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***The authority of the President of the United States to use or deploy armed forces against a nation-state in circumstances likely to lead to an armed attack without a prior declaration of war from the United States Congress should be substantially restricted.***

**Contention 1: Wars of Choice**

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

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

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

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

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

II. The Causes of War

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

 A. Image I--The Level of the Individual

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

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

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

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

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

 B. Image II--The Level of the State

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

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

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

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

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

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

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

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

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

A. Why an Unconstrained Executive Matters Today

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

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

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

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

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

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

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

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

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

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

An Increasing Tempo of Operations

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

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

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

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

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

The Importance of the Declaration

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

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

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

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

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

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

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

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

**Contention 2: Cult of the Presidency**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Contention 3: Solvency**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

# 2AC

**A2: imperialism K**

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

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

Conclusion

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

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

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

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

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

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

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

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

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

***Radical rejection fails --- the plan’s the most pragmatic check on militarism***

Plan’s essential to restrain short-term effects of militarism —- sweeping critique of war is too extreme to reach broad acceptance

Andrew **Bacevich 13**, Professor of History and International Relations at Boston University and Ph.D. in American Diplomatic History from Princeton University, The New American Militarism, p. 205-210

There is, wrote H. L. Mencken, “always a well-known solution to every human problem—neat, plausible, and wrong.”1 Mencken’s aphorism applies in spades to the subject of this account. **To imagine** that there exists **a simple antidote to the “military metaphysic”** to which the people and government of the United States have fallen prey **is to misconstrue the problem**. As the foregoing chapters make plain, the origins of America’s present-day infatuation with military power are anything but simple. American **militarism is not** the invention of a cabal nursing **fantasies** of global empire **and** manipulating an unsuspecting people **frightened** by the events of 9/11. Further, **it is *counterproductive* to think in these terms— to assign culpability to a particular president** or administration and to imagine that throwing the bums out will put things right. Yet neither does the present-day status of the United States as sole superpower reveal an essential truth, whether positive or negative, about the American project. **Enthusiasts** (mostly on the right) who interpret America’s possession of unrivaled and unprecedented armed might as proof that the United States enjoys the mandate of heaven **are deluded. But so too are those (mostly on the left)** who see in the far-flung doings of today’s U.S. military establishment substantiation of Major General Smedley Butler’s old chestnut that “war is just a racket” and the American soldier “a gangster for capitalism” sent abroad to do the bidding of Big Business or Big Oil.2 **Neither the will of God nor the venality of Wall Street suffices to explain** how the United States managed to become stuck in World War IV. Rather, the new American **militarism is a little like pollution**—the perhaps unintended, but foreseeable by-product of prior choices and decisions made without taking fully into account the full range of costs likely to be incurred. In making the industrial revolution, the captains of American enterprise did not consciously set out to foul the environment, but as they harnessed the waters, crisscrossed the nation with rails, and built their mills and refineries, negative consequences ensued. Lakes and rivers became choked with refuse, the soil contaminated, and the air in American cities filthy. By the time that the industrial age approached its zenith in the middle of the twentieth century, most Americans had come to take this for granted; a degraded environment seemed the price you had to pay in exchange for material abundance and by extension for freedom and opportunity. Americans might not like pollution, but there seemed to be no choice except to put up with it. To appreciate that this was, in fact, not the case, **Americans needed a different consciousness. This is where the environmental movement**, beginning more or less in the 1960s, **made its essential contribution.** Environmentalists enabled Americans to see the natural world and their relationship to that world in a different light. They argued that the obvious deterioration in the environment was unacceptable and not at all inevitable. **Alternatives did exist. Different policies and practices could stanch and even reverse the damage. Purists** in that movement **insisted upon the primacy of environmental** needs, everywhere and in all cases. **Theirs was** (and is) **a principled position** deserving to be heard. **To act on their recommendations, however, would likely mean shutting down the economy, an impractical and politically infeasible course of action. Pragmatists** advanced a different argument. They **suggested** that **it was possible to negotiate a compromise between economic needs and *environmental* imperatives. This compromise might oblige Americans to curtail certain bad habits, but it did not require changing the fundamentals of how they lived their lives**. Americans could keep their cars and continue their love affair with consumption; but at the same time they could also have cleaner air and cleaner water. Implementing this compromise has produced an outcome that environmental radicals (and on the other side, believers in laissez-faire capitalism) today find unsatisfactory. In practice, it turns out, once begun negotiations never end. Bargaining is continuous, contentious, and deeply politicized. Participants in the process seldom come away with everything they want. **Settling for half a loaf when you covet the whole is inevitably frustrating. But the results are self-evident. Environmental conditions** in the United States today **are palpably better than they were a half century ago. Pollution has not been vanquished, but it has become more manageable**. Furthermore, the nation has achieved those improvements without imposing on citizens undue burdens and without preventing its entrepreneurs from innovating, creating, and turning a profit. **Restoring a semblance of balance** and good sense **to** the way that Americans think about **military power will require a similarly pragmatic approach. Undoing all** of the **negative effects** that result from having been seduced by war **may lie beyond reach, but Americans can** at least **make them** more **manageable and** thereby **salvage their democracy**. In explaining the origins of the new American militarism, this account has not sought to assign or to impute blame. None of the protagonists in this story sat down after Vietnam and consciously plotted to propagate perverse attitudes toward military power any more than Andrew Carnegie or John D. Rockefeller plotted to despoil the nineteenth-century American landscape. The clamor after Vietnam to rebuild the American arsenal and to restore American self-confidence, the celebration of soldierly values, the search for ways to make force more usable: all of these came about because groups of Americans thought that they glimpsed in the realm of military affairs the solution to vexing problems. The soldiers who sought to rehabilitate their profession, the intellectuals who feared that America might share the fate of Weimar, the strategists wrestling with the implications of nuclear weapons, the conservative Christians appalled by the apparent collapse of traditional morality: none of these acted out of motives that were inherently dishonorable. To the extent that we may find fault with the results of their efforts, that fault is more appropriately attributable to human fallibility than to malicious intent. And yet **in the end it is not motive that matters but outcome**. Several decades after Vietnam, in the aftermath of a century filled to overflowing with evidence pointing to the limited utility of armed force and the dangers inherent in relying excessively on military power, the American people have persuaded themselves that their best prospect for safety and salvation lies with the sword. Told that despite all of their past martial exertions, treasure expended, and lives sacrificed, the world they inhabit is today more dangerous than ever and that they must redouble those exertions, they dutifully assent. Much as dumping raw sewage into American lakes and streams was once deemed unremarkable, so today “global power projection”—a phrase whose sharp edges we have worn down through casual use, but which implies military activism without apparent limit—has become standard practice, a normal condition, one to which no plausible alternatives seem to exist. All of this Americans have come to take for granted: it’s who we are and what we do. Such a definition of normalcy cries out for a close and critical reexamination. Surely, the surprises, disappointments, painful losses, and woeful, even shameful failures of the Iraq War make clear the need to rethink the fundamentals of U.S. military policy. Yet a meaningful reexamination will require first a change of consciousness, seeing war and America’s relationship to war in a fundamentally different way. Of course, **dissenting views** already exist. A rich tradition of American pacifism abhors the resort to violence as always and in every case wrong. Advocates of disarmament argue that by their very existence weapons are an incitement to violence. In the former camp, there can never be a justification for war. In the latter camp, the shortest road to peace begins with the beating of swords into ploughshares. These are principled views that **deserve a hearing**, more so today than ever. By discomfiting the majority, advocates of such views serve the common good. **But to make full-fledged pacifism or comprehensive disarmament the basis for policy in an intrinsically disordered world would be to open the U**nited ***S***tates **to grave danger. The critique proposed here—offering *not a panacea* but the prospect of causing *present-day militaristic tendencies* to abate—rests on** ten **fundamental principles. First, heed the intentions of the Founders**, thereby restoring the basic precepts that animated the creation of the United States and are specified in the Constitution that the Framers drafted in 1787 and presented for consideration to the several states. Although politicians make a pretense of revering that document, when it comes to military policy they have long since fallen into the habit of treating it like a dead letter. This is unfortunate. Drafted by men who appreciated the need for military power while also maintaining a healthy respect for the dangers that it posed, **the Constitution** in our own day **remains an essential point of reference**. Nothing in that compact, as originally ratified or as subsequently amended, commits or even encourages the United States to employ military power to save the rest of humankind or remake the world in its own image nor even hints at any such purpose or obligation. To the contrary, the Preamble of the Constitution expressly situates military power at the center of the brief litany of purpose enumerating the collective aspirations of “we the people.” It was “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity” that they acted in promulgating what remains the fundamental law of the land. Whether considering George H. W. Bush’s 1992 incursion into Somalia, Bill Clinton’s 1999 war for Kosovo, or George W. Bush’s 2003 crusade to overthrow Saddam Hussein, the growing U.S. predilection for military intervention in recent years has so mangled the concept of common defense as to make it all but unrecognizable. The beginning of wisdom—and **a major first step in repealing the** new American **militarism—lies in making** the foundational statement of intent contained in **the Preamble** once again **the basis of actual policy**. Only if citizens remind themselves and remind those exercising political authority why this nation exists will it be possible to restore the proper relationship between military power and that purpose, which centers not on global dominance but on enabling Americans to enjoy the blessings of liberty. Such a restoration is long overdue. For over a century, since the closing of the frontier, but with renewed insistence following the end of the Cold War, American statesmen have labored under the misconception that securing the well-being of the United States requires expanding its reach and influence abroad. From the invasion of Cuba in 1898 to the invasion of Iraq in 2003, policymakers have acted as if having an ever larger perimeter to defend will make us safer or taking on burdens and obligations at ever greater distances from our shores will further enhance our freedoms.3 In fact, apart from the singular exception of World War II, something like the opposite has been the case. The remedy to this violation of the spirit of the Constitution lies in the Constitution itself and in the need to revitalize the concept of separation of powers. Here is the second principle with the potential to reduce the hazards by the new American militarism. In all but a very few cases, the impetus for expanding America’s security perimeter has come from the executive branch. In practice, presidents in consultation with a small circle of advisers decide on the use of force; the legislative branch then either meekly bows to the wishes of the executive or provides the sort of broad authorization (such as the Tonkin Gulf Resolution of 1964) that amounts in effect to an abrogation of direct responsibility. The result, especially in evidence since the end of World War II, has been to eviscerate Article I, Section 8, Clause 11 of the Constitution, which in the plainest of language confers on the Congress the power “To declare War.” The problem is not that the presidency has become too strong. Rather, the problem is that the Congress has failed—indeed, failed egregiously—to fulfill its constitutional responsibility for deciding when and if the United States should undertake military interventions abroad. Hiding behind an ostensible obligation to “support our commander-in-chief” or to “support the troops,” the Congress has time and again shirked its duty. **An *essential step* toward curbing** the new American **militarism is to redress** this **imbalance in war powers and** to **call upon** the **Congress to reclaim its constitutionally mandated prerogatives**. Indeed, **legislators should insist upon a strict constructionist definition of war such that any use of force other than in direct and immediate defense** of the United States **should require prior congressional approval**. The Cold War is history. The United States no longer stands eyeball-toeyeball with a hostile superpower. Ensuring our survival today does not require, if it ever did, granting to a single individual the authority to unleash the American military arsenal however the perception of threats, calculations of interest, or flights of whimsy might seem to dictate. Indeed, given all that we have learned about the frailties, foibles, and strange obsessions besetting those who have occupied the Oval Office in recent decades—John Kennedy’s chronic drug abuse, Richard Nixon’s paranoia, and Ronald Reagan’s well-documented conviction that Armageddon was drawing near, to cite three examples—**it is simply absurd that elevation to the presidency should include** the grant of such authority.4 **The decision to use armed force** is freighted with implications, seen and unseen, that affect the nation’s destiny. Our history has shown this time and again. Such **decisions should require collective approval in advance by** the people’s **elected representatives**, as the Framers intended. Granted, one may examine the recent past—for instance, the vaguely worded October 2002 joint resolution authorizing the use of force against Iraq—and despair of those representatives actually stirring themselves to meet their responsibilities.5 But the errors and misapprehensions, if not outright deceptions, that informed the Bush administration’s case for that war—and the heavy price that Americans subsequently paid as a result— show why Cold War–era **deference to the will of the commander-in-chief is no longer acceptable**. If serving members of Congress cannot grasp that point, citizens should replace them by electing people able to do so.

***3. We don’t embrace the law. We’re not pro-State, but we’re "anti-anti State". Some things can ONLY be solved "through the system".***

Dr. Richard **Barbrook**, Hypermedia Research Centre – U. of Westminster, 6-5-19**97**, “More Provocations,” Amsterdam.nettime.org/Lists-Archives/nettime-1-9706/msg00034.html

I thought that this position is clear from my remarks about the ultra-left posturing of the ‘zero-work’ demand. In Europe, **we have real social problems** of deprivation and **poverty which, in part, can only be solved by state action. This does not make me a statist, but rather *anti-anti-statist*. By opposing such intervention because they are carried out by the state anarchists are tacitly lining up with the neo-liberals. Even worse, refusing even to vote for the left, they acquiese to rule by neo-liberal parties. I deeply admire direct action movements.** I was a radio pirate and we provide server space for anti-roads and environmental movements. **However, this doesn’t mean that I support political abstentionism** or, even worse, the mystical nonsense produced by Hakim Bey. It is great for artists and others to adopt a marginality as a life style choice, but most of the people who are economically and socially marginalised were never given any choice. They are excluded from society as a result of deliberate policies of deregulation, privatisation and welfare cutbacks carried out by neo-liberal governments. **During the ‘70s**. I was a pro-situ punk rocker until Thatcher got elected. Then **we learnt the hard way that voting did change things and lots of people suffered if state power was withdrawn** from certain areas of our life, such as welfare and employment. Anarchism can be a fun artistic pose. However, human suffering is not.

***4. Whiteness isn’t a monolithic root cause---they shut off productive debate over solutions – means the alt fails***

**Shelby 7** – Tommie Shelby, Professor of African and African American Studies and of Philosophy at Harvard, 2007, We Who Are Dark: The Philosophical Foundations of Black Solidarity

**Others** might **challenge the distinction between** **ideological and structural causes of black disadvantage**, on the grounds that **we are rarely**, if ever, **able to** so **neatly separate these factors**, an epistemic situation that is only made worse by the fact that these causes interact in complex ways with behavioral factors. These distinctions, while perhaps straightforward in the abstract, are difficult to employ in practice. For example, **it would be** difficult, if not **impossible**, **for the members of a poor black community to determine** **with any accuracy** **whether their impoverished condition is due** **primarily to institutional racism**, the impact of past racial injustice, **the increasing technological basis of the economy**, **shrinking state budgets**, the vicissitudes of **world trade**, the ascendancy of **conservative ideology**, **poorly funded schools**, lack of personal initiative, **a violent drug trade** that deters business investment, **some combination of these factors**, **or some other explanation altogether**. Moreover, it is notoriously difficult to determine when the formulation of putatively race-neutral policies has been motivated by racism or when such policies are unfairly applied by racially biased public officials.¶ **There are** very real **empirical difficulties** **in determining the** **specific causal significance** **of the factors that create and perpetuate black disadvantage**; nonetheless, it is clear that these factors exist and that **justice will demand** **different practical remedies according to** **each factor's relative impact** **on blacks' life chances**. **We must acknowledge that our social world is complicated** and not immediately transparent to common sense, **and thus that** **systematic empirical inquiry**, **historical studies, and rigorous social analysis are required to reveal its systemic structure** and sociocultural dynamics. There is, moreover, no mechanical or infallible procedure for determining which analyses are the soundest ones. In addition, given the inevitable bias that attends social inquiry, legislators and those they represent cannot simply defer to social-scientific experts. **We must instead rely on** **open public debate**—among politicians, scholars, policy makers, intellectuals, and ordinary citizens—**with the aim of garnering** **rationally motivated** and informed **consensus**. And even if our practical decision procedures rest on critical deliberative discourse and thus live up to our highest democratic ideals, some trial and error through actual practice is unavoidable.¶ These difficulties and complications notwithstanding, a general recognition of the distinctions among the ideological and structural causes of black disadvantage could help blacks refocus their political energies and self-help strategies. **Attention to these distinctions might help** **expose the superficiality of theories** **that seek to** **reduce all the social obstacles that blacks face to** contemporary forms of racism or ***white supremacy***. **A more** penetrating, **subtle, and empirically grounded** **analysis** **is needed to** **comprehend the causes of racial inequality and black disadvantage**. Indeed, these distinctions highlight the necessity to probe deeper to find the causes of contemporary forms of racism, as some **racial conflict may be a symptom of broader problems or recent social developments** (**such as immigration policy** or reduced federal funding for higher education).

***Islamophobia has zero causal explanatory power as a method and you can’t solve it because it’s so nebulous***

**Bleich**, professor of political science – Middlebury, **‘11**

(Erik, “What Is Islamophobia and How Much Is There? Theorizing and Measuring an Emerging Comparative Concept,” American Behavioral Scientist, 55(12) p. 1581-1600)

Islamophobia is a widely used concept in public and scholarly circles. It was originally developed in the late 1990s and early 2000s by political activists, nongovernmental organizations (NGOs), public commentators, and international organizations to draw attention to harmful rhetoric and actions directed at Islam and Muslims in Western liberal democracies. For actors like these, the term not only identifies anti- Islamic and anti-Muslim sentiments, it also provides a language for denouncing them. In recent years, Islamophobia has evolved from a primarily political concept toward one increasingly deployed for analytical purposes. Researchers have begun using the term to identify the history, presence, dimensions, intensity, causes, and consequences of anti-Islamic and anti-Muslim sentiments. In short, Islamophobia is an emerging comparative concept in the social sciences. **Yet, there is no widely accepted definition of the term.** **As a result, it is extremely difficult to compare levels of Islamophobia** across time, location, or social group, or to levels of analogous categories such as racism, anti-Semitism, or xenophobia. Without a concept that applies across these comparative dimensions, it is also virtually **impossible to identify** the **causes and consequences** **of Islamophobia with any precision.**

***Not the root cause***

**Joppke**, professor of politics – American University of Paris, PhD Sociology – Berkeley, **‘9**

(Christian, “Limits of Integration Policy: Britain and Her Muslims,” Journal of Ethnic and Migration Studies, Volume 35, Issue 3)

The Runnymede report defines Islamophobia as certain ‘closed’ views of Islam, which are distinguished from ‘open views’ in terms of eight binary oppositions, such as ‘monolithic/diverse’, ‘separate/interacting’, or ‘inferior/different’ (the first adjective always marking a ‘closed’, the second an ‘open’ view). **This makes for an elastic definition of Islamophobia, with little that could not be packed into it.** Consider the eighth binary opposition, ‘Criticism of West rejected/considered’. If ‘criticisms made by Islam of “The West” (are) rejected out of hand’, there is an instance of Islamophobia, the non-biased attitude being that ‘criticisms of “the West” and other cultures are considered and debated’. Is it reasonable to assume that people enter debate by putting their point of view to disposition? **Under such demanding standards, only an advocate of Habermasian communicative rationality would go free of the charge of Islamophobia.** However, the real problem is to leave unquestioned the exit position, ‘criticism of the West’. In being sweeping and undifferentiated, such a stance seems to be no less phobic than the incriminated opposite. If the point of the Runnymede report is to ‘counter Islamophobic assumptions that Islam is a single monolithic system’, it seems inconsistent to take for granted a similarly monolithic ‘criticism of “the West”’, which the ‘West’ is asked to ‘consider and debate’. **There is a double standard here**, in that ‘the West’ is asked to swallow what on the other side would qualify as phobia.

***The alt’s all-or-nothing choice fails --- small reforms like the plan are key to institutional change and getting others to sign on to the alt***

Erik Olin **Wright 7**, Vilas Distinguished Professor of Sociology at the University of Wisconsin, “Guidelines for Envisioning Real Utopias”, Soundings, April, www.ssc.wisc.edu/~wright/Published%20writing/Guidelines-soundings.pdf

5. Waystations¶ The final guideline for discussions of envisioning real utopias concerns the importance of waystations. The central problem of envisioning real utopias concerns the **viability of institutional alternatives** that embody emancipatory values, but the practical achievability of such institutional designs often ***depends upon the existence of smaller steps***, intermediate institutional innovations **that move us in the right direction but only partially embody these values.** Institutional proposals which have an ***all-or-nothing quality*** to them are both ***less likely to be adopted in the first place, and may pose more difficult transition-cost problems*** if implemented. The catastrophic experience of Russia in the “shock therapy” approach to market reform is historical testimony to this problem.¶ Waystations are a difficult theoretical and practical problem because there are many instances in which partial reforms may have very different consequences than full- bodied changes. Consider the example of unconditional basic income. Suppose that a very limited, below-subsistence basic income was instituted: not enough to survive on, but a grant of income unconditionally given to everyone. One possibility is that this kind of basic income would act mainly as a subsidy to employers who pay very low wages, since now they could attract more workers even if they offered below poverty level¶ earnings. There may be good reasons to institute such wage subsidies, but they would not generate the positive effects of a UBI, and therefore might not function as a stepping stone.¶ What we ideally want, therefore, are **intermediate reforms** that have two main properties: first, they concretely **demonstrate the virtues of the fuller program of transformation, so they contribute to the ideological battle of *convincing people that the alternative is credible and desirable;*** and second, they ***enhance the capacity for action of people***, increasing their ability to push further in the future. Waystations that increase popular participation and ***bring people together in problem-solving deliberations*** for collective purposes are particularly salient in this regard. This is what in the 1970s was called “nonreformist reforms”: reforms that are ***possible within existing institutions*** and that ***pragmatically solve real problems*** while at the same time **empowering people in ways which** ***enlarge their scope of action in the future.***

***We must use the institutions that exercise power to change them***

Lawrence **Grossburg**, University of Illinois, We Gotta Get Outta This Place, **1992**, p. 391-393

**The Left needs institutions which can operate within the systems of governance, understanding that such institutions are the mediating structures by which power is actively realized.** It is often **by directing opposition against specific institutions** that **power can be challenged.** The Left has assumed from some time now that, since it has so little access to the apparatuses of agency, its only alternative is to seek a public voice in the media through tactical protests. **The Left** does in fact need more visibility, but it also **needs greater access to the entire range of apparatuses of decision making and power**. Otherwise, the Left has nothing but its own self-righteousness. **It is not individuals who have produced** starvation and the other **social disgraces** of our world, **although it is individuals who must take responsibility for eliminating them. But to do so, they must act within organizations, and within the system of organizations which in fact have the capacity** (as well as the moral responsibility) **to fight them.** Without such organizations, the only models of political commit­ment are self-interest and charity. Charity suggests that we act on behalf of others who cannot act on their own behalf. But we are all precariously caught in the circuits of global capitalism, and every­one’s position is increasingly precarious and uncertain. It will not take much to change the position of any individual in the United States, as the experience of many of the homeless, the elderly and the “fallen” middle class demonstrates. Nor are there any guarantees about the future of any single nation. We can imagine ourselves involved in a politics where acting for another is always acting for oneself as well, a politics in which everyone struggles with the resources they have to make their lives (and the world) better, since the two are so intimately tied together! For example, we need to think of affirmation action as in everyone’s best interests, because of the possibilities it opens. We need to think with what Axelos has described as a “planetary thought” which “would be a coherent thought—but not a rationalizing and ‘rationalist’ inflection; it would be a fragmentary thought of the open totality—for what we can grasp are fragments unveiled on the horizon of the totality. Such a politics will not begin by distinguishing between the local and the global (and certainly not by valorizing one over the other) for the ways in which the former are incorporated into the latter preclude the luxury of such choices. **Resistance is always a local struggle, even when** (as in parts of the ecology movement) **it is imagined to connect into its global structures of articulation**: Think globally, act locally. Opposition is predicated precisely on locating the points of articulation between them, the points at which the global becomes local, and the local opens up onto the global. Since the meaning of these terms has to be understood in the context of any particular struggle, one is always acting both globally and locally: Think globally, act appropriately! Fight locally because that is the scene of action, but aim for the global because that is the scene of agency. “Local struggles directly target national and international axioms, at the precise point of their insertion into the field of imma­nence. This requires the imagination and construction of forms of unity, commonality and social agency which do not deny differences. Without such commonality, politics is too easily reduced to a ques­tion of individual rights (i.e., in the terms of classical utility theory); difference ends up “trumping” politics, bringing it to an end. The struggle against the disciplined mobilization of everyday life can only be built on affective commonalities, a shared “responsible yearning: a yearning out towards something more and something better than this and this place now.” The Left, after all, is defined by its common commitment to principles of justice, equality and democ­racy (although these might conflict) in economic, political and cultural life. It is based on the hope, perhaps even the illusion, that such things are possible. **The construction of an affective commonal­ity attempts to mobilize people in a common struggle, despite the fact that they have no common identity or character, recognizing that they are the only force capable of providing a new historical and oppositional agency. It strives to organize minorities into a new majority.**

**A2 roleplaying bad**

***We’re not roleplaying - fiat is a tool to allow debaters to imagine a world where the plan is enacted for the purpose of evaluating if we as citizens should support it – It would be impossible and irresponsible for debate to function any other way***

Michael **Eber**, former Director of Debate at Michigan State University, “Everyone Uses Fiat”, April 8th 20**05**, http://www.opensubscriber.com/message/edebate@ndtceda.com/1077700.html

**It is shocking to me how**, after literally a DECADE of debates, **no one seems to understand *what the hell fiat is***. **Policy teams foolishly defend "role playing" even though *they do not role play*.** And critique teams reject fiat even though almost every single K alternative relies on a utopian imaginary that necessitates a greater degree of fiat than the reformist Aff. **Debate is about *opinion formation, not role-playing. Affirmative policy teams do not pretend to BE the federal government. They merely IMAGINE the consequences of the government enacting the plan as a means of determining whether it SHOULD be done***. **All fiat represents is the step of imagining hypothetical enactment of the plan as an intellectual tool for deciding whether WE should endorse it.** "**How should we determine whether or not to ENDORSE lifting sanctions on Cuba?**" "**Well, what would happen if the government did that**?" "**Let's** ***IMAGINE*** **a world where sanctions are lifted**. **What would that world look like? Would it be better than the status quo**?" "Is that world better than competitive alternatives?" ***This conversation does NOT posit the discussants AS the federal government. They do not switch identities and act like Condaleeza*** and Rummy. ***They do not give up the agency to decide something for themselves - the whole point is simply to use the imagination of fiat to determine OUR OPINION.*** "**I think sanctions should be removed [by the government] because IT IS A GOOD IDEA. It would save lives**." "I think sanctions should not be removed because that policy would help Castro and make things worse" ***It is nonsensical to*** simultaneously ***say "Aff = fiat = bad"*** and then defend alternatives that are only coherent/debatable/endorsable BY USING THE IMAGINITIVE TOOL OF FIAT. "Our alternative is revolution against capitalism" "Why do that? How should we determine whether or not to ENDORSE revolution against capitalism?" "Well, what would happen if we did that?" "Let's IMAGINE a world of revolution against capitalism [or us demanding revolution, or whatever]. Would that be a good thing?" ***It is NEARLY IMPOSSIBLE, and certainly irresponsible, to have a debate about whether to reject capitalism without imagining what would happen if we did***. It is also incoherent to say something like "we will defend the consequences of our plan, but not fiat." ***The imagination of "what would happen if" IS FIAT.*** If you want to make framework debates better, then never again utter the stupid phrases "pre-fiat" and "post-fiat."

***The aff’s approach is a good starting point---normative policy prescriptions are educationally valuable***

The 1AC is one that fulfills "deliberative citizenship" by advocating for deliberative politics

Richard**Ellis et al 9**, Ph.D. University of California, Berkeley, degree completed December 1989, M.A. University of California, Berkeley, Political Science, 1984, B.A. University of California, Santa Cruz, Politics, 1982, Debating the Presidency: Conflicting Perspectives on the American Executive, p. google books

In 1969 the political scientist Aaron Wildavsky published a hefty reader on the American presidency. He prefaced it with the observation that “the presidency is the most important political institution in American life” and then noted the paradox that an institution of such overwhelming importance had been studied so little. “The eminence of the institution,” Wildavsky wrote, “is matched only by the extraordinary neglect shown to it by political scientists. Compared to the hordes of researchers who regularly descend on Congress, local communities, and the most remote foreign principalities, **there is an extraordinary dearth of students of the presidency**, although scholars ritually swear that the presidency is where the action is before they go somewhere else to do their research.”1 Political scientists have come a long way since 1969**. The presidency remains** as **central to national life** as it was then, and perhaps even more so. The state of scholarly research on the presidency today is unrecognizable compared with what it was forty years ago. A rich array of new studies has reshaped our understanding of presidential history, presidential character, the executive office, and the presidency’s relationship with the public, interest groups, parties, Congress, and the executive branch. Neglect is no longer a problem in the study of the presidency. In addition, those who teach about the presidency no longer lack for good textbooks on the subject. A number of terrific books explain how the office has developed and how it works. **Although students gain a great deal from reading these texts, even the best of them can inadvertently promote a passive learning experience. Textbooks convey what political scientists know, but the balance and impartiality that mark a good text can obscure the contentious nature of the scholarly enterprise**. ***Sharp disagreements*** **are often smoothed over in the writing.** **The primary purpose of *Debating*** the Presidency **is to allow students to *participate* directly in the ongoing real-world controversies swirling around the presidency and to judge for themselves which side is right.** **It is premised philosophically on our view of students as active learners to be engaged *rather than* as *passive* *receptacles* to be filled. The book is** **designed to promote a** classroom **experience in which *students debate*** and discuss issues **rather than simply listen** to lectures. Some issues, of course, lend themselves more readily to this kind of classroom debate. In our judgment, **questions of *a normative nature*** —**asking not just what is**, **but what ought to be**—**are likely to foster the most** interesting and ***engaging*** classroom ***discussions***. So in selecting topics for debate, **we** generally **eschewed narrow** but important empirical **questions** of political science—such as whether the president receives greater support from Congress on foreign policy than on domestic issues—**for broader questions that include** empirical as well as normative components—such as **whether the president has usurped the war power** that rightfully belongs to Congress. **We aim not only to teach students to think like political scientists, but also to encourage them to think like democratic citizens**. Each of the thirteen issues selected for debate in this book’s second edition poses questions on which thoughtful people differ. These include whether the president should be elected directly by the people, whether the media are too hard on presidents, and whether the president has too much power in the selection of judges. Scholars are trained to see both sides of an argument, but we invited our contributors to choose one side and defend it vigorously. Rather than provide balanced scholarly essays impartially presenting the strengths and weaknesses of each position, Debating the Presidency leaves the balancing and weighing of arguments and evidence to the reader. The essays contained in the first edition of this book were written near the end of President George W. Bush’s fifth year in office; this second edition was assembled during and after Barack Obama’s first loo days as president. The new edition includes four new debate resolutions that should spark spirited classroom discussion about the legitimacy of signing statements, the war on terror, the role of the vice presidency, and the Twenty-second Amendment. Nine debate resolutions have been retained from the first edition and, wherever appropriate, the essays have been revised to reflect recent scholarship or events. For this edition we welcome David Karol, Tom Cronin, John Yoo, Lou Fisher, Peter Shane, Nelson Lund, Doug Kriner, and Joel Goldstein, as well as Fred Greenstein, who joins the debate with Stephen Skowronek over the importance of individual attributes in accounting for presidential success. In deciding which debate resolutions to retain from the first edition and which ones to add, we were greatly assisted by advice we received from many professors who adopted the first edition of this book. Particularly helpful were the reviewers commissioned by CQ Press: Craig Goodman of Texas Tech University, Delbert J. Ringquist of Central Michigan University, Brooks D. Simpson of Arizona State University, and Ronald W. Vardy of the University of Houston. We are also deeply grateful to chief acquisitions editor Charisse Kiino for her continuing encouragement and guidance in developing this volume. Among the others who helped make the project a success were editorial assistants Jason McMann and Christina Mueller, copy editor Mary Marik, and the book’s production editor, Gwenda Larsen. Our deepest thanks go to the contributors, not just for their essays, but also for their excellent scholarship on the presidency.

**A2: law bad**

***Law is not inherently racist – it’s bad now because of poor engagement. Admittedly scary empirics shouldn’t close-off reformism. Their arg is net worse.***

**Farber ‘98**

\*\* Associate Dean for Faculty and Research, and Henry J. Fletcher Professor of Law, University of Minnesota. J.D., summa cum laude, University of Illinois School of Law, 1975. Richard Delgado, \* Jean N. Lindsley Professor of Law, University of Colorado Law School. J.D., U.C. Berkeley School of Law, 1974. Thomas M. Cooley Law Review¶ 1998¶ 15 T.M. Cooley L. Rev. 361, KRINOCK LECTURE SERIES: IS AMERICAN LAW INHERENTLY RACIST?, Lexis

PROFESSOR KENDE: On behalf of Thomas M. Cooley Law School, I want to welcome you to the Krinock Lecture. My name is Mark Kende and I am an Associate Professor of Law here at Thomas M. Cooley. The Krinock Lecture is in honor of the distinguished service rendered by a former Dean of the law school, the late Robert Krinock. The Krinock Lecture is unique because it has been funded entirely by personal contributions form the faculty. Its purpose is to enrich the intellectual environment of the law school and the community by bringing in prominent speakers on law-related topics. This term, we are doing something a little bit different though with the lecture. Instead of just having one person giving a speech, we are having a debate. **The topic of the debate will be: "Is American Law Inherently Racist?"** **We are honored to have two nationally renowned legal scholars join us this evening to conduct the debate. They are Professor Richard Delgado** of the University of Colorado Law School, who will be arguing the affirmative side of the topic, **and Professor Daniel Farber** of the University of Minnesota Law School, who will be arguing the negative side, and I will be moderating the debate. Before I more fully introduce each of our speakers and describe their impressive credentials, I want to explain the format of the debate so everyone understands how we are going to do things. Initially Professor Delgado will make a two-minute opening statement followed by Professor Farber who will make his two-minute opening statement. Professor Delgado will then have twenty minutes to present his case in chief and after he has concluded, he will have five minutes to answer audience questions that are solely about his particular argument. Professor Farber will then have twenty-five minutes to present his responsive case in chief. He too will then answer audience questions for five minutes related solely to his [\*362] remarks. Professor Delgado will then have ten minutes of rebuttal time to reply to Professor Farber. Professor Farber will follow with ten minutes of time, and then Professor Delgado will conclude with a five-minute statement. After the debate part of the event has concluded, Professor Delgado and Farber will answer questions for up to twenty minutes. This is basically the format of this debate.¶ Now let me introduce our distinguished debaters more thoroughly. Richard Delgado is the Jean N. Lindsley Professor of Law at the University of Colorado Law School, where he has taught classes in civil procedure, civil rights, and biotechnology and the law since 1990. He has also taught at Arizona State, Washington, UCLA, University of California at Davis, and Wisconsin. Professor Delgado graduated from the University of California at Berkeley Law School in 1974, where he served as the Notes and Comments Editor of the University of California Law Review. Professor Delgado is a prolific scholar having authored numerous books and more than one hundred law review articles. His books have won six national book awards including the American Library Association's Outstanding Academic Book (for his book "The Coming Race War"), four Gustavus Myers prizes for the Outstanding Book on human rights, and a Pulitzer Prize nomination. His award winning book "The Rodrigo Chronicles" is a dialogue between a law student and a professor.¶ Professor Delgado is most well known for being one of the leading commentators and authors in the field of race and law in America. He is considered one of the founders of the critical race theory movement, which argues that American law is based on racist assumptions and tendencies. He has appeared as a commentator about race on programs such as Good Morning America, the McNeil-Lehrer Report, PBS, and NPR. We are honored to have Professor Delgado arguing the affirmative side of the topic.¶ Daniel A. Farber is the Henry J. Fletcher Professor of Law and Associate Dean for Faculty at the University of Minnesota Law School where he has taught constitutional law, environmental law, civil procedure, and legislation since 1987. He was a visiting professor at the Harvard Law School during the spring of 1998 and has also taught at Stanford and the University of Illinois. Professor Farber graduated summa cum laude and first in his class from the University of Illinois in 1975, where he was Editor-in-Chief of the University of Illinois Law Review. He served as a law clerk to United States Supreme Court Justice John Paul Stevens.¶ Professor Farber has also authored numerous books and law review articles on constitutional law and environmental law topics. [\*363] He has authored a casebook on constitutional law and environmental law and has just had a treatise entitled "The First Amendment" published by Foundation Press. He is currently the Editor of the journal "Constitutional Commentary." Along with his colleague, Professor Phil Frickey, he has authored a leading book on public choice theory. Professor Farber's book "Beyond All Reason: The Radical Assault on Truth and American Law," co-authored with Professor Suzanna Sherry, is perhaps the most comprehensive critique yet of the critical race theorists. Professor Farber will be arguing the negative side of the debate.¶ On a personal note, I want to thank both speakers for being willing to come here to Cooley today, for braving this debate format, and for being so easy to work with. So if we could, I would like to give them a round of applause before we begin. Without further adieu, let me now turn the podium over to Professor Delgado for his two-minute introduction and to begin the debate.¶ Introductory Remarks¶ PROFESSOR DELGADO: Thank you Mark. As the first speaker, and I hope before the clock starts to run, I would like to thank Professor Kende and the faculty of Thomas M. Cooley Law School for sponsoring this debate, and of course for inviting me. It seems to me that in just the last few months and years, this country has returned to an examination of race in a way that did not characterize the ten or fifteen years just before that. All to our good, I think. I am thinking of books like William Bowen and Derek Bok's recently issued book, n1 evaluating twenty years of affirmative action. I am thinking, as well, of John Hope Franklin's Presidential Commission and its workshops and community events around the nation. You could see today's event as part of a series that reexamines this nation's oldest and perhaps most intractable problem-race. I would like to commend Thomas M. Cooley Law School for scheduling it.¶ Probably most of you know me through my writing on race and racism. You know, that way of disseminating one's ideas is a whole lot easier. You just stay at your desk and spin the ideas out and someone else takes it from there and publishes them. I am very happy, however, to be able to take part in a public event like this [\*364] even though it entails removing myself 2,000 miles from my home base and living out of a suitcase for three days because I think the whole thing is terribly important.¶ It struck me this morning that my friend Dan Farber over there has much the easier task of the two of us-purely in debate terms. For I am the one who has to prove a superlative-namely, that American law is inherently racist. Not just sometimes, occasionally, or often racist, but inherently so. I am reminded of those automobile executives who argued that a model of car was not inherently unsafe merely because it burst into flames upon light rear-end contact, since the rest of the time it provided safe transportation for American families at a price that they could afford. Or that character in the Russian novel n2 who did his landlady in, and then defended himself by pointing out all the good deeds he expected to do later in life.¶ To make today's question more manageable, not to mention easier for me, I will define a system as inherently racist if it is recurrently so-that is, it keeps coming back to the behavior time and again and for each of the different minority groups. And second, it does so for reasons seemingly imbedded in its very structure and makeup, its social DNA, so to speak. Particularly if you are White, I hope you will listen with an open mind to the evidence that I will present today during my case-in- chief. Some of what you hear may be unfamiliar-not in standard history or constitutional law textbooks. It may go against your sense that things are better today for persons of color, as indeed they are for some.¶ White folks tend to see, literally, fewer acts of out and out racism than their brothers and sisters of color do. A merchant who is in the practice of hassling well-behaved black teenagers in his or her store, will generally not do so if white shoppers are there watching. A police officer who routinely stops motorists of color driving through certain neighborhoods may refrain from doing so if a well-dressed Caucasian is in the back seat of the car. Talk of racism also makes people feel defensive and want to change the subject-perhaps to that other group's responsibility for their low estate.¶ Yet as recent events show, denial is rarely a successful, much less helpful strategy. Coming to terms with the continuing legacy of race and racism, fairly and openly, is the path to a stronger society and a legal system that we can all be proud of. Thank you.¶ [\*365] ¶ PROFESSOR FARBER: When Suzanna Sherry and I wrote a book n3 about critical race theory, radical feminism, and some related movements, our greatest hope was to spark a dialogue. So I am especially pleased to have the opportunity to be here today to discuss this issue with Professor Delgado. Too often people on different sides of these issues simply send manifestos out that repeat their own point of view and do not really try to engage the other side. So I think this is a tremendously constructive occasion, at least I hope it will be.¶ **I was very struck in his introductory remarks by Professor Delgado's statement that, in a sense, racism is part of the DNA of the American legal system, a sort of genetic flaw**. I think that really is a fair statement of the heart of critical race theory. **Although I understand the frustration that leads people to that conclusion, I continue to think that it is wrong. It underestimates our capacity to change the legal system, and it ignores important parts of our legal history**. **In the end, despite the good intentions of people who favor that view, this thesis of inherent racism will only interfere with public dialogue about racial issues and make it more difficult for us to confront our important racial problems today.**

**Daulatzai bad**

***Daulatzai burries and essentializes Muslim history – no coherent link argument***

**Plummer ’13** (Brenda Gayle Plummer, University of Wisconsin–Madison, “Reviews: Sohail Daulatzai , Black Star, Crescent Moon: The Muslim International and Black Freedom beyond America,” Journal of American Studies / Volume 47 / Issue 03 / , pp 839-840) \

Malcolm X and the Nation of Islam (NOI) dominate much of the book, and they are **made to stand in** for the Muslim challenge to the West as a whole. Drawing heavily on the work of Melani McAlister, Daulatzai traces how the NOI and its most noted orator stood the “moral geography” and symbolism of Christendom on its ear to craft oppositional discourses and practices that provided alternative pathways to personal and collective emancipation for African Americans. He recuperates the Nation's use of the term “Asiatic black man,” explaining that blacks should not limit themselves to Africa as the exclusive site of what is actually a global identity. These sweeping claims, however, ***bury as much history as they reveal.*** We learn very little of the substantial history of Islam in America before the NOI, nor are the black American Muslims who did not belong to the Nation **or who disagreed with its tenets** acknowledged or described. It is also odd that the author sees little contradiction in bequeathing Louis Farrakhan, a lethal enemy of Malcolm X, the mantle of Malcolm's internationalist energy and commitment. No specific examination of Farrakhan's views is found in this account. Farrakhan's opportunism is forgotten, and he is praised for making peace among various hip hop artists and for being cited in their lyrics.

Black Star, Crescent Moon **could use less of the author's** ***irritatingly essentialized*** appeals to the “Muslim International” and the “Muslim Third World.” While the author describes the former as “a parallel space to the state,” **the “Muslim Third World” is never defined**. It includes variously Saudi Arabia and the Afro-Asian Conference in Bandung, Indonesia, although neither of the two leading conference luminaries, Nehru and Zhou Enlai, were Muslims or represented Muslims. If the “Muslim International” and the “Muslim Third World” are meant to connote spaces of anti-imperialist popular resistance, the inclusion of certain polities is indeed puzzling. Are people who grew up in refugee camps or confront brutal Israeli apartheid policies to be conflated with those who secretly tipple fine scotch in Jeddah mansions? In reality there is ***no neat equation* between Islam as currently practiced and anti-imperialism and antiracism**. Just as Islam has been the principal religion in some revolutionary regimes that resisted domination, in other places it has proven compatible with slavery, racism, and exploitative capitalism, now as in the past. The same may be said for all of the “universal” religions.

***That bankrupts their epistemology***

**McCloud ’07** (Aminah, Ph.d., Professor of Islamic Studies, Temple University, “African-American Muslim Intellectual Thought,” Souls 9 (2): 171–181, 2007)

By denying Black Muslim communities authentic standing, scholars of the African-American religious experience have chosen to investigate them solely as either **sociological or anthropological oddities**. These studies, while popular, ***barely scratch the surface*** of understanding Islam as a bona fide religious expression among Black Americans. With its religious authenticity denied, all Black Muslim experience is reduced to expressions of Black nationalism or cultism. With much if not all research on the Nation of Islam focused on its language of protest, which constitutes **only a small part of its rhetoric,** scholars are then able to ***reduce all that is Islam in the Black community*** **to expressions of protest thought**. Black protest thought has (and hopefully will always have) a special place in American history as an expected and accepted space of protest against white American racism. In that space, performance modes including ecstatic worship and marches reside—and African-American Islam has been absent in this space.

Beyond the space of protest, another designated space for African-Americans is that labeled as their “quest for identity”—whites know who they are, but Blacks are still struggling to find out who they are. This space serves various purposes. The abhorrent phenomenon of slavery—in which Blacks were uprooted from their homes and homelands to be bought and sold as property—has kept African-American identity in a state of perpetual limbo, according to many scholars. White naming of enslaved Africans began a history of identity issues that have been kept on the front burner of research on African-Americans and their communities. If for nothing more than the assignment of a special social place, the names “colored,” “Negro,” “black,” “Afro-American,” “Black American,” and “African American” have come to constitute a tragic-comedy of identities and spaces of contention, while to a great extent the reality of the lives of those who have been so named remains, outside their communities, unnamed and unknown.

The social condition of contemporary Black Americans is not colonization, it is not slavery and it is not apartheid—but its features include characteristics of all of these conditions. Unable to fully take part in the national celebrations of American immigrants or the legacies of the American founding fathers, and almost totally alienated from any of the varieties of African culture and thought, Black Americans remain apart from immigrant communities, the white American mainstream and their African heritage while at the same time, to one degree or another, connected to them all. While this may be lamentable for some, it has enabled and empowered others to define themselves in multifaceted ways, including affiliations with religions other than Christianity, while still always participating in the protest against racism and its handmaidens. There seems to be, in that corridor reserved for criticism of white racism, an invisible security fence that, if breached, sets off alarm bells.

# 1AR

#### Sweeping characterizations of the government as monolithically oppressive are essentialist and block progress

Goodsell '3 Charles, Professor Emeritus at [Virginia Tech](http://en.wikipedia.org/wiki/Virginia_Polytechnic_Institute_and_State_University)'s [Center for Public Administration and Policy](http://en.wikipedia.org/wiki/Center_for_Public_Administration_and_Policy) "The Case for Bureaucracy, Fourth Edition" orig. 1984 p. 8-10

**The descriptive category, then, is vast. It embraces** thousands of institutions **and** millions of people**. It incorporates an incredible variety of activities, from investigating child abuse to filling potholes to combating AIDS to negotiating international treaties and conducting wars. The very enormity of the category speaks eloquently of the critical importance of our subject. The vast range of organizations included cries out for thoughtful assessment of individual bureaucracies rather than characterization by stereotype.** Many readers will be aware of the sociological model of bureaucracy posited by Max Weber early in the past century. To Weber, a bureaucracy was an organization with specified functional attributes: large size; a graded hierarchy; formal rules; specialized tasks; written files; and employees who are salaried, technically trained, career-appointed, and assigned stated duties requiring expert knowledge. Weber regarded his model as an ideal type, useful for description and analysis. 5 **Many academic theorists and researchers contend that by possessing these characteristics, an organization tends automatically to exhibit certain patterns of behavior. These include rigidity, proceduralism, resistance to change, oppressive control of employees, dehumanized treatment of clients, indifference to citizen input, use of incomprehensible jargon, and tendencies toward empire building and concentration of power. These ascribed traits are, obviously, all pejorative. They also happen to spring, for the most part, from predisposed beliefs about large organizations rather than from empirical study.** When academic writers on bureaucracy reflect negatively on the consequences of the "Weberian model," they are often being not neutral social scientists at all but ideological critics of hierarchical organization-a position shared by many intellectuals. As if by a kind of original sin embedded in its organizational form, bureaucracy is seen as automatically and perpetually condemned to incompetence and antidemocratic excess. Returning to my own use of the word, I do not deny that much if not most of American public administration is made up of organizations that answer to many if not all of Weber's basic structural characteristics. Yes, steps are often taken to flatten chains of command, create flexible roles and teams, empower employees and citi zens, and stress service to citizens. Still, most public sectororganizations and jurisdictions continue to feature differentiated levels of office, bounded areas of authority, internal rules, electronic or paper files, career or at least long-term employees, and professional experts of one kind or another. So, to that extent, most administrative components of U.S. government are still essentially "bureaucracies" in the Weberian sense - whatever that may mean in terms of resultant behavior. (They are not, however, necessarily very big, as we discover later.) Let me make myself abundantly clear. I do not deny that selected attempts to deemphasize these structural characteristics in our public administration institutions would be helpful in many instances. **I do not, however, accept the deterministic thought implicit in theories of bureaucracy that automatically equate *any* substantial presence of** Weber's characteristics with incompetence or **rigidity, dehumanized or oppressive conduct, or imperialistic behavior. Hence I am not, obviously, using the term *bureaucracy* in the typical pejorative sense.** To put the matter another way, **my debating opponents and I disagree not over whether American public administration is essentially bureaucratic, but over whether that means it is inevitably pathological**. 6