**plantext**

***The United States Congress should require a declaration of war for the initiation of an armed attack and/or hostilities by the President of the United States.***

***For the purpose of this restriction Congress should define:***

***“initiation of an 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 against another nation that has not attacked the United States***

***“initiation of hostilities” as: a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict against another nation that has not attacked the United States***

**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 --- this has created an antagonistic brand of politics where Americans defer political responsibility to a mythologized and God-like president --- that ensures an unrestrained imperial executive which shuts down the political***

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.**

***This “cult of the presidency” is dangerous – it causes Americans to under-estimate their own political agency leading to passivity in the face of an all-powerful executive.***

**Nelson ’08**, Dana D. Nelson, professor of English at Vanderbilt University, 2008, “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg x-xvi

In the early months of Obama’s presidency, his positive achievements and his distinction from the previous administration were lead news (except on Fox, which manages to find something distasteful and even sinister in every action from Obama and his administration). There was some thoughtful critical coverage in mainstream media, but it was typically buried. A June 2009 New York Times Magazine cover article emphasized the former Senator’s determination to “win over” Congress, featuring the current president as a Congressional compromiser, quite different from his more adversarial and unilateralist predecessors, and meanwhile Obama’s more understated but no less significant executive unilateral ism went relatively unremarked — for instance, in his continued use of the signing statements he denounced George Bush for utilizing. Obama’s first signing statement, attached to the March 2009 spending bill, came just days after he instructed government officials not to enforce any Bush signing-statement provisions attached to laws without consulting his ad- ministration’s attorney general, Eric Holder. Obama’s statement nevertheless expressed his administration’s interest in preserving expansive executive powers (at least, his own) and went so far as to contest a Congressional whistleblower provision that established protection for federal employees who give information to Congress, asserting basically that as president he could override any such legal protections at his discretion. By July, Obama had issued enough signing statements declaring his authority to bypass legal provisions to provoke the House into issuing an official rebuke (voting 429 to 2 in favor). In a follow-up letter, Democratic Congressmen Barney Frank and David R. Obey reminded the president of statements he had made as a Senator during the Bush administration: “During the previous administration, all of us were critical of the president’s assertion that he could pick and choose which aspects of Congressional statutes he was required to enforce. We were therefore chagrined to see you appear to express a similar attitude.” **But Obama’s change of heart on the subject of expanding executive powers should not come as a surprise—rather, he’s staying true to a long historical trend**. Obama seems to register signing statements on the general principle of marking out areas where the executive’s power should not be challenged, ‘whether or not he intends to enforce particular legal provisions, making his specific approaches to executive policy difficult to discern beyond his rhetoric of transparency counterbalanced by his practice of opacity His ongoing use of signing statements promises to entrench them as a means to expand presidential powers and essentially to continue asserting the line-item veto the Supreme Court has explicitly disallowed. **He has sought other putatively constitutionally principled ways to bypass Congressional lawmaking and democratic accountability**— for instance, a bill introduced in February 2009 by Senators Leahy, Specter, Feingold, and Kennedy that aimed to provide guidance to federal courts considering cases in which the executive has asserted the state secrets privilege. The Obama administration’s response to the proposed State Secrets Protection Act seemingly appears, as Dan Fejes of the blog Pruning Shears observed in August 2009, in the odd conclusion to a july Department of justice amicus brief This was offered in response to the appeal of a suit filed by an employee fired for refusing to recant a complaint about his company’s practice of hiring illegal immigrants. The Obama administration’s filing mainly concerned arcane Issues about attorney\_client privilege, in essence arguing that an employer Victory before the Supreme Court would undermine district court judges’ ability to control the discovery process. Yet the brief spends numerous final pages addressing the question of state secrets, an issue only tangentially raised by the case at hand, arguing that the president’s right to invoke state Secrets protection is rooted in the Constitution. As Adam Liptalc summarizes in his New York Times Cover age of the amicus brief, that argument “is controversial and the brief’s account of the relevant decisions was incomplete” **It’s clear that the Obama Department of justice does not want judicial or democratic limits put on the authority the executive can claim** under the rubric of state secrets protection. **Early on, the Obama DOJ was in- yoking the doctrine to prevent courts from reviewing the same warrant- less wiretapping program that candidate Obama had so forcefully con- demned when the Bush administration was overseeing it** (for example, on his campaign web sites “Plan to Change Washington,” where he listed as one of the “problems” to be solved by his administration the “secrecy” that “dominates government actions”). While early DOJ filings in February and even March 2009 could be interpreted as transition caution, as early as April it was evident that the Obama-staffed DOJ was hewing closely to and even exceeding the desire for government secrecy that characterized Bush’s administration. The Obama DOJ even outdid Bush- era arguments on behalf of expanding executive powers in favor of secrecy, inventing an entirely new category of “sovereign immunity;” which, in Glenn Greenwald’s summary claims “that the Patriot Act bars any law suits of any kind for illegal government surveillance unless there is ‘willful disclosure’ of the illegally intercepted communications» As Greenwald elaborates on Salon.com: In other words, beyond even the outrageously broad “state secrets” privilege in vented by the Bush administration and flow embraced fully by the Obama administration, the Obama DOJ has now invented a brand new claim of government immunity one which literally asserts that the US. Government is free to intercept all of your communications (calls, emails, and the like) and — even if what they’re doing is blatantly illegal and they know it’s illegal —you are barred from suing them **Despite a prolonged uproar about the Bush administration’s unilateralism and secrecy, and its frequent assertion that the executive was above the law, surprisingly little outrage has made headlines abou.t the Obama administration’s staking remarkably similar views—its unwillingness to give up military tribunals, or to relinquish the powers claimed by the Bush administration with regard to a president’s right to indefinitely imprison military detainees, or to support any Congressional hearings reviewing the legality of the Bush administration’s conduct in the “War on Terror**” (the White House expressed its desire to “look to the future” when At torney General Holder announced his appointment of a special prosecutor to investigate CIA detainee abuses). **Supporters who later would profess themselves enraged about Obama’s domestic and economic policies hardly lifted an eyebrow about his claims to what are in essence royal powers for the presidency.** Meanwhile, conservatives concluded with genuine delight that Obama’s actions (despite his unwillingness to speak on the subject) prove him a solid supporter of Reagan’s “unitary executive theory” This theory of executive power; as I detail in this book, encourages presidents to act with all available secret and public tools to expand the purview of executive power; even extralegally. The more modest legalistic claims of the theory—related to the president’s control over agencies—do little to check the unilateralist psychology and administrative culture it has fostered since its articulation under Reagan1 Its practical effect, as law professor Peter M. Shane summarized in his analysis of unitary executive theory’s effects on government, Madison’s Nightmare, has been to undermine US. constitutional democracy. Obama’s support for that theory and its deep influence on ongoing policy decisions deserve discussion and debate among citizens on the right and left. But how do we get there? **Media and cultural hyping of Obama’s incomparability made it all the more difficult critically to evaluate how his executive aims and policies impact both constitutional government and citizen democracy**. Whether or not our society can deliberate the merits of unitary executive theory to the ongoing health of our nation’s democratic experiment is a question entirely unrelated to whether mainstream America would take off the rose-colored glasses regarding its current president. Obama is (as the nation discovered in the dog days of August) like most other : : presidents in the typical cycle of his approval ratings—the crest and then : the inevitable fall of supporter hopes. But health care reform had begun floundering. Obama tried briefly to invoke the old magic of his campaign to inspire voters to renew their enthusiasm for his “plan” (still without offering a specific plan), and headlines read “Faith in Obama Drops,” “Obama’s Trust Problem,” and “Obama’s just Not That Into You.” When politics as usual—acrimonious and uncompromising as ever—went on summer recess, reporters turned instead to town halls featuring citizens with loaded guns**. People hoping for real change—in health care, in Wash- ington gridlock—might have been indulged in a week or two of regret. But no. Get over it, recognize “he’s just not that into you,” and move on to the next guy urged the allusive Salon headline, sidestepping the very point on which reporter Mike Madden allows Obama to finish the article: the necessity of citizen activism**. The president reminded his sup- porters at a conference call and video forum on August 20 sponsored by his postelection Organizing for America that in 2008, rather than giving up when McCain and Palm surged to the head of the polls, they “kept on working steadily, deliberately, sensibly, knocking on doors, talking to your coworkers, just giving people the facts . . . and that’s what we’re going to have to do today” He labeled the problem in a nutshell, as anticlimactic as it is. **In the United States, we expect the president to do the work of democracy.** **When he disappoints**, as the Salon title suggests, **we write him off and regretfully get busy looking for the next one who will do the trick, right the ship, win the day.** **One of the (many) problems with the belief that the president is both the leader of democracy and its central agent is that it trains people to put all their energy into electing the right president, then they can settle back into their “regular” lives, waiting for him to get the(ir) job done** . As Bonnie Adkins, an Iowan organizer for the Obama campaign who subsequently tried to rally the troops to assist with his health care re-form agenda, summarized for a New York Times reporter about one of the most active set of supporters in campaign history: “The enthusiasm is not there like it was a year ago. Most people, when they get to November 5, put their political hat away and it doesn’t come out for three years.” One intelligent August criticism of Obama was that instead of leading the reform he was operating like an organizer—bringing interested actors to the proverbial table and leaving it to Congress, the health insurance industry, doctors, hospitals, the pharmaceutical companies, and, perhaps unexpectedly, to the regular Americans who mounted massive grassroots campaigns to reach the ears and votes of their Congressional representa- tives to wrangle out how reform should go. In this critique, health care reform was floundering because President Obama left the ship without its rudder. **Michael Moore**, in a Rolling Stones roundtable in August 2009 (with David Gergen and Paul Krugman), **swiftly turned that point on its head: “I want to ask people reading this conversation, ‘What have you done today, what did you do yesterday, what do you plan to do tomorrow to make sure we have universal health care in this country, to get those troops out of Iraq and Afghanistan?’ We need to see a mass mobilization like we did last year, and it can’t all be on Obama for that not happening. We have to take responsibility for that ourselves**.” That’s a great point, one Obama prepped his supporters for during his campaign, during his acceptance speech, during his inaugural address. He knew better than his supporters that his candidacy was exciting an enthusiasm that he as president would be unable to meet, an enthusiasm for democratic involvement. Citizens were bound for disappointment in their expectation that Obama would deliver that change. Not two weeks after his inauguration, Chris Bowers posted a letter on Open Left titled “What Does Obama Want Us to Do?” Seemingly immobilized in the aftermath of inauguration (“should we be holding more cocktail parties and/ or dinners with Republicans in our neighborhoods, as President Obama himself is doing?”), **Bowers spoke for many of Obama’s supporters when he castigated the new president for fostering “a major leadership vacuum right now” His letter is alarming in the level of its civic passivity and the extent to which Bowers gets the representative relationship exactly back ward. It’s not the president’s job to tell us what to do or how to represent his agenda: it’s our job to tell the nation’s “number one” representative and all our other representatives —what we want him and them to do**. In August, as Congress wrangled with health care reform, **Some people began doing that, both on the right and the left**; for instance, the well- covered Tea Party campaign, a grassroots effort to fight for fiscal responsibility, limited government, and the free market; or FDL Action, which organized Supporters to call progressive members of Congress demand ing their Support for a public Option as Obama and the Senate’s so-called Gang of Six express their willingness to abandon it; the street-theater tactics of the Backbone Campaign, a Seattle grassroots organization whose public actions aim to embolden regular citizens to demand government accountability to citizens and not just corporations; or the fifty-state grassroots organization Equality Across America, which organized an October march in Washington, D.C. on behalf of LGBT civil rights to forward the demands Washington seems perennially willing to back-burner. Democracy, **as these and many other groups grasp, is about the people’s sovereignty: our power, not the president’s. It’s Ours to shape, to grow— and to lose.**

***Only challenging this myth can allow us to reclaim our democratic agency—we must contest the president’s symbolic authority to manipulate both global and local politics***

**Nelson ’08** (Dana D. Nelson, professor of English at Vanderbilt University, 2008,

 “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg xvii-xviii)

**But Obama detractors, right and left, might usefully cool off a bit and consider that the failures we seek to attribute to the president could as easily be dropped at our own feet**. **The cycle of the four seasons evoked by our quadrennial presidential election might encourage us to believe that democracy will perpetually renew itself**, a gift of nature reminiscent of the seasons. In the seasonal rendition, the energies of democracy wax and wane; like the winter freeze that coaxes seeds from their hulls and gives roots the rest they need to thrive again in the summer to come, this “natural” cycle is a good thing. We become energized in the democratic summer of the election cycle and involve ourselves in selecting a new president. Then we cozy into our couches during the democratic winter and wait for him to perform the magical work of democracy, preferably with a cinematic flourish that will keep us happily spellbound. **The ever-renewing cycle of seasons might be a comforting myth, but it’s not democracy’s reality. The real radicalism of the U.S. revolution for independence came in its advancement of the ideal and the practice of the people’s sovereignty, the idea that regular people were qualified and capable of self-rule** if they worked at it vigilantly, thoughtfully, and hard enough. **The Constitution structured a balanced government, and we have for centuries regarded its scheme of checks and balances as the clarion of democracy**—without really paying attention to how those checks are holding up. Here’s **what the Framers got wrong: the three branches are not in fact equally suited to protect their own self-interest**. **The one headed by the single person—the executive—is best suited for that. Consequentially**, over time, **the presidency has expanded its symbolic and practical powers to the point that**, as I argue in this book, **the presidency is jeopardizing the fundamental premise of democracy: the self-rule of the people.** As we stew in the cold of winter, once again blaming the president for not fixing everything we see wrong in our nation (and indeed, the world), we might want to consider that **we are unthinkingly surrendering our own democratic power and agency**, both as a form of government and as our most precious cultural and political heritage. Corazon Aquino, the Philippine politician who led her country into what many regarded as a democratic revolution against the corrupt Marcos government, died in August 2009. Reflecting on the optimism of that revolutionary moment, and what came after, many Filipinos expressed a sense of regret not just for the loss of Aquino but for their country since her landmark election--- for lost opportunity, the failure to capitalize on the possibilities opened up in that moment of change in the face of continuing poverty, inequality and corruption. Teresita I. Barcelo summarized in The New York Times: “We thought all we needed to do was remove the dictator and do nothing about it. We thought the problem was just the dictator. I say the problem is us. We did not change.” As Barcelo understands, **what the president does for us can be good or bad—but either way, it isn’t democracy**. Bad for Democracy urges that we learn from her wisdom that democratic change does not come like the change of seasons, a gift of nature or the president, but rather from our own efforts at self-governing. **Democracy is not “natural”; rather, it’s a habitat we build together. it won’t be easy, but if we care about our nation’s democratic experiment, we must seriously rethink the relationship of citizens to our form of self-government.** We must find ways to involve ourselves in that project among those with whom we disagree, within a government that is far friendlier to corporate than citizen interest, and within a society that has for too long considered “democracy” something that only “government” does.

***This symbolic authority gives the president unlimited influence over public life. Public passivity gives the president total leeway to create and direct reality***

**Nelson ’08**, Dana D. Nelson, professor of English at Vanderbilt University, 2008, “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg 1-2

**IN THE RUN-UP TO THE 2004 PRESIDENTIAL ELECTION, A BUSH administration official memorably asserted** to New York Times reporter Ron Suskind, “**We’re an empire now, and when we act, we create our own reality And while you’re studying that reality—judiciously, as you with we’ll act again, creating other new realities, which you can study too, and that’s how things will sort out**. **We’re history’s actors . . . and you, all of you, will be left to just study what we do** 6” **Suskind’s article** “Without a Doubt” **framed this assertion as the administration’s assessment of Left- leaning intellectuals**, and it predictably outraged Bush’s political oppositions His administration was widely seen by Democrats as heedlessly unilateralist: this bald assertion of power seemed concisely to summarize Bush’s own philosophy and his scorn for those who disagree with him. But **this is not just a simple summary of the Bush**—Cheney—Rumsfeld— Wolfowìtz **philosophy for dealing with political, opposition. Rather, it draws on a deep and relatively unnoticed tradition of expanding presidential powers** that began in the age of George Washington. This expansion has come at times through the ambitions, machinations, and moxie of individual presidents — some of them impressively gifted governmental and political leaders. **It has** also **come through the active and passive consent of citizens, the courts, and Congress.** **Because the president has come to symbolize both our democratic process and our national power, we tend to see him simultaneously as democracy’s heart** (he will unify the citizenry) **and its avenging sword** (he will protect us from all external threats). **Those beliefs**, inculcated in us from our earliest days in school, reinforced by both popular culture and media coverage of government, politics, and foreign affairs, **make us want to give the president more power**, regardless of the constitutional checks and balances we also learned to treasure as schoolchildren.

***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

***We are the imperialists – and we are culpable – confronting that is a critical moment for counter-hegemonic resistance***

**The Center for Informed Americans** NEWSLETTER #43 Revisiting September 11 The Collapsing Towers September 28, 20**03**, <http://davesweb.cnchost.com/nwsltr43.html>

A few months have passed since then and no evidence establishing a link between Iraq and the ‘terrorist’ attacks has surfaced. So where do we now stand? According to the most recent polls, **an even higher percentage of the American people** (around 70%) now **believe that Saddam was behind the carnage of September 11.** It is perfectly obvious that **we, as a nation, are in denial**. In a big way. **We will believe virtually any lie** (or at least convince ourselves that we believe), no matter how thoroughly that lie has been discredited, **just so long as we do not have to face the undeniable reality that** ***our beloved, peace-loving, law-abiding nation is waging a brutal, illegal, unprovoked and completely unjustified war of aggression.* We refuse to deal with the reality that America is not the hero** of this story, even though the evidence is overwhelming. What that evidence says is that ***we are the aggressors.*** ***We are the imperialists***. ***We are the oppressors***. ***We are the occupiers***. ***We are the mass murderers***. ***We are the war criminals.* But to the vast majority of us, that cannot possibly be true. We are** (repeat after me) America, **land of the free and home of the brave**. **We do not invade and occupy sovereign nations for the express purpose of exploiting their resources and oppressing their people**. We do not slaughter innocents for the financial gain of the Washington elite. **There must, therefore, be a righteous reason that we invaded Iraq** -- ***and we are determined to find it***. **We need to find it**, and then cling to it for dear life, **no matter how demonstrably fraudulent it is**. During the build-up to the invasion, we were willing to accept the most amateurishly fabricated evidence of the existence of ‘weapons of mass destruction.’ We would have gratefully welcomed any discovery of such weapons, no matter how obviously staged the 'discovery' would have been. Even without any ‘discoveries,’ even after months of searching, many of us are reluctant to give up our belief in the mythical weapons. We will continue to believe in nonexistent weapons just as we will continue to believe that most of the Iraqi people are really quite happy to have their country militarily occupied. And we will continue to believe that occupying Iraq somehow makes America a better and safer place to live, just as we will continue to believe that the world becomes a much kinder and gentler place every time America slaughters for profit. Most of all, **we will continue to believe that Iraq sponsored the September 11 attacks, because that belief allows us to construct a false reality in which America did not**, in defiance of world opinion, choose to **wage an unprovoked war against a nation that posed no threat to anyone**. No, **in our artificial reality, a benevolent America acted in self-defense against a terrorist-sponsoring regime that had launched a completely unprovoked first-strike against us. We will believe** - indeed, we will warmly embrace - **that Orwellian inversion of reality *because we lack the courage to take even a cursory look at the alternative***. **We would rather live in a parallel universe than accept a reality that can no longer be reasonably denied, but which we are terrified to confront.**

**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***

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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.**

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

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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.

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#### Congress checks on exec terror policy prevents state of exception

Mitzen 11 Dr. Jennifer, Associate Professor of Political Science at Ohio State University and Michael Newell, PhD student in Political Science at the Maxwell School of Citizenship and Public Affairs, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” JUROS Arts & Humanities Vol. 2, http://libeas01.it.ohio-state.edu/ojs/index.php/juros/article/download/1265/1791

As Benjamin Wittes notes, the “presidential power model has failed,” and “Only Congress can ultimately write the law of this long war” (Wittes, 2008). The pursuit of terrorist policies through the exception has not resulted in clear, transparent and legally correct outcomes because the exception has been entirely controlled by “unilateral presidential actions” (Wittes, 2008). Instead, Congress “can build comprehensive legal systems and do so in the name of the political system as a whole” (Wittes, 2008). What this would entail would be a “law of terrorism” that would “at once restrain and empower the executive branch” in its actions in the War on Terror (Wittes, 2008). Simply allowing the executive to continue to unilaterally decide the fate of suspected terrorists and anti-terrorism policy will prove Agamben correct: that the American system of checks on power has been replaced with the primacy of the executive. It should then be Congress’ goal to step forward and outline the exact legal policies in the War on Terror, allowing President Obama this role will only prolong the elements of the exception that Agamben has given such dire warnings about.¶ Conclusion¶ The state of exception has been the standard response to crises for American presidents and other world leaders since the emergence of constitutional law and democratic government. Its creation and longevity as a political and legal tool should not be surprising. Constitutional democracies were not and are not designed to have laws and rules governing every potential complication that the country could face. Instead, it has been consistently argued that exceptional times require exceptional measures. The use of these measures when the public is ready and willing to accept the securitizing speech-act almost invariably lead to breaches of the law, and in Agamben’s opinion the expansion of executive authority. The War on Terror has seemingly reinforced Agamben’s argument, as the breadth and magnitude of legal issues resulting from this war have made the legal recovery extremely complicated.¶ However, some scholars suggest that the War on Terror has actually undermined the ability of the sovereign to invoke the state of exception, stating that instead:¶ In so far as it pursues this end, the effect of such commentary is to compound efforts to curtail the experience of deciding on/in the exception – efforts that are already well under way at Guantánamo Bay. For notwithstanding all the liberal heartache that they provoke, the law and legal institutions of Guantánamo Bay are working to negate the exception (Johns, 2005).¶ Johns suggests that the policies of the War on Terror are leading towards a tendency to condemn the state of exception and crisis authority. Johns bases his argument in the abundance of legal scholarship calling for “a newly fashioned emergency regime” that would “rescue the concept [of emergency power] from fascist thinkers like Carl Schmitt” (Johns, 2005). This logic would suggest that Agamben’s prediction is not coming true, that the executive will now be limited by what actions they can pursue during future crises and that the legal authority acquired by the executive during the War on Terror has been ceded back to its designated proprietors.¶ But for Johns to be proven right, it requires a change in long established habits. Citizens cannot expect the executive to singularly react to any complication the country faces. Indeed, Agamben’s warnings and the results of the War on Terror suggest that doing so will continue to produce dissatisfying results at best, immoral quagmires at worst. For democracy and constitutional governance to survive, it is the responsibility of officials and citizens alike to adapt existing legal structures to novel threats, and to not rely on executive mandate alone.

#### The state’s inevitable---reform is key

Paul A. Passavant 7, Hobart and William Smith Colleges in New York, “The Contradictory State of Giorgio Agamben”, Political Theory Volume 35, Number 2, April, SAGE

Third, any social formation is constituted by elements of both contingency and determination. By emphasizing pure potentiality, Agamben misses this and either cherishes the excessive quality of pure potentiality to the neglect of the exigent needs of the present, or neglects how the active political subjects he does defend are embedded within finite commitments that necessarily persevere through the foreclosure of other possibilities. Some contemporary political theorists concerned with injustice and the lack of democracy also emphasize contingency, excess, and potentiality over determination, finitude, and acts.49 These theorists correctly seek to disrupt oppressive patterns. Since politics-hence political change-would not be possible under conditions of absolute determination, emphasizing contingency or excess makes sense. Yet reflection upon the retraction of certain state services from places like the Bronx during the late 1970s per mits us to see how neither justice nor democracy is served by excessive eco nomic duress or violence. Not only are these contingencies unjust, but also their incapacitating effects prevent democratic practices of government where the latter necessarily presupposes some collective capacity to direct and achieve collective purposes. State actions that mitigate chaos, economic inequality, and violence, then, potentially contribute to the improved justice of outcomes and democracy. Political theorists must temper celebrating contingency with a simultaneous consideration of the complicated relation that determination has to democratic purposes.50 ¶ Fourth, the state's institutions are among the few with the capacity to respond to the exigency of human needs identified by political theorists. These actions will necessarily be finite and less than wholly adequate, but responsibility may lie on the side of acknowledging these limitations and seeking to redress what is lacking in state action rather than calling for pure potentiality and an end to the state. We may conclude that claims to justice or democracy based on the wish to rid ourselves of the state once and for all are like George W. Bush claiming to be an environmentalist because he has proposed converting all of our cars so that they will run on hydrogen.5" Meanwhile, in the here and now, there are urgent claims that demand finite acts that by definition will be both divisive and less than what a situation demands.52 In the end, the state remains. Let us defend this state of due process and equal protection against its ruinous other.

### Frontline

#### Perm – Do the plan and the alternative at the same time

#### This solves their argument best – their evidence is not exclusive – it’s a question of priority – the permutation remedies this by prioritizing land rights while still doing the plan – any incommensurable epistemological issue is outweighed by the importance of a broad struggle against violence

Judith Butler, Professor of Rhetoric and Comparative Literature @ UC Berkley, “Precarious Life: The Powers of Mourning and Violence”, 2004, page 48

We could have several engaged intellectual debates going on at the same time and find ourselves joined in the fight against violence, without having to agree on many epistemological issues. We could disagree on the status and character of modernity and yet find ourselves joined in asserting and defending the rights of indigenous women to health care, reproductive technology, decent wages, physical protection, cultural rights, freedom of assembly. If you saw me on such a protest line, would you wonder how a postmodernist was able to muster the necessary “agency” to get there today? I doubt it. You would assume that I had walked or taken the subway! By the same token, various routes lead us into politics, various stories bring us onto the street, various kinds of reasoning and belief. We do not need to ground ourselves in a single model of communication, a single model of reason, a single notion of the subject before we are able to act. Indeed, an international coalition of feminist activists and thinkers—a coalition that affirms the thinking of activists and the activism of thinkers and refuses to put them into distinctive categories that deny the actual complexity of the lives in question— will have to accept the array of sometimes incommensurable epistemological and political beliefs and modes and means of agency that bring us into activism.

#### Legal strategy is key—no matter what our orientation to the state is, the details of certain mechanisms to address problems predetermine the value of a moral stance—pre-req to dismantle oppression and colonial mindsets

Smith 2012 (Andrea, “The Moral Limits of the Law: Settler Colonialism and the Anti-Violence Movement” settler colonial studies 2, 2 (2012) Special Issue: Karangatia: Calling Out Gender and Sexuality in Settler Societies)

Aside from Derrick Bell, because racial and gender justice legal advocates are so invested in the morality of the law, there has not been sustained strategising on what other possible frameworks may be used. Bell provides some possibilities, but does not specifically engage alternative strategies in a sustained fashion. Thus, it may be helpful to look for new possibilities in an unexpected place, the work of anti-trust legal scholar Christopher Leslie. Again, the work of Leslie may seem quite remote from scholars and activists organizing against the logics of settler colonialism. But it may be the fact that Leslie is not directly engaging in social justice work that allows him to disinvest in the morality of the law in a manner which is often difficult for those who are directly engaged in social justice work to do. This disinvestment, I contend is critical for those who wish to dismantle settler colonialism to rethink their legal strategies. In ‘Trust, Distrust, and Anti-Trust’, Christopher Leslie explains that while the economic impact of cartels is incalculable, cartels are also unstable.18 Because cartel members cannot develop formal relationships with each other, they must develop partnerships based on informal trust mechanisms in order to overcome the famous ‘prisoners’ dilemma’. The prisoner’s dilemma, as described by Leslie, is one in which two prisoners are arrested and questioned separately with no opportunity for communication between them. There is enough evidence to convict both of minor crimes for a one year sentence but not enough for a more substantive sentence. The police offer both prisoners the following deal: if you confess and implicate your partner, and your partner does not confess, you will be set free and your partner will receive a ten-year sentence. If you confess, and he does as well, then you will both receive a five-year sentence. In this scenario, it becomes the rational choice for both to confess because if the first person does not confess and the second person does, the first person will receive a ten-year sentence. Ironically, however, while both will confess, it would have been in both of their interests not to confess. Similarly, Leslie argues, cartels face the prisoners’ dilemma. If all cartel members agree to fix a price, and abide by this price fixing, then all will benefit. However, individual cartel members are faced with the dilemma of whether or not they should join the cartel and then cheat by lowering prices. They fear that if they do not cheat, someone else will and drive them out of business. At the same time, by cheating, they disrupt the cartel that would have enabled them to all profit with higher prices. In addition, they face a second dilemma when faced with anti-trust legislation. Should they confess in exchange for immunity or take the chance that no one else will confess and implicate them? Cartel members can develop mechanisms to circumvent pressures. Such mechanisms include the development of personal relationships, frequent communication, goodwill gestures, etc. In the absence of trust, cartels may employ trust substitutes such as informal contracts and monitoring mechanisms. When these trust and trust substitute mechanisms break down, the cartel members will start to cheat, thus causing the cartel to disintegrate. Thus, Leslie proposes, anti-trust legislation should focus on laws that will strategically disrupt trust mechanisms. Unlike racial or gender justice advocates who focus on making moral statements through the law, Leslie proposes using the law for strategic ends, even if the law makes a morally suspect statement. For instance, in his article, ‘Anti-Trust Amnesty, Game Theory, and Cartel Stability’, Leslie critiques the federal Anti-Trust’s 1993 Corporate Lenience Policy that provided greater incentives for cartel partners to report on cartel activity. This policy provided ‘automatic’ amnesty for the first cartel member to confess, and decreasing leniency for subsequent confessors in the order to which they confessed. Leslie notes that this amnesty led to an increase of amnesty applications.19 However, Leslie notes that the effectiveness of this reform is hindered by the fact that the ringleader of the cartel is not eligible for amnesty. This policy seems morally sound. Why would we want the ringleader, the person who most profited from the cartel, to be eligible for amnesty? The problem, however, with attempting to make a moral statement through the law is that it is counter-productive if the goal is to actually break up cartels. If the ringleader is never eligible for amnesty, the ringleader becomes inherently trustworthy because he has no incentive to ever report on his partners. Through his inherent trustworthiness, the cartel can build its trust mechanisms. Thus, argues Leslie, the most effective way to destroy cartels is to render all members untrustworthy by granting all the possibility of immunity. While Leslie’s analysis is directed towards policy, it also suggests an alternative framework for pursuing social justice through the law, to employ it for its strategic effects rather than through the moral statements it purports to make. It is ironic that an anti-trust scholar such as Leslie displays less ‘trust’ in the law than do many anti-racist/anti-colonial activists and scholars who work through legal reform.20 It also indicates that it is possible to engage legal reform more strategically if one no longer trusts it. As Beth Richie notes, the anti-violence movement’s primary strategy for addressing gender violence was to articulate it as a crime.21 Because it is presumed that the best way to address a social ill is to call it a ‘crime’, this strategy is then deemed the correct moral strategy. When this strategy backfires and does not end violence, and in many cases increases violence against women, it becomes difficult to argue against this strategy because it has been articulated in moral terms. If, however, we were to focus on legal reforms chosen for their strategic effects, it would be easier to change the strategy should our calculus of its strategic effects suggest so. We would also be less complacent about the legal reforms we advocate as has happened with most of the laws that have been passed on gender violence. Advocates presume that because they helped pass a ‘moral’ law, then their job is done. If, however, the criteria for legal reforms are their strategic effects, we would then be continually monitoring the operation of these laws to see if they were having the desired effects. For instance, since the primary reason women do not leave battering relationships is because they do not have another home to go, what if our legal strategies shifted from criminalising domestic violence to advocating affordable housing? While the shift from criminalisation may seem immoral, women are often removed from public housing under one strike laws in which they lose access to public housing if a ‘crime’ (including domestic violence) happens in their residence, whether or not they are the perpetrator. If our goal was actually to keep women safe, we might need to creatively rethink what legal reforms would actually increase safety.

#### Perm solves – multi strategies key

Smith 10 [Andrea, Assistant Professor of Media and Cultural Studies at UC Riverside, Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism, GLQ: A Journal of Lesbian and Gay Studies, Volume 16, Number 1-2, 2010, pp. 42-68, Project Muse] Awirth

Thus a **politics of disidentification can be helpful to the project of decolonization. It provides a theoretical apparatus that can allow colonized peoples to engage in multiple strategies in order to build a sufficient base of support that can dismantle the settler state. Disidentification forces us to admit that we cannot organize from a space of political purity, that we have been inevitably marked by colonization. When we no longer have to carry the burden of political and cultural purity, we can be more flexible and creative in engaging multiple strategies and creating a plethora of alliances that can enable us to use the logics of settler colonialism against itself**. At the same time, however, while political organizing is enabled by disidentification, sometimes it is also enabled by counteridentification that clearly identifies the United States as a settler colonial state. Otherwise, a disidentification approach can lapse into a politics that forecloses the issue of indigenous genocide by presuming the United States should and will always continue to exist.

#### presidentialism creates an antagonistic politics of resentment that ensures Otherization and oppression—makes it impossible to resist colonial violence

Engels, 10 (Jeremy Engels is Assistant Professor of Communication Arts and Sciences at Penn State University, Rhetoric Society Quarterly, Vol. 40, No. 4, pp. 303–325, “The Politics of Resentment and the Tyranny of the Minority: Rethinking Victimage for Resentful Times” ISSN 0277-3945 (print)/ISSN 1930-322X (online) # 2010 The Rhetoric Society of America, DOI: 10.1080/02773941003785652, jj)

The Politics of Resentment and the 1960s

In 1964, Lyndon Johnson signed the Civil Rights Act into law. ‘‘What the ceremony marked was not merely a law but a liberal apotheosis—an apparent liberal national consensus,’’ Rick Perlstein writes (5). President Johnson was plan- ning an ambitious agenda of the Great Society, which was intended to eradicate racism, segregation, and poverty while enriching the lives of all citizens through environmental justice, Medicare and Public Broadcasting. Johnson won the 1964 election over Barry Goldwater handily. The Republican Party was in terrible shape—it nearly closed its national office because it couldn’t raise funds to keep it open (13). The day after the election, November 5, The New York Times printed an article titled ‘‘White Backlash Doesn’t Develop,’’ dismissing the Republican hope that anti–civil rights violence like that in Birmingham, Alabama the year before would spread throughout the country, paving the way to victory.

Of course, the white backlash did develop. It began as images of looting, fire, and murder filled the TV screens of Americans across the nation with the Watts riots in the summer of 1965. Suburbanites who had fled the big cities for the safe comfort of cul-de-sacs began to fear for their lawns and their lives; and the suburbs were the future, concluded Kevin Phillips. Phillips was a Harvard trained lawyer who worked as an ‘‘ethnic specialist’’ for Richard Nixon’s presidential campaign in 1968, analyzing voting patterns and tailoring messages for different ethnic audiences. Although political commentators at the time mocked Phillips—in his popular The Selling of the President, Joe McGinnis chastised his demographic analyses and laughed about how he explained all of Nixon’s negative polling in terms of ‘‘excluded Catholics’’ (141)—Phillips was nevertheless an astute observer of the changing political culture. Deploying a metaphor that captured, with awful, violent clarity, the Nixon campaign’s racial politics, Phillips claimed that the suburbs were a ‘‘white noose’’ surrounding ‘‘the increasingly Negro cities’’ (184). The ‘‘emerging Republican majority,’’ he concluded, would be tied to the two faces of ‘‘Negrophobia’’: white fear of blacks and white resentment of liberal social engineering (195).

Did Johnson’s plan work? Phillips asked—while reminding Americans that the more liberals tried to improve the lives of minorities the more violent they became. As the smoke billowed into the air, newspapers began to call for law and order in place of civil rights. A popular book by George Hunter titled How to Defend Yourself, Your Family, and Your Home was published in 1967, instructing white suburbanites how to kick and shoot and kill when the riots, like wildfire, spread to their neighborhoods. This book advised Americans to read the NRA’s monthly magazine American Rifleman for its new column ‘‘the armed citizen,’’ which praised American vigilantes (108). Everywhere, white America was gripped by fears of a black revolution—kind of a Denmark Vesey scare for the twentieth century stoked by television and radio. Simultaneously, students became increas- ingly agitated on campuses across the nation, demonstrating against the war. Opi- nion polls showed that the majority of Americans were deeply resentful of student protestors, who spit on authority, mocked the wisdom of their elders, and called for revolution (DeGroot 381–385). Senator William J. Fulbright, chairman of the Foreign Relations Committee, concluded that racial violence and the Vietnam War were eating at America’s soul. He observed: ‘‘the Great Society has become a sick society.’’

It was into this sickness that the resurrected Nixon stepped, running a successful campaign for president in 1968. Rhetorical scholars have long noted the divisive- ness of Nixon’s campaign rhetoric: according to Andrew W. King and Floyd Douglas Anderson, he practiced a ‘‘rhetoric of polarization.’’ Once elected, he did not leave the either=or, us versus them, no compromise, win-at-all-costs rhet-oric behind. ‘‘A campaign rhetoric will be one of either-or choices, a war-like rhetoric seeking defeat of the enemy and victory for the candidate. A governing rhetoric will be one of decorum in which confrontation usually leaves some opening for accommodation,’’ observes Theodore Otto Windt, Jr. ‘‘It is the former that Nixon mastered, not the latter. What Nixon did is merge a campaign rhetoric into a governing rhetoric’’ (118). Nixon was a master at dividing in order to bring together. He was also a master at stoking resentments in order to win votes and secure support, turning division into victimage and justifying the rage of one side at the other. For Joseph Lowndes, ‘‘[t]he key’’ to Nixon’s rise ‘‘was a rhetorical constituency variously called the ‘silent majority,’ the ‘emerging Republican majority,’ ‘the Forgotten Americans,’ and ‘Middle America.’ This invented political demographic was meant to appeal to voters primarily on the basis of white racial resentment’’ (9). To this I want to add that he was a master not just at appealing to voters’ resentment but also at constituting his audience as victims of the rhetorical and democratic violence of their enemies—hence validating the resentment they felt for rioting blacks and angry students while making it productive of political gain.

Resentment is an ugly emotion that, once brought out into the open, seems inappropriate to democratic politics. A politics of resentment is always in danger of seeming illegitimate. Nixon’s rhetoric, during the presidential election of 1968 and during his first year of governing in 1969, hence made the resentment many middle-class white Americans felt for African Americans and student protestors more respectable by rearticulating it in the language of liberal democracy. Resentment for other races became resentment for lawbreakers, and the race war became the war between majorities and minorities for political power. The key point, here, was that resentment lived on under the surface of democratic dis- course. Far from curing the resentment Americans felt by naming a scapegoat, as Johnson attempted to do, Nixon cultivated his audience’s resentment, keeping it angry, agitated, and weak in order to rule.

Americans were at war, Nixon announced in campaign commercials and speeches, and there were only two sides: the majority position, occupied by Republicans, and the minority position, occupied by Democrats. Nixon linked the majority=Republican position to the law, and the minority=Democratic position to anarchy—transforming his political adversaries into anti-democratic crusaders preying on the majority of Americans. There was no neutral space in this war. In turn, Nixon dismissed Americans’ complaints about the war and racial discrimination as ‘‘minority’’ positions. This meant two things. First, he did not have to listen to his critics, because in democratic culture the majority rules. Thus, when asked what he would be doing during the national Moratorium movement against the war on October 15, 1969, he said he would be watching football (Perlstein 418–426).

Second, the very existence of ‘‘minority’’ opinions, no matter if they fell on deaf ears, proved the health of Nixon’s democracy—even as the elimination of a neutral subject position from which to make educated decisions demonstrated its sickness. In his November 3, 1969, address, in which he dampened the enthusiasm gener- ated by the Moratorium by forecasting a peace that was not coming, President Nixon told a story about his recent trip to San Francisco where he was welcomed by demonstrators with signs saying ‘‘Lose in Vietnam, bring the boys home.’’ ‘‘Well,’’ the president said, ‘‘one of the strengths of our free society is that any American has a right to reach that conclusion and to advocate that point of view.’’ However, he had no obligation to listen. ‘‘But as President of the United States,’’ he continued, ‘‘I would be untrue to my oath of office if I allowed the policy of this nation to be dictated by the minority who hold that point of view and who try to impose it on the nation by mounting demonstrations in the street.’’ Here, Nixon justified not just unresponsiveness but open disdain for minority voices by arguing that protestors violated the democratic process of majority rule. In contrast to this vocal minority, and in perhaps his most famous phrasing, Nixon positioned himself as the leader of ‘‘the great silent majority.’’

The contrast between silence and shouting was central to Nixon’s politics of resentment, for the metaphor of ‘‘silence’’ allowed the president to position those Americans who refused to raise their voices and who suffered in silence, as the vic- tims of rhetorical violence. In his Inaugural Address of January 20, 1969, Nixon argued that what democracy needed most was for Americans to stop shouting at each other. He transformed the ‘‘majority’’ of Americans, those who voted for him, into the victims of a tyrannical minority, impolite, indecorous protestors who refused to lower their voices and who consequently committed rhetorical violence against the silent majority. Shouting, here, was a metaphor for aggressive- ness and irrationality that acted as proof that anti-Nixon forces were intent on anarchy, not democracy. Having studied the body politic, Nixon diagnosed what ailed it: Americans were suffering from ‘‘a fever of words,’’ from ‘‘inflated rhet- oric,’’ from ‘‘angry rhetoric that fans discontents into hatreds.’’ ‘‘We cannot learn from one another until we stop shouting at one another—until we speak quietly enough so that our words can be heard as well as our voices,’’ he asserted.

By talking in terms of silence and shouting, Nixon constituted his audience— the silent majority—as victims. The problem with democratic culture, the president proclaimed, was not war, racism, economic injustice, or other forms of objective violence. The problem was that minorities had disregarded the demo- cratic process and had begun yelling at the (silent) majority. The rhetorical violence of (loud) minorities was thus a marker of democratic violence, for these minorities had broken the rules by refusing to defer to the majority’s will. Americans had a duty to play by the rules of democracy. There was a time for debate, so long as the participants talked quietly and politely about important issues. Once the vote was complete, however, the minority had the duty to submit quietly to the majority’s decision. With his talk of a great silent majority, Nixon argued that an all-too-vocal minority had declared war on democracy.

While we usually think of persecuted minorities as harboring resentment, Nixon managed to motivate resentment in an imputed majority. He did this by deploying a metaphor—the silent majority—that allowed him to perpetuate resentment by inscribing it in the language of liberal-democracy. In the late 1960s, Nixon embraced, and then reversed, Alexis de Tocqueville’s famous argument about the tyranny of the majority by drawing Americans’ attention to the tyranny of the minority. The idea that the majority should rule, even while it respects the rights of the minority, is central to the liberal-democratic vocabulary. Yet Tocqueville foresaw the problems of such government in the 1830s, for he realized that it is easy for majorities to persecute minorities—thus inspiring those minorities to take up arms in order to have their opinions heard (235–49). This was precisely what happened in the 1960s. Black protestors rioted to overturn a racist culture, and students mobilized to overturn the war machine. Nixon dismissed these com- plaints as ‘‘minority’’ positions, arguing that it was the right of the majority to rule over the minority, even to ignore its wishes. Yet Nixon cut off any arguments about the tyrannizing majority by making the majority silent—how can something silent be a tyrant? With rhetorical dexterity, Nixon transformed the majority into the victim of an unruly minority that refused to abide by the rules of democracy, which included rational discourse and majority rule. According to the president, the silent majority was the victim of the loud, obnoxious, and fundamentally undemocratic minority. These symmetrical ideas, of a tyrannizing minority and a victimized majority, might be Nixon’s most lasting contributions to the rhetoric of the American presidency.

Nixon talked about silence, but his actions ensured that there was plenty of shouting to keep the silent majority agitated. His rhetoric was, in Nietzsche’s terminology, ‘‘guilty.’’ Rather than attempting to address the causes of resentment, Nixon stoked the resentment Americans felt for lawbreakers and criminals with carefully choreographed political performances of anarchy during his presidency. Riots and student protests were dominant topics in his presidential rhetoric, and rather than fix the problems causing the protests, Nixon prolonged them. Indeed, fearing that a ‘‘Halloween peace’’ negotiated by Johnson in 1968 might derail his presidential campaign, we now know that Nixon actively worked to undermine peace negotiations so that the Vietnam War continued to be a campaign issue.5 Once elected president, he continually and perpetually deceived Americans about his plans for ending the war, especially in the silent majority address.6 And to ensure that Americans remained agitated—not at him for prolonging the war, but instead at the protestors who committed rhetorical and democratic violence against the silent majority—he planted war protestors at his campaign events so that there would be images of him confronting crazies on the evening news (Perlstein 501–503). ‘‘The President feels that we are doing too good a job keeping the demonstrators out of the halls,’’ wrote aide Dwight Chapin in an internal memo from 1970. ‘‘The President’s whole pitch is built around having a few demonstrators in the hall heckling him so that he can refer to them and their ‘obscenities.’ We have a new role now. Once the hall is three-quarters full, we can let in fifty to a hundred demonstrators . . . . This should give the President the opportunity to strike out at them should he desire to do so’’ (Lichtman 289).

Nixon’s goal was not to solve the problems that created resentment, but instead to continually stoke the righteous anger of the silent majority for ‘‘revolutionaries’’ who spit on democracy, thereby keeping Americans angry, resentful, and in need of his leadership. This model of presidential leadership led to predictably ugly outcomes. When we think of the 1960s today, we tend to think of anti-war violence—and while we should not absolve protestors like the Weathermen who moved beyond rhetoric toward violence, we must also remember that the pro-war side struck first and was persistently vicious toward student demonstrators (Perlstein 81, 179, 339–40, 367). This was the consequence of the politics of resent- ment. It was the cost of order. Out of riots and Molotov Cocktails, out of afros and long hair, out of Black Panthers and hippies and druggies and draft-dodgers, through dialectical opposition Nixon constituted a real America: the law- respecting silent majority. This America was the victim, and it was justified in its rage at the minorities who victimized it. By cultivating, and channeling, resent- ment, Nixon found the power to rule.

As Nietzsche recognized, the politics of resentment involves a bottling up of pas- sion and drives that, like a raging river confronting a moral dam, will eventually break. During the 1968 campaign, Nixon suggested that he would support violence against ghetto rioters and student protestors like those at Columbia, arguing that ‘‘Our first commitment as a nation in this time of crisis and questioning must be a commitment to order’’ (‘‘Nixon Would’’ 23). When the dam did break at Kent State, he blamed the students, not the national guardsmen: a judgment echoed by many in the silent majority. The official reaction to this tragedy was, ‘‘This should remind us all once again that when dissent turns to violence, it invites tragedy,’’ although eventually Nixon softened his tone (Perlstein 497). More emblematic of the consequences of a politics of resentment was the hard hat riot. On May 8, 1970, students gathered in downtown New York City to lament the Kent State shootings and express their discontent with the invasion of Cambodia. They were greeted by over 200 New York construction workers carrying flags and chanting patriotic slogans, who proceeded to beat the students black-and-blue with their hard hats. These workers destroyed property and hurt peaceful demonstrators, but Nixon cried, ‘‘Thank God for the hard hats!’’ (Cowie 265). This was the outcome of the politics of resentment, as an age that began as an era of consensus devolved into a street fight.

### Contingency

#### Robust democratic politics allows us to question the privilege that exists in settled conventions of the SQ

Harvey, 12 (Oct 20, Kathryn, writer for e-international relations, “[Democratic Agonism: Conflict and Contestation in Divided Societies](http://www.e-ir.info/2012/10/20/democratic-agonism-conflict-and-contestation-in-divided-societies/),” http://www.e-ir.info/2012/10/20/democratic-agonism-conflict-and-contestation-in-divided-societies/)

We find in Connolly’s work a similar branch of postmodernism and anti-foundationalism as advanced by Foucault and Nietzsche. He writes; ‘Deconstructionists show how every social construction of the self, truth, reason or morality, endowed by philosophy with a coherent unity and invested with a privileged epistemic status, is actually composed of an arbitrary constellation of elements held together by powers and metaphors which are not inherently rational’ (1993: 231). He thus agrees that the modernist search for rational foundations which make up human nature is inherently flawed, as these unities have a constructed character and an epistemic privilege. Applying this strain of thought to radical democracy, Connolly impels a more thorough democratic politics. He argues that ‘When democratic politics is robust, when it operates to disturb the naturalisation of settled conventions, when it exposes settled identities to some of the contestable contingencies that constitute them, then one is in a more favourable position to reconsider some of the demands built into those conventions and identities’ (quoted in Deveaux, 1999: 13-14). Thus, for Connolly, the very indeterminacy of democracy’s foundations must be uncovered and incorporated into its institutions and practices; ‘Spaces for difference are to be established through the play of political contestation’ (Connolly, quoted in Deveaux, 1999: 13). The ‘building stones’ that are part of democracy but which are buried under notions of identity, consensus, legitimacy and the common good, must be unearthed through a post-structuralist approach. As Saul Newman summarises, Connolly’s account is illuminating as it uncovers the need to eschew the essential foundations of democracy, and ‘open itself to contingency, indeterminacy and, above all, difference’ (2008: 231).

#### Their observation that we are living on stolen land doesn’t mean all action in the present is morally tainted

Hendrix 5 (Burke, Assistant Professor at cornell in the Department of Government and Program on Ethics and Public Life, American Indian Quarterly, Volume 23, “Moral Minimalism in American Indian Land Claims”, http://muse.jhu.edu/journals/american\_indian\_quarterly/v029/29.3hendrix.html)

I am not sure how to solve these issues or even how to think clearly about the limits and relative weight of culpability in political inaction. It does seem to me, however, that the culpability of living non-Indians must generally be fairly limited, particularly among those who have no direct connections to the recent theft or exploitation of Indian lands. It seems to me that most non-Indians are more like Newcomers than Invaders. If they have through their moral failures weakened their claims to possess their current properties somewhat, it does not seem to me that they have forfeited them entirely. If so, it follows that a statute of limitations should apply to historical thefts when the suffering caused to current inhabitants in returning land would be very high. Where the suffering [End Page 549] caused would be low, on the other hand, the statute of limitations applies weakly if at all. Being forcibly ejected from one's home can clearly create serious suffering. Homes are, after all, filled with the memories of one's life, including the birth and growth of children and the passing of parents. Homes also help to provide both shape and expression to individual character in complex ways. Moreover, the notion of "home" entails more than simply a house—it also entails fields, forestlands, and fences in rural areas. Perhaps most important, communities have a particular character that derives not only from their physical shape but also from the relationships that they foster and maintain over time. It is very hard to uproot a community and rebuild it elsewhere and far more difficult if the community has nowhere to go as a group but must separate into individual families and seek new lives apart.

### A2 democracy K

#### The aff is not an endorsement of currently existing democracy, but rather an attempt to realize its radical potential—even if it’s unobtainable, we should still strive for it

**Nelson ’08**, Dana D. Nelson, professor of English at Vanderbilt University, 2008, “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg 13-14

We treasure the democratic spirit of our nation’s founding and its expansions of access and rights. But every such expansion has taken years of political struggle ‘Sometimes it has taken lives, Democracy is notoriously difficult to institute, and it’s just as hard to maintain. Because of the effort it takes —because people have to take responsibility for it, fight for it, watch over it, nourish it—many buy the argument that a participatory democracy is an impractical ideal, and we therefore shouldn’t be too worried about letting our leaders govern for us in the best ways they see fit. I don’t agree, either in principle or in fact. My definition of democracy is the simple one, taken from the original Greek: demos (people) + kratia (power)1 Democracy is happening when the people have and can use the power of self-governance. Simple to say and hard to realize, especially so because we don’t ever get to struggle for democracy in ideal conditions — democracy is the art of making something decent together out of what ever we’ve currently got. And what we have now are “representative institutions” that most people don’t feel are working for them, as seen by presidential and congressional approval ratings. What we’ve got now is precious little public trust—which is undeniably bad for democracy.

Yet it may be that we’ve been wrong to attach our hopes for democracy to institutions. This is not to say that formal institutions can’t support democracy; it is simply to point out, as political theorist C. Douglas Lummis wisely observes, that institutions can only be a means to democracy: they cannot be democracy itself. Rather; we might more fruitfully think of democracy as a spirit we the people guard and nurture, a goal that we are always working toward, and that democracy won’t exist if we stop guarding, nurturing, and working at it. In other words, democracy is neither the government’s shape nor its responsibility: the responsibility for democracy belongs to us, the people, together. Then the question becomes (and it’s the BIG question): how do we effectively guard and nurture that spirit, and measure and maximize its presence in our government and in our lives, in the midst of our ongoing disagreements and differences?

#### Even if its roots are flawed, democracy is flexible and can be re-appropriated

MANDAVILLE AND MANDAVILLE 2k7 (ALICIA PHILLIPS associate Director of Development Policy at the Millennium Challenge Corporation, PETER P prof international/public affairs @ George mason, “Introduction: Rethinking democratization and democracy assistance” Development, 2007, 50(1), (5–13)

We have outlined some of the ways in which democratization efforts can be reconceptualized and reformulated based on insights from critical social theory and by paying closer attention to the local histories and legacies of power relationships (and various modes of mediating them) that shape the political present in developmental contexts around the world. Inevitably, we have raised more questions than answers and offered more byway of criticism than concrete alternatives. In this issue, there are other contributions that give considered analyses of various alternative democracy practices, as well as a sustained critique of certain aspects of mainstream democracy assistance. We hope that these diverse perspectives will aid us in moving our thinking and practices from a somewhat hegemonic and universally conceived effort of ‘democracy assistance’ towards greater comfort with messier, idiosyncratic, but often at the end of the day, more participatory forms of democratic politics.

### Impact

***There is no root cause of war and we turn their impacts – large-scale violence leads to structural violence***

**Goldstein, ’01** (Joshua S., Professor of International Relations at American University, War and Gender: How Gender Shapes the War System and Vice Versa, pp.411-412)

I began this book hoping to contribute in some way to a deeper understanding of war – an understanding that would improve the chances of someday achieving real peace, by deleting war from our human repertoire. In following the thread of gender running through war, I found the deeper understanding I had hoped for – a multidisciplinary and multilevel engagement with the subject. Yet I became somewhat more pessimistic about how quickly or easily war may end. The war system emerges, from the evidence in this book, as relatively ubiquitous and robust. Efforts to change this system must overcome several dilemmas mentioned in this book. First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### Their criticism is just wrong about what causes violence – the focus on the United State’s role in genocide and the stealing of land obscures a criticism of indigenous first nations who engaged in brutal acts of violence against other First Nations. The imperialist expansion engaged by the Aztecs which justified the mass extermination of people also ushered in an era of slavery that far predates the slave trade in America

Adam Jones, Ph.D., Research Fellow in the Genocide Studies Program @ Yale, “Genocide: A Personal Journey”, June 2006, http://www.genocidetext.net/personal\_journey.htm

For the ensuing five-and-a-half years, 2000 to 2005, I lived in Mexico City, by some estimates the largest metropolis on earth. There, a legacy of genocide can still be sensed in the ruined temples of the prehispanic civilization. Those temples presided over both the genocidal atrocities of the Aztec conquerors, and those inflicted upon them -- and other indigenous nations -- by the Spanish conquistadores. Shortly after my arrival I was able to spend two weeks in the sweltering Yucatán peninsula -- glorying in the region's magnificent archaeological sites and colonial architecture, but also tracing key sites involved in the little-known Caste War of the mid-nineteenth century. Between 1847 and 1849, taking advantage of a civil war that divided the white elite, Mayan rebels launched a millenarian uprising that bore strong similarities to the massive rebellion in Upper Peru (today's Bolivia) in the late eighteenth century. Like that earlier revolt, the Mayan campaign displayed genocidal tendencies from the outset. It aimed explicitly at killing any whites, combatant or non-combatant, who came within range of rifle or dagger. By this means, the hated colonizer and his brood would be banished forever.

#### These examples of sovereign violence in indigenous cultures should make you question the efficiency of “whishing America away” – but more importantly it should make you question what the CAUSE of sovereign violence is. Their account of indigenous history is one-sided.

### A2: A2 alt

#### The alt fails:

#### Bad Forum – using the classroom as a site to decolonize thought oversimplifies the Western-Indigenous relationship and history, is counter-productive, and creates a close minded dichotomy between primitivism and modernity which turns their project.

Nakata et al 2012, N. Martin Nakata, Victoria Nakata, Sarah Keech & Reuben Bolt

Nura Gili Centre for Indigenous Programs, University of New South Wales, Australia, “Decolonial goals and pedagogies for Indigenous studies,” Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, <http://decolonization.org/index.php/des/article/view/18629>, KEL

A number of points are threaded through our argument. We agree that anti-colonial critique is a fundamental beginning point for unsettling entry-level students’ presuppositions about Indigenous-Western relations. However we argue that the end-point of instating regenerated Indigenous ‘ways’ or ‘traditions’ as the counter-solution to overcoming colonial legacies occurs too hurriedly in some scholarly analysis and in lecture settings. In this process, explorations in lecture rooms skip the more complex theoretical dilemmas students need to engage with to understand the conceptual limits of their own thinking, as well as the discipline’s, and to critically engage propositions from within Indigenous Studies scholarship. Our stance also leads us away from approaches that focus on decolonising students. Approaches that focus on changing students’ thinking through constant engagement with or reflection on their complicity with colonialism, its knowledge, and its privileges personalises a deep political and knowledge contest in ways that can be counter-productive for both students and their educational goals. Our argument is that the complex grounds of this ‘Indigenous-Western’ contest make it a difficult task to resolve what is colonial and what is Indigenous, or what ultimately serves Indigenous interests in contemporary knowledge practice. Furthermore, the quest to resolve this contest in lecture rooms relies on engaging students in an oversimplification of the way colonial, Western, and Indigenous meanings are produced and operate in contemporary lifeworlds. We propose that students might be more disposed to understanding the limits of their own thinking by engaging in open, exploratory, and creative inquiry in these difficult intersections, while building language and tools for describing and analysing what they engage with. This approach engages the politics of knowledge production and builds critical skills — students’ less certain positions require the development of less certain, more complex analytical arguments and more intricate language to express these arguments. Pedagogically, we propose this as a way to also prevent slippage into forms of thinking and critical analysis that are confined within dichotomies between primitivism and modernity; and as a way to avoid the closed-mindedness of intellectual conformity, whether this be expressed in Indigenous, decolonial, or Western theorising.

#### Too Reductionist – their simplistic critique of all Western thought reifies colonial binaries and thought and prevents more important complex analysis, turning their case.

Nakata et al 2012, N. Martin Nakata, Victoria Nakata, Sarah Keech & Reuben Bolt

Nura Gili Centre for Indigenous Programs, University of New South Wales, Australia, “Decolonial goals and pedagogies for Indigenous studies,” Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, <http://decolonization.org/index.php/des/article/view/18629>, KEL

In Indigenous Studies, simplistic critique of the Western has had a tendency toward reductive ideological critique in the effort to demonstrate political resistance as the path to Indigenous ‘liberation’ and re-affirmation of traditional identities2. By simplistic critique, we mean that which represents the Western in singular terms and antithetical to the Indigenous. This reflects, in part, the activism of the struggle for freedom, recognition, and self-determination. When coupled with the determination to affirm dynamically adapting cultural practices or to re-instate conceptual thought from Indigenous knowledge systems or ‘traditions’, Smith’s (1999) decolonising priority to re-claim, re-name, re-write and re-right is upheld. This approach is ideologically powerful in terms of the Indigenous sense of autonomy and distinctiveness. However, it runs the danger of reifying the colonial binaries, even though ‘deconstruction’ of them re-turns the negative binary into a positive force mobilised by re-generated Indigenous meanings. More importantly, political resistance that demands the routine dismissal of the Western, as colonial and as the singular originary source of Indigenous struggles, when coupled with the quick re-claiming and re-naming of the Indigenous, inhibits fuller, more measured examination of the complex layers of meaning that now circumscribe what it means to be Indigenous and how Indigenous contemporary social conditions and concerns can be understood (see, for example, Sutton, 2009).

#### Only action precipitates change—the alt’s consciousness shift does nothing without concrete change—you can’t think your way into acting, you have to act your way into thinking

Kirsch 2k

Max H., Associate Professor and Director of the Ph.D. Program in Comparative Studies: The Public Intellectuals Program at the Florida Atlantic University, Routledge, "Queer theory and social change", p. 63-64

To the extent that we have the capacity for empathy, we should be able to extrapolate at least some of the emotions of others in relation to our own. The danger, of course, is the projection of our own emotions onto others that produces an emotional isomorphism that makes this methodology a dangerous means on which to rely solely. For integral to the debates about the individual and society are inquiries concerning the development of consciousness and whether an individual consciousness can effectively act on society. Consciousness has its own set of determinants, including that of what is being experienced in the felt world, the energy that is directed at the individual and which the individual takes on and transforms. The standard inquiry about the direction of change – whether social action changes society or consciousness works to enact change – is yet another dualism that requires integration. Consciousness takes many forms. Leon Trotsky (1973), while examining the problems facing the Russian Revolution, explored ways in which common experiences, including language usage, relations of work, sexism, alcohol use, and religion, all play a part in the way that members of a society think and act, and derive their consciousness, and, in turn, the effect of that consciousness on social change. Both Lenin and Trotsky were constantly aware of the changes in social stature that all members of a society, which had just gone through a significant and traumatic change, were experiencing; they were also aware of the dangers of the styles of thought that produced inequality or negatively impacted on mutual respect. In short, it was their belief that action precipitated change, and that consciousness could not transform on its own without an awareness of the symbolic power of the social relations of everyday activity. Is this still relevant? Is it simply Seidman’s concept of “social theory”? The mere mention of Lenin and Trotsky conjures up diabolical schemes of coercive state-induced conformity that sends shivers down the spines of many liberally-minded theorists. It has been assumed much too quickly that the “meta-narrative” of Marxism leads to Stalinism, so quickly that we are no longer obliged to read the work of Marxists, often critical, even those who were part of the left opposition during the Russian Revolution. Even Lenin himself thought that “organization” could be overdone (Lenin, 1993). But, as in the case of Freud, much of this writing, when carefully read, can be seen to have been misinterpreted and misapplied, particularly in and through the current wave of antiMarxism that has penetrated the queer movement. If we respect the view that the personal is political, we will see that the actions and concerns of everyday life affect the way in which we consider change. But the personal, thought of as purely psychical, is not enough, for it relies on that division of the ego that magnifies individual difference into – to use the language of psychology again – neuroses. The dialectical interaction stressed by Lenin and Trotsky is similar to the one employed by psychoanalysts on the psychic level; it has long been realized that we cannot change our feelings and our emotions without a change in our actions. While these levels must be separately analyzed, they also have to be integrated on the cultural level. The ambivalence that we experience towards identity, towards categorization, is also psychical. An inability to form social bonds through identification, and to change them as we do, seems to be, as Weeks points out, “the negation of choice,” for “identities and categorizations are also points of comfort, security and assuredness” (1985: 189).These social bonds allow for what Weeks calls “sexual communities,” where “individual feelings become meaningful, and ‘identity’ possible” (1985: 189).

**A2: K pedagogy**

#### Red pedagogy demands dialogic engagement with the state

Sany Grande, 2007, Critical Pedagogy: Where are We Now?, p. 330-31

Andre Lorde’s essay, The Masters Tools Not Dismantle the Master's House, is one of the most quoted essays in academic history and, I would also venture to say, one that needs rethinking. While it is self-evident that indigenous knowledge is essential to the process of decolonization, l would also argue that the Masters tools are necessary. Otherwise, to take Audrey Lorde seriously means to create a dichotomy between the tools of the colonizer and those of the colonized. Such a dichotomy leaves the indigenous scholar to grapple with a kind of “Sophie’s Choice" moment where one feels compelled to choose between retaining their integrity (identity) as a Native scholar by employ in only indigenous knowledge or to “sell out” and employ the frames of Western knowledge. What does it mean for indigenous scholars to engage Western knowledge? Does it signify a final submission to the siren’s song, seducing us into the colonialist abyss with promises of empowerment? Or is it the necessary first step in reclaiming and decolonizing an intellectual inquiry room-of our own.’ Such questions provoke beyond the bounds of academic exercise, suggest instead the need for an academic exorcism.

The demon to be purged is the specter of colonialism. As indigenous scholars, we live within, against` and outside of its constant company` witnessing its various manifestations as it shape shifts its way into everything from research and public policy to textbooks and classrooms. Thus. the colonial tax of Native scholars not only requires a recognition of personal identity but also an analysis of how whole nations get trans- or (dis) figured when articulated through Western frames of knowing. As Edward Said observes. “institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracy and colonial styles” all support to the Westem discourse" (Said, 1985, p, 2). ln other words, is it possible to engage the grammar of empire without replicating its effects.’

At the same time indigenous entertain these ruminations, Native communities continue to be impacted and transformed by the forces of colonization, rendering the “choice” of whether to employ Western knowledge in the process“ of defining indigenous pedagogies essentially moot. ln other words, by virtue of living in this world and having to negotiate the forces of colonization, indigenous scholars are given no choice but to know, understand, and acquire the grammar of empire as well as develop the skills to contest it. The relationship between the two is not some liberal dream of multicultural harmony but rather the critical and dialogical tension between competing moral visions.

# 1AR

***Perm is the best methodological option --- corrects shortcomings of both***

Methodologies are always imperfect – endorsing multiple epistemological frameworks can correct the blindspots of each

**Stern and Druckman 00** (Paul, National Research Council and Daniel, Institute for Conflict Analysis and Resolution – George Mason University, International Studies Review, Spring, p. 62-63)

Using several distinct research approaches or sources of information in conjunction is a valuable strategy for developing generic knowledge. This strategy is particularly useful for meeting the challenges of measurement and inference. The nature of historical phenomena makes controlled experimentation—the analytic technique best suited to making strong inferences about causes and effects—practically impossible with real-life situations. Making inferences requires using experimentation in simulated conditions and various other methods, each of which has its own advantages and limitations, but none of which can alone provide the level of certainty desired about what works and under what conditions. We conclude that debates between advocates of different research methods (for example, the quantitative-qualitative debate) are unproductive except in the context of a search for ways in which different methods can complement each other. Because there is no single best way to develop knowledge, the search for generic knowledge about international conflict resolution should adopt an epistemological strategy of triangulation, sometimes called “**critical** **multiplism**.”53 That is, it should use multiple perspectives, sources of data, constructs, interpretive frameworks, and modes of analysis to address specific questions on the presumption that research approaches that rely on certain perspectives can act as **partial correctives** for the limitations of approaches that rely on different ones. An underlying assumption is that robust findings (those that hold across studies that vary along several dimensions) engender more confidence than replicated findings (a traditional scientific ideal, but not practicable in international relations research outside the laboratory). When different data sources or methods converge on a single answer, one can have increased confidence in the result. When they do not converge, one can interpret and take into account the known biases in each research approach. A continuing critical dialogue among analysts using different perspectives, methods, and data could lead to an understanding that better approximates international relations than the results coming from any single study, method, or data source.