that have had a voice and a vote in the international system, one tends to read the source material in light of highly parochial assumptions about political life. Thus, Chapters Two, Three, and Four, as interdisciplinary aids to legal interpretation, distinguish the book from more standard international law scholarship. For this limited interpretive purpose, however, one need understand only empowered approaches to political legitimacy - that is to say, approaches that have been influential among state actors (Western, Socialist, and Nonaligned) whose deeds and words are the source material of international law in the relevant periods. That other, disempowered approaches may more authentically represent cultural norms in much of the world (e.g., in postcolonial states ruled by unrepresentative, Western-influenced leaders) would be interesting to know, but unhelpful to this particular project. The book does not purport to be a thoroughgoing examination of the question of political legitimacy in general; that would be a project so immense as to be imponderable. Rather, the book seeks to be a thoroughgoing examination of the international norm emerging to govern the exceptional case: the de facto government so manifestly unrepresentative as to be arguably without standing to resist, in the name of the sovereignty belonging to the underlying political community, external impositions. The question, then, is what indication of representativeness is minimally required to deem a ruling apparatus the state's "government" for purposes of international law. The orthodox approach to this question has been the "effective control doctrine," the linchpin of  [\*2060]  which is popular acquiescence in governance (pp. 137-42). A sharp break from orthodoxy is implicit in liberal-internationalist assertions of a "democratic entitlement," the linchpin of which is a liberal-democratic institutional structure. [10](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n10" \t "_self) The former approach is clearly giving way to a significant extent, and there are those who argue, on the basis of a fair amount of evidence, that the latter approach is emerging as the basis of a new norm that would open the door to "prodemocratic" intervention, perhaps including even the use of force, especially where a "freely and fairly elected" government has been overthrown. [11](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n11" \t "_self) Governmental Illegitimacy in International Law elaborately argues two politically relevant propositions: (1) that the case for the democratic entitlement as the emerging norm in international law is weaker than is generally supposed; and (2) that liberal-democratic legitimism (i.e., the use of the democratic entitlement as the basis for disregarding a government's legal prerogatives) is dangerous both to self-determination and to peace. The book presents the second proposition as relevant to the first, inasmuch as one may appropriately amplify those aspects of the source material that stem from enlightened considerations. The book thereby intends to strike a blow for anticolonialism. It denies the existence of, and opposes the establishment of, a broad-ranging legal license for external intervention in the affairs of weak states. It associates such a license with great-power initiatives of the past that have been misguided at best, oppressive and exploitative at worst. Confronting a dismal subject matter that admits only of bleak choices, the book maintains a presumption in favor of what I, none too facetiously, often refer to as "the right to be ruled by one's own thugs," though it concedes a limited range of blatant thuggery that overcomes this presumption. [12](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n12" \t "_self) The book does not, as Gathii charges, "celebrate[] Haiti as the exemplary contemporary case of successful prodemocracy intervention," [13](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n13" \t "_self) but merely accepts that in a certain class of cases, of which Haiti is archetypical, one can no longer, and should not want to, deny the existence of an exception to the nonintervention norm. What  [\*2061]  Governmental Illegitimacy in International Law seeks to promote is a balanced norm, one that finds ample support in state practice and opinio juris and that serves, to the extent possible, the long-term interests of the inhabitants of weak states. II. Confessions of a "Neoconservative Realist" Gathii's characterization of my work as an exemplar of "neo-conservative realism" presents several difficulties. There are certain aspects of the book that can fairly be characterized as "conservative" and as "realist," at least in counterposition to liberal internationalism, if special definitions of those terms are designated with sufficient care. The book is conservative in the limited sense that it seeks to rationalize and to bolster the conception of international legal order, premised on the twin principles of self-determination of peoples and non-intervention in internal affairs, that was dominant throughout the 1960s, 1970s, and 1980s, but that now faces significant challenges. [14](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n14" \t "_self) The book is realist to the extent that it takes states (qua political communities entitled to self-government) seriously as units of the international system, and that it treats skeptically efforts to superimpose idealist blueprints on complex and unruly realities. [15](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n15" \t "_self) Gathii's own efforts to define the terms, however, lead only to confusion. The prefix "neo-" is especially troubling, because although Gathii at times seems to intend it in a more generic sense, the term "neoconservative" cannot be disassociated from a specific movement among right-wing American intellectuals that stands for propositions diametrically opposed to the book's central arguments. It is jarring to see the word used to characterize, for example, a discussion of U.S. intervention in Central America so overtly adverse to that emblematic neoconservative project of the 1980s (pp. 290-303, 347-61). Indeed, Gathii's accurate assertion that "the neoconservative tradition... is embedded in American exports such as neoliberalism and democracy promotion programs" [16](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n16" \t "_self) goes far in explaining the book's chilly reception  [\*2062]  of the latter; but how, then, can the book conceivably be identified with neoconservatism? This glitch could be dismissed as a detail if it were not reflective of Gathii's broader misperception of the political spectrum. Gathii complains of "binary thinking" as a " "pathological' feature of Western knowledge systems," [17](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n17" \t "_self) but ironically, it is his organization of the material, not mine, that suffers from this pathology. Thus, Gathii does not discern that my approach to the question of governmental illegitimacy charts a middle way between the effective control doctrine and the democratic entitlement, one that seeks to appreciate the vast diversity of legitimacy rationales without embracing an abject relativism. To the extent that the book seeks to categorize the elements of that diversity, it does so expressly for the sake of convenience alone, and in a tone of self-deprecation. [18](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n18" \t "_self) For all of his complaints about my neglect of non-Western approaches to legitimacy, Gathii nowhere explains how the book excludes that which it does not expressly discuss. Nonetheless, this either-or motif is the relentless theme of his essay. According to Gathii's dichotomous reasoning, "Western" approaches to international relations amount to a dyad of liberal internationalist and neoconservative realist tendencies. Thus, the idea of "liberalism overextending itself" - which well captures my adverse characterization of the effort to exalt liberal-democratic institutional norms as legal criteria for governmental legitimacy - is, for Gathii, necessarily of a piece with Right-of-Center critiques of the New Deal welfare state. [19](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n19" \t "_self) Yet the considerations that underlie my critique of liberal internationalism cannot, on any careful reading, be imagined to emanate from the Right. Gathii's reasoning turns on an assertion that my "examination of only the legitimacy or illegitimacy of state authority invariably endorses the inequalities inherent in the private order which overlays the authority of any government providing its public imprimatur in private ordering." [20](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n20" \t "_self) But given that my project concerned a very narrow (albeit  [\*2063]  grandly complex) question - namely, when does a ruling apparatus in effective control lack standing to assert rights, incur obligations, and authorize acts on behalf of the state in the international system? - Gathii's assertion seems merely to reflect a methodological prejudice against treating anything as a discrete issue. [21](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n21" \t "_self) For Gathii, either one expressly discusses economic and social inequality in every context, or one is unconcerned with it. Ironically, part of the book's criticism of the democratic entitlement thesis is precisely that the latter emphasizes institutional criteria at the expense of contextual factors such as economic and social conditions (pp. 104-06, 120, 424-26) - an aspect that would, I had supposed, be hard to miss if one were reading the book for its political implications. The book's defense of sovereign prerogative overtly reflects an interest in maintaining political space for the very resistance to private-sector predation that Gathii seeks to champion. [22](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n22" \t "_self) Moreover, Gathii's complaint that I "ignore" international economic domination [23](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n23" \t "_self) could not be more misplaced, since I not only discuss the various pronouncements of intergovernmental organizations against coercive economic measures, but seek to establish for those pronouncements a legal significance that, though modest, goes beyond what most Western international lawyers tend to admit. [24](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n24" \t "_self) To make use of legal discourse, however, is to accept that its political worth - its credibility with influential actors who do not share one's interests and values - can be maintained only by resisting the temptation to assert as law one's entire political and moral wish list. I do not contend that the lending conditions imposed by international financial institutions are violations of international law, as Gathii  [\*2064]  would like, [25](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n25" \t "_self) because the absence of any broadly accepted basis would render the contention useless and self-discrediting. Furthermore, I do not denounce the absence of a doctrinal basis for this contention as a failing of international law, because that body of law has never pretended to exhaust the question of international distributive justice. Like many "critical" theorists, Gathii, in so busily demonstrating the truism that law is political, fails to appreciate the distinctiveness of law's role in politics, and therefore curses its necessary limitations. The supreme example of Gathii's binary thinking, however, and by far the most disturbing, is the neat division between "Eurocentric" and "Third-World" approaches. The irony of Gathii's condemnation of my "Eurocentrism" (apart from the difficulty of reconciling it with my copious quotations from Kwame Nkrumah, Julius Nyerere, Raul Castro, and the like) is that the reconstructed image of the contemporary sovereign state system that I present reflects the influences, direct and indirect, of the Nonaligned Bloc, quite as much as it does those of Westphalia or even of the drafters of the United Nations Charter. As the book details, the era of decolonization and its aftermath profoundly affected legal norms, as both Western and Socialist blocs purchased Third-World political support by, inter alia, affirming the inviolability of weak states (pp. 6, 113-18, 160-71). In repudiating conventional legal analysis as Eurocentric, Gathii dismisses both the significance of Third-World participation in shaping contemporary norms and the extent of the Third World's stake in the continued vitality of those norms - an attitude not, so far as I can tell, broadly shared among Third-World leaders, scholars, or peoples. International law's basic categories do, of course, stem from European sources, [26](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n26" \t "_self) but then so, too, in large measure, do the ideologies of the postcolonial state governments. Gathii may see this as itself a corruption of authentic African, Asian, and Latin-American traditions, [27](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n27" \t "_self) but the struggle over authenticity is internal to those  [\*2065]  societies and cultures. If Gathii is intent on regarding Third-World authenticity as excluding Western political thought - Rousseau and Marx as much as Locke and Mill, and by extension all African, Asian, and Latin-American thinkers who have drawn inspiration from them - his notion of "Third-World approaches" cannot help but be a highly tendentious rendering. Gathii is correct to assert that my analysis treats colonialism as a legal aberration rather than as "ingrained in international law as we know it today." [28](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n28" \t "_self) But he fails altogether to explain why it would be useful, in terms of his purported political goals, to do otherwise. Characterizing contemporary international law as essentially continuous with patterns of past Western domination (thereby belittling the hard-won achievements of anticolonialist struggles) scarcely promises a more effective defense to the phenomena - economic disempowerment, cultural imperialism, and proposals to subject "failed states" to trusteeship [29](http://www.lexis.com/research/retrieve?_m=09f90476a1942b49ffc9e173cb3f97f3&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAA&_md5=2a8ae3c0defbbd51a2908363cb088a97" \l "n29" \t "_self) - against which he inveighs. Gathii undoubtedly believes that Governmental Illegitimacy in International Law, in failing to attack the structure of international law itself, subtly reinforces these phenomena. But the first two exist despite, not because of, the conception of international law that the book embodies, and the last is most effectively opposed by invoking that conception. Conclusion Professor Gathii's substantive concerns about neocolonialism and neoliberalism are the very concerns that underlie Governmental Illegitimacy in International Law. It is thus ironic - though, in light of recent scholarly trends, not very surprising - that he should regard my book as part of the problem rather than as part of the solution. It would be different if the methodological radicalism of Gathii and others of his persuasion entailed a programmatic alternative. But it does not. Instead, it disdains to engage in the only consequential struggle in which its adherents are, by training and position, equipped to participate. It therefore reflects neither the interests nor, it is a sure bet, the views of those on whose behalf it purports to operate. Faced with the alternative that it presents to more traditional modes of scholarship, I much prefer to take the advice of an old mentor: "the more radical the message, the more conservative the suit."

#### 3) The K is wrong – queers do not embody the death drive – 100% link takeout

**Brenkman ‘02** (John, professor of English and Comparative Literature at CUNY, Narrative 10.2, “Queer Post-Politics,” projectmuse)

**What I want to question here is the idea that queer sexualities can be said to** enact or **embody** or afford the experience of the underlying mechanism of the subject and the signifier, **jouissance and the death drive**, in the psychoanalytic sense. More generally, I am questioning whether any sexual practice can be equated with the logic of the signifier, the structure of desire, and so on. **This is more than a philosophical category mistake, though it is that too.**  **First of all, sexual practices and experiences, unlike the logic of the signifier or the structure of desire** (assuming these are plausible concepts in the first place**), are carried out by individuals through the whole of their being, putting in play their identity formations, their fantasies and fetishes, their social embodiment.** In short, **sexuality is practiced and experienced not by the "subject" but by the "person**." **Second, assuming that the second version of jouissance and the death drive is** [End Page 179] **the secret of the force within the social-symbolic order that ruptures the symbolic and the subject, then this jouissance and death drive are surely at work in all sexualities, including the straightest heterosexual practices and experiences. Third, while queer sexualities are obviously in this historical moment anti-social, it does not follow that they are the very embodiment or enactment of asociality or the asymbolic**. What has given, **for example, anonymous sex its value in the gay community—what has made it worth fighting for—is its role in creating an alternative sociality. The bars and the baths are a cultural creation, a subculture, which makes certain sexual practices and experiences possible. Queerness is not outside sociality; it is an innovation in sociality**. In sum, there is no match between sexualities of any sort and the "structure" or "logic" or "mechanism" of the psyche. Edelman's articulation of the relation between the death drive and queerness is so powerful and resonant, I believe, because in the AIDS epidemic the confluence of sex and death, which is deeply and ambiguously embedded in all human experience, has taken on an unbearably traumatic and catastrophic form. **Edelman** expresses the sorrow and joy and defiance of gay life today in words that are as poetic as theoretical language gets: "**The future is kid stuff**, reborn each day to postpone the encounter with the gap, the void, the emptiness, that gapes like a grave from within the lifeless mechanism of the signifier that animates the subject by spinning the gossamer web of the social reality within which that subject lives" (29). **This sentence is genuinely polyvalent, but its various meanings do not all have the same validity**. In its admixture of queer excess and Lacanian asceticism**, it expresses a poignant individual ethic and attitude toward life that can be embraced or refused but not proved or refuted**. As a theorem about the relation of queer sexualities and the social-symbolic order, it is an obfuscation. And finally, in its poetry and protest, **it makes a** jarring statement of conscience—**a statement that belongs to the very political realm that queer post-politics imagines it could transcend.**

#### 5) Turn – Extinction is unethical

Robin Attfield, Professor of Philosophy at Cardiff University, “The Ethics of the Global Environment”, Perdue University Press, 1999, pg 68

Nevertheless, as John Leslie has remarked, many **philosophers write as if there were no reason for preserving the human species** beyond obligations either to the dead or to the living, and some as if there would be nothing wrong with allowing the species to extinguish itself, or even with actively extinguishing it ourselves, well before this would happen in the ordinary course of events. Now **the argument** concerning the value of ongoing current activities already shows that the verdicts that there would be nothing wrong with **allowing** (let alone causing) **premature extinction are unsupportable**; for the prospect of premature human extinction deprives many (but not all) widespread current activities of their meaning and value. But, as has just been argued, there must be something else to explain the strength of the imperative not to allow or to make premature extinction come about, and to explain what it is that makes most people who contemplate the possibility of premature human extinction regard it as appalling. Cicero makes a parallel point: 'As we feel it wicked and inhuman for men to declare that they care not if when they themselves are dead the universal conflagration ensues, it is undoubtedly true that we are bound to study the interest of posterity also for its own sake.'23  Likewise the consequentialist ethic introduced and defended in Chapter 2 maintains that future people have moral standing (and future living creatures of other species too). **Future generations have this standing even though their existence is contingent on current generations and the identity of future individuals is unknown at present; the good or ill of individuals who could be brought into existence count as reasons for or against actions or policies which would bring them into being**. This in turn implies that where the existence beyond a certain date of individuals likely to lead happy, worthwhile or flourishing lives can be facilitated or prevented, there is an obligation not to prevent it, other things being equal. **This does not mean that everyone should be continually having children**; other things are seldom equal, and problems of human numbers mean that acting on this basis could easily produce overextended families, countries or regions, or an overpopulated planet, where extra people would spell misery for themselves and for the others (see Chapter 7). But it does mean that each life likely to be of positive quality comprises a reason for its own existence, and that countervailing reasons of matching strength (concerning the disvalue of adding this life) are required to neutralise such a reason.  There are many other implications, including the importance of planning for the needs of future generations (considered in later chapters). **A further implication, more relevant here, is that humanity should not be allowed to become extinct, insofar as this is within human control, even if,** foreseeably, a small minority of any **given generation will lead lives of negative quality** (lives which are either not positively worth living or actually worth not living), **as long as**, **overall, the lives of that generation are of positive quality**, and the positive intrinsic value of worthwhile lives outweighs the intrinsic disvalue of the lives of misery. Since each generation is highly likely to include some lives which are not worth living, however hard its members and their predecessors may try to raise the quality of these lives, this implication makes all the difference to the issue of whether causing or even allowing the extinction of humanity is a moral crime.  **People who think that preventing misery is always of the greatest importance have to take the view that human extinction should be tolerated or even advocated; but the consequentialist ethic defended here says otherwise**. So, of course, say the widespread intuitions reviewed earlier. A modified version of one of John Leslie's thought-experiments could be used to test much the same issue. On each of numerous inhabitable planets, capable of supporting a large human population, whose members would predictably lead lives of positive quality, there will also be a person whose life will predictably and inevitably be of negative quality. For the purposes of the thought-experiment, these large human populations can be brought into existence by waving a magic wand. Should this be done? For consequentialists who believe in optimising the balance of intrinsic value over intrinsic disvalue, and in counting every actual and possible life as having moral standing, the answer is affirmative, even though the resulting population of each planet includes a life of negative quality.  But **theorists who prioritise the prevention of misery would have to hold that** the answer depends entirely on whether the **life of negative quality** on each planet **can be prevented**; **if it cannot, then none of these lives should be engendered**. (Others too, including consequentialists, might also take this view if the addition of human lives were liable to harm the living creatures of these same planets; to make this thought-experiment a test case, we need to adopt the further assumption that no such harm would be done.)   This thought-experiment also has a bearing on human extinction. For the future of the Earth beyond a certain date (just after the death of the youngest person now alive) is in some ways similar to the situation of the planets just mentioned. The current generation could produce a population living then, most of them people with lives worth living, but only at the risk of producing a minority whose lives will foreseeably be miserable. If the happiness or the worthwhile lives of the majority do not count as reasons for generating those same lives, and hence nothing counts but the misery of the minority, or if the prevention of misery  should be prioritised over all else, then allowing extinction is clearly mandatory, and so may be even genocide. **However**, as Leslie claims, **the coexistence of hundreds of thousands of lives of positive quality with one life of misery is not morally disastrous, if the misery of the miserable life really cannot be alleviated**. 25 (If of course this misery could be alleviated, whether by contemporaries or by the previous generation, then this might well be a morally disastrous situation, and alleviation would almost certainly be obligatory.) Consequentialism, then, does not mandate extinction, unlike several of the theories which stand opposed to it.

#### 6) Alt doesn’t solve – Our cultural intrinsically links futurity with heterosexuality – same-sex marriage debate proves

Mario **Feit,** teaches political theory at George Mason University, “Extinction Anxieties: Same-Sex Marriage and Modes of Citizenship”, Theory & Event. Baltimore: **2005**. Vol. 8, Iss. 3

1. **Apocalyptic scenarios dominate the rhetoric of those opposed to same-sex marriage**. Straight opponents see the end of marriage, the nation and democracy on the horizon. George W. Bush wants to ban same-sex marriage because "the preservation of marriage rises to the level of national concern." This is because "marriage cannot be severed from its cultural, religious and natural roots without weakening the good influence of society." National well-being depends on the vitality of "the most fundamental institution of civilization." Finally, same-sex marriage must be resisted because it undermines democracy: "arbitrary court decisions" and renegade local officials are trumping "an overwhelming consensus in our country."1 However, queer critics of marriage, too, are concerned about the effects of marriage - albeit on queer community and citizenship. For example, Judith Butler expresses her and others' unease, namely that "their sense of an alternative movement is dying. Sexual politics was supposed to be about finding alternatives to marriage."2 Same-sex marriage thus seems to spell the end of lesbian and gay community or politics. Their opposition to same-sex marriage puts queer marriage critics, as Michael Warner acknowledges, in the strange company of "homophobic dinosaurs."3 2. **Why this doomsday rhetoric**, **which outpaces and exceeds the likely consequences of same-sex marriage? Because same-sex marriage calls into question the perpetuation of community in the face of mortality.** In one case, **reproduction of community quite literally is understood as sexual reproduction of community; homosexuality in this instance is presented as lethal because it is non-reproductive.** Queer opposition to marriage, on the other hand, presents marriage as a lethal force to a community that does not raise its succeeding generations. In this case, the fear is that an instrument of heteronormativity overwhelms precarious queer processes of socialization and regeneration. In short, both arguments are concerned with the perpetuation of community in light of the absence of gay sexual reproduction.4

#### 7) Perm do both – The alt alone fails - Engaging the state is necessary to prevent political irrelevance

**Brenkman ‘02** (John, professor of English and Comparative Literature at CUNY, Narrative 10.2, “Queer Post-Politics,” projectmuse)

The burden of this argument is that **a genuinely critical discourse cannot arise via the marking or symbolizing of the gap between the present and the future**. Such symbolizing has indeed been the defining feature of modern critical social discourse, whether among the Enlightenment's philosophes, French revolutionaries, Marxists, social democrats, or contemporary socialists and democrats. Jürgen Habermas, in The Philosophical Discourse of Modernity, defines modern time-consciousness itself as a taking of responsibility for the future. Edelman sees in such a time-consciousness an inescapable trap. For him any such political discourse or activity steps into "the logic by which political engagement serves always as the medium for reproducing our social reality" (26). **Certainly the political realm—whether viewed from the perspective of the state, the political community and citizenship, or political movements—is a medium of social reproduction, in the sense that it serves the relative continuity of innumerable economic and non-economic institutions. But it is not simply a mechanism of social reproduction; it is also the site and instrument of social change.** **Nor is it simply the field of existing power relations; it is also the terrain of contestation and compromise.**  **Edelman compounds his reductive concept of the political realm by in turn postulating an ironclad intermeshing of social reproduction and sexual reproduction. Here too he takes a fundamental feature of modern society, or any society, and absolutizes it. Sexual reproduction is a necessary dimension of social reproduction**, almost by definition, in the sense that a society's survival depends upon, among many other things, the fact that its members reproduce. Kinship practices, customs, religious authorities, and civil and criminal law variously regulate sexual reproduction. **However, that is not to say that the imperatives of social reproduction dictate or determine or fully functionalize the institutions and practices of sexual reproduction. The failure to recognize the relative autonomy of those institutions and practices underestimates how seriously feminism and the gay and lesbian movement have already challenged the norms and institutions of compulsory heterosexuality in our society**. **They have done so through creative transformations in civil society and everyday life and through cultural initiatives and political and legal reforms**. The anti-abortion and anti-gay activism of the Christian Right arose, in response, to alter and reverse the fundamental achievements of these movements. How then to analyze or theorize this struggle? A motif in Edelman's analysis [End Page 176] takes the rhetoric and imagery of the Christian Right and traditional Catholicism to be a more insightful discourse than liberalism when it comes to understanding the underlying politics of sexuality today. I think this is extremely misguided. The Right does not have a truer sense of the social-symbolic order than liberals and radicals; it simply has more reactionary aims and has mobilized with significant effect to impose its phobic and repressive values on civil society and through the state. The Christian Right is itself a "new social movement" that contests the feminist and gay and lesbian social movements. **To grant the Right the status of exemplary articulators of "the" social order strikes me as politically self-destructive and theoretically just plain wrong.**

#### 8) Turn – futurity is key to solve heteronormativity --- negativity is a terrible strategy

**Muñoz ’09** (Jose Esteban, “Cruising Utopia: the then and there of Queer Futurity,” google books, p. 11-12, jj)

Yet I nonetheless contend that most of **the work with which I disagree under the provisional title of "antirelational thesis"** **moves to imagine an escape or denouncement of relationality as first and foremost a distancing of queerness from** what some theorists seem to think of as the contamination of **race, gender, or other particularities that taint the purity of sexuality as a singular trope of difference.** In other words, **an****tirelational approaches to queer theory are romances of the negative**, wishful think­ing, and **investments In deferring various dreams of difference**. To some extent *Cruising Utopia* is a polemic that argues against antirelationality by insisting on the essential need for an understanding of queerness as collectivity. **I respond to Edelman's assertion that the future is the province of the child and therefore not for the queers by arguing that queerness is primarily about futurity and hope**. That is to say that **queerness is always in the horizon**. I contend that **if queerness is to have any value whatsoever, it must be viewed as being visible** **only in the hori­zon**. **My argument is** therefore interested in **critiquing the ontological certitude that I understand to be partnered with the politics of persistent and pragmatic contemporary gay identity.** This mode of ontological certitude is often represented through a narration of disappearance and negativity that boils down to another game of fort-da. What then does a Blochian approach offer instead of a powerful critical impulse toward negation? Bloch found solid grounds for a critique of a totalizing and naturalizing idea of the present in his concept of the no-longer-conscious. **A turn to the no-longer-conscious enabled a critical hermeneutics attuned to comprehending the not-yet-here. This temporal calculus performed and utilized the past and the future as armaments to combat the devastating logic of the world of the here and now, a notion of nothing existing outside the sphere of the current moment, a version of reality that naturalizes cultural logics such as capitalism and heteronormativity**. Concomitantly, Bloch also sharpens our critical imagination with his emphasis on hope. **An antiutopian might understand himself as being critical in rejecting hope, but in the rush to denounce it, he would be missing the point that hope is spawned of a critical investment in utopia, which is nothing like naive but, instead, profoundly resistant to the stultifying temporal logic of a broken-down present.** My turn to Bloch, hope, and utopia is a challenge to theoretical insights that have been stunted by the lull of presentness and various romances of negativity and have thus become routine and resoundingly anticritical. This antiutopian theoretical faltering is often nothing more than rote invocation of poststructural pieties. **The critical practices often summarized as poststructuralism inform my analysis as much as any other source from which I draw. the corrective I wish to make by turning to utopia is attuned to Eve Kosofsky Sedgwick's critique of the way in which paranoid reading practices have become so nearly automatic in queer studies that they have, in many ways, ceased to be critical**. **Antiutopianism in queer studies, which is more often than not intertwined with antirelationality, has led many scholars to an impasse wherein they cannot see futurity for the life of them. Utopian readings are aligned with what Sedgwick would call reparative hermeneutics**

#### Embracing political change is important for altering the future and for queer scholarship -- Even if there's no future, the aff is key to make the present better

Duggan 94 – Lisa, Queering the State, Social Text, No. 39 (summer, 1994), pp. 1-14

The problem for those of us engaged in queer scholarship and teaching, who have a stake in queer politics, is how to respond to these attacks at a moment when we have unprecedented opportunities (we are present in university curriculums and national politics as never before), yet confront perilous and paralyzing assaults. It is imperative that we respond to these attacks in the public arena from which they are launched. We cannot defend our teaching and scholarship without engaging in public debate and addressing the nature and operations of the state upon which our jobs and futures depend. In other words, the need to turn our attention to state politics is not only theoretical (though it is also that). It is time for queer intellectuals to concentrate on the creative production of strategies at the boundary of queer and nation-strategies specifically for queering the state.5

#### Reducing the future to reproduction is reductionist – fantasies of immortality are inevitable – the case is a da to the alt

**Feit 2005** (Mario, “Extinction anxieties: same-sex marriage and modes of citizenship” theory and event, 8:3, projectmuse)

Warner is thus concerned with the purity of the queer alternative, which he sees under attack by virtue of the persistence of the reproductive narrative's extension to non-biological reproduction.101 Those "extrafamilial intimate cultures" should not be understood in the terms of that which they replace, namely biological reproduction. Those alternative spaces are to be pried loose from biological reproduction; their representations should also be freed from the metaphors of reproduction. Warner's demand for purity goes further  --  he hopes for a culture cleansed from the reproductive imaginary altogether. The reproductive narrative would become archaic. It would no longer be used to conceive of relations to mortality, cultural production and the building of a future. In other words, lesbians and gay men must not appropriate reproductive metaphors for their own relation to mortality, sexuality and world-making. Same-sex marriage must be avoided.102 It would link queer life to the kinship system's relation to mortality and immortality. It turns out to be, at least for Warner, a misguided response to mortality. Warner takes the heteronormative promise of immortality via reproduction too seriously  --  too seriously in the sense that he thinks that by resisting reproductive imaginations one resists fantasies of immortality. However, Bauman's point about strategies of immortality is precisely that **all aspects** of human culture are concerned with immortality. Indeed, Bauman's argument focuses on cultural production in the widest sense, whereas he considers sexual reproduction "unfit for the role of the vehicle of individual transcendence of death" because procreation secures species "immortality at the expense of the mortality of its individual members."103 In other words, fantasies of immortality may exist outside the reproductive paradigm  --  and Irving's attempt to find vicarious immortality may not be reducible to a heteronormative strategy of consolation. These juxtapositions of Bauman and Warner complicate the latter's sense that any attempt to imagine a future by definition implicates one in heteronormativity. Put more succinctly, giving up on reproductive relations to the future does not constitute the break with fantasies of immortality Warner makes it out to be. Indeed, there are other ways  --  nonheteronormative ways  --  in which we equate world-making, i.e. citizenship, with vicarious immortality. The queer dream of immortality may not rely on reproduction. But it, too, is a way of coping with mortality by leaving a mark on the world, by leaving something behind that transcends generations. In Warner's and Butler's critiques of marriage it is quite clear that a culture that they are invested in, that they helped to build, is one that they want to see continue. They take same-sex marriage so personally, because queer culture is so personally meaningful. If my argument is correct, this personal meaningfulness exceeds the meaning that Butler and Warner consciously attribute to it. That neither of them argues that the preservation of queer culture is about vicarious immortality is beside the point. As Zygmunt Bauman emphasizes, the immortalizing function of culture is highly successful insofar it remains opaque to those participating in the making of this culture.104 In raising the question of how much queer critics of marriage are themselves invested in strategies of immortality, of a nonheteronormative kind, I thus hope to contribute to a reflection on the anxieties driving the queer critique of marriage. Attending to anxieties about mortality, I believe, will help move the same-sex marriage debate among queer theorists away from concerns with transcending death and towards a more complex awareness of the challenges of political strategies for plural queer communities.

### 2ac psycho bad

#### Reject their psychoanalysis garbage

Adam Rosen-Carole 10, Visiting Professor of Philosophy at Bard College, 2010, “Menu Cards in Time of Famine: On Psychoanalysis and Politics,” Psychoanalytic Quarterly, Vol. LXXIX, No. 1, p. 205-207

On the other hand, though in these ways and many others, psychoanalysis seems to promote the sorts of subjective dispositions and habits requisite for a thriving democracy, and though in a variety of ways psychoanalysis contributes to personal emancipation— say, by releasing individuals from self-defeating, damaging, or petrified forms action and reaction, object attachment, and the like—in light of the very uniqueness of what it has to offer, one cannot but wonder: to what extent, if at all, can the habits and dispositions—broadly, the forms of life—cultivated by psychoanalytic practice survive, let alone flourish, under modern social and political conditions? If the emancipatory inclinations and democratic virtues that psychoanalytic practice promotes are systematically crushed or at least regularly unsupported by the world in which they would be realized, then isn’t psychoanalysis implicitly making promises it cannot redeem? Might not massive social and political transformations be the condition for the efficacious practice of psychoanalysis? And so, under current conditions, can we avoid experiencing the forms of life nascently cultivated by psychoanalytic practice as something of a tease, or even a source of deep frustration?

(2) Concerning psychoanalysis as a politically inclined theoretical enterprise, the worry is whether political diagnoses and proposals that proceed on the basis of psychoanalytic insights and forms of attention partake of a fantasy of interpretive efficacy (all the world’s a couch, you might say), wherein our profound alienation from the conditions for robust political agency are registered and repudiated?

Consider, for example, Freud and Bullitt’s (1967) assessment of the psychosexual determinants of Woodrow Wilson’s political aspirations and impediments, or Reich’s (1972) suggestion that Marxism should appeal to psychoanalysis in order to illuminate and redress neurotic phenomena that generate disturbances in working capacity, especially as this concerns religion and bourgeois sexual ideology. Also relevant are Freud’s, Žižek’s (1993, 2004), Derrida’s (2002) and others’ insistence that we draw the juridical and political consequences of the hypothesis of an irreducible death drive, as well as Marcuse’s (1970) proposal that we attend to the weakening of Eros and the growth of aggression that results from the coercive enforcement of the reality principle upon the sociopolitically weakened ego, and especially to the channeling of this aggression into hatred of enemies. Reich (1972) and Fromm (1932) suggest that psychoanalysis be employed to explore the motivations to political irrationality, especially that singular irrationality of joining the national-socialist movement, while Irigaray (1985) diagnoses the desire for the Same, the One, the Phallus as a desire for a sociosymbolic order that assures masculine dominance.

Žižek (2004) contends that only a psychoanalytic exposition of the disavowed beliefs and suppositions of the United States political elite can get at the fundamental determinants of the Iraq War. Rose (1993) argues that it was the paranoiac paradox of sensing both that there is every reason to be frightened and that everything is under control that allowed Thatcher “to make this paradox the basis of political identity so that subjects could take pleasure in violence as force and legitimacy while always locating ‘real’ violence somewhere else—illegitimate violence and illicitness increasingly made subject to the law” (p. 64). Stavrakakis (1999) advocates that we recognize and traverse the residues of utopian fantasy in our contemporary political imagination.1

Might not the psychoanalytic interpretation of powerful figures (Bush, Bin Laden, or whomever), collective subjects (nations, ethnic groups, and so forth), or urgent “political” situations register an anxiety regarding political impotence or “castration” that is pacified and modified by the fantasmatic frame wherein the psychoanalytically inclined political theorist situates him- or herself as diagnosing or interpretively intervening in the lives of political figures, collective political subjects, or complex political situations with the idealized efficacy of a successful clinical intervention? If so, then the question is: are the contributions of psychoanalytically inclined political theory anything more than tantalizing menu cards for meals it cannot deliver**?**

As I said, the worry is twofold. These are two folds of a related problem, which is this: might the very seductiveness of psychoanalytic theory and practice—specifically, the seductiveness of its political promise—register the lasting eclipse of the political and the objectivity of the social, respectively? In other words, might not everything that makes psychoanalytic theory and practice so politically attractive indicate precisely the necessity of wide-ranging social/institutional transformations that far exceed the powers of psychoanalysis?

And so, might not the politically salient transformations of subjectivity to which psychoanalysis can contribute overburden subjectivity as the site of political transformation, blinding us to the necessity of largescale institutional reforms? Indeed, might not massive institutional transformations be necessary conditions for the efficacy of psychoanalytic practice, both personally and politically? Further, might not the so-called interventions and proposals of psychoanalytically inclined political theory similarly sidestep the question of the institutional transformations necessary for their realization, and so conspire with our blindness to the enormous institutional impediments to a progressive political future?

#### This is a solvency takeout and a turn. The neg overstates the political value of psychoanalysis and is a neurotic projection of personal alienation

Adam Rosen-Carole 10, Visiting Professor of Philosophy at Bard College, 2010, “Menu Cards in Time of Famine: On Psychoanalysis and Politics,” Psychoanalytic Quarterly, Vol. LXXIX, No. 1, p. 226-229

The second approach to the problem has to do with psychoanalytic contributions to political theory that avoid Freud’s methodological individualism, but nevertheless run into the same problem. An expanding trend in social criticism involves a tendency to discuss the death or aggressive drives, fantasy formations, traumas, projective identifications, defensive repudiations, and other such “psychic phenomena” of collective subjects as if such subjects were ontologically discrete and determinate. Take the following passage from Žižek (1993) as symptomatic of the trend I have in mind:

In Eastern Europe, the West seeks for its own lost origins, its own lost original experience of “democratic invention.” In other words, Eastern Europe functions for the West as its Ego-Ideal (Ich-Ideal): the point from which [the] West sees itself in a likable, idealized form, as worthy of love. The real object of fascination for the West is thus the gaze, namely the supposedly naive gaze by means of which Eastern Europe stares back at the West, fascinated by its democracy. [p. 201, italics in original]

Also, we might think here of the innumerable discussions of “America’s death drive” as propelling the recent invasions in the Middle East, or of the ways in which the motivation for the Persian Gulf Wars of the 1990s was a collective attempt “to kick the Vietnam War Syndrome”— that is, to solidify a national sense of power and prominence in the recognitive regard of the international community—or of the psychoanalytic speculations concerning the psychodynamics of various nations involved in the Cold War (here, of course, I have in mind Segal’s [1997] work), or of the collective racist fantasies and paranoiac traits that organize various nation-states’s domestic and foreign policies.7

Here are some further examples from Žižek, who, as a result of his popularity, might be said to function as a barometer of incipient trends:

• What is therefore at stake in ethnic tensions is always the possession of the national Thing. We always impute to the “other” [ethnic group, race, nation, etc.] an excessive enjoyment: he wants to steal our enjoyment (by ruining our way of life) and/or he has access to some secret, perverse enjoyment. [1993, pp. 202-203]

• Beneath the derision for the new Eastern European post- Communist states, it is easy to discern the contours of the wounded narcissism of the European “great nations.” [2004, p. 27, italics added]

• There is in fact something of a neurotic symptom in the Middle Eastern conflict—everyone recognizes the way to get rid of the obstacle, yet nonetheless, no one wants to remove it, as if there is some kind of pathological libidinal profit gained by persisting in the deadlock. [2004, p. 39, italics added]

• If there was ever a passionate attachment to the lost object, a refusal to come to terms with its loss, it is the Jewish attachment to their land and Jerusalem . . . . When the Jews lost their land and elevated it into the mythical lost object, “Jerusalem” became much more than a piece of land . . . . It becomes the stand-in for . . . all that we miss in our earthly lives. [2004, p. 41]

Rather than explore collective subjects through analyses of their individual members, this type of psychoanalytically inclined engagement with politics treats a collective subject (a nation, a region, an ethnic group, etc.) as if it were simply amenable to explanation, and perhaps even to intervention, in a manner identical to an individual psyche in a therapeutic context.

But if the transpositions of psychoanalytic concepts into political theory are epistemically questionable, as I believe they are,8 the question is: why are they so prevalent? Perhaps the psychoanalytic interpretation of collective subjects (nations, regions, etc.), or even the psychoanalytic interpretation of powerful political figures, registers a certain anxiety regarding political impotence and provokes a fantasy that, to an extent, pacifies and modifies—defends against—that anxiety. Perhaps such engagements, which are increasingly prevalent in these days of excruciating political alienation, operate within a fantasmatic frame wherein the anxiety of political exclusion and “castration”—that is, anxieties pertaining to a sense of oneself as politically inefficacious, a non-agent in most relevant senses—is both registered and mitigated by the fantasmatic satisfaction of imagining oneself interpretively intervening in the lives of political figures or collective political subjects with the efficacy of a clinically successful psychoanalytic interpretation.

To risk a hypothesis: as alienation from political efficacy increases and becomes more palpable, as our sense of ourselves as political agents diminishes, fantasies of interpretive intervention abound. Within such fantasy frames, one approaches a powerful political figure (or collective subject) as if s/he were “on the couch,” open and amenable to one’s interpretation. 9 One approaches such a powerful political figure or ethnic group or nation as if s/he (or it) desired one’s interpretations and acknowledged her/his suffering, at least implicitly, by her/his very involvement in the scene of analysis.

Or if such fantasies also provide for the satisfaction of sadistic desires provoked by political frustration and “castration” (a sense of oneself as politically voiceless, moot, uninvolved, irrelevant), as they very well might, then one’s place within the fantasy might be that of the all-powerful analyst, the sujet supposé savoir, the analyst presumptively in control of her-/himself and her/his emotions, etc. Here the analyst becomes the one who directs and organizes the analytic encounter, who commands psychoanalytic knowledge, who knows the analysand inside and out, to whom the analysand must speak, upon whom the analysand depends, who is in a position of having something to offer, whose advice—even if not directly heeded—cannot but make some sort of impact, and in the face of whom the analysand is quite vulnerable, who is thus powerful, in control . . . perhaps the very figure whom the psychoanalytically inclined interpreter fears.

Minimally, what I want to underscore here is that (1) a sense of political alienation may be registered and fantasmatically mitigated by treating political subjects, individual or collective, as if they were “on the couch”; and (2) expectations concerning the expository and therapeutic efficacy of psychoanalytic interpretations of political subjects may be conditioned by such a fantasy.

### 2ac death drive

#### 1. There is no monolithic death drive underpinning all human actions – their theory is intentionally non-falsifiable

**Allen & Turvey ’01** (Richard Allen, Associate Professor of Cinema Studies at the NYU, and Malcolm Turvey, managing editor of the journal, October, 2001,Theory and the Arts, p. 29-30, Scholar)

Structuralism is now out of fashion, and the later Barthes was partly responsible for this. One of the theories that has replaced structuralism in study of arts is Lacanian psychoanalysis. Once associated with a broadly structualist analysis of culture, a new Lacanianism has risen in a more potent form in the writings of the prolific Slovenian theoretician Slavoj Zizek, one that is closer to Lacan’s own surrealist roots. Lacan rewrites Freud’s psychological theory of unconscious agency as a philosophical theory that describes the essential or constitutive paradox of self-representation. **Lacanian theory has the aura of a scientific theory that makes empirical claims by borrowing the language of psychological and linguistic theories, but is actually immune from empirical confirmation and refutation**. Zizek bases his interpretation of Lacan on the Hagelian dictum that the use of language and singles out human beings emerges against the background of an essential abyss of non-meaning, of the empty nothingness that is organic life. Human beings, when they begin to use language and strive to attain self-consciousness, negate, or conceal this essential abyss of nothingness by entering into the pre-existing structure of language that is concrete, inorganic, inert and external. Human consciousness and its products, including culture, thus embody a subjection to an external and therefore alien authority. This subjection is at once essential to concealing the abyss of nothingness that is organic life and, at the same time, is only made possible and sustained by the existence of that concealed abyss and the ‘pressure’ exerted by it. This abyss of nothingness (called ‘the Real’) forms a traumatic core at the heart of human consciousness and culture that always threatens to disrupt the inert structure of human civilization that is concealment serves to make possible. For Zizek, the ego and its social and culture that always threatens to disrupt the inert structure of human civilization that its concealment serves to make possible. For Zizek, the ego and its social and cultural analogues grow ever more rigid and paranoid in order to prevent the irruption of ‘the Real’, whose role in sustaining the social structure through a negative force or pressure is thereby only augmented and made more insistent. For Zizek, ‘what we call “culture” is…in its very ontological status, the reign of the dead over life, i.e. the form in which the “death drive” assumes its positive existence’ (Zizek 1992: 54). Zizek (after Lacan), like Wittgenstein, proposes that what is distinctive about human beings is their capacity to use language. There the similarities abruptly end. For Wittgenstein, what defines language use, or activities such as making and responding to art, is once again that they are a species of intentional action**. Zizek’s metaphysical Freudianism involves stepping outside intentional human actions and the framework of ‘rules’, reasons and concepts that are woven into them in order to claim that all intentional behavior has one and the same function: to express the death drive or the conversion of life into death**. However**, the only way in which the nature of human behavior can be thus defined is by explaining it in the terms of a single underlying condition or state, utterly invisible and essentially unknowable to the human agent that determines the real nature of intentional action**. Of course, some art may indeed allegorize this picture of the human condition, in particular, art influenced by Lacan and the influences upon Lacan such as Hegel and Freud**. But the significance of such works are trivialized and misunderstood once they are mobilized as ‘proof’ of an all-encompassing theory of human behavior. Indeed, this theory has precisely the compulsory authoritarian qualities Zizek attributes to political instutitions and culture: it is universal and inescapable. It is also irrefutable: therein lies it appeal**. Cognitive theories of art, by comparison with structuralist or psychoanalytic theories, seem like a breath of fresh (or cold) air. They predate contemporary critical theory, for example in the writings of E.H. Gombrich and Rudolf Arnheim, but they are becoming increasingly influential in fields of study such as film among those who are justifiably impatient with the flagrant logical and empirical inadequacies of theories such as structuralism and Lacanianism. However, **the opposition of cognitivist theorists to structuralists and Lacanians lies not in the fact that structuralism and Lacanianism offer theoretical accounts** of the practices of making and responding to art that seek to explain these practices **from a position outside the framework** in which the users of art understand and make sense of art. **Rather, it lies in the fact that theories such as structuralism and Lacanianism provide an inadequate account of the data that they are supposed to describe: they do not give an adequate account of the facts.** **Such a criticism is scarcely telling against a theory such as Zizek’s, which brashly pronounces its immunity from defeasibility as the source of its authority**. Nonetheless, cognitive theorists have turned to contemporary psychology and the latest theories of the mind in order to place the theorization of art on a more scientific footing. Now, there are many questions of a causal nature that psychological theories of the arts have fruitfully addressed, such as colour perception, motion perception, depth perception, pattern recognition and so on. However, **cognitive theorists of art go further and seek to explain the meaning of the psychological concepts we use** when we engage with art, **as if these concepts described an empirical process that can be explicated by a theory.**

#### 2. The death drive isn’t biologically intrinsic – it’s a mode of secondary drives – belief in it leads to nihilism.

**Robinson ’05** (Andrew Robinson, PhD in political theory at the University of Nottingham, 2005 The Political Theory of Constitutive Lack: A Critique, Theory and Event, 8:1, Project Muse)

Guattari's critique of psychoanalysis makes clear the myths which underlie it. 'Psychoanalysis transforms and deforms the unconscious by forcing it to pass through the grid of its system of inscription and representation. **For psychoanalysis, the unconscious is always already there, genetically programmed, structured, and finalized on objectives of conformity to social norms**'104. Similarly, Reich has already exposed a predecessor of the idea of "constitutive lack" - **the** Freudian "**death instinct**" - as a denial that "I don't know". It **is**, he says, **a metaphysical attempt to explain as yet inexplicable phenomena, an attempt which gets in the way of fact-finding about these phenomena**105. He provides a detailed clinical rebuttal of the idea of the "death instinct" which is equally apt as an attack on Lacanians (who seem unaware of Reich's intervention). In Reich's view, **the masochistic tendencies Freud associates with the "death instinct" are secondary drives arising from anxiety, and are attributable to 'the disastrous effect of social conditions on the biopsychic apparatus. This entailed the necessity of criticizing the social conditions which created the neuroses - a necessity which the hypothesis of a biological will to suffer had circumvented'**106. The idea of **the "death instinct" leads to a cultural philosophy in which suffering is assumed to be inevitable, whereas Reich's alternative - to attribute neurosis to frustrations with origins in the social system - leads to a critical sociological stance**107.

# 1AR

**A2 ableism language K**

#### Last card in 2NC---Mills---Imposing discursive norms such as “mankind” or “he”, the other team perpetuates the world into a masculine norm where women become invisible.

Goueffic 96 (Goueffic, Louise. Author, BA graduate studies in France. Breaking the patriarchal code. Pg. 13-14 : 1996. )

From the I 960s until today, such-questioning has involved a shift from looking at gender bias in language as an abstract system, to looking at bias in language use and at potentially sexist discourses, which may be obvious, or subtle, or even unarticulated. We will deal with the latter in Chapter 3, and in the rest of this book. There are a number of areas that have been highlighted regarding the former, i.e. gender bias in language as an abstract system. One of them is the problematic use of pronouns, particularly the (arguably) generic use of 'he', 'him', 'his' to refer to both men and women. Feminists such as Spender (1990) believe that language is man- made, with male forms being seen as the norm and female ones seen as deviant. Some have claimed that the use of generics 'he'/,him'/,his', as well as 'man'/'mankind' and expressions like 'the man in the street', to refer to both men and women, reinforces this binary understanding of norm and deviance, promotes male imagery, and makes women invisible. These claims exemplify the 'dominance approach' (see Chapter 2), in that the use of generic expressions is seen to be preventing women from expressing and raising consciousness about their own experience, and perpetuating men's domi- nance and exploitative behaviour. In addition to the male being treated as the norm or unmarked term and to women being hidden behind such terminology, feminists have objected to the use of generic expressions such as 'man', saying that they are not true generics (Graddol and Swann, 1989). Spender illustrated this with an example that is acceptable in English: 'Man is the only primate that commits rape'; and an example that is not: 'man being a mam- mal that breastfeeds his young'. Another example where it becomes obvious that 'man' is not a true generic is the sentence 'Man has difficulty in childbirth' (Hekman, j 990). In addition to criticisms regarding the restriction and exclusion of women, the use of generics can be misleading and confusing. For a detailed discussion and a number of examples in this area, which has been the subject of much controversy, see Graddol and Swann (1989). For a thorough investigation into gender-variable pronouns and gender marking in languages other than English, see Hellinger and Hadumod (2001). Other areas of bias in the English language as an abstract system include the fol- lowing: sex specification in the language (e.g. the now outdated 'authoress', or the use of 'she' to refer to countries, boats, motor cars); gratuitous modifiers (Miller and Swift, 1981) that diminish a person's prestige, drawing attention to their sex (e.g. 'woman doctor' /'lady doctor') - and while historically the focus for those opposing sexism has been on discrimination against women rather than men, another example of a modifier would be the phrase 'male nurse'; lexical gaps or under-lexicalization, for example having many more terms for promiscuous women than for men (Stanley, 1977) and no female equivalents of terms such as 'henpeck', 'virility', 'penetration'; semantic derogation (Schulz, 1975), where a term describing a woman initially has neutral connotations, but gradually acquires negative connotations, and becomes abusive or ends up as a sexual slur (e.g. 'lady', 'madam', 'mistress', 'queen '); relatedly, there are many more negative terms for women than for men, particularly pertaining to sexual behaviour and denoting women as sexual prey (Cowie and Lees, 1987; Cameron, 1992); asymmetrically gendered language items, i.e. single words used to describe women, for which there is no equivalent for men, and vice versa. For example, the use of 'fireman'/'policeman'/'chairman' (prior to linguistic intervention, see next section); the use of 'Mrs ' to label only women, thus arguably reinforcing a patriarchal order; and the difference in status between lexical items such as 'master', 'bachelor', 'governor', 'god', 'wizard', and their female equivalents; connotations of language items, such as 'girl' (which may sometimes indicate immaturity, dependence, triviality, e.g. compare 'weatherman' to 'weathergirl'); 'lady' and 'woman', both of which are often used euphemistically for decorum or to obscure 'negative' associations with sexuality and reproduction; and the nurturing connotations of 'mothering', compared to those of the term 'fathering' . As will become evident later, bias in the language does not necessarily entail bias in language use, and as we will also see in Chapter 3, sexist discourses mayor may not draw on sexist language items. Words have more than one meaning, and language users' intentions are obscure and unpredictable.

#### This equates maleness with humanness that renders the feminine and transgendered bodies invisible

Earp B. THE EXTINCTION OF MASCULINE GENERICS. Journal For Communication & Culture [serial online]. June 2012;2(1):4-19. Available from: Communication & Mass Media Complete, Ipswich, MA. Accessed September 4, 2013.

The use of masculine terms to refer to persons of unknown gender, generic or hypothetical persons, people in general, or as a synonym for humankind is more than just a grammatical curiosity. As a number of commentators have forcefully argued, it may be legitimately harmful to women and girls. One way to understand this harm is to consider how masculine generics (such as mankind) seem to count being a man as the default or prototypical human status, creating what Wendy Martyna calls an “implicit equation of maleness with humanness”. This equation has the effect of devaluing, excluding, or making invisible female human beings—a matter of particular concern since, as Michael Newman points out, females “not only constitute half of humanity, but are also victims of other forms of marginalization.” Non-sexist terms such as humankind, that is, terms which embrace—both denotatively and connotatively—*all* genders, nimbly avoid this problem and are thus preferable to their sexist counter-parts. What does it mean for masculine terms to make women “invisible”—and how could mere word-choice have such a dramatic-sounding effect? Simply put, there is amble psycholinguistic evidence that people encountering he/man generics are more likely to think of male human beings as the referents of those terms. Thus, when a person reads or hears the word “mankind,” for example, he or she is likely to reflexively conjure up mental images of men (doing such-and-so) as opposed to either women or abstract visions “the human race.” This has the effect of minimizing women’s importance and diverting attention away from their very existence. The result is a sort of invisibility—in the language itself, in the individual’s mind’s eye, and in the broader social consciousness.

***Disability rhetoric doesn’t reinforce ableism and rejecting it doesn’t solve- their linguistic gymnastics just papers over oppression***

**Pierce 2012** (Samantha Pierce, founder and Executive Director of NeuroDiversity Consulting, a firm dedicated to special needs families and educating parents and the community at large about neurodiversity, March 17, 2012, http://www.neurodiversityconsulting.org/1/post/2012/03/person-first-language-the-r-word-and-other-linguistic-gymnastics.html)

In sociology **there is a theory**, called the Sapir-Whorf thesis (also known as linguistic relativity) , **which claims** “people see and understand the world through the cultural lens of language.” (Macionis, 2011)\* To put it another way, **language creates reality.** Since Edward Sapir and Benjamin Whorf first put forth their theories on the relationship between language and reality in the first half of the last century sociologists have come to the conclusion that language doesn’t determine reality in any strict sense. For my part I think our language reflects our reality rather than genuinely creates it. But we still act as if we believe that language creates reality.¶ **Consider the terms used to describe people with developmental disabilities.** First we had imbeciles, morons, idiots. All originated as clinical terms to describe the developmentally disabled. We now know them as throw away insults used by young and old alike. In the span of a few decades we have seen the term “retarded”, once a clinical descriptor for those with developmental delays, degenerate into an insult so grave that there is a movement to stamp out the use of the word. It’s called the euphemism treadmill where new terms are developed to replace old terms that have come to be seen as derogatory. Even the term “special needs” seems to be taking its turn on the euphemism treadmill for some. ¶ All of this brings to me to the person, or people, first language movement. “People-first language is a form of linguistic prescriptivism in English, aiming to avoid perceived and subconscious dehumanization when discussing people with disabilities, as such forming an aspect of disability etiquette.” The idea is basically to name the person first and the descriptor of their condition second. In English we usually do things the other way round. Such tinkering with English sentence structure is seen by some as a good thing for the disabled. It is an effort to create a reality where the personhood of the disabled is valued and respected. In essence it is an attempt to apply the Sapir-Whorf thesis in its language creates reality form.¶ Advocates of person first language claim that we should embrace person first language “To ensure inclusion, freedom, and respect for all.” I agree with some of the sentiments expressed in the above linked article, such as,¶ “The real problem is never a person’s disability, but the attitudes of others! A change in our attitudes leads to changes in our actions. Attitudes drive actions.”¶ But **I am more than a bit skeptical that acts of linguistic gymnastics will make any forward movement towards better treatment of and greater respect for the disabled. Unless we work to change attitudes about the disabled within our culture and within our society it’s not going to matter what clumsy, politically correct term is dreamed up next to gloss over the fact that the disabled are greatly devalued in our culture.**¶ Person, or people, first language hinges on the idea that a person is a person first and their disability is secondary to their personhood. Now **the problem with this kind of thinking is why anyone would think that identifying someone with their disability somehow denies their personhood.** Another problem with person first language is that **despite the fact that many of the disabled themselves reject the use of person first language and the reasoning behind it other, often nondisabled people, keep pushing for its use.** In researching this article I found very few references among supporters of person first language to the opinions of the disabled about person first language (the two references were from Wikipedia and About.com.¶ One can find any number of articles, papers, and blog posts (add this one to that number), some written by the disabled and some not, pointing out the fatal flaws and clumsiness of person first language. Dr. C Edwin Vaughan wrote in his article People-First Language: An Unholy Crusade, ¶ **I wonder if the proponents of people-first language believe that putting disabled people first on the printed page accomplishes anything in the real world?** Does it alter attitudes, professional or otherwise, about disabilities? **What is their evidence? The awkwardness of the preferred language calls attention to a person as having some type of "marred identity"** (Goffman, 1963). But the misconceptions that diminish the lives of disabled people must still be countered directly.¶ In 1993 Kenneth Jernigan wrote, The Pitfalls of Political Correctness: Euphemisms Excoriated, which was published, and republished, in the Braille Monitor, a journal published by the Nation Federation of the blind. In his article he states,¶ As civilizations decline, they become increasingly concerned with form over substance, particularly with respect to language.¶ **Euphemisms and the politically correct language** which they exemplify are sometimes only prissy, sometimes ridiculous, and sometimes tiresome. Often, however, they are more than that. At their worst they **obscure clear thinking and damage the very people and causes they claim to benefit.¶** The blind have had trouble with euphemisms for as long as anybody can remember, and late twentieth-century America is no exception. **The form has changed** (in fact, everything is very "politically correct"), **but the old notions of inferiority and second-class status still remain. The euphemisms and the political correctness don't help. If anything, they make matters worse since they claim modern thought and new enlightenment.¶** Jernigan further went on to write in a resolution adopted by the National Federation of the Blind,¶ **We believe that it is respectable to be blind, and although we have no particular pride in the fact of our blindness, neither do we have any shame in it. To the extent that euphemisms are used to convey any other concept or image, we deplore such use. We can make our own way in the world on equal terms with others**, and we intend to do it.¶ In 1999 Joy Johnston wrote of the National Federation of the Blind’s response to person first language,¶ “That one sentiment alone provides the blind community with more empowerment than a thousand politically correct slogans could ever provide.”¶ In the same article we find,¶ What PC [political correctness] proponents fail to understand in their good-hearted mission is that **changing the words a person speaks does not change the thoughts in their minds or the feelings in their heart. It's merely a surface solution that does not change the reality of what it is to be a female, a black man, or a disabled person in this society one iota.**¶ Stop and consider the following: person with femaleness; person with maleness; person with blackness; person with deafness; person with blindness. All of these characteristics are an intrinsic part of an individual, you can’t separate them from the person. Person first language implies that personhood cannot coexist with disability. It stems from the erroneous assumption that acknowledging the important role that a disability plays in an individual’s life diminishes one’s personhood. What it communicates is the impression that one doesn’t really believe in the disabled individual’s personhood. The proliferation of person first language despite strong opposition to it from the disabled themselves certainly points to the devaluation of the disabled. Clearly “we” think “we” know what is better for “them” than they do never mind what they actually have to say for themselves.

### Perm / futurity good

#### AND Edelman’s theory ignores that improvements have empirically been the result of political engagement – perm solves

**Brenkman ‘02** (John, professor of English and Comparative Literature at CUNY, Narrative 10.2, “Queer Post-Politics,” projectmuse)

**It is the next moves in Edelman's argument that concern me**. Having postulated in his political theory argument the intermeshed unity of social reproduction, sexual reproduction, and politics, he is led to suggest that the phobic position of queers is the quintessential requirement of the social-symbolic order as such. Having postulated that the very projection of a narrative of social change from the present toward a future is inescapably complicit in this whole mechanism of social-sexual-political reproduction, **he is led to cast all social and political reforms as in essence perpetuations of the anti-queer imperatives of the social-symbolic order. The true queer politics is therefore beyond politics**. **Edelman formulates this post-politics in the following passage (at the same time equivocating by affirming the importance of the actual extension of tolerance, rights, and interests achieved by the gay and lesbian movement**—an equivocation I will not dwell on, since politically it is a welcome ambiguity, though **it highlights the faultlines of his theoretical position**): "[T]he true oppositional politics implicit in the practice of queer sexualities lies not in the liberal discourse, the patient negotiation, of tolerances and rights, important as these undoubtedly are to all of us still denied them, but rather in the capacity of queer sexualities to figure the radical dissolution of the contract, in every sense social and symbolic, on which the future as guarantee against the real, and so against the insistence of the death drive, depends" (23). **[End Page 177]**