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#### The aff’s use of law actively displaces moral questions in favor of detached questions of legality propelling violent interventions and structural harm

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!. Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure. Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!. Conclusion The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### Militarism is unsustainable and the root cause of all extinction threats and ensures structural violence – non-violence is the only possible response

Kovel 2

(Joel, “The United States Military Machine”, http://www.joelkovel.org/americanmilitary.htm; Jacob)

I want to talk to you this evening about war - not the immediate threat of us war against Iraq, but about how this conflict is an instance of a larger tendency toward war-making endemic to our society. In other words, the phrase from the folksong, “I ain’t gonna study war no more,” should be rethought. I think we do have to study war. Not to make war but to understand more deeply how it is put together and about the awful choices that are now being thrust upon us. These remarks have been stimulated by recent events, which have ancient roots, but have taken on a new shape since the collapse of the Soviet Union, the rise of the second Bush administration, and the inception of the so-called “War on Terror.” The shape is that of permanent warfare- war-making that has no particular strategic goal except total us dominance over global society. Hence, a war without end and whose internal logic is to perpetuate itself. We are, in other words, well into World War III, which will go on whether or not any other state such as Iraq is involved. It is quite probable that this administration will go to war in Iraq, inasmuch as certain very powerful people crave it. But it is not necessarily the case, given the fact that the war against Iraq is such a lunatic proposal that many other people in high places are against it and too many people are marching against it. And while war against Iraq is a very serious matter that needs to be checked by massive popular resistance, equally serious are the structures now in place in the United States dictating that whether or not the war in Iraq takes place, there will be another war to replace it, and others after that, unless some very basic changes take place. America Has Become a War-Making Machine The United States has always been a bellicose and expansive country, built on violent conquest and expropriation of native peoples. Since the forming of the American republic, military interventions have occurred at the rate of about once a year. Consider the case of Nicaragua, a country utterly incapable of being any kind of a threat to its giant northern neighbor. Yet prior to the Sandinista revolution in 1979 (which was eventually crushed by us proxy forces a decade later), our country had invaded Nicaragua no fewer than 14 times in the pursuit of its imperial interests. A considerable number of contemporary states, such as Britain, South Africa, Russia, and Israel, have been formed in just such a way. But one of the special conditions of the formation of America, despite its aggressivity, was an inhibition against a military machine as such. If you remember, no less a figure than George Washington warned us against having a standing army, and indeed the great bulk of us interventions prior to World War II were done without very much in the way of fixed military institutions. However, after WWII a basic change set in. War-weary America longed for demobilization, yet after a brief beginning in this direction, the process was halted and the permanent warfare state started to take shape. In part, this was because policy planners knew quite well that massive wartime mobilization had been the one measure that finally lifted America out of the Great Depression of the 1930s. One of the lessons of that time was that propounded by the British economist John Maynard Keynes, to the effect that capitalist societies could ameliorate chronic [economic] crises by infusions of government spending. The Great War had certified this wisdom, and permanent military expenditure readily became the received wisdom. This was greatly reinforced by the drastic realignment of capitalist power as a result of the war. America was essentially the only capitalist power in 1945 that did not lay in ruins and/or have its empire shattered. The world had been realigned and the United States had assumed a global imperial role. Policy planners like George Kennan lucidly realized that this meant safeguarding extreme inequalities in wealth, which implied a permanent garrison to preserve the order of things. The notion was especially compelling given that one other state, the Soviet Union, had emerged a great power from the war and was the bellwether of those forces that sought to break down the prevailing distribution of wealth. The final foundation stone for the new military order was the emergence of frightful weapons of mass destruction, dominance over which became an essential element for world hegemony. The Iron Triangle These factors crystallized into the Cold War, the nuclear arms race, and, domestically, into those structures that gave institutional stability and permanence to the system: the military-industrial complex (mic). Previously the us had used militarism to secure economic advantage. Now, two developments greatly transformed our militarism: the exigencies of global hegemony and the fact that militarism became a direct source of economic advantage, through the triangular relations of the mic with the great armament industries comprising one leg, the military establishment another, and the state apparatus the third, profits, power, and personnel could flow through the system and from the system. Clearly, this arrangement had the potential to greatly undermine American democracy. It was a “national security state” within the state but also extended beyond it into the economy and society at large, virtually insulated from popular input, and had the power to direct events and generate threats. Another conservative war hero-become-president, Dwight Eisenhower, warned the nation in a speech in 1961 against the emerging permanent war machine, but this time, the admonitions were not heeded.\* The machine made a kind of war against the Soviet system for 35 years. Although actual guns were not fired between the two adversaries, as many as 10 million people died in its varied peripheral conflicts, from Korea to Vietnam, Angola, El Salvador, Nicaragua, and Guatemala. The Cold War divided the world into bipolar imperial camps, directed by gigantic superpowers that lived off each other’s hostility. It was a terrible war whose immense suffering took place largely outside the view of the American people, but it also brought about an uneasy kind of stability in the world order, in part through the standoff in nuclear weapons. During the Ford and Carter administrations, another great crisis seized the world capitalist economy. Having matured past the rebuilding that followed the world war, a period of stagnation set in, which still has the global economy in its grip despite episodic flashes of vigor. Predictably, a spate of militarism was central to the response. A “Second Cold War” took place under Reagan, featuring an accelerated nuclear arms race, which was deliberately waged so as to encourage Soviet countermeasures in the hope that this would cause breakdown in the much weaker, bloated, and corrupt Russian system. The plan worked splendidly: by 1989-91, the mighty Soviet empire collapsed, and the bipolar world order became unipolar, setting a stage for the current phase. The fall of the Soviet Union was widely expected to bring a ìpeace dividend.î This would have been the case according to the official us line, parroted throughout the media and academe, that our military apparatus was purely defensive (after all, we have no Department of War, only one of "Defense") and reactive to Soviet expansionism and military/nuclear threat. As this was no longer a factor, so the reasoning wentóindeed, as the us now stood bestride the world militarily as had no power since the Roman Empireóconventional logic predicted a general diminution in American militarism after 1991, with corresponding benefits to society. The last decade has at least settled this question, for the effect on us aggression, interventionism, and the militarization of society has been precisely the opposite. In other words, instead of braking, the machine accelerated. Removal of Soviet power did not diminish Americaís imperial appetite: it removed inhibitions on its internally driven expansiveness. As a result, enhanced war-making has replaced the peace dividend. The object of this machine has passed from dealing with Soviet Communism to a more complex and dispersed set of oil wars (Iraq I and now II), police actions against international miscreants (Kosovo), and now the ubiquitous War Against Terror, aimed variously at Islamic fundamentalists, Islam as a whole, or anybody irritated enough with the ruling order to take up some kind of arms against it. The comparison with the Roman Empire is here very exact. As the eminent economist and sociologist Joseph Schumpeter described Rome in 1919: “There was no corner of the known world where some interest was not alleged to be in danger or under actual attack. If the interests were not Roman, they were those of Rome’s allies. And if Rome had no allies existed, the allies would be invented. The fight was always invested with the order of legality. Rome was always being attacked by evil-minded neighbors.” The logic of constant threat meshes with that of ruthless expansion, which we see everywhere in this epoch of unipolar world dominion. Currently, the military budget of the us is 334 billion dollars. The budget for the next fiscal year is 379 billion dollars- an increase of more than 10 percent. By 2007, the projected military budget of the us is to be an astounding 451 billion dollars: almost half a trillion dollars, without the presence of anything resembling a conventional war. The present military budget is greater than the sum of all other military budgets. In fact, it is greater than the entire federal budget of Russia, once America's immortal adversary, and comprises more than half - 52 percent of all discretionary spending by the us government. (By comparison, education accounts for 8 percent of the federal budget.) A considerable portion of this is given over to "military Keynesianism," according to the well-established paths of the mic. Thus, although in the first years after the fall of the ussr certain firms like General Dynamics, which had played a large role in the nuclear arms race, suffered setbacks, that problem has been largely reversed for the entire class of firms fattening at the trough of militarism. It is fair to say, though, that the largesse is distributed over a wider scale, in accordance with the changing pattern of armaments. us Armies Taking Root Everywhere From having scarcely any standing army in 1940, American armies now stand everywhere. One feature of us military policy since WWII is to make war and then stay where war was made, rooting itself in foreign territory. Currently, the us has military bases in 113 countries, with 11 new ones formed since the beginning of the War Against Terror. The us now has bases in Kazakhstan, Uzbekistan, and Kurdistan, encircling China and creating new sources of military tension. On these bases, the us military has erected some 800,000 buildings. Imagine that: 800,000 buildings in foreign countries that are now occupied by us military establishments. And America still maintains large forces in Germany, Japan, and Korea, with tens of thousands of troops permanently on duty (and making mischief, as two us servicemen recently ran over and killed two Korean girls, provoking massive demonstrations). After the first Gulf War the us military became installed in Saudi Arabia and Kuwait, in which latter place it currently occupies one quarter of the country - 750 square miles devoted to military activity. This huge investment is no doubt determined by proximity to Iraq. Again, after going to war in Kosovo, the us left behind an enormous base in a place called Bondsteel. These self-expanding sites of militarism are permanent goads to terrorist organizations. Recall that one of Osama bin Laden's professed motivations for al-Qaeda's attacks on American facilities was the presence of us bases in his home country of Saudi Arabia. The bases are also permanent hazards to the environment - indeed, the us, with some 800,000 buildings on these military sites, is the world's largest polluter and the largest consumer of fossil fuels. With territorial expansion of the us military apparatus, there is a corresponding expansion of mission. For instance, in Colombia, where billions of us dollars are spent in the "War on Drugs," us troops are now being asked to take care of pipelines through which vital oil reserves are passing. In addition, the War on Drugs is now subsumed into the War Against Terror. The signifier of Terror has virtually unlimited elasticity, for once an apparatus reaches the size of the us military machine, threats can be seen anywhere. With the inauguration of the new hard-line president of Colombia, Alvaro Uribe, the us authorized the use of 1.7 billion dollars in military aid hitherto limited to anti-drug operations for direct attacks on deeply entrenched farc guerrillas. This redirection of aid came after Colombian officials and their American supporters in the Congress and Bush administration argued that the change was needed as part of the global campaign against terrorism. Within this overall picture, American armed forces are undergoing a qualitative shift of enormous proportion. In words read by President Bush: “Our forces in the next century must be agile, lethal, readily deployable, and must require a minimum of logistical support. We must be able to project our power over long distances in days or weeks rather than months. On land our heavy forces must be lighter, our light forces must be more lethal. All must be easier to deploy.” Crossing Weapons Boundaries - Both Nuclear and Conventional As a result, many boundaries and limits of the bipolar era have been breached. For example, the distinction between nuclear and conventional weapons had always constituted a radical barrier. The standoff between the us and the ussr was epitomized by mind-numbing hydrogen bomb-missiles facing each other in a scenario called “Mutual Assured Destruction.î”In short, a strategic condition of deterrence prevailed, which made nuclear weapons seem unthinkable. With the demise of the ussr, deterrence no longer inhibits us nuclear weaponry, and the weapons themselves have proliferated downward, becoming miniaturized and increasingly tactical rather than strategic. Meanwhile, the genie of the weapons industries has developed ever more destructive “conventional” weapons. These include non-explosive devices of awesome power, such as laser beams, microwaves, and large-scale climate manipulation, along with a new generation of super-powerful explosive devices. Thus the strongest non-nuclear weapons are now considerably more lethal than the least powerful nuclear weapons, making the latter thinkable and eliminating a major barrier against their employment. These so-called conventional bombs have already been used, for example, in Afghanistan, where the us employed a gigantic explosive weapon, called a “Bunker Buster” to root out al-Qaeda combatants in underground bunkers. They are based upon the “daisy cutter,” a giant bomb about the size of a Volkswagen Beetle and capable of destroying everything within a square kilometer. Significantly, the model used in Afghanistan, the B61-11, already employs nuclear technology, the infamous depleted uranium warhead, capable by virtue of its extreme density, of great penetrating power. Depleted uranium (du) is a by-product of the nuclear power industry (chiefly being U-238 created in the extraction of U-235 from naturally occurring uranium ore). Over 500,000 tons of deadly du have accumulated and 4-5,000 more tons are being produced every year. Like all products of the nuclear power industry, du poses immense challenges of disposal. It has this peculiar property of being almost twice as dense as lead and it is radioactive with a half-life of 4.5 billion years. Wherever depleted uranium is used, it has another peculiar property of exploding, vaporizing at 56 degrees centigrade, which is just like a little more than half the way to boiling water. So it is very volatile, it explodes, it forms dust and powders that are inhaled, disburses widely, and produces lethal cancers, birth defects, and so forth for 4.5 billion years. In the case of depleted uranium, the challenge of disposal was met by incorporating the refuse from the “peaceful” branch of nuclear technology into the war-making branch. Already used in anti-tank projectiles in the first Iraq war (approximately 300 tons worth) and again in Yugoslavia (approximately 10-15 tons were used in each of the various Yugoslav wars), it is presumed, although the defense department coyly denies it, that this material was also used in the Afghanistan war. Depleted uranium has spread a plague of radioactivity and further rationalized the use of nuclear weapons as such. Consequently, the B61-11 is about to be replaced with the BLU113, where the bunker buster will now be a small nuclear weapon, almost certainly spear-tipped with du. Pollutants to Earth and Space To the boundaries crossed between nuclear and non-nuclear weapons, and between the peaceful and militaristic uses of atomic technology, we need to add those between earth and its lower atmosphere on the one hand, and space on the other. The administration is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. In November 2002, Bush proposed that nato allies build missile defense systems, with components purchased, needless to add, from Boeing, Raytheon, etc, even as Congress was approving a fiscal 2003 defense budget containing $7.8 billion authorization for missile defense research and procurement, as part of the $238 billion set aside for Star Wars over the next 20 years. The administration now is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. A new missile defense system bureaucracy has risen. It is currently developing such wild items as something called ìbrilliant pebblesî which involves the release of endless numbers of mini satellites into outer space. All of this was to protect the world against the threat of rogue states such as North Korea. As the Seattle Times reported, the us expects the final declaration to, “express the need to examine options to protect allied forces, territories, and population centers against the full range of missile threats.” As an official put it, "This will establish the framework within which nato allies could work cooperatively toward fielding the required capabilities. With the us withdrawal this year from the anti-ballistic treaty with Russia, it is no longer a question of whether missile defenses will be deployed. The relevant questions are now what, how, and when. The train is about to pull out of the station; we invite our friends, allies, and the Russian Federation to climb on board." The destination of this train is defensive only in the Orwellian sense, as the missiles will be used to defend us troops in the field. In other words, they will be used to defend armies engaged in offensive activities. What is being “defended” by the Strategic Defense Initiative (sdi), therefore, is the initiative to make war everywhere. Space has now become the ultimate battlefield. And not just with use of these missiles. The High Frequency Active Aural Research Program (haarp) is also part of sdi. This amounts to weather warfare: deliberately manipulating climate to harm and destroy adversaries. A very dubious enterprise, to say the least, in an age when global warming and climate instability are already looming as two of the greatest problems facing civilization. The chief feature is a network of powerful antennas capable of creating controlled local modifications of the ionosphere and hence producing weather disturbances and so forth. All of these technical interventions are accompanied by many kinds of institutional and political changes. The National Aeronautics and Space Administration, nasa, for instance, is now a partner in the development of this strategic defense initiative. The very way in which the United Nations was drawn into the resolution in the war against Iraq is a breach and a violation of the original un Charter, which is to never make war, never to threaten to make war on any member state. The un was a peacemaking institution, but now the Super power has forced it into its orbit. The scrapping of the abm and other elements of the treaty structure (non- proliferation, test-ban) that had organized the world of the Cold War is one part of a process of shedding whatever might inhibit the cancerous growth of militarism. It also creates an atmosphere of general lawlessness in the world. This is felt at all levels, from the rise of an ultra-militarist clique in the White House to the formal renunciation of no-first-use nuclear strategy, the flouting of numerous un regulations, the doctrine of pre-emptive war, and, as the logical outcome of all these developments, the condition of Permanent War and its accompaniment of general lawlessness, media slavishness, and a wave of repression for whose parallel we have to go back to the Alien and Sedition acts of the 1790s, or Trumanís loyalty oaths of 1947. Militarism cannot be reduced to politics, economics, technology, culture, or psychology. All these are parts of the machine, make the machine go around, and are themselves produced by the actions of the machine. There is no doubt, in this regard, that the machine runs on natural resources (which have to be secured by economic, political, and military action), and that it is deeply embedded in the ruling corporate order. There is no contradiction here, but a set of meshing parts, driven by an insensate demand for fossil fuel energy. As a man from Amarillo, Texas put it when interviewed by npr as to the correctness of Bush’s plan to go to war in Iraq: “I agree with the president, because how else are we going to get the oil to fly the F-16s?” We go to war, in other words, to get the oil needed to go to war. A Who's Who List of MIC Beneficiaries The fact that our government is front-loaded with oil magnates is another part of the machine. It is of interest, therefore, that Unocal, for example, celebrated Condoleezza Riceís ascendancy to the post of National Security Advisor by naming an oil tanker after her. Or that Dick Cheney, originally a poor boy, became a rich man after the first Gulf War, when he switched from being Secretary of Defense, in charge of destroying the Kuwait oil fields, to ceo of a then-smallish company, Halliburton, in charge of rebuilding the same oil fields. Or that G.W. Bush himself, aside from his failed venture with Harken Oil, is scion of a family and a dynasty that controls the Carlyle Group, founded in 1987 by a former Carter administration official. Carlyle is now worth over $13 billion and its high officials include President Bush I, his Secretary of State (and fixer of the coup that put Bush II in power) James Baker, Reaganís Secretary of Defense Frank Carlucci, former British Prime Minister John Major, and former Phillipine President Fidel Ramos, among others. The Carlyle Group has its fingers everywhere, including ìdefenseî, where it controls firms making vertical missile launch systems currently in use on us Navy ships in the Arabian sea, as well as a range of other weapons delivery systems and combat vehicles. And as a final touch which the worldís people would be much better off for knowing, there are very definite connections between Carlyle and the family of Osama bin Laden - a Saudi power whose fortunes have been fused with those of the United States since the end of World War II. Thus the military-industrial complex lives, breathes, and takes on new dimensions. There is a deep structural reason for the present explosion of us militarism, most clearly traceable in the activities of Vice President Cheney, made clear in the energy report that he introduced with the generous assistance of Enron executives in May 2001. According to the report, American reliance on imported oil will rise by from about 52 percent of total consumption in 2001 to an estimated 66 percent in 2020. The reason for this is that world production, in general, and domestic production in particular are going to remain flat (and, although the report does not discuss this, begin dropping within the next 20 years). Meanwhile consumptionówhich is a direct function of the relentless drive of capitalism to expand commodity productionóis to grow by some two- thirds. Because the usage of oil must rise in the worldview of a Cheney, the us will actually have to import 60 percent more oil in 2020 to keep itself going than it does today. This means that imports will have to rise from their current rate of about 10.4 million barrels per day to about 16.7 million barrels per day. In the words of the report: “The only way to do this is persuade foreign suppliers to increase their production to sell more of their output to the us.” The meaning of these words depends of course on the interpretation of “persuade”, which in the us lexicon is to be read, I should think, as requiring a sufficient military machine to coerce foreign suppliers. At that point they might not even have to sell their output to the us, as it would already be possessed by the superpower. Here we locate the root material fact underlying recent us expansionism. This may seem an extravagant conclusion. However an explicit connection to militarismóand Iraqóhad been supplied the month before, in April 2001, in another report prepared by James Baker and submitted to the Bush cabinet. This document, called “Strategic Energy Policy Challenges for the 21st Century,” concludes with refreshing candor that ìthe us remains a prisoner of its energy dilemma, Iraq remains a destabilizing influence to the flow of oil to international markets from the Middle East, Saddam Hussein has also demonstrated a willingness to threaten to use the oil weapon and to use his own export program to manipulate oil markets, therefore the us should conduct an immediate policy review toward Iraq, including military, energy, economic, and political diplomatic assessments. Note the absence of reference to “weapons of mass destruction,” or aid to terrorism, convenient rationalizations that can be filled in later. Clearly, however things turn out with Iraq, the fundamental structural dilemma driving the military machine pertains to the contradictions of an empire that drives toward the invasion of all social space and the total control over nature. Since the former goal meets up with unending resistance and the latter crashes against the finitude of the material world, there is no recourse except the ever-widening resort to force. But this, the military monster itself, ever seeking threats to feed upon, becomes a fresh source of danger, whether of nuclear war, terror, or ecological breakdown. The situation is plainly unsustainable, a series of disasters waiting to happen. It can only be checked and brought to rationality by a global uprising of people who demand an end to the regime of endless war. This is the only possible path by which we can pull ourselves away from the abyss into which the military machine is about to plunge, dragging us all down with it.

#### The arrogant certainty of their calculations about war produce detached analysis that legitimizes violence and is complicit with militarism. Our alternative is not a totalizing embrace of pacifism, but rather a pacifist analysis that calls for moral and epistemic doubt within our decisionmaking about war – that’s the only way to formulate effective policies to address structural causes of conflict and avoid inevitable cycles of violence

Neu 13 – prof @ U of Brighton

(Michael, International Relations 27(4), December, The Tragedy of Justified War)

Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing the operat- ing mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is con- cerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents, who have non-complex and non-exploitative relationships, relationships that lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence and the moralistic attitudes that politicians and the media are capable of adopting. To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss. This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgments are offered and the ability to regard the moral case as closed once the judgments have been made. One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgments about war. If they did, they would become more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) but to the timeless wisdom that forms the essence of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60 If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be just war theorists, but unjust war theorists, confronting politicians with a jus contra bellum, rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that: notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61 Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders. Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty though, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be. Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, self- righteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstruct- ing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim? A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we ‘conduct our lives and arrange our institutions’ (Marcus) in this world. It is not enough to adopt a ‘wait and see’ policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘through more careful decision-making’ (Lebow), then this is what ought to be done by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

### 2

#### The courts are deferring on war powers now – never take action against elected government

Devins 2010 - Professor of Law and Professor of Government, College of William & Mary (February, Neal, “Symposium: Presidential Power In Historical Perspective: Reflections on Calabresi and Yoo's the Unitary Executive: Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants” 12 U. Pa. J. Const. L. 491, Lexis)

From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113

Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.

#### Intervening in presidential powers during wartime decks court capital – gives a perception of siding with the enemy

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Indeed, a court concerned about conserving its own institutional power might be more likely to defer during times of crisis. One cannot be certain how the public will respond to a decision. Ruling for "the enemy" during wartime could be a risky proposition. A court primarily concerned about maintaining its institutional capital might therefore make the strategic choice to defer in times of crisis so as to avoid showdowns that could undermine its legitimacy, thereby preserving its power for ordinary [\*1252] times. n273 Accordingly, it is not obvious that the Supreme Court's own institutional interests in times of crisis push it in the direction of intervention, rather than deference or avoidance.

#### Overruling destroys the rule of law

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(SUPER PRECEDENT, 90 Minn. L. Rev. 1204)

Chief Justice Roberts was a model for avoiding pitfalls in the confirmation process. It is possible he may have been too good a model. He constantly espoused respect for precedent throughout his hearings. He may or may not have been a firebrand when he worked in the Office of the Attorney General, the White House, or in Office of the Solicitor General, but he was not a firebrand when he appeared in front of the Senate [\*1228] Judiciary Committee. He no doubt understands that President Bush would love to see him not only vote as Chief Justice Rehnquist did but also move the Court further to the right. Yet, John Roberts the nominee accepted some judicial decisions inconsistent with that political agenda, including those recognizing a marital right of privacy, 98 the framework for analyzing separation of powers conflicts, 99 the constitutionality of the 1965 Voting Rights Act, 100 and heightened scrutiny for gender classifications. 101 Roberts even acknowledged Roe as "settled law," and recognized that overruling a precedent would be "a jolt to the legal system." 102 One has to assume that some overrulings would produce more of a "jolt" to the system than others, and some might fatally electrocute the system. While Chief Justice Roberts suggested it was not unthinkable for the Supreme Court to overrule settled law, he made abundantly clear that his philosophy of judicial modesty is grounded, at least in part, on respect for what came before. Roberts acknowledged that predictability, stability, consistency, and reliance are values to be taken into account in constitutional adjudication, and it would seem to follow that these values ought to count in most cases. 103 It further follows that there may be at least some instances in which the values promoted by fidelity to precedent become compelling. A Court that overrules too many precedents not only sets a bad example for the Courts that follow (because it provides no incentive to respect the work of its predecessors), but also signals permission for other branches to view its decisions with the same lack of respect with which it views them. A healthy respect for precedent means learning to live with decisions with which you disagree. When Roberts went further to describe himself as a "bottom-up" kind of judge, 104 he signaled that his inclination is to decide cases incrementally and to infer principles from the records of the cases below. A bottom-up judge is willing to learn from experience, which necessarily means that a good deal of our experience has to be left in tact.

#### Goes global

Kersch Politics Princeton ‘4

(THE GLOBALIZED JUDICIARY, THE GOOD SOCEITY, VOLUM 13 NO 3)

Scholars of the emerging globalized judiciary have described a process that looks very much like that of bureaucratic formation at work amongst judges around the world. In charting the development of transnational judicial networks and support structures, Anne-Marie Slaughter, Andrew S. Tulumello, and Stepan Wood have suggested that "a wide range of possibilities exist for strengthening formal and informal links between international and domestic institutions in ways that blur the distinction between international and domestic law ...."7 As this process develops, she and her co-authors add, "it is possible that domestic institutions will become more interested in and receptive to their counterpart international institutions as they begin to perform the same functions horizontally rather then vertically." And, indeed, this is precisely what they observe happening amongst judges. "Domestic judges, at least in the United States," they add, "are beginning to articulate their responsibility to 'help the world's legal systems work together, in harmony, rather than at cross purposes.' Such cooperation includes not only procedural mechanisms of deference and collaboration, but also substantive evaluation of the degree of convergence between domestic and foreign law."8 This cooperation has been made possible by "a deep sense of participation in a common global enterprise of judging." "It [involves]," Slaughter asserts, "a vision of a global community of law, established not by the World Court in the Hague, but by national courts working together around the world."9 "Constitutional cross-fertilization," as Slaughter calls its, is a crucial part of this trend.

#### Extinction

Rhyne Fmr. President Bar Association ‘58

(LAW DAY SPEECH, VOICE OF AMERICA, <http://www.abanet.org/publiced/lawday/rhyne58.html>)

The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance.

### 3

#### The United States Congress should propose an amendment to the United States Constitution which interprets Title X in Division A of the Detainee Treatment Act of 2005 attached to the McCain amendment as unconstitutional and limits future objecting presidential signing statements on indefinite detention to Congressionally-agreed complex issues, and specifies that the war powers authority of the President of the United States, including indefinite detention, are subject to judicial review. The Amendment should specify that it must be ratified immediately. The necessary states should ratify the Amendment.

#### Only a constitutional amendment can effectively check executive war powers and create meaningful judicial involvement

Goldstein 88, J.D. Stanford Law School

(Yonkel, “The Failure of Constitutional Controls Over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment,” Stanford Law Review, 40 Stan. L. Rev. 1543)

Because of these considerations, a constitutional amendment concerning the appropriate distribution of war powers should be adopted. More than any other legislative or rulemaking device, a constitutional amendment has a chance of commanding sufficient authority to be credible, especially in time of crisis. Because the constitutional problems associated with the control of nuclear weapons are so closely related to the war powers in general, the amendment must deal with war powers generally. Because technical capabilities of weapons and defense systems can change relatively rapidly, it is important that the amendment does not rigidly lock the nation into any specific procedure which is sure to become obsolete. Finally, the amendment ought to account for the recent congressional tendency to avoid taking stands on controversial issues until public opinion has clearly been discerned. Although the desire of members of Congress to see how their constituencies regard an issue is understandable, following massive public sentiment is not a viable option in many nuclear scenarios. Analogous to this congressional hesitancy is the Judiciary's reluctance to involve itself in questions of this kind. If my characterization of the problem is correct, namely that the Executive, aided by judicial acquiescence, has expanded its powers at the expense of congressional power, only one additional source of power on the federal level remains -- that is, of course, the people. The amendment proposed below attempts to take all of the above considerations into account.¶ Congress shall be required to supervise and oversee military planning, capabilities, and readiness. Congress, as part of its ordinary legislative powers and its extraordinary power to declare war, shall have absolute authority to govern, control, and direct all aspects of the structure and functioning of the armed forces. This power includes the right to issue orders to the Commander in Chief, as well as subordinate civilian and military authorities.¶ This power shall be delegable in whatever way Congress sees fit including, but not limited to, congressional committees and subcommittees, the Executive department, or to technical systems.¶ The failure of Congress to provide adequate oversight to war-planning shall be a justiciable cause of action against Congress as a whole. If the court hearing such a complaint finds that Congress has not adequately discharged its responsibility to consider fully all the requisite factors related to military planning, capabilities, and readiness, the court may grant an injunction directing Congress to consider the particular factors at issue and to come to a rationally based plan. No substantive outcome may be ordered by the court. The court's final order shall be appealable through normal judicial channels.¶ The first paragraph of this amendment clarifies that Congress is the highest authority in the military chain of command. Inasmuch as the President has a role in the "normal" legislative process, the President continues to have an important voice, subject to Congressional veto. For [\*1588] most purposes the first paragraph returns to the original constitutional distribution of war powers. It potentially infringes on the presidential power to retaliate, however, should Congress enact restrictive legislation. Likewise, the presidential ability to present Congress with faits accomplis might potentially be restricted. Neither of these situations, however, is very likely, absent some overwhelming crisis which would motivate Congress to take such action. Under this proposal Congress will be motivated to design a system that allows for realistic military responses by the Executive, lest it face the threat of lawsuits.¶ One might object that this runs counter to the commander-in-chief powers of the President. I believe that it is actually faithful to the commander-in-chief clause, if one understands the phrase to mean "the most senior military officer." If one's understanding of "commander in chief" is different, then by virtue of this being an amendment to the Constitution, such an understanding would have to be adjusted. That this would be a change from such an understanding of the Framers' intent does not disturb me. The only point of my discussion of the Framers' intent n276 is to point out that it is no longer operating, despite the persistence of the Framers' rhetoric. Whether this re-establishes the Framers' intent or institutes a brand new concept is not critical; that it decisively establish lines of authority in this area is.¶ The second paragraph of the amendment proceeds on the assumption that it may not always be wise to require Congress to discharge the tremendous powers incorporated in paragraph (1) as a unitary body. By not constitutionalizing any set procedure, but by granting what is nearly a carte blanche to Congress to set some procedure, maximal flexibility is built into the system. Even if Congress were to enact a system which functioned just as the current one does, doing so under this amendment has the virtue of making it clear that Congress has absolute authority to alter the system at will. Further, because this proposal would be an amendment to the Constitution, the ambiguities and nuances of the nondelegation doctrine would be irrelevant.¶ The third paragraph of the proposed amendment incorporates both the courts and the citizenry into the scheme. It is intended to reverse the long judicial tradition of granting deference to the Executive in military affairs. What is envisioned is something similar to "hard-look review," n277 which any citizen would have standing to initiate. In other [\*1589] words, courts would, at the initiation of a citizen, have a supervisory role to be certain that Congress has rationally considered the relevant data in military planning. Beyond ensuring some modicum of congressional rationality, however, courts would have to defer to congressional judgment in policy areas. Judicial competence to function in this area would be no different than in the host of other technical areas in which the courts provide oversight. Judges' expertise in these cases lies in their ability to ensure that legitimate issues are addressed in the decisionmaking process. Given the tremendous predominance of the Executive in this area, this proposal actually strengthens the policy underlying the separation of powers. If the separation of powers attempts to create an internal tension between the coordinate branches of government, the problem is that, due to executive hypertrophy, the other branches have been overwhelmed in this area, and not enough tension exists. By virtually ensuring that courts be involved, this proposal should create enough tension in the system so that the judicial and legislative branches together will have sufficient weight to deal with the Executive. This method may seem paradoxical at first. The courts have a strong tendency to avoid involving themselves in policies which require them to pass on the actions of the political branches. There is, however, nothing in this proposal that is more inconsistent with separation of powers than is the idea that courts can review laws, duly passed by Congress and signed by the President, in order to ascertain their constitutionality.¶ Allowing any citizen to bring such a suit virtually guarantees that such suits will be brought. This is a necessary antidote to the significant institutional reticence to deal with difficult issues before public [\*1590] opinion is mobilized as a result of a crisis. Often, important options are foreclosed at that point, and planning cannot be optimal. There is no reason why responding to law suits which would be brought under this amendment would be any more burdensome for Congress than "hardlook" review has been for administrative agencies. Surely there will be some extra work. The potential benefits of that work, however, are quite likely to outweigh the costs. Professor Raoul Berger, in discussing decisionmaking during the Vietnam War, states:¶ Perhaps the decisions would not have been better had they been debated in Congress, but, as George Reedy, former special assistant and then Press Secretary to President Lyndon Johnson, remarked, they could not have "been much worse. . . . [W]ithin the executive branch," states Reedy, "there exists a virtual horror of public debate on issues," compounded by the complacent assumption that the executive branch "have some sort of a truth that comes out of their technical expertise and that this truth . . . is not something to be debated." But executive decision itself suffers from a deep-seated malady; as Reedy points out, it lacks the benefit of "adversary discussion of issues"; the "so-called debates are really monologues in which one man is getting reflections of what he sends out." That courtiers are apt to reflect the desires of the monarch needs little documentation. n278¶ Professor Dahl points out that in a democracy the control of nuclear weapons is best maintained if accurate information about the relevant issues is provided to the citizenry, along with an opportunity to participate in the political process in an appropriate way. n279 The process of passing a constitutional amendment has, thus, an additional short-term advantage: Because of the inevitable public debate which would precede the adoption of the amendment, the public would necessarily become better educated concerning the various aspects of the control over our military power**.** Not only would there be debate before the passage of the amendment**, but** the amendment would do much to further a continuing public debate on specific defense measures. It is this aspect of the amendment which promises the greates benefit. People's real responses during a crisis are functions of a complex set of variables. Not even the process of amending the Constitution, by itself, will control people's reactions during a crisis. The continuing dialogue between litigants, Congress, the courts, and the Executive, however, will be as powerful a conditioning device as the law can devise to affect people's beliefs about what is proper in time of war. Thus, the adoption of this proposal should affect real-world crisis behavior in at least two ways. **First,** it would have a consciousness-raising effect concerning the proper lines of authority during a national defense emergency. Second, [\*1591] it would mandate the modification of strategic weapons systems, support systems, and processes available during a crisis. In addition, the options government officials have available to them during a crisis would necessarily be affected by this proposal.¶ Although this proposal may at first seem radical, the mechanism embodied in the proposed amendment is not at all foreign to judicial principles. For example, Professor Gerald Gunther, in discussing the 1971 Supreme Court term, writes of an inchoate "means-focused" principle he found operating in the decisions he was reviewing. n280 He described how a review of the rationality of legislative means, rather than merely of governmental ends, strengthens rational scrutiny, while allowing the court to avoid "ultimate value judgments." n281 He pointed out a similarity between the principle he discussed in equal protection cases and the process of "remanding to the legislature." n282 A "remand to the legislature" for the purpose of fleshing out the record or to consider heretofore unconsidered factors is, in essence, what the injunctive power of the court, in the proposed amendment, would allow.¶ Professor Cass Sunstein argues explicitly for a standard of constitutional oversight similar to administrative review. n283 The scheme he sets out, a kind of restrained, rational review of legislation, is also quite similar to what is envisioned in this amendment with respect to the control of the military. Sunstein traces his scheme to the republican view that rational discussion enhances the public good. n284 In the administrative context he sees courts as ensuring that the agency concerned "deliberate in order to identify and implement the public values that should control the controversy." n285 Sunstein advocates courts expanding this approach to various areas of constitutional litigation "to ensure that representatives have exercised some form of judgment instead of responding mechanically to interest-group pressures." n286 He acknowledges that if his proposal is to be effective "some scrutiny of legislative processes is necessary." n287¶ CONCLUSION¶ The control of nuclear weapons is an issue of paramount importance. This control is grounded in the United States system of civilian control over the military. Historically, confusion has existed about precisely [\*1592] how the system works. The system of civilian control virtually broke down during the Truman Administration, although it had shown signs of strain even before that time. The Vietnam War and events in the post-Vietnam era substantiate the conclusion that the original constitutional system for controlling the country's war powers is defunct. It is past time to develop a new control system.¶ The amendment I propose attempts to develop such a system in the context of the nuclear age. Any legal solution less drastic than a constitutional amendment will not have sufficient force to overcome the conflicting past practice. Any proposal which just focuses on one or two particular nuclear scenarios will provide inadequate control. Although my proposal leaves a great number of specific questions to be answered, it provides a solid framework in which answers to those questions can begin to take shape.

#### Amendments solve the case and avoid our court disads – no chance of rollback

Baker 95**,** Law Prof at Texas Tech

(Thomas E., Exercising the Amendment Power to Disapprove of Supreme Court Decisions: A Proposal for a "Republican Veto", repository.law.ttu.edu/bitstream/handle/10601/33/baker6.pdf?sequence=1)

Indeed, the best use of this "republican veto" would be to set aside a Supreme Court decision that itself overrules a prior decision. This would have the immediate effect of reinstating the preferred earlier interpretation. For example, Congress and the state legislatures by vetoing either National League of Cities v. Usery or Garcia v. San Antonio Metropolitan Transit Authority, could have settled the debate over the Tenth Amendment, at least for this generation. That would have avoided the constitutional consternation that resulted from the Court's yo-yoing of its own precedents. This usage to set aside judicial overrulings has the potential to reclaim valuable constitutional precedent at only an incremental cost to the Court as an institution. The Supreme Court's recent internal debate over stare decisis for constitutional questions is instructive and provides Congress with some helpful criteria to consider in deciding whether to veto a Supreme Court decision. Such criteria include the narrowness of the margin of the decision, the persuasiveness of the dissents, the lack of allegiance by present members of the Court, the difficulty of consistent application by the lower courts and subsequent Supreme Courts, the extent of reliance on the ruling within the legal community and in society at large, how related doctrines have affected the ruling, and whether the facts and assumptions relied on in the decision have been overcome by subsequent developments.9o The debate over the particular proposal ought to take place on this level of pragmatic argumentation, with full consideration afforded to all relevant and prudential factors1 including the threshold assumption that there is a higher burden for constitutional change than for legislative matters. Constitutional politics ought to claim the best wisdom of our nation, expressed through the Congress and the state legislatures. How can the Supreme Court be expected to act in response to the exercise of the "republican veto" if the practice becomes routine? If an amendment is proposed by Congress and ratified by the states, then the Court is oath-bound to respect the outcome of the political process. In fact, each time Article V has been relied on to overrule a Supreme Court decision, the Justices have adhered to their oaths. The Supreme Court, no less than the political branches, must adhere to the rule of law; indeed, the Court as an institution has the most to lose under the rule of man. The constitutional dialogue would be enhanced by regular repair to the "republican veto." Under settled understandings of the principle of separation of powers, the decisions when and what to propose and ratify in a "republican veto" are wholly given over to the Article V procedures. The judicial task of interpreting any amendment, including a new amendment setting aside a specific Court decision, nec- essarily resides with the Supreme Court, as does the continuing obligation to interpret the scope of the underlying provision of the Constitution. The implied veto of judicial review is subject to the explicit veto of Article V, but the awesome responsibility to interpret the Constitution will remain with the Supreme Court. Once ratified, a "republican veto" will become part and parcel of the same constitutional dynamic. Arguably, an amendment that is negative should be preferred over an amendment that attempts affirmatively to state a new constitutional rule for decision. What is needed is a different interpretation, not different language. In our constitutional theater, the Supreme Court always will perform center stage, but Article V makes Congress the director, and the people in the states the playwrights. A "republican veto" will oblige the Justices to reinterpret their part as they perform their ongoing role. This is a constitutionally creative collaboration which is textually preferred over the common law methodology within the exclusive domain of the Justices

## Case

### Adv 2

**Evaluate consequences—to do otherwise is moral tunnel vision and is therefore complicit with evil**

**Issac, professor of political science at Indiana University, 2002 (Jeffrey, Dissent, Spring, ebsco)**

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

**Ethics can’t be separated from their social context—adaptive ethics are necessary to reflect actual moral experience. The affirmative’s dogmatic adherence to principle guarantees that it will never be politically useful or change society**

**Minteer et al, 2004 (Ben, Journal of Agricultural and Environmental Ethics, 17: 131-156, ebsco)**

In this paper, we have attempted to provide the outlines of a pragmatic contextualist alternative to principle-ism in environmental ethics. We believe that this project, drawn from the ethical theory of John Dewey and bolstered by our sociological study of public environmental ethics and wildlife management attitudes, offers a more empirically valid and productive method of inquiry that can link environmental ethics to the concrete problems of environmental practice. We recognize, however, that in calling for this contextualist and processual/experimental approach to moral argument in environmental ethics, we may be accused, especially by those with principle-ist leanings, of effectively changing the subject with respect to ethical theorizing in the field. For in the final analysis, what is environmental ethics if it is not primarily about the construction of general moral principles to guide specific environmental policy and management decisions? But we believe such a response simply begs the question of the range of methodological options available to practical ethicists. It assumes that the enterprise of moral inquiry must be preoccupied with the identification of fixed principles, rules, and standards, and that, once these concepts and claims are secured, those specific environmental decisions and actions will flow logically from them. Instead, we argue for another approach within the ethical tradition – one rooted in a pragmatic moral methodology – that we believe will render environmental ethics more useful in contributing to public deliberations and that we believe ultimately offers a more accurate reflection of real moral experience. Finally, while in this paper we have been fairly critical of what we see as the dominant methodological approach in environmental ethics, our criticisms should be understood in the correct manner, and in the proper spirit. Mainly, we should not be read as suggesting in this paper that an environmental ethics without principle is desirable, even if it were somehow possible. The contextual approach we are advocating here certainly does not entail the adoption of “principle nihilism” in environmental ethics, nor does it ignore the important work in substantive ethical theory conducted in the field over the past three decades. But we do believe that the field now needs to press beyond its traditionally dominant defenses of principle alone. This is especially true if environmental ethics seeks to understand the complex normative structure of concrete decision-making and policy deliberations, not to mention if it wishes to make meaningful and enduring contributions to these critical public processes.

#### Engaging in forms of calculation is necessary to cultivate a democratic civic culture that checks political exclusion and loss of value to life

Loader – Criminology Prof at Oxford – 7

(Civilizing Security, Pg. 5)

Faced with such inhospitable conditions, one can easily lapse into fatalistic despair, letting events simply come as they will, or else seek refuge in the consolations offered by the total critique of securitization practices – a path that some critical scholars in criminology and security studies have found all too seductive (e.g. Bigo 2002, 2006; Walters 2003). Or one can, as we have done, supplement social criticism with the hard, uphill, necessarily painstaking work of seeking to specify what it may mean for citizens to live together securely with risk; to think about the social and political arrangements capable of making this possibility more rather than less likely, and to do what one can to nurture practices of collective security shaped not by fugitive market power or by the unfettered actors of (un)civil society, but by an inclusive, democratic politics. Social analysts of crime and security have become highly attuned to, and warned repeatedly of, the illiberal, exclusionary effects of the association between security and political community (Dillon 1996; Hughes 2007). They have not, it should be said, done so without cause, for reasons we set out at some length as the book unfolds. But this sharp sensitivity to the risks of thinking about security through a communitarian lens has itself come at a price, namely, that of failing to address and theorize fully the virtues and social benefits that can flow from members of a political community being able to put and pursue security in common. This, it seems to us, is a failure to heed the implications of the stake that all citizens have in security; to appreciate the closer alignment of self-interest and altruism that can attend the acknowledgement that we are forced to live, as Kant put it, inescapably side-by-side and that individuals simultaneously constitute and threaten one another’s security; and to register the security-enhancing significance and value of the affective bonds of trust and abstract solidarity that political communities depend upon, express and sustain. All this, we think, offers reasons to believe that security offers a conduit, perhaps the best conduit there is, for giving practical meaning to the idea of the public good, for reinventing social democratic politics, even for renewing the activity of politics at all.

### S

#### Judicial restrictions do nothing – Youngstown proves

DiPaulo 2010 – assistant professor of constitutional law at Middle Tennessee State(Amanda, “Zones of Twilight, Wartime Presidential Powers and Federal Court Decision Making” Lexington Books, Google Books)

The Youngstown decision has its critics, and its relevance to judicial decision making today is not assumed. In fact, there are many arguments as to why the Jackson framework should not be looked to for guidance today. That troops have been committed abroad without any congressional or judicial sanctions is said to show the limited impact the Youngstown decision has had constraining presidents after Truman left office (Irons. 2005; 17). Others argue that Congress now steps aside in war powers controversies, staying out of the Executive's way altogether. Devins and Fisher point out that the Youngstown decision made sense at the time because Congress was expected to play a more decisive role in foreign affairs (2002: 72). This apparent unwillingness on the part of Congress to get involved in the crafting of war-powrers policies would leave Jackson's framewrork perpetually stuck in the second prong at best, and inapplicable at worst. Either way, Youngstown's famous concurrence becomes a "relic of the past" (Devins & Fisher. 2002; 80) as it has no value in categorizing war-powers claims. H. Jefferson Powell suggests that the concurrence is often misunderstood, claiming that Jackson had no intention of limiting external presidential authority but is meant to limit the president in regard to internal affairs alone (Powell. 2002; 129). Evidence for this claim is found in Jackson's concurrence itself when he states that "military powers of the Commander-in-Chief [are] not to supersede representative government of internal affairs;' it is 'the Constitution's policy that Congress, not the Executive, should control utilization of the war power as an instrument of domestic policy" (Jackson's concurrence as quoted in Powell; 129).

#### **Courts don’t solve – no case law and president will circumvent the ruling**

Bradley 8 – prof of law & public policy @ Duke

(Curtis A., Terror and the Law: The Limits of Judicial Reasoning in a Post-9/11 World)

The descriptive inadequacy of the war model creates problems for regulating the war on terror through law. By its nature, legal reasoning tends to be backward-looking: it focuses on the Constitution and existing statutes, judicial precedents, and historical practices rather than on designing a new framework. Lawyers and judges are now debating, for example, whether the war on terror is controlled by a Supreme Court decision from the Civil War era or another one from World War II, even though neither addresses the unique features of the current conflict. There is nothing inherently wrong with this sort of reasoning. It is what lawyers and judges are trained to do, and it is useful in many settings. The past can sometimes provide important guidance about what works and what does not and about a nation’s collective values. Furthermore, the approach is properly designed to limit the ability of administration lawyers and unelected federal judges to make fundamental policy choices. But it is not the ideal way to regulate a long-term security situation that raises difficult and novel issues. Courts tend to hide the functional considerations that influence their decisions, and as they strain to interpret statutes or precedents in ways that accommodate their preexisting preferences, they can undermine the rule of law. Another problem is that there is little existing law that is directly applicable to the war on terror. None of the Supreme Court’s war-powers decisions from earlier conflicts addresses this one’s unique features. This is the reason why in its 2oo4 decision in Hamdi ‘v. Rumsfeld, the Supreme Court declined to rule on the most difficult legal questions, such as how to define who, other than fighters on the battlefield in Afghanistan, qualifies as an enemy combatant and how long these enemy combatants can be detained. International law also provides only limited guidance. The Geneva Conventions are surely some of the most important post-World War ll treaties, but they are ill suited to regulate the war on terror because they are primarily focused on conflicts fought by organized state armies. It would be an overstatement to say that there is no law at all to guide efforts to combat terrorism, but as Wittes observes, much of what is available are “underdeveloped strands of law intended for other purposes, interacting in peculiar and often perverse ways.” Perhaps as a result, the current approach has tended to work in a piecemeal fashion. As Wittes persuasively explains, because the governments various tactics in the war on terror are interconnected, the government can adapt to a judicial ruling about one of them by altering its practices with respect to another. For instance, if the courts make it too difficult for the administration to resort to military trials, the government might start holding suspects without trial for a longer period. Increased judicial oversight of the treatment of detainees at Guantanamo may cause the military to rely more heavily on detention centers in, say, Afghanistan. This substitution effect-a problem in other areas of judicial decision-making as well-can make it difficult to develop a coherent and effective regulatory regime.

#### Rights are a bad basis for war powers cases because they’re too malleable

DiPaulo 2010 – assistant professor of constitutional law at Middle Tennessee State(Amanda, “Zones of Twilight, Wartime Presidential Powers and Federal Court Decision Making” Lexington Books, Google Books)

The rights revolution experienced in the 1960s and 1970s saw new issues come to the courts with old laws being challenged. When the Executive's policies curtailing rights during armed hostilities were before the courts, courts emphasized precedents requiring cooperation between the elected branches of government that already existed. As far back as the Civil War, Justice Salmon Chase, in his ex parte Milligan dissent, argued that it is a mistake to frame questions in rights-based language. As further discussed in Chapter 3, Chase and three of his colleagues agreed that the military tribunals set up by the president were unconstitutional, not because citizens have a right not to be tried by them, but because Congress did not authorize them. Making rules concerning the government of the armed forces cases "arising in the land and naval forces, or in the militia in actual service in time of war or public danger, are expressly excepted from the fifth amendment . . . and it is admitted that the exception applies to the other amendments as well as to the fifth' (Chase's Milligan dissent). My analysis shows that the courts have largely followed Justice Chase's lead. Using rights-based language would be legitimate because the cases concern violations of liberties, but the separation of powers framework offered by Jackson offers something more to war-powers adjudication that language in the Bill of Rights does not. Simply because a rights claim is made does not mean that the federal courts, even if they decide the case using rights-based language, will protect the rights in question. The language found in the Bill of Rights is not only interpreted by nine justices with different philosophies on the law, but is also malleable. Since no right is absolute, it is entirely possible for the courts, when using rights-based language, to limit a constitutionally protected right in such a way that when the emergency subsides, the limit placed on the right in question could remain.

### Adv 1

#### Globalization solves environment—conscience shift, regulation, development, clean tech, and private property

Norberg 3 – Cato Institute Senior Fellow (Johan, In Defense of Global Capitalism, p 225-37

Although multinational corporations and free trade are proving good for development and human rights in the Third World, there still remains the objection that globalization harms the environment. Factories in the Western world, the argument runs, will relocate to poorer countries with no environmental legislation, where they can pollute with impunity. The West has to follow suit and lower its own environmental standards in order to stay in business. That is a dismal thesis, with the implication that when people obtain better opportunities, resources, and technology, they use them to abuse nature. Does there really have to be a conflict between development and the environment? The notion that there has to be a conflict runs into the same problem as the whole idea of a race to the bottom: it doesn't tally with reality. There is no exodus of industry to countries with poor environmental standards, and there is no downward pressure on the level of global environmental protection. Instead, the bulk of American and European investments goes to countries with environmental regulations similar to their own. There has been much talk of American factories moving to Mexico since NAFTA was signed. Less well known, however, is that since free trade was introduced Mexico has tightened up its environmental regulations, following a long history of complete nonchalance about environmental issues. This tightening up is part of a global trend. All over the world, economic progress and growth are moving hand in hand with intensified environmental protection. Four researchers who studied these connections found “a very strong, positive association between our [environmental] indicators and the level of economic development.” A country that is very poor is too preoccupied with lifting itself out of poverty to bother about the environment at all. Countries usually begin protecting their natural resources when they can afford to do so. When they grow richer, they start to regulate effluent emissions, and when they have still more resources they also begin regulating air quality. 19 A number of factors cause environment protection to increase with wealth and development. Environmental quality is unlikely to be a top priority for people who barely know where their next meal is coming from. Abating misery and subduing the pangs of hunger takes precedence over conservation. When our standard of living rises we start attaching importance to the environment and obtaining resources to improve it. Such was the case earlier in western Europe, and so it is in the developing countries today. Progress of this kind, however, requires that people live in democracies where they are able and allowed to mobilize opinion; otherwise, their preferences will have no impact. Environmental destruction is worst in dictatorships. But it is the fact of prosperity no less than a sense of responsibility that makes environmental protection easier in a wealthy society. A wealthier country can afford to tackle environmental problems; it can develop environmentally friendly technologies—wastewater and exhaust emission control, for example—and begin to rectify past mistakes. Global environmental development resembles not so much a race for the bottom as a race to the top, what we might call a “California effect.” The state of California's Clean Air Acts, first introduced in the 1970s and tightened since, were stringent emissions regulations that made rigorous demands on car manufacturers. Many prophets of doom predicted that firms and factories would move to other states, and California would soon be obliged to repeal its regulations. But instead the opposite happened: other states gradually tightened up their environmental stipulations. Because car companies needed the wealthy California market, manufacturers all over the United States were forced to develop new techniques for reducing emissions. Having done so, they could more easily comply with the exacting requirements of other states, whereupon those states again ratcheted up their requirements. Anti-globalists usually claim that the profit motive and free trade together cause businesses to entrap politicians in a race for the bottom. The California effect implies the opposite: free trade enables politicians to pull profit-hungry corporations along with them in a race to the top. This phenomenon occurs because compliance with environmental rules accounts for a very small proportion of most companies' expenditures. What firms are primarily after is a good business environment—a liberal economy and a skilled workforce— not a bad natural environment. A review of research in this field shows that there are no clear indications of national environmental rules leading to a diminution of exports or to fewer companies locating in the countries that pass the rules. 20 This finding undermines both the arguments put forward by companies against environmental regulations and those advanced by environmentalists maintaining that globalization has to be restrained for environmental reasons. Incipient signs of the California effect's race to the top are present all over the world, because globalization has caused different countries to absorb new techniques more rapidly, and the new techniques are generally far gentler on the environment.Researchers have investigated steel manufacturing in 50 different countries and concluded that countries with more open economies took the lead in introducing cleaner technology. Production in those countries generated almost 20 percent less emissions than the same production in closed countries. This process is being driven by multinational corporations because they have a lot to gain from uniform production with uniform technology. Because they are restructured more rapidly, they have more modern machinery. And they prefer assimilating the latest, most environmentally friendly technology immediately to retrofitting it, at great expense, when environmental regulations are tightened up. Brazil, Mexico, and China—the three biggest recipients of foreign investment—have followed a very clear pattern: the more investments they get, the better control they gain over air pollution. The worst forms of air pollution have diminished in their cities during the period of globalization. When Western companies start up in developing countries, their production is considerably more environment-friendly than the native production, and they are more willing to comply with environmental legislation, not least because they have brand images and reputations to protect. Only 30 percent of Indonesian companies comply with the country's environmental regulations, whereas no fewer than 80 percent of the multinationals do so. One out of every 10 foreign companies maintained a standard clearly superior to that of the regulations. This development would go faster if economies were more open and, in particular, if the governments of the world were to phase out the incomprehensible tariffs on environmentally friendly technology. 21 Sometimes one hears it said that, for environmental reasons, the poor countries of the South must not be allowed to grow as affluent as our countries in the North. For example, in a compilation of essays on Environmentally Significant Consumption published by the National Academy of Sciences, we find anthropologist Richard Wilk fretting that: If everyone develops a desire for the Western high-consumption lifestyle, the relentless growth in consumption, energy use, waste, and emissions may be disastrous. 22 But studies show this to be colossal misapprehension. On the contrary, it is in the developing countries that we find the gravest, most harmful environmental problems. In our affluent part of the world, more and more people are mindful of environmental problems such as endangered green areas. Every day in the developing countries, more than 6,000 people die from air pollution when using wood, dung, and agricultural waste in their homes as heating and cooking fuel. UNDP estimates that no fewer than 2.2 million people die every year from polluted indoor air. This result is already “disastrous” and far more destructive than atmospheric pollution and industrial emissions. Tying people down to that level of development means condemning millions to premature death every year. It is not true that pollution in the modern sense increases with growth. Instead, pollution follows an inverted U-curve. When growth in a very poor country gathers speed and the chimneys begin belching smoke, the environment suffers. But when prosperity has risen high enough, the environmental indicators show an improvement instead: emissions are reduced, and air and water show progressively lower concentrations of pollutants. The cities with the worst problems are not Stockholm, New York, and Zürich, but rather Beijing, Mexico City, and New Delhi. In addition to the factors already mentioned, this is also due to the economic structure changing from raw-material-intensive to knowledge-intensive production. In a modern economy, heavy, dirty industry is to a great extent superseded by service enterprises. Banks, consulting firms, and information technology corporations do not have the same environmental impact as old factories. According to one survey of available environmental data, the turning point generally comes before a country's per capita GDP has reached $8,000. At $10,000, the researchers found a positive connection between increased growth and better air and water quality. 23 That is roughly the level of prosperity of Argentina, South Korea, or Slovenia. In the United States, per capita GDP is about $36,300. Here as well, the environment has consistently improved since the 1970s, quite contrary to the picture one gets from the media. In the 1970s there was constant reference to smog in American cities, and rightly so: the air was judged to be unhealthy for 100–300 days a year. Today it is unhealthy for fewer than 10 days a year, with the exception of Los Angeles. There, the figure is roughly 80 days, but even that represents a 50 percent reduction in 10 years. 24 The same trend is noticeable in the rest of the affluent world—for example, in Tokyo, where, a few decades ago, doomsayers believed that oxygen masks would in the future have to be worn all around the city because of the bad air. Apart from its other positive effects on the developing countries, such as ameliorating hunger and sparing people the horror of watching their children die, prosperity beyond a certain critical point can improve the environment. What is more, this turning point is now occurring progressively earlier in the developing countries, because they can learn from more affluent countries' mistakes and use their superior technology. For example, air quality in the enormous cities of China, which are the most heavily polluted in the world, has steadied since the mid-1980s and in several cases has slowly improved. This improvement has coincided with uniquely rapid growth. Some years ago, the Danish statistician and Greenpeace member Bjørn Lomborg, with about 10 of his students, compiled statistics and facts about the world's environmental problems. To his astonishment, he found that what he himself had regarded as self-evident, the steady deterioration of the global environment, did not agree at all with official empirical data. He found instead that air pollution is diminishing, refuse problems are diminishing, resources are not running out, more people are eating their fill, and people are living longer. Lomborg gathered publicly available data from as many fields as he could find and published them in the book The Skeptical Environmentalist: Measuring the Real State of the World. The picture that emerges there is an important corrective to the general prophesies of doom that can so easily be imbibed from newspaper headlines. Lomborg shows that air pollution and emissions have been declining in the developed world during recent decades. Heavy metal emissions have been heavily reduced; nitrogen oxides have diminished by almost 30 percent and sulfur emissions by about 80 percent. Pollution and emission problems are still growing in the poor developing countries, but at every level of growth annual particle density has diminished by 2 percent in only 14 years. In the developed world, phosphorus emissions into the seas have declined drastically, and E. coli bacteria concentrations in coastal waters have plummeted, enabling closed swimming areas to reopen. Lomborg shows that, instead of large-scale deforestation, the world's forest acreage increased from 40.24 million to 43.04 million square kilometers between 1950 and 1994. He finds that there has never been any large-scale tree death caused by acid rain. The oft-quoted, but erroneous statement about 40,000 species going extinct every year is traced by Lomborg to its source—a 20-year-old estimate that has been circulating in environmentalist circles ever since. Lomborg thinks it is closer to 1,500 species a year, and possibly a bit more than that. The documented cases of extinction during the past 400 years total just over a thousand species, of which about 95 percent are insects, bacteria, and viruses. As for the problem of garbage, the next hundred years worth of Danish refuse could be accommodated in a 33-meter-deep pit with an area of three square kilometers, even without recycling. In addition, Lomborg illustrates how increased prosperity and improved technology can solve the problems that lie ahead of us. All the fresh water consumed in the world today could be produced y a single desalination plant, powered by solar cells and occupying 0.4 percent of the Sahara Desert. It is a mistake, then, to believe that growth automatically ruins the environment. And claims that we would need this or that number of planets for the whole world to attain a Western standard of consumption—those “ecological footprint” calculations—are equally untruthful. Such a claim is usually made by environmentalists, and it is concerned, not so much with emissions and pollution, as with resources running out if everyone were to live as we do in the affluent world. Clearly, certain of the raw materials we use today, in presentday quantities, would not suffice for the whole world if everyone consumed the same things. But that information is just about as interesting as if a prosperous Stone Age man were to say that, if everyone attained his level of consumption, there would not be enough stone, salt, and furs to go around. Raw material consumption is not static. With more and more people achieving a high level of prosperity, we start looking for ways of using other raw materials. Humanity is constantly improving technology so as to get at raw materials that were previously inaccessible, and we are attaining a level of prosperity that makes this possible. New innovations make it possible for old raw materials to be put to better use and for garbage to be turned into new raw materials. A century and a half ago, oil was just something black and sticky that people preferred not to step in and definitely did not want to find beneath their land. But our interest in finding better energy sources led to methods being devised for using oil, and today it is one of our prime resources. Sand has never been all that exciting or precious, but today it is a vital raw material in the most powerful technology of our age, the computer. In the form of silicon—which makes up a quarter of the earth's crust— it is a key component in computer chips. There is a simple market mechanism that averts shortages. If a certain raw material comes to be in short supply, its price goes up. This makes everyone more interested in economizing on that resource, in finding more of it, in reusing it, and in trying to find substitutes for it. The trend over the last few decades of falling raw material prices is clear. Metals have never been as cheap as they are today. Prices are falling, which suggests that demand does not exceed supply. In relation to wages, that is, in terms of how long we must work to earn the price of a raw material, natural resources today are half as expensive as they were 50 years ago and one-fifth as expensive as they were a hundred years ago. In 1900 the price of electricity was eight times higher, the price of coal seven times higher, and the price of oil five times higher than today. 25 The risk of shortage is declining all the time, because new finds and more efficient use keep augmenting the available reserves. In a world where technology never stops developing, static calculations are uninteresting, and wrong. By simple mathematics, Lomborg establishes that if we have a raw material with a hundred years' use remaining, a 1 percent annual increase in demand, and a 2 percent increase in recycling and/or efficiency, that resource will never be exhausted. If shortages do occur, then with the right technology most substances can be recycled. One-third of the world's steel production, for example, is being reused already. Technological advance can outstrip the depletion of resources. Not many years ago, everyone was convinced of the impossibility of the whole Chinese population having telephones, because that would require several hundred million telephone operators. But the supply of manpower did not run out; technology developed instead. Then it was declared that nationwide telephony for China was physically impossible because all the world's copper wouldn't suffice for installing heavy gauge telephone lines all over the country. Before that had time to become a problem, fiber optics and satellites began to supersede copper wire. The price of copper, a commodity that people believed would run out, has fallen continuously and is now only about a tenth of what it was 200 years ago. People in most ages have worried about important raw materials becoming exhausted. But on the few occasions when this has happened, it has generally affected isolated, poor places, not open, affluent ones. To claim that people in Africa, who are dying by the thousand every day from supremely real shortages, must not be allowed to become as prosperous as we in the West because we can find theoretical risks of shortages occurring is both stupid and unjust. The environmental question will not resolve itself. Proper rules are needed for the protection of water, soil, and air from destruction. Systems of emissions fees are needed to give polluters an interest in not damaging the environment for others. Many environmental issues also require international regulations and agreements, which confront us with entirely new challenges. Carbon dioxide emissions, for example, tend to increase rather than diminish when a country grows more affluent. When talking about the market and the environment, it is important to realize that efforts in this quarter will be facilitated by a freer, growing economy capable of using the best solutions, from both a natural and a human viewpoint. In order to meet those challenges, it is better to have resources and advanced science than not to have them. Very often, environmental improvements are due to the very capitalism so often blamed for the problems. The introduction of private property creates owners with long-term interests. Landowners must see to it that there is good soil or forest there tomorrow as well, because otherwise they will have no income later on, whether they continue using the land or intend to sell it. If the property is collective or government-owned, no one has any such long-term interest. On the contrary, everyone then has an interest in using up the resources quickly before someone else does. It was because they were common lands that the rain forests of the Amazon began to be rapidly exploited in the 1960s and 1970s and are still being rapidly exploited today. Only about a 10th of forests are recognized by the governments as privately owned, even though in practice Indians possess and inhabit large parts of them. It is the absence of definite fishing rights that causes (heavily subsidized) fishing fleets to try to vacuum the oceans of fish before someone else does. No wonder, then, that the most large-scale destruction of environment in history has occurred in the communist dictatorships, where all ownership was collective. A few years ago, a satellite image was taken of the borders of the Sahara, where the desert was spreading. Everywhere, the land was parched yellow, after nomads had overexploited the common lands and then moved on. But in the midst of this desert environment could be seen a small patch of green. This proved to be an area of privately owned land where the owners of the farm prevented overexploitation and engaged in cattle farming that was profitable in the long term. 26 Trade and freight are sometimes criticized for destroying the environment, but the problem can be rectified with more efficient transport and purification techniques, as well as emissions fees to make the cost of pollution visible through pricing. The biggest environmental problems are associated with production and consumption, and there trade can make a positive contribution, even aside from the general effect it has on growth. Trade leads to a country's resources being used as efficiently as possible. Goods are produced in the places where production entails least expense and least wear and tear on the environment. That is why the amount of raw materials needed to make a given product keeps diminishing as productive efficiency improves. With modern production processes, 97 percent less metal is needed for a soft drink can than 30 years ago, partly because of the use of lighter aluminum. A car today contains only half as much metal as a car of 30 years ago. Therefore, it is better for production to take place where the technology exists, instead of each country trying to have production of its own, with all the consumption of resources that would entail. It is more environmentally friendly for a cold northern country to import meat from temperate countries than to waste resources on concentrated feed and the construction and heating of cattle pens for the purpose of native meat production.

#### Transition from neolib causes massive violence – counter-revolutionary interventions

Anderson ‘84

professor of sociology – UCLA,

(Perry, In the tracks of historical materialism, p. 102-103)

That background also indicates, however, what is essentially missing from his work. How are we to get from where we are today to where he point us to tomorrow? There is no answer to this question in Nove. His halting discussion of “transition” tails away into apprehensive admonitions to moderation to the British Labor Party, and pleas for proper compensation to capitalist owners of major industries, if these are to be nationalized. Nowhere is there any sense of what a titanic political change would have to occur, with what fierceness of social struggle, for the economic model of socialism he advocates ever to materialize. Between the radicalism of the future end-state he envisages, and the conservatism of the present measures he is prepared to countenance, there is an unbridgeable abyss. How could private ownership of the means of production ever be abolished by policies less disrespectful of capital than those of Allende or a Benn, which he reproves? What has disappeared from the pages of The Economics of Feasible Socialism is virtually all attention to the historical dynamics of any serious conflict over the control of the means of production, as the record of the 20th century demonstrates them. If capital could visit such destruction on even so poor and small an outlying province of its empire in Vietnam, to prevent its loss, is it likely that it would suffer its extinction meekly in its own homeland? The lessons of the past sixty-five years or so are in this respect without ambiguity or exception, there is no case, from Russia to China, from Vietnam to Cuba, from Chile to Nicaragua, where the existence of capitalism has been challenged, and the furies of intervention, blockade and civil strife have not descended in response. Any viable transition to socialism in the West must seek to curtail that pattern: but to shrink from or to ignore it is to depart from the world of the possible altogether. In the same way, to construct an economic model of socialism in one advanced country is a legitimate exercise: but to extract it from any computable relationship with a surrounding, and necessarily opposing, capitalist environment—as this work does—is to locate it in thin air.

#### Ecosystem collapse is inevitable from developing countries

Porter 2013 - writes the Economic Scene column for the Wednesday Business section (March 19, Eduardo, “A Model for Reducing Emissions” <http://www.nytimes.com/2013/03/20/business/us-example-offers-hope-for-cutting-carbon-emissions.html?_r=1&>)

Even if every American coal-fired power plant were to close, that would not make up for the coal-based generators being built in developing countries like India and China. “Since 2000, the growth in coal has been 10 times that of renewables,” said Daniel Yergin, chairman of IHS Cambridge Energy Research Associates.¶ Fatih Birol, chief economist of the International Energy Agency in Paris, points out that if civilization is to avoid catastrophic climate change, only about one third of the 3,000 gigatons of CO2 contained in the world’s known reserves of oil, gas and coal can be released into the atmosphere.¶ But the world economy does not work as if this were the case — not governments, nor businesses, nor consumers.¶ “In all my experience as an oil company manager, not a single oil company took into the picture the problem of CO2,” said Leonardo Maugeri, an energy expert at Harvard who until 2010 was head of strategy and development for Italy’s state-owned oil company, Eni. “They are all totally devoted to replacing the reserves they consume every year.”

Habitat and species loss doesn’t negatively affect an area’s biology – evolutionary incentive to cooperate rather than compete ensures increased adaptability and mutual aid

**Boulter, 02** (Michael Boulter - professor for paleobiology at the Natural History Museum and the University of East London, former editor to the Palaeontological Association, former secretary to the International Organization of Palaeobotany, and UK representative at the International Union of Biological Sciences, “Extinction: Evolution and the End of Man,” pg. 26, CM)

We know so little about their inter-relationships that the view from the rowing boat remains a fairy story. A popular view is that all this fighting, all this competition between individuals and species, is the motor of evolution. That is a myth from Victoriana, placed under the Darwinian banner of ‘survival of the fittest’. It’s an old-fashioned concept that should be banished to the annals of what is wrong about biology. Now, we know that the complex relationship between the organisms and the environment is also important. Evolution is less to do with winning battles between species and individuals, more do with being able to do with being able to live well together in the same environment. It is not necessarily the strongest that succeeds, but the most adaptable to new environments that might develop suddenly and unexpectedly.

# 2NC

## DA

#### Court activism on war powers emboldens the president because it removes Congress from power

Rosen 2006 - professor of law at The George Washington University and the legal affairs editor of The New Republic (June, Jeffery, “Most Democratic Branch : How the Courts Serve America” Oxford University Press, 9780195174434, ebook)

Some defenders of bipartisan judicial restraint have argued plausibly that the Court should be freer to engage in adventurous interpretations of federal statutes than of the U.S. Constitution, because Congress is always free to reverse statutory decisions with which it disagrees, while constitutional decisions cannot be reversed, except by a constitutional amendment. And in an age when Congress is increasingly reluctant to take responsibility for policy choices, judicial restraint may be just as likely to encourage presidential unilateralism as it is to encourage a dialogue between the president and the Congress. But judicial creativity can remove any remaining incentives to congressional action: In the Hamdi case, for example, the Court detected congressional authorization where no explicit authorization existed and then made up judicial procedures in order to save the executive from its worst impulses. This had the unfortunate effect of removing any political pressure on Congress to adopt the comprehensive procedural safeguards that European countries with systems of preventative detention have adopted. It may a have also emboldened the president to take the remarkable and unconvincing unilateralist view that the congressional resolution authorizing him to find the perpetrators of the 9/11 attacks could be stretched to authorize him to break U.S. surveillance laws with domestic wiretaps of U.S. citizens. The national scandal that erupted when this secret spying program was revealed is consistent with similar scandals that emerged in Europe during the 1980s and ‘90s: namely, political pressure calling for new laws to regulate the executive invariably arise in response to well-publicized executive excess. Courts should not imagine they can create these legal regulations on their own in the absence of public support and debate.

#### Court enforcement doesn’t work – protecting individual rights spurs backlash

Dixon 2011 - Assistant Professor of Law, University of Chicago Law School (March, Rosalind, “Partial Constitutional Amendments” 13 U. Pa. J. Const. L. 643, Lexis)

As scholars such as Gerry Rosenberg and Michael Klarman have shown, there are a number of reasons why, if the Court attempts to protect individual rights in the face of clear opposition from a majority of Americans, it is unlikely to be effective in achieving its aims. n136 One reason is that in a decentralized judicial system such as that of the U.S., many federal district courts and state courts will refuse to give practical effect to such a ruling and will in most cases be able to do so without facing any meaningful prospect of review by the Court itself. n137 Another reason is that the meaningful protection of individual rights will often require active government support or expenditure, which will clearly be lacking if there is broad political opposition to particular constitutional change. n138 A third reason is that, if particular rights are sufficiently unpopular, they will tend to generate a form of counter-mobilization or backlash that not only limits the enjoyment of the particular right in question, but often also the broader political rights and interests of the citizens the Court is concerned to [\*677] protect. n139 Together, these factors all combine to mean that, except in certain limited circumstances, by simply refusing as a formal legal matter to overrule a prior counter-majoritarian or blocking decision, the Court will tend to have limited capacity to increase the actual enjoyment of rights those decisions may promise.

#### Congress only backs up the courts when they aren’t interventionist

Rosen 2006 - professor of law at The George Washington University and the legal affairs editor of The New Republic (June, Jeffery, “Most Democratic Branch : How the Courts Serve America” Oxford University Press, 9780195174434, ebook)

This kind of comprehensive legislative oversight is less likely in America now that the Supreme Court has removed any incentive for Congress to act; by insisting on judicial oversight without political accountability, the Court encouraged the executive to draft a series of vague and unsatisfying procedures to regulate its own conduct. If, by contrast, the Court had struck down the executive’s system of preventative detention as being unauthorized by Congress, then Congress likely would have stepped into the breach to provide whatever authorization the president thought necessary. Similarly, when the Court held that aliens detained at Guantanamo Bay, Cuba, had a right to file petitions of habeas corpus challenging their detention, Congress responded by essentially overturning the decision. If the court had ruled more modestly – holding that enemy combatants tried before military commissions could challenge the legal basis for their trials, but that other detainees captured and held outside the United States could not do so – then Congress might not have been roused to repudiate the Court’s unilateralism.

#### Intervention in executive war powers causes backlash and costs legitimacy

Huq 2012 - Assistant professor of law, University of Chicago Law School (August, Aziz Z., “Structural Constitutionalism as Counterterrorism,” 100 Calif. L. Rev. 887, Lexis)

It is worth noting that Justice Souter's argument in favor of legislative involvement might be recast in slightly different terms. He could be understood to be claiming that splitting decisional power between Congress and the President generates more libertarian outcomes because both branches must concur in the employment of a coercive power, and it is less likely that both Congress and the executive will agree on a policy that raises fundamental liberty concerns. At the very least judicial repudiation of unilateral executive action creates frictional resistance against some unwise actions that impinge on constitutional rights. But again, this argument is contingent on transient political dynamics. If Congress tends to be less libertarian than the President, it is hard to see how this bilateralism requirement could make a difference. It may also be that judicial invalidations trigger public backlashes against the courts or draw attention to the absence of government power to extinguish a right, which in turn would lead to the enactment of perhaps even more sweeping security measures. Over the long term, moreover, constant reminders by courts that the power to eliminate liberties lies with legislators may instead accentuate the probability that Congress will act against individual liberties.

## CP

#### *Amendments force court compliance even when overruling their decisions*

*Schaffner 05, Law Prof at George Washington*

*(Joan, The Federal Marriage Amendment, 54 Am. U.L. Rev. 1487)*

*Because the judicial branch has the ultimate authority over constitutional interpretation and construction, the only "check" on judicial power of constitutional interpretation is the constitutional amendment process. The amendment process should be used to overturn the Court only when it acts beyond its powers or inconsistently with constitutional principles. Otherwise, the careful balance of powers among the branches is compromised. The history of amending the Constitution to overrule Supreme Court decisions is consistent with this view and is particularly relevant here. While the U.S. Supreme Court is not being overturned by the FMA, the Massachusetts Supreme Judicial Court's Goodridge decision is in jeopardy. Goodridge was the catalyst for the fervor behind the proposed marriage amendment. Moreover, the FMA will forever prevent the U.S. Supreme Court from addressing the issue. Only four constitutional amendments have been adopted to overrule the Supreme Court. n186 They are: (1) the Eleventh Amendment, which overruled Chisolm v. Georgia; n187 (2) the Thirteenth Amendment and, most specifically, the first sentence of the [\*1519] Fourteenth Amendment, n188 which overruled Dred Scott v. Sanford; n189 (3) the Sixteenth Amendment, which overruled Pollack v. Farmer's Loan & Trust Co.; n190 and (4) the Twenty-Sixth Amendment, which overruled Oregon v. Mitchell. n191 As we will see, each amendment was in harmony with the basic principles that underlie the Constitution - individual rights, separation of powers, and federalism. Moreover, in the cases where fundamental liberty interests were at stake, the amendment reestablished individual rights in light of the Court's limited interpretation of those rights. Without analyzing the propriety of the individual Supreme Court decisions, the following will demonstrate that, unlike the FMA, the use of the amendment power to overrule these cases was proper and consistent with basic democratic principles.*

#### *Constitutional Amendments have greater compliance and endurance than judicial decisions because they garner oppositional buy in*

*Vermeule 04, Law Prof at Harvard*

*(Adrian, Constitutional Amendments and the Constitutional Common Law, Public Law and Legal Theory Working Paper No. 73,* [*http://www.law.uchicago.edu/files/files/73-av-amendments.pdf*](http://www.law.uchicago.edu/files/files/73-av-amendments.pdf)*)*

*On this view, it is an illusion that constitutional common law incurs lower decision costs in the long run, even if a given change may be more easily implemented through adjudication in the short run. Although at any given time it is less costly to persuade five Justices to adopt a proposed constitutional change than to obtain a formal amendment to the same effect, the former mode of change incurs higher decision costs over time, because common-law constitutionalism allows greater conflict in subsequent periods. A benefit of formal amendments, then, is to more effectively discourage subsequent efforts by constitutional losers to overturn adverse constitutional change. Precisely because the formal amendment process is more costly to invoke, formal amendments are more enduring than are judicial decisions that update constitutional rules; so losers in the amendment process will less frequently attempt to overturn or destabilize the new rules, in subsequent periods, than will losers in the process of common-law constitutionalism. This point does not necessarily suppose that dissenters from a given amendment come to agree with the enacting supermajority’s judgment, only that they accept the new equilibrium faute de mieux. Obviously more work might be done to specify these intuitions, but it is at least plausible to think that the simplest view, on which formal amendments incur decisionmaking costs that exceed their other benefits, is untenably crude. The overall picture, rather, is a tradeoff along the following lines. Relative to common-law constitutionalism, the Article V process requires a higher initial investment to secure constitutional change. If Mueller is right, however, constitutional settlements produced by the Article V process will tend to be more enduring over time than is judicial updating, which can be unsettled and refought at lower cost in subsequent periods.*

#### Even a failed amendment would lead to the Courts using other constitutional language for the substance of the amendment

Vermeule 2004, Law Professor University of Chicago

Adrian, “Constitutional Amendments and The Constitutional Common Law,” Public Law and Legal Theory Working Paper No. 73, September

I now put aside the issue of counterfactual relevance versus factual causation, to focus on some problems of generalization that inhere in the irrelevance thesis. These problems arise when a claim that might hold true of any particular amendment is incautiously assumed to be generalizable to all amendments simultaneously. In some cases, the generalization does not hold even if the constituent claims are each plausible, taken one by one. So I will assume, contrary to I.A., that showing any particular amendment to have been counterfactually irrelevant suffices to show it to have been causally irrelevant as well. Still, however, there is a separate problem: it does not follow that all amendments can be simultaneously irrelevant in either sense.

To elicit the problem, consider the argument that the protracted struggles over the rejected Equal Rights Amendment, which would have constitutionalized a guarantee of gender equality, were irrelevant. “Today, it is difficult to identify any respect in which constitutional law is different from what it would have been if the ERA [the Equal Rights Amendment] had been adopted.”18 The reason given for this, however, is that the Supreme Court subsequently read a strong presumption against gender-based law into the Fourteenth Amendment’s Equal Protection Clause. The ERA was irrelevant because the work it would otherwise have done was picked up by (the Court’ reading of) a different constitutional amendment.

If that is so, however, then we have established that the ERA was or would have been irrelevant only because there was some other amendment in the picture that picked up the slack, and which must therefore have itself been relevant. To be sure, the Court’s decision so to interpret equal protection was necessary for this story; but it is equally true that the Court felt it necessary to find some text, somewhere in the picture, into which gender equality could be read. Absent the text providing for “equal protection,” the Court might have used some third text altogether—say, the Privileges and Immunities Clause—but then that text would have been relevant in turn.

## Adv 2

**Policymakers should adhere to ethical principles only if they provide superior policy guidance—looking at the principle in a vacuum has no value**

**Minteer et al, 2004 (Ben, Journal of Agricultural and Environmental Ethics, 17: 131-156, ebsco)**

In sum, Dewey argued that moral principles should operate very differently than the way most contemporary environmental ethicists employ them in discussions regarding environmental policy making and problem solving. Ethical theories are, in his opinion, critical instrumentalities – tools – for analyzing and interpreting particular social problems and conflicts, not fixed ends to which we owe any sort of special treatment or obedience. As a result, the “rightness” of moral claims depends on their ability to contribute to the resolution of specific problematic situations – an ability determined through intelligent appraisal and inquiry – not on the intrinsic nature of the principle itself (Dewey, 1989, p. 280). In making this move, Dewey significantly shifted discussions of moral theory and argument away from a preoccupation with the ontological status and justification of general moral principles and moved it toward the refinement of the process of intelligent inquiry and the development of better and more effective methods of deliberation, cooperative problem solving, and conflict resolution. It is important to note that in arguing for the instrumental and experimental role of moral principles in problematic situations, Dewey did not deny the existence of such principles, nor did he reject their role within moral deliberation and decision-making. He only sought to put them in their proper place. Historically successful moral principles promoting the good and the right were not to be uncritically accepted before experimental inquiry, just as they were not to be cast aside simply because they trafficked in generalities or presumed to hold a universal currency. Instead, they should be understood as potentially useful resources for comprehending and ultimately transforming particular unstable and disrupted moral contexts: In moral matters there is ...a presumption in favor of principles that have had a long career in the past and that have been endorsed by men of insight. ...Such principles are no more to be lightly discarded than are scientific principles worked out in the past. But in one as in the other, newly discovered facts or newly instituted conditions may give rise to doubts and indicate the inapplicability of accepted doctrines (Dewey, 1989, p. 330). Still, in Dewey’s way of thinking, the conceptual and practical demands placed on previously held moral principles by the emergence of new experiences and evolving factual circumstances required an **adaptive** moral system, one in which standards, rules, and principles would necessarily undergo various degrees of revision and reinterpretation in order to meet new socio-historical conditions and changing individual desires. Often, this process led to the formulation of entirely new principles as moral inquirers responded to the dynamic and evolving quality of human experience: In fact, situations into which change and the unexpected enter are a challenge to intelligence to create new principles. Morals must be a growing science if it is to be a science at all, not merely because all truth has not yet been appropriated by the mind of man, but because life is a moving affair in which old moral truth ceases to apply. Principles are methods of inquiry and forecast which require verification by the event; and the time honored effort to assimilate morals to mathematics is only a way of bolstering up an old dogmatic authority, or putting a new one upon the throne of the old. But the experimental character of moral judgments does not mean complete uncertainty and fluidity. Principles exist as hypotheses with which to experiment (Dewey, 1959, p. 221).

**Securing life is a prerequisite to determining value**

**Schwartz, 02** (Lisa, Medical Ethics, <http://www.fleshandbones.com/readingroom/pdf/399.pdf>)

The second assertion made by supporters of the quality of life as a criterion for decision- making is closely related to the first, but with an added dimension. This assertion suggests that the determination of the value of the quality of a given life is a subjective determi- nation to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant informa- tion about their future, and comparative con- sideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves. It is important to remember the subjectiv- ity assertion in this context, so as to empha- size that the judgement made about the value of a life ought to be made only by the person concerned and not by others.

# 1NR

## K

#### The plan uncritically invokes legality to determine technical issues of war, which invokes a process of militarization that says war is sometimes ok. This is the essence of biopolitics – creating technical, legal justifications for intervention

Gregory 11, Distinguished Professor of Political Geography at UBC

Derek, University of British Columbia, “The everywhere war,” The Geographic Journal, Vol. 177, No. 3, September

I have argued elsewhere that the American way of war¶ has changed since 9/11, though not uniquely because¶ of it (Gregory 2010), and there are crucial continuities¶ as well as differences between the Bush and Obama¶ administrations: ‘The man who many considered the¶ peace candidate in the last election was transformed¶ into the war president’ (Carter 2011, 4). This requires¶ a careful telling, and I do not mean to reduce the three¶ studies I have sketched here to a single interpretative¶ narrative. Yet there are connections between them as¶ well as contradictions, and I have indicated some of¶ these en route. Others have noted them too. Pakistan’s¶ President has remarked that the war in Afghanistan¶ has grave consequences for his country ‘just as the¶ Mexican drug war on US borders makes a difference¶ to American society’, and one scholar has suggested¶ that the United States draws legal authority to conduct¶ military operations across the border from Afghanistan¶ (including the killing of bin Laden, codenamed¶ ‘Geronimo’) from its history of extra-territorial operations¶ against non-state actors in Mexico in the 1870s¶ and 1880s (including the capture of the real¶ Geronimo) (Margolies 2011). Whatever one makes of¶ this, one of the most persistent threads connecting all¶ three cases is the question of legality, which runs like¶ a red ribbon throughout the prosecution of late¶ modern war. On one side, commentators claim that¶ new wars in the global South are ‘non-political’,¶ intrinsically predatory criminal enterprises, that¶ cartels are morphing into insurgencies, and that the¶ origins of cyber warfare lie in the dark networks of¶ cyber crime; on the other side, the United States¶ places a premium on the rule and role of law in its¶ new counterinsurgency doctrine, accentuates the¶ involvement of legal advisers in targeting decisions by¶ the USAF and the CIA, and even as it refuses to¶ confirm its UAV strikes in Pakistan provides arguments¶ for their legality.

The invocation of legality works to marginalise¶ ethics and politics by making available a seemingly¶ neutral, objective language: disagreement and debate¶ then become purely technical issues that involve¶ matters of opinion, certainly, but not values.The appeal¶ to legality – and to the quasi-judicial process it invokes¶ – thus helps to authorise a widespread and widening¶ militarisation of our world. While I think it is both¶ premature and excessive to see this as a transformation¶ from governmentality to ‘militariality’ (Marzec 2009), I¶ do believe that Foucault’s (2003) injunction – ‘Society¶ must be defended’ – has been transformed into an¶ unconditional imperative since 9/11 and that this¶ involves an intensifying triangulation of the planet by¶ legality, security and war. We might remember that¶ biopolitics, one of the central projects of late modern¶ war, requires a legal armature to authorise its interventions,¶ and that necropolitics is not always outside the¶ law. This triangulation has become such a common- place and provides such an established base-line for¶ contemporary politics that I am reminded of an interview¶ with Zizek soon after 9/11 – which for him¶ marked the last war of the twentieth century – when he¶ predicted that the ‘newwars’ of the twenty-first century¶ would be distinguished by a radical uncertainty: ‘it will¶ not even be clear whether it is a war or not’ (Deichmann¶ et al. 2002).

#### **aff desire for certainty bad – decisions about war are inevitably complex and require doubt and consideration – mere recognition not enough, moral doubt must be the center of our analysis**

Neu 13 – prof @ U of Brighton

(Michael, International Relations 27(4), The Tragedy of Justified War)

A tragic conception of war does not necessarily subscribe to the pacifist prohibition, since not waging war may inevitably result in a high, indeed a higher, number of innocents being killed as well (with killing, of course, not being the only morally relevant harm that can be caused, or avoided, by waging or not waging war). Think only of Nazi- Germany. I am not necessarily claiming here that the Second World War was morally justified, but that a war against the Nazis would have been justified (or whatever adjective we might choose to describe tragic wars in case we subscribe to the dilemmatic war conception).22 Not waging war may sometimes lead to a moral disaster as well, with that disaster perhaps being even more morally unacceptable. And yet, the tragic conception shares the pacifist insistence that war inevitably wrongs innocent parties regardless of whether it is morally justified or not. Even a justified war against the Nazis would have been unjust, as it would have resulted in the wronging of innocents. It is not less wrong to kill a ‘Nazi toddler’ than it is to kill any other toddler in the world. To state this is not to put into perspective the unspeakable horrendousness of the Nazi crimes; it is not to mitigate the moral requirement to stop the Nazis from doing what they did, and it is not necessarily to deny that sometimes mass murderers cannot be stopped other than by means of force, with such force potentially being a case of acting for the best even if it results in the (unjust) killing of toddlers.¶ There are many situations in which it is rather less obvious that not waging war will lead to a moral disaster which is even more morally unacceptable than war itself. Think of three recent wars: Operations Enduring Freedom (Afghanistan), Iraqi Freedom (Iraq) and Odyssey Dawn (Libya), respectively. I am not discussing here whether any of these wars were morally justified. The point is that even if one were to grant this, one could not deny that each of these wars was also unjust, namely, for killing toddlers (as well as many other people that contemporary just war theorists would concede to be ‘non-liable’).23 The wronging could be denied by just war theorists in various ways, in particular (a) by attempting to drown the injustice of war in the dark blue sea of moral measuring and all-things-considered moral calculi; (2) by overemphasizing the normative difference between two forms of killing: intentional killing and killing with foresight and/or (c) by at least implicitly prioritizing our life over theirs. (One cannot help but think that, to some people’s minds, the approximately 3000 civilians who died on 9/11 somehow matter more than the vastly higher number of civilians who have died as a result of the US-led invasions of Afghanistan and Iraq since 2001, and this perception is owed not only to the fact, as Jean Bethke Elshtain takes it to be, that the victims of 9/11 were wickedly murdered, rather than justifiably man-slaughtered.24) None of these justificatory tools, nor any combination thereof (as far as they can consistently be combined), can take away from the injustice of justified wars.¶ The unavoidable injustice of justified war has not been sufficiently appreciated by contemporary theorists of just war, who belittle, ignore or deny it (while more fully appreciating the potential injustice of not waging war). Binary thinking dominates, according to which war is morally just or unjust, period. For all the battle among theorists about whether or not an unjust war’s conduct can be just, the protagonists are much closer in spirit than one is led to assume, for neither has any qualm about pressing a complex moral reality into a rigid binary structure25. Chris Brown’s judgment on the nature of analytical political theory captures the discursive parameters within which many theorists operate:¶ There is a particular style to analytical political theory which involves an extraordinary, at times painfully detailed, attention to the importance of constructing unbreakable chains of close theoretical reasoning, with the intention of providing an absolutely airtight account of the problem in question. Most such theorists would regard this as a statement of the blindingly obvious; the fact that most, if not all, of the major political philosophers produced work that contained contradictions, and left loose ends untied, is regarded as a strike against those classics, rather than as a reflection of their inevitably inadequate attempts to cope with the untheorisable complexities of human existence. When a writer such as Michael Walzer emulates the past by employing underspecified concepts (‘supreme emergency’, for example) or leaving certain key questions unresolved, he is described as a ‘phenomenologist of the moral life’ (Jon Elster’s phrase) who stays on the surface of events, unlike proper political philosophers who are intolerant of ambiguity and unresolved dilemmas.26¶ Likewise, and referring to Brown, Peter Euben criticizes the ‘analytical style’s fetish for constructing unbreakable chains of closely reasoned argument in order to solve political and moral problems. The assumption is that ambiguity and unresolved dilemmas (let us call them riddles) are somehow pathological’.27 What is implied here, of course, is that a categorical insistence on the resolvability of dilemmas (or at least on resolvability without substantial remainders) may itself be pathological.¶ I cannot provide an extensive account of binary thinking and lacking ambiguity in contemporary just war theory here. A few examples, picked from a pool of many more contemporary theorists whose works one could draw on, may suffice to make the relevant point. It should become apparent that most of the thinkers I refer to do recognize the ambiguity of moral justifications for war.28 However, they do not place this recognition at the centre of their moral arguments about war. That is, they somehow fail to engage with the tragedy of justified war in the broad sense. There is some fragmented talk of tragedies, moral dilemmas, dirty hands and rights infringements, but no critical engagement with the kind of thinking in just war theory that is predominantly – or in some cases even exclusively – concerned with drawing binary distinctions between just and unjust wars and military operations. The core question raised in the literature is whether or not one may wage war, and whether or not certain military operations may be undertaken; once the answer has been found, the moral case is closed – particularly, but not exclusively – in just war accounts that embrace the kind of style described by Brown.29 This style, of course, is not Michael Walzer’s. When contemporary analytical philosophers deride his contributions to just war theory as some kind of ‘story-telling’,30 devoid of conceptual clarity, argumentative rigour and methodological finesse, it is perhaps sentences like the following one that critics have in mind: ‘[T]he theory of war, when it is fully under- stood, poses a dilemma, which every theorist ... must resolve as best as he can’.31 Walzer’s thinking nonetheless falls prey to the kind of binary thinking that analytical theorists would take to new heights a couple of decades later on. While Walzer famously defends the conceptual plausibility of the notion of dirty hands, according to which especially politicians must sometimes do wrong to do right, he introduces this concept into his theory of ‘just and unjust wars’ only in his account of ‘supreme emergencies’. Here, political communities cannot help but engage in the intentional killing of innocent people:¶ [D]irty hands aren’t permissible (or necessary) when anything less than the ongoingness of the community is at stake, or when the danger we face is anything less than communal death. In most wars, the issue never arises; there are no supreme emergencies; the normal defense of rights holds unquestioned sway.32¶ This feature also sets ‘most wars’ apart from the case of torturing the captured terrorist who refuses to reveal the location of a number of bombs that are about to go off in the midst of a metropolis.33 According to Walzer, the terrorist is wronged in the ticking bomb scenario, rightly wronged, but wronged. The toddler bombed into pieces in justly con- ducted wars, on the contrary, is not wronged in Walzer’s view. This is implausible. If some version of Walzer’s doing-wrong-to-do-right thinking is sound, it must also apply to the case of dropping bombs in too close proximity of innocent toddlers, rather than only to the case of torturing non-innocent terrorists.¶ A similar criticism can be launched against Brian Orend’s work, whose substance and style is similar to Walzer’s. On the one hand, and much like Walzer, Orend thoughtfully points out that ‘reflection upon war’s tragedy is something which just war theory can benefit from, and which has hitherto been ignored’.34 On the other hand though, and again like Walzer in spirit, Orend follows up his own reference to war’s tragedy only in his discussion of the moral structure of supreme emergencies: ‘The whole thing is a wretched moral tragedy and, no matter what you do, you’re wrong’.35 While Orend actually sets out to reject Walzer’s dirty hands account of supreme emergencies, his critique veils a much more fundamental agreement between the two thinkers: War itself is no case of doing wrong to do right (Walzer) and no wretched moral tragedy (Orend); rather, it can be morally evaluated in binary terms. This is implied by statements such as the following two: ‘Provided that the other criteria of just war are fulfilled, then the defence of rights, the protection of people, and the punishment of aggression seem worth the cost of incidental, indirect casualties’36 and ‘Although the people in the aggressor state retain their human rights, these will not be violated, provided that the victim state fights its just war in accord with the laws of war’.37 The first sentence somehow belittles what is effectively the bombing of toddlers into pieces (given certain plausible assumptions about the nature of modern warfare), while the second denies that the targeting of toddlers with foresight necessarily constitutes a violation of rights. Walzer’s and Orend’s intentionality restriction on war’s tragedy must be lifted. A more explicit denial of the tragedy of justified war, and one that resembles more closely the style referred to by Brown, is to be found in C.A.J. (Tony) Coady’s writings. Coady suggests that:¶ if we accept that some incidental killing (collateral damage) is morally legitimate in a just war, either because of the [Doctrine of Double Effect] or for some other principled reason, it is then unclear (at least to me) how the non-combatants ... have been wronged. They have not been done any injustice, though their deaths are a horrible and deeply regrettable outcome of what we are assuming to be right action.38¶ Coady goes on to state, even more remarkably:¶ It would of course be psychologically understandable (to say the least) that if they [i.e. the unintentionally targeted non-combatants] had access to appropriate weapons they might shoot down the bomber. Such (as Hobbes insisted) is the imperative of self-preservation. It might even be morally excusable since they may not know, or positively disbelieve, that the target is legitimate or their likely deaths proportionate.39¶ On this view, there is really nothing wrong about bombing toddlers, provided certain conditions are met. This view is apparently shared by the just war theorist A.J. Coates, who writes that ‘[r]ealistically, [noncombatant deaths] are an inevitable part of any war, and especially of modern war. Though an undoubted physical evil, they may not constitute a moral evil’.40¶ Part of the reason why ‘collateral damage’ may not constitute a moral evil from a just war theorist’s point of view is that the damage is proportionate. While just war theory is not a consequentialist doctrine, it cannot dispense with making proportionality judgments that involve the weighing of some lives against some other lives (or even against abstract notions like ‘military advantage’). Particularly when delivered with a high degree of precision and/or certainty, such judgments tend to be insensitive to the tragedy of justified war. Take the example of Thomas Hurka, who concedes that ‘[j]udgments about proportionality in war cannot be made simply or mechanically’, but then proceeds to confront the reader with a passage like the following:41¶ I wish I could say more precisely ... how many enemy civilian deaths are proportionate side effects of saving one of our civilians. But I do think that when weighing its own civilians’ lives against those of enemy civilians it will merely collaterally kill, a nation may give some preference to the former: more than zero preference, but not as much as is permitted when no killing is involved. If the nation is trying to prevent terrorist attacks like those of September 11, 2001, then tragic though the result will be, and assuming the nation makes serious efforts to minimize collateral harm, it may kill somewhat more enemy civilians if that is unavoidable in saving a smaller number of its own.42¶ Hurka’s wish for more precision is precisely the problem here. It is a wish for unambiguous, action-guiding judgments about war, judgments that no longer leave any space for interpretation and disagreement, for doubt and agony: for the recognition of war’s tragedy. Hurka concedes that he finds himself unable to make more precise judgments about proportionality, while not questioning the binary structure of his moral argument. We might come to a point at which we cannot be certain about the judgments we make, he is suggesting. We may (unintentionally) kill 100 of them, in order to save 90 of us, but not, perhaps, in order to save 50: at some point, we begin to be uncertain. However, until we reach that point of uncertainty, our judgments are safe, and the task of the moral philosopher of war is to expand the moral space in which we can make unambiguous, safe moral judgments. Perhaps, one day, we can crush the other moral space entirely: the space in which we experience moral doubt about what is right, and moral agony about doing what, despite all doubt, we might assume to be right. In fairness, Hurka does recognize the tragedy of justified warfare, but only as some sort of disclaimer, in a sub- ordinate clause. It is not the kind of recognition that would lead him to abstain from weighing the lives of their civilians against those of our soldiers in the following way:¶ I ... feel forced to treat them as of approximately equal weight, so our soldiers’ and enemy civilians’ lives count roughly equally. While a nation may prefer its own civilians’ lives to those of enemy civilians, it may not do the same with its soldiers’ lives. Instead, it must trade those off against enemy civilians’ lives at roughly one to one.43

#### causal linear IR predictions are inherently incomplete – epistemic uncertainty is the defining principle of international politics

Hendrick 9 – PhD from Bradford U, contributor to Oxford University Press

(Diane, “Complexity Theory and Conflict Transformation: An Exploration of Potential and Implications”, http://www.brad.ac.uk/acad/confres/papers/pdfs/CCR17.pdf)

In international relations Neil E. Harrison makes the case for the value of complexity theory given the unpredictability of events in world politics that has confounded expectations based on existing theories. While there are various explanations proffered for this situation, Harrison sees the tendency of current theories of world politics to work with models of the social world that present it, for analytical purposes, as a simple system as fundamentally misleading. In contrast to realism, that sees political behaviour being driven by essential human characteristics within fixed structures, complexity theory sees world politics as a self- organising complex system in which macroproperties emerge from microinteractions. It is precisely the interactions among interdependent but individual agents within the system that account for the surprising events that defy prediction through the simple models used at the moment. Harrison thus takes the state as a system that is not closed but open to other natural and social systems: “defined as a political system, it is open to technological, cultural and economic systems that influence political choices and processes.” (Harrison, 2006 p. 8) The state is also influenced by other states and by numerous transboundary interactions between major corporations, NGOs, terrorist groups, etc. In such complex systems it is not possible to trace linear causal links: “Despite occasional attempts to bring in domestic politics the state is usually modelled as a unit with exogenous identity and objective interests. This greatly reduces the range of possible causal explanations for any perceived social event, simplifying causal analysis and hypothesis generation and testing.” (Harrison, 2006 p. 11) It is a disconcerting fact that outcomes may have multiple causes and that in different contexts, historically or spatially, the same cause may lead to different outcomes. This cannot be captured by the over-simplified models of international systems. Given the multiple, mutually influencing interactions within social systems it is necessary to look to the evolution of the system rather than to individual events when seeking the causes of observed effects. Complexity theory focuses on processes and relations between components, or in the case of social systems, agents, rather than the components themselves. In a similar criticism to that of Walby, Harrison points to the tendency of theories in international relations to focus on one level of analysis and to present competing theories based on these. Where systems are theorised, they are limited by being presented as nested. Harrison notes that the impact of positive feedback in systems has been acknowledged: “ ‘(I)ntra-national and inter-national events all impinge on one another in a cyclical and ongoing process within which the self-aggravating propensities frequently exceed the self-correcting ones by an unacceptably large amount’ (Singer 1970, 165) thus national elites use rhetoric for domestic political consumption that can incite potential enemies, the public and military desire the psychological comfort of discernible superiority, media amplify inter-nation conflicts, and the benefits of participation in the ideological mainstream preserve the distribution of power and inhibit changes in the historic patterns that transform inevitable conflicts into costly rivalries.” (Harrison, 2006 p. 28) While Walby refers to examples of the importance of the notion of path dependence with reference to differences in development between countries, Harrison sees its relevance at the level of the international state system. Thus development through time is not wholly random and there are limits or constraints created by the prior development of the system that restrict the possible options for change. In this way the international system may change its structure without becoming another system and here Harrison brings the example of the Cold War. While it is true that the Cold War was produced by historical interactions, it is still not possible to claim that it was an inevitable effect of historical causes. The myriad microinteractions that occurred introduce unpredictability into development, especially given the above-mentioned possibility of positive feedback. Harrison is optimistic with regard to the gains from the application of complexity theory to world politics in theoretical but also in policy terms: “This ontological shift from simple to complex systems opens new paths to knowledge and understanding yet incorporates much current knowledge; it validates novel research methods; and theories f

ounded in this approach will generate radically different solutions to policy problems.” (Harrison, 2006 p. 2)

#### **1. the permutation is severance or it links – our criticism is about the way that legal restrictions sanitize our thinking about the morality of war, the affirmative is tied to defending legalism because of the nature of their restriction – severance is a voting issue because it denies stable link ground and makes the aff a moving target**

#### **2. doubt must come first, the affirmative’s footnoting of the alternative doesn’t solve and obscures moral analysis**

Neu 13 – prof @ U of Brighton

(Michael, International Relations 27(4), The Tragedy of Justified War)

I cannot provide an extensive account of binary thinking and lacking ambiguity in contemporary just war theory here. A few examples, picked from a pool of many more contemporary theorists whose works one could draw on, may suffice to make the relevant point. It should become apparent that most of the thinkers I refer to do recognize the ambiguity of moral justifications for war.28 However, they do not place this recognition at the centre of their moral arguments about war. That is, they somehow fail to engage with the tragedy of justified war in the broad sense. There is some fragmented talk of tragedies, moral dilemmas, dirty hands and rights infringements, but no critical engagement with the kind of thinking in just war theory that is predominantly – or in some cases even exclusively – concerned with drawing binary distinctions between just and unjust wars and military operations. The core question raised in the literature is whether or not one may wage war, and whether or not certain military operations may be undertaken; once the answer has been found, the moral case is closed – particularly, but not exclusively – in just war accounts that embrace the kind of style described by Brown.29 This style, of course, is not Michael Walzer’s. When contemporary analytical philosophers deride his contributions to just war theory as some kind of ‘story-telling’,30 devoid of conceptual clarity, argumentative rigour and methodological finesse, it is perhaps sentences like the following one that critics have in mind: ‘[T]he theory of war, when it is fully under- stood, poses a dilemma, which every theorist ... must resolve as best as he can’.31 Walzer’s thinking nonetheless falls prey to the kind of binary thinking that analytical theorists would take to new heights a couple of decades later on. While Walzer famously defends the conceptual plausibility of the notion of dirty hands, according to which especially politicians must sometimes do wrong to do right, he introduces this concept into his theory of ‘just and unjust wars’ only in his account of ‘supreme emergencies’. Here, political communities cannot help but engage in the intentional killing of innocent people: [D]irty hands aren’t permissible (or necessary) when anything less than the ongoingness of the community is at stake, or when the danger we face is anything less than communal death. In most wars, the issue never arises; there are no supreme emergencies; the normal defense of rights holds unquestioned sway.32

#### 3. no net benefit - the aff can't win that they reduce violence, they merely transfer it/recreate cycles

#### **4. mutually exclusive – the quest for negative peace trades off with positive peace through pacifism**

Pankhurst 3

(Donna-, May 1, Development in Practice, “The 'sex war' and other wars: towards a feminist approach to peace building”, Vol. 13 # 2&3, Infomaworld; Jacob)

Turning to the meanings of the term ‘peace’, Galtung’s (1985) conception of negative peace has come into widespread use, and is probably the most common meaning given to the word, i.e. the end or absence of widespread violent conflict associated with war. A ‘peaceful’ society in this sense may therefore include a society in which social violence (against women, for instance) and/or structural violence (in situations of extreme inequality, for example) are prevalent. Moreover, this limited ‘peace goal’, of an absence of specific forms of violence associated with war, can and often does lead to a strategy in which all other goals become secondary. The absence of analysis of the deeper (social) causes of violence also paves the way for peace agreements that leave major causes of violent conflict completely unresolved. Negative peace may therefore be achieved by accepting a worse state of affairs than that which motivated the outburst of violence in the first place, for the sake of (perhaps short-term) ending organised violence. Galtung’s alternative vision, that of positive peace, requires not only that all types of violence be minimal or non-existent, but also that the major potential causes of future conflict be removed. In other words, major conflicts of interest, as well as their violent manifestation, need to be resolved. Positive peace encompasses an ideal of how society should be, but the details of such a vision often remain implicit, and are rarely discussed. Some ideal characteristics of a society experiencing positive peace would include: an active and egalitarian civil society; inclusive democratic political structures and processes; and open and accountable government. Working towards these objectives opens up the field of peace building far more widely, to include the promotion and encouragement of new forms of citizenship and political participation to develop active democracies. It also opens up the fundamental question of how an economy is to be managed, with what kind of state intervention, and in whose interests. But more often than not discussion of these important issues tends to be closed off, for the sake of ‘ending the violence’, leaving major causes of violence and war unresolved—including not only economic inequalities, but also major social divisions and the social celebration of violent masculinities.