# Quarters—Aff vs Wayne NW

## 1AC

### 1ac 1

#### Advantage one Preemption

#### Presidential authority is modeled globally – causes global preemptive conflict

Sloane, 08 [Associate Professor of Law, Boston University School of Law, Robert, Boston University Law Review, April, 88 B.U.L. Rev. 341, p. lexis]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland's sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a "very delicate, plenary and exclusive power ... as the sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress," n52 has been (correctly, in my view) criticized on a host of grounds. n53 But in practice, in part for institutional and structural reasons, n54 it accurately reflects the general **preeminence of the President** in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say - with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945, n55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art. n56 Many states took note, for example, when in the 2002 National Security Strategy of the United States ("NSS"), President Bush asserted that the United States had the right under international law to engage in preventive wars of [\*350] self-defense. n57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS's robust claims of a right to engage in preventive wars of self-defense. n58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as "rogue states," such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan. n59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a rogue regime asserting a right to engage in preventive war; the deterioration of international human rights norms against practices like torture, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but the practical ability of future Presidents to exercise that power both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### That precedent causes global escalation

Rehman, 12 [9/13/12, Fehzan, International Relations at the University of Westminster, "Analyzing America’s National Security Strategy", e-International Relations, http://www.e-ir.info/2012/09/13/analyzing-americas-national-security-strategy/]

Another implication on sovereignty, due to the NSS, was, yet again, demonstrated by the killing of Osama Bin Laden in Pakistan. Some academics have argued that it impeded national sovereignty. Pakistan’s foreign secretary Salman Bashir asserted that this “violation of sovereignty, and the modalities for combating terrorism, raises certain legal and moral issues which fall … in the domain of the international community” (Bowcott, 2011). Others have claimed that America sees itself as above international law and feels that they are able to take actions for which a smaller sovereign state would have received major international repercussions. Many academics believe that what America is doing is setting a new precedent, as it “continues to confuse preemption with preventive war” (Korb & Wadhams, 2006, p.1). This could lead to the demise of the international laws and norms that prohibit the offensive attacks by one state against another for simply self-gain (Korb & Wadhams, 2006, p.2). Other academics have accused the Bush Doctrine of “legitimating a doctrine of anticipatory war” (Wheeler, 2003, p.199). Senator Edward M. Kennedy assured that the Bush Doctrine “would also send a signal to governments the world over that the rules of aggression **have changed** for them too, which could increase the risk of conflict between countries” (Kennedy, The Bush Doctrine of Pre-Emption). The criticism of the NSS’s advancement of pre-emptive strike has been reverberated in foreign ministries across the world. Secretary General Kofi Annan, in his speech to the General Assembly in September 2003, articulated his deep restlessness with a policy that: “represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last fifty eight years… if it were to be adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force” (Annan, 2003). “The Bush administration has stubbornly resisted these warnings about the dangers of the preemptive policy set out in the NSS” (Wheeler, 2003, p.199). Kaufman agrees with the international stance that the NSS has set a dangerous precedent (Kaufman, 2007. P142). The NSS has devised other states, like India-Pakistan, Russia-Georgia, and China-Taiwan, legitimate rationales of unilateral military force for its own gains. This has already happen with the Russia-Georgia crisis of August 2008, where Russia used military intervention in South Ossetia against Georgia. Who is to say that India may use this precedent to use military force against Pakistan, asserting that it believes that Pakistan is a threat to India’s national security? Similarly, China, as an emerging super power, may want to compete with or follow American democracy promotion through pre-emption and preventive wars against Taiwan for the promotion of its Chinese values.

#### These conflicts go nuclear

Arbatov, 13 [Military Power in World Politics in the 21st Century Alexei Arbatov is Director of the International Security Center at the Institute of World Economy and International Relations; Full Member of the Russian Academy of Sciences, Real and Imaginary Threats, http://eng.globalaffairs.ru/number/Real-and-Imaginary-Threats-15925]

At the same time, there is an ongoing rivalry between them, involving **indirect means** and **local conflicts**, for economic, political and military influence in the post-Soviet space and in some regions (especially rich in raw materials) in Asia, Africa and Latin America. In addition, they are seeking to gain military and technological advantages over rivals to exert political and psychological pressure on them (missile defense, and high-precision conventional weapons, including suborbital and hypersonic ones). Military force is used to stake one’s claim to control over important geographical areas and lines of communication (the Eastern Mediterranean, the Black Sea, the Hormuz and Taiwan Straits, the Strait of Malacca, the South China Sea, shipping lanes in the Indian Ocean, extensions of the continental shelf and communications in the Arctic, etc.). Intense rivalry is going on in arms markets (especially in countries of the Middle East, Asia, Latin America, and North Africa). This rivalry involves political leverage and has political consequences. Of all hypothetical conflicts among the great powers, a conflict between China and the U.S. over Taiwan would be of the greatest danger. There is a possibility of an aggravation of the crisis over South China Sea islands, in which Southeast Asian countries will support the U.S. against China. Generally, U.S.-Chinese rivalry for domination in the Asia-Pacific region is becoming the epicenter of global military-political confrontation and competition. Failure of cooperation among the great powers and alliances against common security threats (terrorism, the proliferation of WMD and their delivery systems) **is** quite **imaginable**, which would bring about inability to counter new challenges and threats and an increasing chaos in the world economy and politics. **More** likely are conflicts **between major regional powers**: India and Pakistan, Israel (together with or without the United States) and Iran, and North and South Korea. The danger of these conflicts is exacerbated by their possible escalation to a nuclear war. The greatest threat in this regard is posed by military-political confrontation in South Asia.

#### The plan precludes conflict escalation – binding Congressional role signals restraint

Damrosch, 97 [Lori Fisler Damrosch, Professor of Law at the Columbia University School of Law, “Use of Force and Constitutionalism”, Columbia Journal of Transnational Law, 36 Colum. J. Transnat'l L. 449, Lexis]

Structural-institutional explanations, on the other hand, point to features of liberal-democratic systems that could act as brakes on conflict-initiation, as the American framers and Kant in Perpetual Peace had long ago suggested. n27 To the extent that executive military powers are subject to checks and balances--for example, **by accountability to the legislature**--war (or at least war-initiation) ought to become less likely under the structural-institutional view. Latter-day exponents of [\*457] the Kantian claim have thus hypothesized that structural constraints on executive military powers belong among the factors that may well explain (or help explain) the peace among democracies. n28 For this reason, democracy-and-peace research has pointed to the extent of constraints on the chief executive as one of the components of democracy which ought to be measured and studied in relation to the war-involvement of democratic regimes; n29 but the role of such constraints in keeping democratic polities from becoming involved in wars (or certain wars) is still only imperfectly understood. n30 The perception that one's adversary is (or is not) constrained **may be just as important as actual constraints**: "the presence of democratic institutions provides a visible and generally correct signal of "practical dovishness'--restraints on war in the form of institutional constraint if not of inherent disposition." n31

[TO FOOTNOTE] n31. Russett, supra note 23, at 39 (citing War and Reason, supra note 23, at 157-58) (the "presence of democratic institutions provides a basis for rivals to have an above-average prior belief that the potential foe is restrained from using force too readily. When this restraint exists for both sides, **amicable settlements of disputes are more likely**." ). See also War and Reason, supra note 23, at 272 ("When both sides are democracies, each actor is likely to be dovish, to see the other as dovish, and to be encouraged to pursue negotiated solutions to differences."); Russett, supra note 23, at 141 n.17 (tracing precursors of "the insight that forms of government signal a state's likely international behavior"). Conversely, where one or both sides do not perceive the other as possessing democratic institutions (e.g., U.S. perception of Spain in 1898), the restraint may fail to take effect.

#### It is necessary to create constraints that decrease the prevalence of war

Martin, 11 [ Copyright (c) 2011 Brooklyn Law Review Brooklyn Law Review Winter, 2011 Brooklyn Law Review 76 Brooklyn L. Rev. 611LENGTH: 52175 words ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with International Law NAME: Craig Martin+ BIO: + Visiting Assistant Professor, University of Baltimore School of Law]

Conclusion The prevention of armed conflict is central to modern international law, and reducing the prevalence of war one of the enduring philosophical problems with which man has grappled. The causes of war are understood to operate at three levels--that of the individual, the state, and the international system. It follows that we need mechanisms that are capable of addressing causes within all three levels. In legal terms, that requires legal constraints at both the domestic and the international level. Yet in the twentieth century, we have left the legal constraint of armed conflict entirely to a positivist international legal system, one with thin theoretical and philosophical foundations, and without any of the domestic implementation that is necessary to improve compliance with international law regimes. The proposed Model would be a significant step towards the development of more robust and multi-dimensional legal constraints on the use of armed force, thereby reducing the prevalence of war. The domestic implementation of the international law principles on the use of force would be consistent with the ever increasing penetration of international law into domestic legal systems, and the use of domestic law mechanisms to enforce and enhance compliance with the international law regimes. This incorporation of international law principles would not only operate to ameliorate the permissiveness of the international system, **the primary cause of war** at the international level, but it would also engage significant domestic causes of war as well. The move is consistent with and supported by international law compliance [\*729] theory and constitutional law theory, operating to realize both international law and constitutional law objectives. The requirement for legislative approval of government decisions to use armed force would amplify and strengthen the operation of the first provision. Such legislative involvement would also enhance democratic accountability and bring to bear the deliberative and oversight functions of the legislature on the decision-making process, making it both more transparent and subject to diverse perspectives and arguments. It would more fully realize the structure originally thought to make republics less likely to wage war, and would engage the domestic causes of war in important ways. Subjecting the entire process to a limited form of judicial review would place a further check on the system, helping to ensure that the decision-making process was conducted as required, and genuinely based on the mandated considerations. Together, the separation of powers elements of the Model would operate to resolve aspects of the Kantian dilemma, reducing the tendency of democracies to engage in armed conflict with illiberal states, while strengthening the features of democracies that help explain the democratic peace. This would not only be a benefit to the international society more generally, but it would fundamentally benefit the states that adopt the Model, not only by increasing democratic accountability and strengthening the rule of law, but ultimately by protecting them from involvement in illegitimate and unwise military adventures.

#### The propensity for conflict is causally related to executive influence

Daskal and Vladeck 14 (Jennifer, Assistant Professor of Law – American University Washington College of Law, “After the AUMF,” Harvard National Security Journal, Vol. 5, January, <http://harvardnsj.org/wp-content/uploads/2014/01/Daskal-Vladeck-Final1.pdf>)

Thus, while certain entities and individuals clearly fall outside of the Administration’s definition of “associated forces” (for example, a group of two or more terrorists with no direct affiliation with al Qaeda, such as the two brothers responsible for the 2013 Boston Marathon bombing; or entities that share ideological affinities with al Qaeda but do not engage in any hostilities against the United States or its coalition partners), there is a total lack of transparency as to who is covered. Even with respect to al Qaeda in the Arabian Peninsula (“AQAP”), the government has never clarified whether operations against its members are covered by the AUMF because they are deemed to be “part of” al Qaeda or because the group qualifies as an “associated force.” 35 **Public statements by DoD officials have only served to** confuse matters more, suggesting that there may be a long list of covered groups— while remaining unclear as to whether such references are to “associates” covered by the AUMF or “affiliates” that fall under a separate (heretofore non-public) definition that have ties with al Qaeda, but are not in fact subsumed under the 2001 AUMF. 36 As a result, there is no clarity as to which, if any, of the many groups operating in the tribal areas of Northwest Pakistan qualify, or whether and under what circumstances entities such as al Shabaab, 37 al Qaeda in the Islamic Maghreb (“AQIM”), or the Nusra Front—or parts of such groups—might also be encompassed within the definition of “associated forces.” The pervasive secrecy surrounding the government’s application of that concept has led some to speculate that the Executive Branch will simply subsume “extra-AUMF” cases within the existing AUMF framework, shoehorning emerging threats into the increasingly outdated ambit of the original statute simply by labeling the groups that pose them as “associated forces.” 38 Were this to happen, the government could—despite the incapacitation of those responsible for the September 11 attacks and the pending withdrawal of all U.S. ground troops from Afghanistan—seek to rely on the AUMF as authority for **offensive military operations in Mali, Syria, or Somalia**, even if the targets were not also deemed members of al Qaeda, to say nothing of operations in other corners of the globe with loose affiliations with al Qaeda and little to no connection to the September 11 attackers. 39 To be clear, we are not suggesting that this shift has already taken place. Indeed, we do not and would not know if it did, as the list of covered groups remains classified. 40 There is, however, relatively widespread agreement that such a shift would be unsatisfactory. 41 The more that the AUMF is used to justify the use of military force against those with no connection to the September 11 attacks and the ensuing armed conflict, the more it becomes an essentially limitless authorization, allowing the President to use force as a matter of first resort in a wide range of conflicts, untethered to the self-defense justification for the post-9/11 use of force, and irrespective of constitutional limits that give Congress, not the Executive, the authority to declare war.42 As we explain in Part II below, this is not an appropriate interpretation of the statute, and it is not an appropriate exercise of presidential power. If new groups emerge that pose a threat sufficient to warrant independent use-of-force authority, the government should affirmatively and publicly identify them and obtain from Congress specific authorization to use force against those groups. If, in contrast, no special use-of-force authority is needed to respond to these groups, then this only underscores our more fundamental point: that a new, expanded AUMF is unnecessary. The proponents of the Hoover proposal, however, have seized upon an alternative possibility: in their view, the government will seek to use force against so-called “extra-AUMF” threats regardless of the underlying statutory authorization. They rely upon this presumed fact, coupled with a concern about the lack of transparency as to which groups fall within the AUMF, to justify a new approach presented as a moderate solution: Congress delegates to the President the power to identify those groups against which military force is necessary pursuant to specific statutory criteria. In other words, Congress delegates its war-declaration authority to the Executive Branch, subject to specified criteria. The proposal further requires such delegations to be public—with ex post auditing and reporting to address the current transparency deficit. As the Hoover proposal concludes: a listing system modeled on this approach best cabins presidential power while at the same time giving the president the flexibility he needs to address emerging threats. Such a listing scheme will also render more transparent and regularized the now very murky process by which organizations and their members are deemed to fall within the September 2001 AUMF. 43 The Hoover proposal thus rests on a view—which we share—of the insufficient transparency of the identification of “associated forces.” Its solution, however, is a new use-of-force regime in which Congress enacts a wholesale delegation to the President of the power to identify the groups against which armed conflict is authorized, rather than case-by-case authorizations of such force by Congress. Although we agree that greater transparency and accountability are necessary limitations on the government’s scope of authority to use force against “associated forces” under the AUMF, we fail to see how the transparency concern justifies the type of open-ended or broad force authorizations that the Hoover paper advocates. 44 To the contrary, as we explain below, such an approach rests on two assumptions that we vigorously dispute: that an expansive and expanding war is inevitable and that no alternative means exist for achieving a comparable result. Indeed, not only do such alternatives exist, but an ever-expanding armed conflict paradoxically threatens to make the nation less safe in the long term.

### 1ac 2

#### Advantage Two Coherence

#### The plan resolves operational goal displacement—streamlines crisis response policy

**Pearlstein, 9 -** Visiting Scholar and Lecturer in Public and International Affairs, Woodrow Wilson School of Public & International Affairs, Princeton University (Deborah, “Form and Function in the National Security Constitution” 41 Conn. L. Rev. 1549, lexis)

What the new functionalists fail to engage, however, are flexibility's substantial costs, especially in grappling with an emergency. For example, organizations that depend on decentralized decision-making but leave subordinates too much flexibility can face substantial principal-agent problems, resulting in effectively arbitrary decisions. The problem of differences in motivation or understanding between organizational leaders and frontline agents is a familiar one, a disjunction that can leave agents poorly equipped to translate organizational priorities into priority-consistent operational goals. As Sagan found in the context of U.S. nuclear weapons safety, whatever level of importance organizational leadership placed on safety, leaders and operatives would invariably have conflicting priorities, making it likely that leaders would pay "only arbitrary attention to the critical details of deciding among trade-offs" faced by operatives in real time. n186 One way of describing this phenomenon is as "goal displacement"-a narrow interpretation of operational goals by agents that obscures focus on overarching priorities. n187 In the military context, units in the field may have different interests than commanders in secure headquarters; n188 prison guards have different [\*1603] interests from prison administrators. n189 Emergencies exacerbate the risk of such effectively arbitrary decisions. Critical information may be unavailable or inaccessible. n190 Short-term interests may seek to exploit opportunities that run counter to desired long-term (or even near-term) outcomes. n191 The distance between what a leader wants and what an agent knows and does is thus likely even greater.

The Cuban Missile Crisis affords striking examples of such a problem. When informed by the Joint Chiefs of Staff of the growing tensions with the Soviet Union in late October 1962, NATO's Supreme Allied Commander in Europe, American General Lauris Norstad, ordered subordinate commanders in Europe not to take any actions that the Soviets might consider provocative. n192 Putting forces on heightened alert status was just the kind of potentially provocative move Norstad sought to forestall. Indeed, when the Joint Chiefs of Staff ordered U.S. forces globally to increase alert status in a directive leaving room for Norstad to exercise his discretion in complying with the order, Norstad initially decided not to put European-stationed forces on alert. n193 Yet despite Norstad's no- provocation instruction, his subordinate General Truman Landon, then Commander of U.S. Air Forces in Europe, increased the alert level of nuclear-armed NATO aircraft in the region. n194 In Sagan's account, General Landon's first organizational priority-to maximize combat potential-led him to undermine higher priority political interests in avoiding potential provocations of the Soviets. n195

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disastetr [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.

Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200

Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.

[Pearlstein continues]

In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without replacing those rules with more than the most general guidance about custodial intelligence collection. n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208

Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

#### The existence of restrictions induces superior executive branch decision-making

**Cole, 12** – professor of law at Georgetown (David, “Are We Stuck with the Imperial Presidency?” 6/7,

<http://www.nybooks.com/articles/archives/2012/jun/07/are-we-stuck-imperial-presidency/?pagination=false>)

Posner and Vermeule contend that more specific statutory regimes have also failed to constrain the president. The War Powers Resolution, the National Emergencies Act, and the International Emergency Economic Powers Act, for example, all enacted after Watergate to rein in presidential action, have proved largely ineffectual. Presidents have repeatedly argued that the statutes do not apply. The Obama administration recently did so when it implausibly claimed that the War Powers Resolution—requiring congressional approval of any use of troops in “hostilities” that last more than sixty days—did not apply to the military intervention in Libya. And Congress has failed to exercise meaningful oversight even where such statutes call for it to do so. All of this seems right, to a point. But ironically, Posner and Vermeule base their “legal realist” critique on an excessively formalist assessment of whether law constrains, looking almost entirely at statutory language on its face and at judicial decisions. They argue that legal standards are often manipulable, and that judges therefore often defer to the executive. But the fact that law usually does not dictate particular executive decisions—hardly a surprising revelation—does not mean that it does not constrain them. And in particular, it is misguided to look only at judicial decisions, for law operates outside the courts as well. Thus, while the APA’s open-ended standards undoubtedly permit judges to defer to the executive, they do not require them to defer. Some judges will defer; others will not, as when the Supreme Court in 1983 reversed the National Highway Traffic Safety Administration’s repeal of a requirement for passive restraints in all new cars, or when the D.C. Circuit Court in 2008 rejected the Environmental Protection Agency’s rules for mercury emissions. The executive generally cannot know in advance whether court review will be strict or deferential, and that uncertainty itself has a deterrent effect on the choices it makes, even in the many cases that do not end up in court. In my experience, lawyers for the executive branch generally take legal limits seriously. They take an oath and have been trained to uphold the law. They know that claims of illegality can undermine their programmatic objectives. They cannot predict when they will end up in court and so try to avoid legal challenges. To focus exclusively on specific judicial decisions is to miss law’s daily operation outside the courts. Similarly, to look only at enacted laws misses the checking role that legislators play through other means—such as holding oversight hearings, launching investigations, or simply requesting information about executive practices. The experiences of executive officials, who devote much of their time to compliance with legal mandates and to defending their agency’s actions in Congress and the courts, contradict Posner and Vermeule’s armchair claims that legislative and judicial checks are illusory.3 And President Obama, who has had to fight Congress—and has often lost—on virtually every initiative he has pursued, from economic reform to health care to Guantánamo’s closure, would certainly be surprised to learn that his power knows no limits.

#### Incoherent policies undermine military operations – the plan solves

Gallagher, 11 [Lieutenant Colonel Joseph V. Gallagher III, United States Marine Corps, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication”, Parameters, summer, http://strategicstudiesinstitute.army.mil/pubs/parameters/articles/2011summer/gallagher.pdf]

Understanding the Gap Since World War II, a wide gap has developed between Congress and the executive branch with respect to the critical issue of war powers. Like a black hole, this gap draws in the roles and abilities of the branches to execute foreign policy. Ostensibly, this gap has resulted from two symbiotic behaviors: executive aggressiveness and congressional abdication. The historical record reveals the evolution of this phenomenon. But history does not clearly reveal the structural and political dimensions of this phenomenon. The Constitution grants most foreign policy prerogative to Congress in Article I. Article II grants the president very limited authority in the foreign policy arena.49 This results in a structural dichotomy because the executive branch is better positioned to lead and execute, but congressional actions are more indirect and diffuse. Congress’s bicameral design and widely dispersed support base do not optimize the expeditious exercise of its power. Consequently, considerable power has flowed from Congress to the president.50 Execution of US foreign policy is fraught with political uncertainty and vulnerability. Compared to domestic issues, foreign policy decisions and initiatives are susceptible to greater unpredictability.51 Therefore, when dealing with high levels of uncertainty, Congress often finds it easier to defer to the executive branch, thereby reducing congressional members’ exposure or liability.52 Because most Americans elect their congressional representatives based on domestic issues, they tend to pay little attention to foreign policy; members of Congress often defer acting on foreign policy matters as a safer political option.53 This political safe haven of indecision, however, does not serve the nation well because it encourages concentrating power in the executive branch. Likewise, it severs the link between the electorate, the constitutionally intended legislative process, and the executor. Matters of war, however, require the collective involvement of the people. Militaries fight wars, but nations go to war. In the final analysis, **congressional abdication** of its Article I authority to oversee the nation’s foreign policy has exposed America to unacceptable strategic risk. War, Strategy, and the Constitution One of Clausewitz’ greatest contributions to the study of war is his emphasis on the conceptual link between politics and war. “War is never a separate phenomenon,” Clausewitz wrote, “but the continuation of politics by other means.”54 Behind this proposition is a deeply textured argument about the intrinsic political purpose of war. This political purpose encompasses the components comprising war: societal disposition, economic capability, and strategy. Clausewitz advised leaders to thoroughly consider any use of violence. So the link between war and politics “should never be overlooked.”55 Even in the 21st century, war retains this political dimension despite the recent emergence of nonstate actors and transnational groups.56 In other words, success at the tactical level of war first requires careful preparations at the political and strategic levels. The enabling institutions for success in war—Congress, the president, the cabinet, and other advisors—all need to be fully engaged in the development of feasible, suitable, and acceptable strategy.57 And this carefully crafted strategy needs to include legitimate justification for violence, rigorous calculation and valuation of political objectives, and commitment of resources sufficient to achieve strategic objectives.58 Since 1945, the United States has built the world’s most capable war-fighting machine. So why, then, have most of the nation’s large military interventions since World War II ended in defeat or, at best, stalemate? Political leaders should attend more to what Clausewitz calls the political dimensions of war—national unity and the political value of the objective—as inseparable from national and military strategy. War theorists have long emphasized the importance of national unity and the political value of the war objective. Thousands of years ago, Sun Tzu identified the necessary pre-condition of national unity for successful war strategy.59 National unity enables political leaders to muster resources needed to win wars and to amass the human capital that makes an army. Clausewitz advised, “to discover how much of our resources must be mobilized for war, we must first examine our own political aim.”60 National unity underwrites the commitment the nation needs to successfully prosecute war, provided the war has political value commensurate to the effort expended.61 The founders directed this nation to use a collaborative process to assess the political value of a war. So the Constitution requires Congress to deliberate on the decision to go to war and, when it so decides, to declare war. Therefore, the Constitution serves as the guarantor of ensuring national unity and a legitimate valuation of the war’s political objective—provided through the mechanism of the war declaration. Consider the language of the 1941 war declaration against Japan. It captures the national unity, the political value of the objective, and the will and support of Congress to support the war.62 A Risk to Strategy As the practice of declaring war has become passé, American strategy has likewise become disjointed and disconnected from national security objectives. Following World War II, an acquiescent Congress and an aggressive presidency have, for decades, fostered a strategic climate that failed to maintain the links between the political dimensions of the state and its strategy. The predominant “NSC-68 thinking,” largely a product of executive national security panels that administrations have embraced and Congress has blithely followed, provided inadequate guidance on how objectives and capabilities should be joined to produce coherent overall strategy.63 This connection, Clausewitz observed, is necessary for success in war.

[Gallagher continues]

For example, US strategy following World War II ironically came to resemble the German strategy of the early 20th century, relying heavily on military ways and means that failed to address the political and economic components of warfare.64 Historians are quick to extol the superiority of the German military machine, but Germany lost two world wars. Similarly, the United States has pursued a strategy built on loosely linked operational and tactical successes. Unfortunately, without concretely defined end states specified in a coherent all-encompassing strategy, these successes have not achieved national strategic ends. In Vietnam, Afghanistan, and Iraq, our leaders failed to properly define the national strategic ends, so the attendant strategies have been inchoate. Leaders’ attempts to match ways and means to fluctuating or poorly defined ends resulted in unacceptable levels of uncertainty and risk. These protracted and strategically uncertain conflicts are alien to America’s strategic culture, which has little tolerance for long, risky, or uncertain conflicts.65 More recently, as the executive branch exercises greater authority in directing military interventions, the gap between risk and strategy becomes wider. Theater commanders charged with developing adequate or complete strategies with sound ends and feasible ways to achieve them lack confidence in congressional support to provide the means necessary to achieve these strategic objectives.66 As the world’s only superpower, the United States can expect asymmetrical conflict as the norm. Future adversaries will increasingly focus on the strategic target of the American people’s collective will in their efforts to subvert our national strategy.67 Vietnam Strategy The tragic military and political experience of Vietnam was spawned by an aggressive president promoting foreign policy absent congressional and public blessings.68 Vietnam War strategy affirms how congressional abdication on war matters resulted in protracted disaster. As historian George Herring points out, “America’s failure in Vietnam and the tragedy that resulted also make clear what can happen when major decisions are made without debate or discussion.”69 After Congress passed the Gulf of Tonkin Resolution, the strategy formulation and decision process operated vacuously, failing to determine strategic objectives and the means to obtain them.70 President Johnson made numerous decisions concerning the strategy and operations of the war, resulting in a strategy of incremental gradualism. Despite some tactical successes, Vietnam strategy never developed sufficient coherence nor the sustained support of the American people. Through executive design, Congress and the people never fully vetted the value of the political objective in the context of large-scale military intervention before President Johnson committed forces to combat.71 As a result, President Johnson lacked the top cover of a war declaration. This prevented him from unleashing the nation’s enormous military capability to achieve full, quick military success. Instead, he implemented a strategy that he thought was least likely to jeopardize his legislative agenda, upset the domestic apple cart, or threaten his reelection.72 In retrospect, the incoherence of the Vietnam strategy reflected the real value of the political objective in the eyes of the American people; they could not have cared less about Vietnam.73 Afghanistan and Iraq Strategies The strategies for the ongoing conflicts in Iraq and Afghanistan have both failed to properly incorporate national strategic ends, ways, and means in a consistent manner across the whole of government. In the absence of a national consensus on strategic ends, Congressman James Marshall (D-GA) not surprisingly identified: The mismatches among the needs of post-conflict stability operations in Afghanistan and Iraq, the size and the types of military forces available, and the pitiful scarcity of capability in the civilian branches of our government to effect nation-building efforts, as well as, our utter incompetence as a government in strategic communications.74 US Afghanistan strategy has continually morphed from 2001 to the present. The sweeping language in the September 2001 congressional resolution did little to shape the effort and focus the nation on acceptable long-term national ends.75 A careful analysis of coalition command and control structures indicates how the United States, partners, and allies prosecuted any number of operational strategies.76 Strategic priorities changed from counterterrorism to counterinsurgency, to nation building, back to counterterrorism, then eventually to a combination of all of them. During the lead-up to Operation Iraqi Freedom, significant executive power may have subjected the strategy to unnecessary risk. Indeed, failure of Congress to deliberate a declaration of war may have resulted in poorly defined national objectives and shoddy strategy.77 Significant executive powers facilitated side-stepping full disclosure of policy risk. The president’s obsession with regime change subordinated other key elements crucial to a comprehensive strategy, particularly with respect to clear strategic ends. This obsession obscured full debate and railroaded the nation into a course of action fraught with unexamined risk. Additionally, it masked the real cost of the strategy in terms of lives and dollars and inevitably compromised support for the effort when the strategy did not unfold as planned.78 Eventually, the wars in Iraq and Afghanistan and their strategies became focal points in the 2008 presidential campaign. Similar to President Johnson on Vietnam, candidate Obama politicized the Iraq and Afghanistan conflicts, promising on the campaign trail that, if elected, he would redeploy US combat forces out of Iraq and refocus on Afghanistan as the central front on the war against extremism. This politicalization of the war efforts may have removed strategic considerations from decisionmaking, exposing the strategies to additional, unnecessary risk at a crucial time.79 Another Cry for Reform In 2009, The National War Powers Commission, a bipartisan group commissioned under the auspices of the University of Virginia’s Miller Center for Public Affairs, reviewed the existing WPR and addressed executive overreach with respect to military intervention. Chaired by Warren Christopher and James Baker, the 2009 War Powers Commission concluded that the 1973 WPR does not function as intended and needs replacement.80 Commission members testified before the House Foreign Affairs Committee and Senate Foreign Relations Committee recommending a policy to restore the constitutional grounding for mandatory congressional war declaration for “large” force deployments and “significant armed conflict.”81 The Commission recommended replacing the 1973 WPR with the War Powers Consultation Act of 2009 that adds fidelity to the size, scope, and types of conflict subject to the Act. Most significantly, it directs the president to consult with Congress before introducing troops into “significant armed conflict.”82 Despite the bipartisan clout of former Secretaries of State Warren Christopher and James Baker, the Commission’s recommendations still lacked the necessary political power to prevent the president from deploying forces into significant armed conflict without the full blessing of Congress.83

[Gallagher continues]

Conclusion Reminiscent of the 1973 WPR, the National War Powers Commission’s effort to redress war power authority hoists another warning flag about war power overreach and executive presumption of constitutional power. But it is insufficient to have an academic debate over the constitutionality of war authority. Since the end of World War II, an assertive executive branch has run roughshod over an abdicating Congress, which has compromised US military efficacy. It has repeatedly resulted in the expenditure of national blood and treasure for strategically hollow ends. The Constitution is, in itself, a strategic national security document. The founders’ wisdom imbued within Articles I and II capture, in the Clausewitzian sense, the necessary prerequisites for successful prosecution of war. As the executive and congressional branches deviate from US constitutional foundations with respect to war authority, they increasingly leave the military—and the nation—vulnerable to unacceptable strategic risk. The current interpretations or disregard for war power authority, as practiced today, no longer maintain the necessary connective tissue between political and military muscle movements. As a result, US national and military strategy has become disjoined from legitimate political will. American military operations are hampered by the leadership’s inability to harness the national will. If this nation declared war when it engaged in war, as the Constitution requires, the United States would wage fewer of them—and be far better positioned to win them.

#### Effective power projection stops hotspot escalation to nuclear war

O’Hanlon, 07 [Michael O’Hanlon, Senior Fellow and Sydney Stein Jr. Chair in Foreign Policy Studies at the Brookings Institution and Frederick Kagan, Resident Scholar at the American Enterprise Institute, and “The Case for Larger Ground Forces”, Stanley Foundation Report, April, http://stanleyfoundation.org/publications/other/Kagan\_OHanlon\_07.pdf]

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino- Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnelintensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### That prevents great power war, economic collapse, and global governance failures

**Thayer 13**—PhD U Chicago, former research fellow at Harvard Kennedy School’s Belfer Center, political science professor at Baylor (Bradley, professor in the political science department at Baylor University, “Humans, Not Angels: Reasons to Doubt the Decline of War Thesis”, International Studies Review Volume 15, Issue 3, pages 396–419, September 2013, dml)

Accordingly, while Pinker is sensitive to the importance of power in a domestic context—the Leviathan is good for safety and the decline of violence—he neglects the role of power in the international context, specifically he neglects US power as a force for stability. So, if a liberal Leviathan is good for domestic politics, a liberal Leviathan should be as well for international politics. The primacy of the United States provides the world with that liberal Leviathan and has four major positive consequences for international politics (Thayer 2006). In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for the world. The first has been a more peaceful world. During the Cold War, US leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy and the security blanket it provides reduce nuclear proliferation incentives and help keep a number of complicated relationships stable such as between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood—**particularly the worst form—great power wars.** Second, American power gives the United States the ability to spread democracy and many of the other positive forces Pinker identifies. Doing so is a source of much good for the countries concerned as well as the United States because liberal democracies are more likely to align with the United States and be sympathetic to the American worldview. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Rather, it is because they are more transparent, more likely to want to resolve things amicably in concurrence with US leadership. Third, along with the growth of the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, mobility of capital, and labor markets. The economic stability and prosperity that stems from this economic order is a global public good. Fourth, and finally, the United States has been willing to use its power not only to advance its interests but to also promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The US military has participated in over 50 operations since the end of the Cold War—and most of those missions have been humanitarian in nature. Indeed, the US military is the earth's “911 force”—it serves, de facto, as the world's police, the global paramedic, and the planet's fire department. There is no other state, group of states, or international organizations that can provide these global benefits. Without US power, the liberal order created by the United States will end just as assuredly. But, the waning of US power, at least in relative terms, introduces additional problems for Pinker concerning the decline of violence in the international realm. Given the importance of the distribution of power in international politics, and specifically US power for stability, there is reason to be concerned about the future as the distribution of relative power changes and not to the benefit of the United States.

#### Future interventions are likely – they escalate and go nuclear absent congressional restrictions

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

An Increasing Tempo of Operations All of this came just before the United States emerged as the world's single global power -- a global empire -- that by definition would be waging war at an increased tempo, from Kuwait, to Haiti, to Kosovo, to Afghanistan, to Iraq, and so on in an ever-increasing number of operations. **And** now in Libya, we have reached the point that even resolutions are no longer needed. It is said that there is no precedent for fighting al Qaeda, for example, because it is not a nation but a subnational group. Therefore, Bush could not reasonably have been expected to ask for a declaration of war. But there is precedent: Thomas Jefferson asked for and received a declaration of war against the Barbary pirates. This authorized Jefferson to wage war against a subnational group of pirates as if they were a nation. Had Bush requested a declaration of war on al Qaeda on Sept. 12, 2001, I suspect it would have been granted overwhelmingly, and the public would have understood that the United States was now at war for as long as the president thought wise. The president would have been free to carry out operations as he saw fit. Roosevelt did not have to ask for special permission to invade Guadalcanal, send troops to India, or invade North Africa. In the course of fighting Japan, Germany and Italy, it was understood that he was free to wage war as he thought fit. In the same sense, a declaration of war on Sept. 12 would have freed him to fight al Qaeda wherever they were or to move to block them wherever the president saw fit. Leaving aside the military wisdom of Afghanistan or Iraq, the legal and moral foundations would have been clear -- so long as the president as commander in chief saw an action as needed to defeat al Qaeda, it could be taken. Similarly, as commander in chief, Roosevelt usurped constitutional rights for citizens in many ways, from censorship to internment camps for Japanese-Americans. Prisoners of war not adhering to the Geneva Conventions were shot by military tribunal -- or without. In a state of war, different laws and expectations exist than during peace. Many of the arguments against Bush-era intrusions on privacy also could have been made against Roosevelt. But Roosevelt had a declaration of war and full authority as commander in chief during war. Bush did not. He worked in twilight between war and peace. One of the dilemmas that could have been avoided was the massive confusion of whether the United States was engaged in hunting down a criminal conspiracy or waging war on a foreign enemy. If the former, then the goal is to punish the guilty. If the latter, then the goal is to destroy the enemy. Imagine that after Pearl Harbor, FDR had promised to hunt down every pilot who attacked Pearl Harbor and bring them to justice, rather than calling for a declaration of war against a hostile nation and all who bore arms on its behalf regardless of what they had done. The goal in war is to prevent the other side from acting, not to punish the actors. The Importance of the Declaration A declaration of war, I am arguing, is an essential aspect of war fighting particularly for the republic when engaged in frequent wars. It achieves a number of things. First, it holds both Congress and the president equally responsible for the decision, and does so unambiguously. Second, it affirms to the people that their lives have now changed and that they will be bearing burdens. Third, it gives the president the political and moral authority he needs to wage war on their behalf and forces everyone to share in the moral responsibility of war. And finally, by submitting it to a political process, many wars might be avoided. When we look at some of our wars after World War II it is not clear they had to be fought in the national interest, nor is it clear that the presidents would not have been better remembered if they had been restrained. A declaration of war both frees and restrains the president, as it was meant to do. I began by talking about the American empire. I won't make the argument on that here, but simply assert it. What is most important is that the republic not be overwhelmed in the course of pursuing imperial goals. The declaration of war is precisely the point at which imperial interests can overwhelm republican prerogatives. There are enormous complexities here. Nuclear war has not been abolished. The United States has treaty obligations to the United Nations and other countries. Covert operations are essential, as is military assistance, both of which can lead to war. I am not making the argument that constant accommodation to reality does not have to be made. I am making the argument that the suspension of Section 8 of Article I as if it is possible to amend the Constitution with a wink and nod represents a mortal threat to the republic. If this can be done, what can't be done? My readers will know that I am far from squeamish about war. I have questions about Libya, for example, but I am open to the idea that it is a low-cost, politically appropriate measure. But I am not open to the possibility that quickly after the commencement of hostilities the president need not receive authority to wage war from Congress. And I am arguing that neither the Congress nor the president has the authority to substitute resolutions for declarations of war. Nor should either want to. Politically, this has too often led to disaster for presidents. Morally, committing the lives of citizens to waging war requires meticulous attention to the law and proprieties. As our international power and interests surge, it would seem reasonable that our commitment to republican principles would surge. These commitments appear inconvenient. They are meant to be. War is a serious matter, and presidents and particularly Congresses should be inconvenienced on the road to war. Members of Congress should not be able to hide behind ambiguous resolutions only to turn on the president during difficult times, claiming that they did not mean what they voted for. A vote on a declaration of war ends that. It also **prevents a president from acting as king** by default. Above all, it prevents the public from pretending to be victims when their leaders take them to war. The possibility of war will concentrate the mind of a distracted public like nothing else. It turns voting into a life-or-death matter, a tonic for our adolescent body politic.

### 1ac plan

#### The United States federal government should statutorily establish a permanent war powers consultation committee, requiring the President to enter into binding consultation with the committee over the introduction of United States armed forces into significant armed conflict, and require a Congressional authorization vote following consultation. The statute should define ‘significant armed conflict’ as any conflict expressly authorized by Congress, or any mission conducted by United States armed forces pursuant to Rules of Engagement authorizing the use of force. The statute should include an explicit point-of order mechanism.

#### We reserve the right to clarify ;)

### 1ac solvency

#### Solvency!

#### The plans restrictions spur democratic debate over the use of force and create strategic coherence in U.S. foreign policy even if there are risks of non-enforcement

**Smidt, 9 –** LIEUTENANT COLONEL MICHAEL L. SMIDT, US Army. Paper submitted in fulfillment of a Masters in Strategic Studies degree at the US Army War College ( “THE PROPOSED 2009 WAR POWERS CONSULTATION ACT” dtic.mil)

Although the primary benefit from a joint Congressional and Presidential decision to commit the armed forces into armed conflict, it turns out, over the long run, there are significant strategic benefits in complying with the shared power construct laid out in the Constitution. Certainly Clausewitz never formally supported the ideals of the United States Constitution. However, his writings regarding the importance of government in warfare ironically do suggest there are strategic advantages for a government to follow its political principles. While certainly no two wars are alike, there are, according to Carl von Clausewitz, three common components present in all armed conflicts. This “paradoxical trinity,” as he describes it, is “composed of primordial violence, hatred and enmity. . . .”82 The first of these three aspects is generally associated with the “people,” the second, “with the commander and his army,” and the third with “the government.”83 Clausewitz goes on to explain that a successful military policy or strategy will be one that considers each leg of the trinity and balances the relationship between them like “an object suspended between three magnets.”84 Clausewitz explains that any successful wartime strategy must include participation by the political arm. In the final analysis, the use of military force is nothing more than the clear manifestation and forceful exercise of state policy by violent or potentially violent means.85 Therefore, the state political arm must clearly articulate to the military the underlying political objective sought and how the government defines success.86 Strategy is neither a purely political creation, nor a military one;87 however, “strategy ultimately derives its significance from the realm of politics. . .”88 and “the political dimension of strategy is the one that gives it meaning.”89 The governing body, not just its military forces, must participate in the making of strategy. When a decision is made to apply military force to a problem, the body politic must determine the scope, magnitude and duration of its commitment. The state must decide what it is willing to spend in terms of lives and treasure. The state must calculate what risks it is willing to assume regarding its own national security and that of its allies and the international community. 90 Failure of the government to participate in the making of strategy can lead to potentially catastrophic results on the battlefield.91 Achieving the political object underlying the decision to use military power determines the degree of effort and commitment required of the military.92 Success on the battlefield may be as much about the quality, clarity, and suitability of a state’s political objectives as it is about the relative military vitality, strength and tactical superiority of the various opponents in the conflict. When the government fails to fulfill its responsibility to set and clearly articulate policy, it creates strategic uncertainty within its own population, its armed forces and allies. Moreover, absent clearly articulated state policy, the military element of power will not enjoy its full deterrent potential against the enemy.93 As discussed above, the Framers created a system that requires the participation of both branches of government in national security decisions. Unless both branches participate, the President is acting without congressional power and he is therefore only exercising half of the available war making power of the US government. Moreover, where the President fails to consult with Congress and seek concurrence for any significant commitment of forces in hostilities, or where Congress chooses to avoid participating in any such decision, strategic uncertainty may be the result. Unless both Congress and the President clearly articulate their objectives through a declaration of war or similar legislative or regulatory equivalent, US armed forces, US allies, and perhaps most importantly, the enemy, will not be certain of America’s resolve and determination. Allies might question whether the United States has the stomach to continue for a lengthy period. Commanders will be uncertain as to the funding available and the degree to which the country will mobilize. Where both political branches participate in any significant commitment of the armed forces of the United States, constitutional principles are preserved and there are strategic benefits as well. First, adherence to these priciples demonstrates to the world that as a democratic institution, built on the rule of law, the United States remains faithful to the principles and checks and balances established in the Constitution. Second, the government leg of Clausewitz’s trinity is strengthened where both branches are involved. Any failure to include both political branches means that only half of the power available to the government is employed. Purposes and Problems Associated With The 1973 War Powers Resolution The stated purpose of the 1973 War Powers Resolution (Resolution),94 is to “insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or such situations.”95 The Resolution limits a President’s power to introduce troops into hostilities where there is (1) a congressional declaration of war, (2) a specific congressional statutory authorization, or (3) a “national emergency created by attack upon the United States, its territories or possessions or its armed forces.”96 Presidents of both political parties have argued that their power to deploy troops exceeds these three limited circumstances. For example, Presidents have asserted the power to “rescue Americans abroad, rescue foreign nationals where such action facilitates the rescue of U.S. citizens, protect U.S. Embassies and legations, suppress civil insurrection, implement the terms of an armistice or cease-fire involving the United States, and carry out the terms of security commitments contained in treaties.”97 Just to name a few, examples where Presidents have deployed military forces which exceed the authority of the Resolution include Grenada, Yugoslavia and Haiti.98 Even many strong supporters of congressional power agree that the Resolution overly restricts the President in the types of situations he may send armed forces.99 The Resolution contains requirements relating to consulting with, and reporting to, Congress. However, because of poor drafting, these otherwise justifiable requirements create issues. Presidents are to “consult” with Congress “before” introducing forces into “hostilities or into situations where imminent involvement in hostilities is clearly indicated.”100 The President must continue to consult with Congress regularly until the forces are removed from the situation.101 However, the Resolution does not explain with whom among the 535 members of Congress the President is required to consult.102 The President is required to provide a written report to Congress whenever he introduces forces into hostilities or when hostilities are imminent. He must report deploying troops to a foreign country “equipped for combat” unless those troops are involved in training exercises.103 Unless the President is granted a 30 day extension, 60 days after such a report is provided to Congress, the President must remove the forces if Congress does not affirmatively declare war or provide a statutory equivalent.104 No President has ever filed a report as required by this section.105 Many law scholars agree that Section 5(c),106 which requires the President to withdraw troops from hostile areas where Congress issues a “concurrent” resolution to withdraw troops, is unconstitutional. Only one branch of government is required to participate in a concurrent resolution. In INS v. Chadha, 107 a case decided by the Supreme Court subsequent to the 1973 War Powers Resolution, the Court struck down the practice of using one-house legislative vetoes.108 The Supreme Court has never decided a case on the constitutionality of the War Powers Resolution. Over the course of its existence, over 100 individual members of Congress, acting alone or in small contingents, have petitioned the courts in order to challenge the legality of presidential decisions to deploy American forces. However, Congress as a whole has never sought to compel the President to comply with the Resolution, and therefore, the Supreme Court has avoided considering the issue.109 For example, individual members of Congress have redressed the courts for actions in El Salvador, Nicaragua, Grenada, tanker escort duty in the Persian Gulf, the first Iraq war, and Kosovo. In each case, the judicial branch managed to avoid making a determination on the constitutionality of the Resolution due to the courts’ determination to leave issues of national security to the political branches.110 In addition to its apparent constitutional defects, from a policy standpoint, some have argued the Resolution is detrimental to the operational effectiveness of U.S. forces. The Resolution places troops and civilians abroad at greater risk and has the potential to negatively affect a strategy based partially on deterrence.111 Critics of the Resolution point out that in 1983 members of Congress cited the Resolution and insisted on specifically knowing how long the Marines would be stationed in Lebanon. A precise timetable would certainly have benefited terrorist groups in terms of their own strategy and whether they could simply outlast the United States.112 When the U.S. agreed to reflag ships traveling through the Persian Gulf in the late 80’s, there was some concern that this reflagging action required the President to report to Congress the possibility of hostilities. Some in the international community may have been concerned that the notice to Congress of possible hostilities could have been a masked indication of the real U.S. intent to use the reflagging operations as a pretext introduce combat forces in the area for follow on combat activities in the region.113 Cirtics point out that the Resolution places citizens abroad at greater risk because the Resolution does not permit the President to send troops to rescue Americans overseas.114 Americans overseas may have been placed at greater risk in Vietnam had the President sought congressional authority to conduct a rescue when Vietnam collapsed, in Grenada when Cubans took control of that county, and in Panama when Americans were subject to attack prior to the removal of Noriega. Certainly Congress would have granted authority to rescue in these cases; however, having to seek permission takes time where time is often of the essence. Where secrecy is paramount, having to go to Congress would threaten compromise.

[smidt continues]

Although Presidents have asserted the Resolution is unconstitutional, various Presidents have made decisions in order to avoid triggering certain provisions of the Resolution and thereby placing troops at risk. For example, US soldiers in El Salvador were not allowed to carry M16s in order to avoid triggering the “equipped for combat” provisions. 115 Marines in Lebanon were not permitted to carry loaded weapons and were under a very defensive ROE so that the President would not have to report to Congress that the Marines were facing “imminent involvement in hostilities.”116 As with the creation of many laws, there are potential unintended consequences. The timetables in the Resolution grant the President the ability to operate up to 90 days in certain cases without reporting to Congress. Critics of the Resolution have argued that a President may elect to bring far greater military force to bear on an opponent than is reasonable in order to ensure any military action would be complete prior to exceeding the time limits listed in the Resolution.117 Conversely, these same time tables might give strength to an enemy trying to hold on for 90 days and incite the enemy to surge and to create maximum U.S. casualties in during that same 90 day period.118 Finally, the Resolution seeks to limit a President’s authority to introduce forces into hostilities based on a mutual defense treaty unless Congress specifically grants the executive the power to deploy forces into hostilities as part of congressional implementation of such a treaty.119 These means that in a regional arrangement such as NATO, where an attack on one is considered an attack on all, the President could not come to the defense of the relevant ally without first getting a green light from Congress. This might give potential treaty partners cause for concern because although the President is promising support, his promise is contingent on congressional support and the time it takes to secure that support. Defects Cured in the Proposed 2009 War Powers Consultation Act Although the War Powers Commission concluded that the 1973 War Powers Resolution is unworkable, the Commission concurs that creating an effective legislative framework requiring both branches to participate in any decision to commit U.S. armed forces is worth pursuing. The Commission has proposed a statute that addresses the shortcomings of the 1973 War Powers Resolution by “eliminating aspects of the War Powers Resolution of 1973 that have opened it to constitutional challenge,” and by “. . . promoting meaningful consultation between the branches without tying the President’s hands.” The Act also focuses on “providing a heightened degree of clarity and striking a realistic balance that both advocates of the Executive and Legislative Branches should want.”120 If the proposed 2009 War Powers Consultation Act (Act) is enacted, it will repeal the 1973 War Powers Resolution.121 It does not seek to “define, circumscribe, or enhance the constitutional war powers of either the Executive or Legislative Branches of government. . . .”122 Its primary purpose is to require the participation of both political branches of government when American armed forces are involved in “significant armed conflict.”123 The proposed Act defines “significant armed conflict” as any conflict “expressly authorized by Congress,” or “any combat operation by U.S. armed forces lasting more than a week or expected by the President to last more than a week.”124 The drafters of the proposed Act wanted to involve Congress “only where consultation seems essential.”125 As an example of the application of the definition of significant armed conflict, the Commission points out that President Reagan’s “limited air strikes against Libya would not be considered ‘significant armed conflicts’”, but conversely, the “two Iraq Wars clearly would be . . .” the later would require consultation, the former would not.126 Certain types of combat or combat like operations are specifically exempted from coverage by the statute. For example, the Act would not be triggered when the President is acting to “repel attacks, or prevent imminent attacks” against the “United States, its territorial possessions, its embassies, its consulates, or its armed forces abroad.”127 The Act also exempts “limited acts of reprisal against terrorists or states that sponsor terrorism.”128 Other types of troop deployments expressly exempt from the coverage of the statute include foreign disaster relief,129 “acts to prevent criminal activity abroad,”130 covert operations,131 training exercises,132 and rescuing U.S. citizens abroad.”133 Therefore, the Act would not apply in a Grenada-like rescue of American citizens. Unlike the War Powers Resolution of 1973, the proposed Act clearly lays out with whom in Congress the President must consult when the statute is applicable.134 The Act further requires the President to consult with the listed members of Congress, “Before ordering the deployment of United States armed forces into significant armed conflict . . . .”135 However, where the “need for secrecy or other emergent circumstances precludes consultation. . .” prior to deploying forces, the President must consult with the members of Congress listed in the Act within “three calendar days after the beginning of the significant armed conflict.”136 The President is required to consult with Congress on matters of national security and foreign policy “regularly.”137 Where a “significant armed conflict” is involved, the statute requires continued consultation every two months.138 In addition to consultation with Congress, the Act requires the President to submit a written “classified” report to Congress “setting forth the circumstances necessitating the significant armed conflict, the objectives, and the estimated scope and duration of the conflict.”139 The President must submit the report prior to ordering or approving sending of troops into significant armed conflict.140 Where however, there is a need for “secrecy” or where “emergent circumstance” exists, he must submit the report within three calendar days after the beginning of any significant armed conflict.141 The Act also creates an annual written reporting requirement for the President “due each first Monday of April each year” regarding all ongoing operations.142 Section 5 has been described as “the heart” of the Proposed War Powers Consultation Act of 2009.143 If Congress has not authorized the commitment of U.S. forces in a “significant armed conflict” after receiving presidential notice, then the Act states that the, “Joint Consultation Committee shall introduce an identical concurrent resolution in the Senate and House of Representatives calling for [its] approval.”144 If a concurrent resolution supporting the action is defeated, then any Senator or Representative may file a joint resolution of disapproval which “shall” be voted on within five calendar days.145 The joint resolution will have the force of law only if signed by the President, or if approved by Congress over the President’s veto.146 Section 5 recognizes that the framers of the Constitution intended Congress to play a role in foreign affairs and to influence the use of military force abroad. This Act requires Congress to vote up or down on a President’s decision to commit military forces in a significant armed conflict. Unlike the 1973 War Powers Resolution, the Act does require the President to remove forces from hostilities where Congress fails to act. Forcing those in Congress to vote early either places the entire strength of the government behind the action, or, in the alternative, may require the removal of troops where the entire body politic, and by extension, the American people do not support the effort. While the Act does not delineate which branch has primacy in war making decisions, or who ultimately has the responsibility to decide, , or exactly what roles the respective branches are to play; it does establish a framework requiring each branch is required to participate and work together in a cooperative and deliberative fashion when deciding whether to employ military force.147 Conclusion It is in the United States’ best interests to enact the proposed 2009 War Powers Consultation Act on the grounds that it will encourage shared decision making for any significant use of the armed forces. Joint, rather than unilateral, congressional and presidential foreign policy decisions to use the military are more consistent with the national security framework in the Constitution. The Framers intentionally built a framework which would prevent an overly aggressive government from engaging military forces without deliberate and thoughtful consideration,148 but one which would also be able to take resolute action and defend itself and its interests when necessary.149 Both branches of government have certain indispensable keys relating to the effective use of the military as an instrument of power.150 The constitutional requirement for near simultaneous use of these keys creates a shared power framework. However, Presidents have often been willing to commit troops without first consulting with Congress and Congress has simply gone along. This phenomenon has been described by one scholar as, “Executive custom and Congressional acquiescence.”151 The proposed 2009 War Powers Consultation Act preserves the spirit and objectives of the 1973 War Powers Resolution. The Act facilitates the participation of both political branches of government in any decision to commit forces in any significant operation, while addressing the constitutional and policy defects associated with the Resolution. Passage of the Act should not only serve to protect the American people from an adventurous President, but citizens will also benefit because the Act seeks to force a reluctant Congress to debate and participate in these most important governmental decisions. The Act will go a long way toward restoring the balance of power established by the Framers in the Constitution. In a democracy built on the rule of law, it is imperative that the government comply with the ideals enunciated in the Constitution even though this might, on occasion, mean more time and debate. As discussed above, the Act carves out exceptions to the consultation and voting requirements for emergency situations where time is of the essence. Congress is the peoples’ branch of government and the people need to be heard when their sons and daughters are sent into harms way.152

[smidt continues]

Moreover, when the government adheres to constitutional provisions in matters of national security, strategic advantages will follow. First, in the general sense, the government will appear strong when in compliance with its own rules. The government will not appear panicked or stressed. Second, with regard to the specific conflict involved, when both branches of government support a military action, it will be clear to allies, neutrals and enemies alike the United States means business and is willing to use its military element of power to resolve the issue. Third, a declaration of war or similar statutory pronouncement would have the pragmatic advantage of legal sanction and all that that entails. A declaration of war or similar vote as required by the 2009 War Powers Consultation Act would serve to mobilize the American public.153 And finally, U.S. commanders and soldiers on the ground we be in a better position to plan and execute military operations on the ground. The political objectives established by the policy makers will be more clear. Commanders will have a better idea of how the civilian leadership defines success when national interest are at stake. Where the entire government supports a military action, commanders and soldiers will have reason for faith that the government will provide the resources and personnel required. As has been said, Unless Congress has un-equivocally authorized a war at the outset, it is a good deal more likely to undercut the effort, leaving it in a condition that satisfies neither the allies we induced to rely on us, our troops who fought and sometimes died, nor for that matter anyone else except, conceivably the enemy.154 Congress can easily strangle any war effort where it has not been consulted in advance.155 Of course there are potential risks involved with any attempt to shore up the Constitution with statutory law. First, any legislative framework carries with it the possibility of creating new and unforeseen problems. An overly ambitious attempt to create a more shared balance of power between the Executive and the Legislature, could cause the system to take on the nature of a more parliamentary form of government, which, when viewing the European experience since 9/11, and our own experience during the Revolutionary War, may not be in the United States’ best security interests. Others may argue that we do not need a legislative solution which attempts to mandate exactly how the two branches are to balance the war making power. What we currently have works. Our current system, as flawed as it may be, is one born both of constitutional theory and the “gloss” of historical practice. As Justices Jackson and Douglas teach us in Youngstown,156 both political branches have participated to varying degrees in the decisions to use the armed forces. These two justices seem to be suggesting that the Constitution created a theoretical framework of balanced or shared power, leaving it to history and application to fill in the details. Statutory refinements may only serve to frustrate the application of the Constitution. And finally, it is questionable whether the 2009 War Powers Consultation Act would be enforced anymore than the 1973 War Powers Resolution has been. As with the 1973 War Powers Resolution, there is no guarantee that one or both branches will not simply ignore the law. Furthermore, based on the political question doctrine, the Supreme Court may be just as reluctant to enforce or interpret the Act as it has been the Resolution. These potential risks are minimal as compared to the likely benefits of the Act. The potential restoration of a balanced and shared war making power as originally intended by the Framers outweighs the risks. After 35 years of War Powers Resolution experimentation, the drafters have been able to create a statute which will alleviate the constitutional and policy problems with the Resolution. And as a pragmatic benefit, compliance with the act will lead to greater strategic certainty. From the trench, that sounds like a strategy worth pursuing.

#### The plans modifications to the WPCA avoid circumvention and solidify a congressional lead role

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

The inherent flaws in the War Powers Resolution have recently become the focus of an initiative far more important than the scholarly debate that has previously been its primary product.16 In a recently published report,17 the National War Powers Commission, composed of distinguished former public officials and nationally renowned constitutional scholars proposed the enactment of the War Powers Consultation Act of 2009 (WPCA) as a replacement for the War Powers Resolution.18 This Commission performed its work at the Miller Center of the University of Virginia, and its report articulates in compelling terms why the WPR has failed19, and why consultation between the two political branches has and remains the sine qua non of constitutionally legitimate war powers decisions. Accordingly, the members of the Commission: urge that in the first 100 days of the next presidential Administration, the President and Congress work jointly to enact the War Powers Consultation Act of 2009 to replace the impractical and ineffective War Powers Resolution of 1973. The Act we propose places its focus on ensuring that Congress has an opportunity to consult meaningfully with the President about significant armed conflicts and that Congress expresses its views. We believe this new Act represents not only sound public policy, but a pragmatic approach that both the next President and Congress can and should endorse. The need for reform **stems from** the gravity and uncertainty posed by war powers questions. Few would dispute that the most important decisions our leaders make involve war. Yet after more than 200 years of constitutional history, what powers the respective branches of government possess in making such decisions is still heavily debated. The Constitution provides both the President and Congress with explicit grants of war powers, as well as a host of arguments for implied powers. How broadly or how narrowly to construe these powers is a matter of ongoing debate. Indeed, the constitution’s framers disputed these very issues in the years following the Constitution’s ratification, expressing contrary views about the respective powers of the President, as “Commander in Chief,” and Congress, which the Constitution grants the power “To declare War.”20 The proposals focus on “meaningful” consultation is unsurprising. Indeed, this was a key concern of the drafters of the WPR. As is noted throughout the Report, consultation must be meaningful in order to ensure the cooperative decision-making process essential to constitutionally valid war powers decisions21. This in turn leads to the core of the Commission’s proposal: that consultation occurs prior to, or immediately after a use of the armed forces in a “significant armed conflict.” This term is defined in the proposal as either a use of the armed forces expressly authorized by Congress, or any other use ordered by the President that involves hostilities lasting more than 7 days It is clear from the Commission Report that the key objective of this proposal is to not only ensure cooperation between the political branches of government in relation to the decision to engage in the nation in hostilities, but perhaps more importantly to define with greater precision than the WPR those situations in which such cooperation is required. As I will argue below, this objective is consistent with the historical constitutional “gloss” of war powers. However, it is the thesis of this article that the proposal suffers from the same inherent flaw that hobbled the notification and consultation provisions of the WPR, namely a twilight zone surrounding the trigger for such notification and consultation. Like the failed concept of “hostilities or where imminent hostilities are present24”, the concept of “armed conflict25” will almost inevitably be susceptible to interpretive debate. In addition, the 7 day trigger, like the ubiquitous 60 day clock, will almost inevitably lead to assertions that the President has plenary authority to initiate hostilities, an assertion that is simply overbroad. Finally, and perhaps most problematically, it is unlikely any President will acquiesce to mandated consultation obligations for armed conflicts “thrust” upon the nation, irrespective of their duration. Instead, it is much more likely that they will assert such military operations are conducted pursuant to their exclusive authority to respond to sudden attacks by “meeting force with force26.” There is, however, simply no question that the effort to eliminate the WPR’s express authorization requirement – the provision of the Resolution most inconsistent with the history of constitutional war powers – and the effort to define a more effective triggering event for consultation, is perhaps the ideal remedy to the ongoing debate over how to effectively balance the war powers of the two political branches. What is therefore needed to “close this deal” is a more effective consultation trigger. Such a trigger will ensure Congress is placed on notice in advance of military operations that implicate its institutional war authorization (or prohibition) role. Such a trigger, if properly tailored, would facilitate the ability of Congress to “take a stand” on war making initiative in a timely manner, prevent the President from presenting Congress with a fait accompli, and validate reliance on subsequent congressional acquiescence.

[corn continues]

The consultation trigger of the proposed replacement for the WPR provides the start point for ensuring “meaningful” consultation. However, the efficacy of this proposal will remain compromised until uncertainty as to when such consultation is constitutionally required is resolved. Enhancing this proposal with a more precisely tailored and operationally grounded “trigger” for such pre-execution notice and consultation with Congress is therefore essential. This trigger must be more carefully tailored than either the current “hostilities or…situations where imminent involvement in hostilities is clearly indicated27” language of the WPR – terms that to this day remain undefined, or the proposed “significant armed conflict28” trigger of the WPCA. In addition, the trigger must be tailored to exempt from such mandated notification uses of the armed forces falling under the inherent and exclusive authority of the President – namely responses to sudden attacks. This article will propose such a trigger. Instead of using general terms subject to divergent definitions (and therefore evasion), it will propose a trigger derived from the principles of military operations. This trigger will be linked to the nature of the Rules of Engagement proposed for National Command Authority approval in relation to a given military operations29. These rules reflect the fundamental nature of the authority granted to the armed forces by the President as an aspect of all military operations, and therefore provide a viable mechanism to distinguish responsive uses of armed force from operations where the United States initiates combat activities. It is only in this latter category that pre-operation congressional notification should be required. Linking such notification to the authorization of “mission specific” Rules of Engagement – a concept that will be explained below – will substantially contribute to the efficacy of the historically validated war making balance between the President and Congress.

#### This avoids presidential powers – maintains the right to self-defense, but creates a binding requirement impervious to circumvention

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

Proposing an ROE Linked Notification Provision. This article is premised on the conclusion that express congressional approval is not a constitutionally required predicate for the initiation of armed hostilities by the United States. However, it is also premised on the equally important conclusion that this lack of an express approval requirement – perhaps the ultimate overreach of the War Powers Resolution – cannot properly be interpreted as authorizing the President to initiate all hostilities based on an assertion of inherent executive power. Instead, with the limited exceptions of response to sudden attack and genuine rescue operations, Congress retains the ultimate “check” on the assertion of executive war-making initiatives225. Accordingly, the essential element of the effective execution of the Constitution’s shared war powers framework is providing Congress with a meaningful opportunity to exercise its constitutional role226. Meaningful is the key qualifier, for it indicates that Congress must be afforded the opportunity to check executive war making initiative before they are presented with a fait accompli as the result of initiation of combat operations prior. It therefore becomes clear that pre-execution notification of a planned initiation of hostilities is essential to satisfy this constitutional imperative227. This conclusion was central to the congressional effort to re-establish its role in the war-making process when it passed the War Powers Resolution, and is equally central to the recent Miller Center proposal to amend that law.228 While the Resolution is generally regarded as ineffective,229 it is not necessarily the notification provision that led to this conclusion. In fact, that provision is perhaps the one component of the Resolution that has proved relatively successful. However, as the Miller Center proposal recognizes, uncertainty as to when notification is triggered has and will continue to compromise the efficacy of even that component of the Resolution230. Unfortunately, while the MillerCenter Proposal of a “significant armed conflict” trigger231 is less susceptible to interpretive avoidance than the current Resolution notification provision, it nonetheless fails to link notification to a military operational criteria for distinguishing responsive uses of force from initiations of hostilities. Linking notification to the authorization of ROE measures beyond the standing “inherent” right of self-defense cures this defect. Because National Command Authority approval is necessary for ROE measures that permit the application of combat power in a manner necessary to initiate hostilities with another state or even a non-state entity,232 a contemporaneous notification provision provides the most effective method of ensuring notification is provided to Congress based on an operational standard for conflict initiation. In addition, required notification will be triggered by the decision-making process of the President, and not on an interpretation of the term “hostilities”. Perhaps most importantly, it will ensure notification occurs no later than the point in time when the authorization necessary to employ force for mission accomplishment is provided, thereby mitigating the risk of presenting Congress with a proverbial fait accompli, a result essentially conceded as acceptable by the Miller Center proposal.233

[corn continues]

It is the opinion of this author that incorporating such a notification trigger into the proposed War Powers Consultation Act of 2009 would result in a significant improvement to that exceptionally well conceived legislation. This improvement would be the result of the elimination of the one remaining source of uncertainty inherent in the proposal. To accomplish this, the definition provision of that law should be amended as follows: 3(A). For purposes of this Act, “significant armed conflict” means (i) any conflict expressly authorized by Congress, or (ii) any mission conducted by the U.S. armed forces pursuant to Rules of Engagement authorizing the ue of force beyond the scope of authority provided by the inherent rightof self-defense permitting those forces to initiate hostilities with any state or non-state opponent. Based on this revised definition, the notification/consultation trigger of the proposed law235 should be amended as follows: 4(B). Before ordering the deployment of United States armed forces into significant armed conflict, the President shall consult with the Joint Congressional Consultation Committee. To “consult,” for purposes of this Act, the President shall provide an opportunity for the timely exchange of views regarding whether to engage in the significant armed conflict, and not merely notify the Joint Congressional Consultation Committee that the significant armed conflict is about to be initiated. In order to ensure this constitutionally meaningful consultation, the President shall engage in such consultation no later than that point in time when he or the Secretary of Defense authorize mission accomplishment supplement Rules of Engagement for the purpose of providing U.S. armed forces with the use of force authority necessary to accomplish the anticipated military mission. If one of the military actions described in Section 3(B) of this Act becomes a significant armed conflict as defined in Section 3(A), the President shall similarly initiate consultation with the Joint Congressional Consultation Committee. Providing for an operationally grounded trigger will ensure the full effectiveness of the remainder of the proposed statute with no further modifications. Even the three day “exigency” exception will operate consistently with this amendment, for it will limit late notification to causes beyond the control of the President, namely an inability to communicate with the designated legislators. However, this ROE trigger will eliminate or at least greatly mitigate the risk that a President might attempt to exploit this exemption in the same way that past Presidents have exploited the current sixty-day clock.236 Enacting the War Powers Consultation Act of 2009237 with this limited but important modification holds the greatest promise of finally achieving the objective of the drafters of the War Powers Resolution sought to achieve 36 year ago: to “fulfill the intent of the framers of the Constitution of the United Statesand insure that the collective judgment of both the Congress and the President238” apply to the decision to initiate armed hostilities.

#### Future conflicts are likely – the plan maintains the basis for US leadership

Kaine and McCain, 14 [Senator Kaine From West Virginia and John McCain, Senator from Arizona, “STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS”, http://beta.congress.gov/congressional-record/2014/1/16/senate-section/article/S441-1]

Mr. McCAIN. Mr. President, I am pleased today to join my colleague, the junior Senator from Virginia, as we introduce the War Powers Consultation Act of 2014. This legislation is the final product of the National War Powers Commission, which was a bipartisan effort co-led by former Secretary of State Jim Baker and former Secretary of State Warren Christopher. The commission was set up by the Miller Center at the University of Virginia to devise a modern and workable war powers consultation mechanism for the executive and legislative branches. It included some of our Nation's most distinguished and respected thinkers and practitioners of national security policy and law. In 2008, after more than a year of hard work, the commission released the final product--an actual legislative proposal to repeal and replace the War Powers Resolution of 1973, which no American President has ever accepted as constitutional. As does my colleague, I view our introduction of this legislation today as the start of an important congressional and national debate, not the final word in that debate. We wish to pick up where the National War Powers Commission left off 6 years ago, and we do so fully understanding and hopeful that **this legislation should be considered** and debated and amended and improved through regular order. My colleague from Virginia has done a great job on this legislation, and I am proud to join him. I wish to expand a bit on why updating the War Powers Resolution is such a worthwhile endeavor for the Senate to consider right now. The Constitution gives the power to declare war to the Congress, but Congress has not formally declared war since June of 1942 even though our Nation has been involved in dozens of military actions of one scale or another since that time. There is a reason for this. The nature of war is changing. It is increasingly unlikely that the combat operations our Nation will be involved in will resemble those of World War II, where the standing armies and navies of nation states squared off against those of rival nation states on clearly defined fields of battle. Rather, the conflicts in which increasingly we find ourselves and for which we must prepare will be murkier, harder to reconcile with the traditional notions of warfare; they may be more limited in their objectives, their scope, and their duration; and they likely will not conclude with a formal surrender ceremony on the deck of a battleship. The challenge for all of us serving in Congress is this: How do we reconcile the changing nature of war with Congress's proper role in the declaration of war? It is not exactly a new question, but it is a profound one, for unless we in Congress are prepared to cede our constitutional authority over matters of war to the executive, we need a more workable arrangement for consultation and decisionmaking between the executive and legislative branches. We have seen several manifestations of this challenge in recent years. In 2011 President Obama committed U.S. military forces to combat operations in Libya to protect civilian populations from imminent slaughter by a brutal, anti-American tyrant. I, for one, believe he was right to do so. But 6 months later, when our armed services were still involved in kinetic actions in Libya--not just supporting our NATO allies but conducting air-to-ground operations and targeted strikes from armed, unmanned aerial vehicles--the administration claimed, as other administrations would, that it had no obligations to Congress under the War Powers Resolution because our Armed Forces were not involved in combat operations. That struck many Members of Congress, including me, as fundamentally at odds with reality, and unfortunately it pushed more Members of Congress into opposition against the mission itself. More recently, we saw the opposite problem manifested with regard to Syria. Perhaps due to the backlash in Congress that the administration's handling of the Libya conflict engendered, President Obama decided to seek congressional authorization for limited airstrikes against the Assad regime after it slaughtered more than 1,400 of its own citizens with chemical weapons last August. An operation that likely would have lasted a few days and thus been fully consistent with the President's authority under the existing War Powers Resolution had he decided to act decisively and take limited military action instead devolved into a stinging legislative repudiation of executive action. The tragic result was that the Assad regime was spared any meaningful consequences for its use of a weapon of mass destruction against innocent men, women, and children, and, as with Libya, the forces that want to turn America away from the world were not checked but empowered. Some of us may see the problem in these two instances as a failure of Presidential leadership, and I would agree, but I also believe the examples of Libya and Syria represent the broader problem we as a nation face: What is the proper war power authority of the executive and legislative branches when it comes to limited conflicts, which are increasingly the kinds of conflicts with which we are faced?

[kaine and mccain continue]

It is essential for the Congress and the President to work together to define a new war powers consultative agreement that reflects the nature of conflict in the 21st century and is in line with our Constitution. Our Nation does not have 535 commanders in chief. We have one--the President--and that role as established by our Constitution must be respected. Our Nation is poorly served when Members of Congress try to micromanage the Commander in Chief in matters of war. At the same time, now more than ever, we need to create a broader and more durable national consensus on foreign policy and national security, especially when it comes to matters of war and armed conflict. We need to find ways to make internationalist policies more politically sustainable. After the September 11 attack, we embarked on an expansive foreign policy. Spending on defense and foreign assistance went up, and energy shifted to the executive. Now things are changing. Americans want to pull back from the world. Our foreign assistance and defense budgets are declining. The desire to curb Presidential power across the board is growing, and the political momentum is shifting toward the Congress. America has gone through this kind of political rebalancing before, and much of the time we have gotten it wrong. That is how we got isolationism and disarmament after World War I, that is how we got a hollow army after Vietnam, and that is how we weakened our national security after the Cold War in the misplaced hope of cashing in on a peace dividend. **We can't afford to repeat these mistakes.** A new war powers resolution--one that is recognized as both constitutional and workable in practice--can be an important contribution to this effort. It can more effectively invest in the Congress the critical decisions that impact our national security. It can help build a more durable consensus in favor of the kinds of policies we need to sustain our global leadership and protect our Nation. In short, the legislation we are introducing today can restore a better balance to the way national security decisionmaking should work in a great democracy such as ours. Let me say again. Neither the Senator from Virginia nor I believe the legislation we are introducing today answers all of the monumental and difficult questions surrounding the issue of war powers. We believe this is a matter of transcendent importance to our Nation, and we as a deliberative body of our government should debate this issue, and we look forward to that debate. This legislation should be seen as a way of starting that discussion both here in the Congress and across our Nation. We owe that to ourselves and our constituents. Most of all, we owe that to the brave men and women who serve our Nation in uniform and are called to risk their lives in harm's way for the sake of our Nation's national defense. Before I yield to my tardy colleague from Virginia, I wish to mention again another reason why I think this legislation should be the beginning of a serious debate which we should bring to some conclusion. The fact is that no President of the United States has recognized the constitutionality of the War Powers Act. That is a problem in itself. That is a perversion, frankly, of the Constitution of the United States of America. That is one reason, but the most important reason is that I believe we are living in incredibly dangerous times. When we look across the Middle East, when we look at Asia and the rise in the tensions in that part of the world and we look at the conflicts that are becoming regional--and whose fault they are is a subject for another debate and discussion, but the fact is that we are in the path of some kind of conflict in which--whether the United States of America wants to or not--we may have to be involved in some ways. We still have vital national security interests in the Middle East. It is evolving into a chaotic situation, and one can look from the Mediterranean all the way to the Strait of Hormuz, the Gulf of Aqaba, and throughout the region. So I believe the likelihood of us being involved in some way or another in some conflict is greater than it has been since the end of the Cold War, and I believe the American people deserve legislation and a clear definition of the responsibilities of the Congress of the United States and that of the President of the United States. Again, I thank my colleague from Virginia, whose idea this is, who took a great proposal that was developed at the University of Virginia and was kind enough to involve me in this effort. I thank him for it. I thank him for his very hard work on it, despite the fact that, as the Chair will recognize, he was late for this discussion. I yield the floor. The PRESIDING OFFICER. The Senator from Virginia. Mr. KAINE. Mr. President, I thank my colleague from Arizona for pointing out to all in the Chamber my tardiness, and I should not have been tardy because I do not like to follow the Senator from Arizona. I would rather begin before him. But I want to thank him for his work with me, together, on this important issue and amplify on a few of the comments he has made. Today, together, as cosponsors we are introducing the War Powers Consultation Act of 2014, which would repeal the 1973 War Powers Resolution and replace it. I could not have a better cosponsor than Senator McCain and appreciate all the work he and his staff have done over the last months with us. I gave a floor speech about this issue in this Chamber in July of 2013, almost to the day, 40 years after the Senate passed the War Powers Resolution of 1973. Many of you remember the context of that passage. When it was passed in the summer of 1973, it was in the midst of the end of the Vietnam war. President Nixon had expanded the Vietnam war into Cambodia and Laos without explicit congressional approval, and the Congress reacted very negatively and passed this act to try to curtail executive powers in terms of the initiation of military hostilities. It was a very controversial bill. When it was passed, President Nixon vetoed it. Congress overrode the veto at the end of 1973. But as Senator McCain indicated, no President has conceded the constitutionality of the 1973 act, and most constitutional scholars who have written about the question have found at least a few of what they believe would be fatal infirmities in that 1973 resolution. It was a hyperpartisan time, maybe not unlike some aspects of the present, and in trying to find that right balance in this critical question of when the Nation goes to war or initiates military action, Congress and the President did not reach an accord. I came to the Senate with a number of passions and things I hoped to do. But I think I came with only one obsession, and this is that obsession. Virginia is a State that is most connected to the military of any State in the country. Our map is a map of American military history--from Yorktown, where the Revolutionary War ended, to Appomattox, where the Civil War ended, to the Pentagon, where 9/11 happened. That is who we are. One in nine Virginians is a veteran. If you add our Active Duty, our Guard and Reserve, our military families, our DOD civilians, our DOD contractors, you are basically talking about one in three Virginians. These issues of war and peace matter so deeply to us, as they do all Americans.

[kaine and mccain continue]

The particular passion I had in coming to this body around war powers was because of kind of a disturbing thought, which is, if the President and Congress do not work together and find consensus in matters around war, we might be asking our men and women to fight and potentially give their lives without a clear political consensus and agreement behind the mission. I do not think there is anything more important that the Senate and the Congress can do than to be on board on decisions about whether we initiate military action, because if we do not, we are asking young men and women to fight and potentially give their lives, with us not having done the hard work of creating the political consensus to support them. That is why I have worked hard to bring this to the attention of this body with Senator McCain. The Constitution actually sets up a fairly clear framework. The President is the Commander in Chief, not 535 commanders-in-chief, as Senator McCain indicated. But Congress is the body that has the power both to declare war and then to fund military action. In dividing the responsibilities in this way, the Framers were pretty clear. James Madison, who worked on the Constitution, especially the Bill of Rights, wrote a letter to Thomas Jefferson and said: The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It [[Page S443]] has accordingly with studied care vested the question of war in the Legislature. Despite that original constitutional understanding, our history has not matched the notion that Congress would always be the initiator of military action. Congress has only declared war five times in the history of the United States, while Presidents have initiated military action prior to any congressional approval more than 120 times. In some of these instances where the President has initiated war, Congress has come back and either subsequently ratified Presidential action--sometimes by a formal approval or sometimes by informal approval such as budgetary allocation--but in other instances, including recently, Presidents have acted and committed American military forces to military action without any congressional approval. The Senator from Arizona mentioned the most recent one. President Obama committed military force to NATO, action against Libya in 2011, without any congressional approval, and he was formally censured by the House of Representatives for doing so. The current context that requires a reanalysis of this thorny question, after 40 years of the War Powers Resolution, was well stated by the Senator from Arizona. Wars are different. They start differently. They are not necessarily nation state against nation state. They could be limited in time or, as of now, we are still pursuing a military force that was authorized on September 18, 2001, 12 or 13 years later. Wars are of different duration, different scope, different geography. Nation states are no longer the only entities that are engaged in war. These new developments that are challenging--what do we do about drones in countries far afield from where battles were originally waged--raise the issue of the need to go back into this War Powers Resolution and update it for the current times. As the Senator from Arizona mentioned, this has been a question that Members of Congress have grappled with and thought about, as have diplomats and scholars and administration officials and Members of Congress for some time. In 2007, the Miller Center for the study of the presidency at the University of Virginia convened a National War Powers Commission under the chairmanships of two esteemable and bipartisan leaders--former Secretaries of State Warren Christopher and James Baker. The remaining members of the Commission were a complete A list of thinkers in this area--Slade Gorton, Abner Mikva, Ed Meese, Lee Hamilton. The Commission's historian was no less than Doris Kearns Goodwin, who looked at the entire scope of this problem in American history and what the role of Congress and the President should be. The Commission issued a unanimous report, proposing an act to replace the War Powers Act of 1973, briefed Congress and incoming President Obama on the particular act in 2007 and 2008, but at that time, the time was not yet ripe for consideration of this bill. But now that we are 40 years into an unworkable War Powers Resolution and now, as the Senator indicated, we have had a string of Presidents-- both Democratic Presidents and Republican Presidents--who have maintained that the act is unconstitutional and now that we have had a 40-year history of Congress often exceeding to the claim of unconstitutionality by not following the War Powers Resolution itself, we do think it is time to revisit. Let me just state two fundamental, substantive issues that this bill presents in the War Powers Consultation Act of 2014. First, there is a set of definitions. What is war? The bill defines significant military action as any action where involvement of U.S. troops would be expected to be in combat for at least a week or longer. Under those circumstances, the provisions of the act would be triggered. There are some exceptions in the act. The act would not cover defined covert action operations. But once a combat operation was expected to last for more than 7 days, the act would be triggered. The act basically sets up two important substantive improvements on the War Powers Resolution. First, a permanent consultation committee is established in Congress, with the majority and minority leaders of both Houses and the chairs and ranking members of the four key committees in both Houses that deal with war issues--Intel, Armed Services, Foreign Relations, and Appropriations. That permanent consultation committee is a venue for discussion between the executive and legislative branches--permanent and continuous--over matters in the world that may require the use of American military force. Because the question comes up often: What did the President do to consult with Congress? Is it enough to call a few leaders or call a few committee chairs? This act would normalize and regularize what consultation with Congress means by establishing a permanent consultation committee and requiring ongoing dialogue between the Executive and that committee. The second requirement of this bill is that once military action is commenced that would take more than 7 days, there is a requirement for a vote in both Houses of Congress. The consultation committee itself would put a resolution on the table in both Houses to approve or disapprove of military action. It would be a privileged motion with expedited requirements for debate, amendment, and vote, and that would ensure that we do not reach a situation where action is being taken at the instance of one branch with the other branch not in agreement, because to do that would put our men and women who are fighting and in harm's way at the risk of sacrificing their lives when we in the political leadership have not done the job of reaching a consensus behind the mission. To conclude, I will acknowledge what the Senator from Arizona said. This is a very thorny and difficult question that has created challenges and differences of interpretation since the Constitution was written in 1787. Despite the fact that the Framers who wrote the Constitution actually had a pretty clear idea about how it should operate, it has never operated that way. Forty years of a failed War Powers Resolution in today's dangerous world suggests that it is time now to get back in and to do some careful deliberation to update and normalize the appropriate level of consultation between a President and the legislature. The recent events as cited by the Senator--whatever you think about the merits or the equities, whether it is Libya, whether it is Syria, whether it is the discussions we are having now with respect to Iran or any other of a number of potential spots around the world that could lead to conflict--suggest that while decisions about war and initiation of military action will never be easy, they get harder if we do not have an agreed-upon process for coming to understand each other's points of view and then acting in the best interest of the Nation to forge a consensus.

#### Explicitly mandated congressional authorization maintains flexibility, while restraining the executive

Fleischman, 10 [J.D. Candidate, 2010, New York University School of Law; B.A., 2007, Washington University in St. Louis, A FUNCTIONAL DISTRIBUTION OF WAR POWERS Matthew Fleischman \*, <http://www.nyujlpp.org/wp-content/uploads/2012/11/Matthew-Fleischman-A-Functional-Distribution-of-War-Powers.pdf>]

IV. THE WAR POWERS LAW WE NEED Given the theoretical outline above, this Note will now present an alternative statute, **based upon the WPCA**, to govern this complex problem. The full text of the statute is appended to the end of this Note. I will explain, section by section, how and why my proposed act differs from the WPCA. Section 1 includes an alternative title for the act: the War Powers Procedure Act (WPPA). This title reinforces that this new statute does not intend to alter the constitutional distribution of war powers, but simply prescribes a process by which those powers can be effectuated. The title will still include the word “Act,” “to avoid the confusion surrounding the term ‘Resolution.’”196 Section 2 of the proposed WPPA still “recognizes that we cannot resolve the constitutional questions underlying the war powers debate,” 197 but only prescribe a process by which they will be exercised. Some have argued that the language of the WPR’s section 2 provides a mechanism for the Executive to circumvent the act.198 Nonetheless, the proposed language in the WPPA **mitigates the risk of the act being deemed unconstitutional** just as similar language did so in the WPR. The language simply serves to explain the reasons underlying the adoption of the WPPA. Just as in the WPCA, section 3 of the WPPA clearly defines the core terms of the statute. This is designed to **remedy the ambiguity created by the WPR.** Section 3(A) is altered to also include “significant armed conflict” in the definition of “declarations of war.” While formal declarations of war rarely occur and few would debate that they qualify as significant armed conflicts, it is nonetheless important to write a statute that provides for all reasonably foreseeable possibilities. Section 3(A)(iii) is modified to shorten the minimum time period required for a use of force to qualify as a significant armed conflict. Given that there is substantial reason to require congressional authorization, 199 this qualification is designed only to provide adequate flexibility for small tactical missions that are not included in the exceptions of section 3(B). The list of exceptions in section 3(B) now contains a maximum number of days the exception can last. Rather than use the vague language in the WPCA (e.g. “limited”200), the cap on the number of days that each of the exceptions can last provides increased clarity. This alteration ensures that an action in defense of our nation cannot be turned into an extended offensive strike. This is important since it is critical to limit the number of methods by which the Executive can evade congressional authorization. The number of days is capped at 10 because that should be sufficient time for Congress to fully debate the issue at hand.201 Often times the debate over whether or not to go to war begins long before an action is commenced and, even if it is not, it is critical for decisions to be made quickly before policy options become more limited. The list of exceptions is also altered to no longer include limited acts of reprisal against states that sponsor terrorism. Attacks of reprisal on another state very well could lead to an increase in hostilities and, therefore, could be used as a backdoor around the section 4 requirement of congressional preapproval. Section 4 is the first section of the WPCA to be significantly altered.

[Fleischman continues]

The WPPA would strengthen the reporting requirements, as compared to what appeared in section 4 of the WPCA. Namely, sections 4(A) and 4(B) of the WPCA explain that consultation with Congress is to occur before military engagement, and state what information is to be provided to the Joint Congressional Consultation Committee.202 The WPPA preserves the Executive’s right to begin military operations unilaterally when secrecy is required, but section 4(C) has been amended to ensure that the President reports immediately to the Committee under such circumstances. By accelerating the process of consultation, fewer policy options are foreclosed and the potential costs of the attack are limited. Section 4(F) is modified to provide greater clarity on what intelligence agencies are required to provide to the Committee’s staff. Information can be distorted in the process of writing and condensing reports; by explicitly requiring raw data to be turned over, the Committee can come to its own conclusions with limited distortion by the Executive branch.203 Section 5 is the most significantly changed aspect of the WPPA, requiring congressional pre-authorization of military action rather than a congressional vote after hostilities begin. This Congress-First approach is at the heart of the functionalist analysis discussed above. The outlined procedure is reminiscent of that delineated in the WPCA, in that it ensures a speedy decision, but the WPPA goes much further, as the process leads to a vote and deliberation with the entirety of Congress. Section 5(D) provides an avenue for the President to renew his request for congressional authorization; however, the President is required to wait fifteen days. This waiting period is required so that the Executive cannot badger Congress into submission. It also allows both for the Executive to collect more information, and for the circumstances of the conflict to change. While the waiting period may be disconcerting to some, given that certain situations can be urgent, there is a mechanism to temporarily bypass congressional authorization when necessary. In the interim, the President can engage in operations that do not qualify as significant military operations. In section 6, delayed congressional authorization is explained The free period is limited to fourteen days, which is significantly shorter than the sixty days written into the WPR204 and the twenty days written into John Hart Ely’s suggested act.205 Given that the longest deliberation on a declaration of war was seventeen days, and that it occurred in the early part of the nineteenth century,206 this should still provide ample opportunity for a full discussion of the issue. By requiring immediate production of information by the President, the Act will allow Congress to act faster, as Congress can begin processing the President’s proposal immediately. While a longer time period would permit greater deliberation, the policy options become more limited the longer the conflict rages on. If the resolution passes, the military engagement becomes an approved significant armed conflict and the other enumerated sections become binding. Alternatively, if the resolution fails to pass, the President is given ten days to withdraw troops from the area. While the War Powers Commission recommended tying Congress’s hands through House rules, the WPPA instead uses a modified version of the spending restrictions advocated by then-Senator Biden in his attempt to amend the WPR, the Use of Force Act.207 While some have questioned the constitutionality of this provision, it is unlikely the provision would be found unconstitutional, as the Court has already found a constitutional basis for this sort of a funding restriction. 208 Furthermore, there is little reason to believe that anyone would or could challenge the constitutionality of this act. CONCLUSION: THE REAL-WORLD POTENTIAL OF THE WPPA The distribution of war powers in America has “remain[ed] a dark continent of American jurisprudence”210 for too long. A consistent procedure by which it is effectuated must be established. The plan proposed in this Note attempts to codify a method backed by an in-depth analysis of the rational incentives of political actors. Every combat mission is unique and even the most justifiable wars can end in defeat. A war powers law cannot be evaluated based upon how it would function in any single conflict. Instead, it must be evaluated based on whether it creates adequate opportunities for discourse between the branches of government without overly hindering the ability of the government to wage effective warfare. Congress legislated a role for itself after Vietnam with the WPR, but Congress should now pass the WPPA to further clarify its role in one of our nation’s most important decisions.

#### Inclusion of point of order solves executive loopholes and prevents vague interpretation of the AUMF

Mitchell 9 (Jonathan F., Assistant Professor of Law – George Mason University School of Law, “Legislating Clear-Statement Regimes in National-Security Law,” Georgia Law Review, Summer, 43 Ga. L. Rev. 1059, Lexis)

The proposals to add funding restrictions to FISA and the War Powers Resolution are equally vulnerable to expansive executive branch theories of implied repeal. Recall that the OLC Kosovo memo asserts that the 1999 Emergency Supplemental Appropriations Act implicitly repealed restrictions in the War Powers Resolution, even though the Appropriations Act never earmarked funds for military operations in Kosovo, nor specifically authorized military operations in Kosovo beyond the WPR’s sixtyday window. According to OLC, it was enough that some 178 members of Congress thought that the President might continue the Kosovo hostilities beyond sixty days and that the appropriations legislation did not expressly withhold funds for that purpose.179 In like manner, a future executive might claim that a generic Authorization to Use Military Force implicitly repeals Senator Specter’s proposed funding restrictions under the last-in-time rule, so long as it can concoct some argument that legislators are aware (or should be aware) that warrantless surveillance of the enemy is a “fundamental incident of the use of military force.” Or the 180 President might claim that annual appropriations bills for the intelligence agencies implicitly repeal the earlier-enacted funding restrictions if legislators are aware of the President’s warrantless surveillance activities but fail to expressly reaffirm FISA’s restrictions. Proposals that would add funding restrictions to the War Powers Resolution are similarly incapable of withstanding the executive-branch lawyers’ broad theories of implied repeal. Those funding restrictions, like § 8(a)(1) of the War Powers Resolution, would be brushed aside whenever implicit congressional “authorization” might be found in later-enacted statutory language. The challenge for these efforts to strengthen the War Powers Resolution and FISA is that any future ambiguous statute will provide rope for executive-branch lawyers to concoct congressional "authorization" for the President's actions, no matter what restrictions or interpretive instructions Congress provides in framework legislation. None of these proposed reforms will disable the executive from using its expansive theories of constitutional avoidance and implied repeal to provide a veneer of legality for the President's actions, and minimize the prospect of future criminal sanctions and political reprisals against executive-branch employees. b. point-of-order mechanisms Congress could establish more effective clear-statement regimes in national security law if it pre-committed itself against enacting vague or ambiguous statutory language that the executive might use to claim implicit congressional "authorization." One such precommitment strategy would be to include point-of-order mechanisms in the War Powers Resolution and FISA (and other national-security framework statutes). These would **empower any individual legislator** to object to any bill **that authorizes military force**, or that funds the military or the intelligence agencies, and that fails to explicitly prohibit military hostilities beyond sixty days or warrantless electronic surveillance, unless Congress has specifically authorized such activities. Congress could further specify that if the point of order is sustained, the bill will be automatically amended to specifically prohibit or withhold funding for such activities. When a legislator raises a point of order, the chair must either sustain it and declare the legislation out of order, or overrule it. n181 Then a majority vote of the chamber can reverse the chair's ruling. Establishing point-of-order mechanisms in the War Powers Resolution and FISA **would strengthen the codified clear-statement requirements** in two ways. First, such mechanisms would impose a procedural roadblock to ambiguous statutory language that executive-branch lawyers might construe as implicitly authorizing extended military hostilities or warrantless electronic surveillance. Second, they would help deter future legislators from acquiescing to Presidential actions that Congress has not specifically authorized. Yet Congress has never established a point-of-order mechanism to [\*1105] enforce the clear-statement requirements in its national-security legislation, n182 even though it regularly employs this device to enforce precommitments in legislation that governs the federal budget process. If Congress had included such a point-of-order mechanism in the War Powers Resolution, any legislator could have objected to the 1999 Emergency Supplemental Appropriations Act when it reached the House or Senate floor. Any such objection would have required the chair to sustain the point of order and amend the legislation, because the bill appropriated money for the military yet failed to withhold funds for military hostilities that extend beyond sixty days. Then a majority vote of the entire chamber would have been necessary to overturn the chair's ruling and allow the 1999 Emergency Supplemental Appropriations Act to survive as written. And, if the chair had decided to overrule the point-of-order objection in violation of the chamber's rule, the objecting legislator could have appealed the chair's ruling to the full chamber, where a majority vote could overrule the chair's ruling and sustain the point of order. If FISA had included a point-of-order enforcement mechanism, any legislator could have raised a similar objection to the post-September 11th Authorization to Use Military Force, and the annual appropriations legislation to fund the intelligence agencies, unless those statutes were amended to specifically preclude electronic surveillance outside of FISA. Point-of-order mechanisms would not completely foreclose Congress from enacting ambiguous legislation such as the 1999 Emergency Supplemental Appropriations Act or the post-9/11 Authorization to Use Military Force. But they would impose significant procedural obstacles to legislation that executive-branch lawyers might use to claim implicit congressional authorization for extended military hostilities or electronic surveillance. Unless Congress specifically authorizes military hostilities beyond sixty days or warrantless electronic surveillance, appropriations statutes that fail to explicitly prohibit or withhold funding for such activities will survive only if: (1) Every single legislator in a chamber fails to raise a point-of-order objection; (2) A majority in that chamber votes to overrule a point-of-order objection; or (3) Congress repeals the point-of-order device before considering the bill.

## 2AC

### Solvency

#### Legal restraints work---exception theory is self-serving and wrong

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

### Heg

#### Accurate and verifiable scholarship shows low deterrence is the most important correlate of war

**Moore 4** – Professor of Law at the University of Virginia. He formerly served as the first Chairman of the Board of the United States Institute of Peace and as the Counselor on International Law to the Department of State. (John Norton, Winter, “Beyond the Democratic Peace: Solving the War Puzzle”, 44 Va. J. Int'l L. 341, Lexis Law)

As so broadly conceived, there is strong evidence that deterrence - that is, the effect of external factors on the decision to go to war - is the missing link in the war/peace equation. In my War & Peace Seminar, I have undertaken to examine the level of deterrence before the principal wars of the twentieth century. n125 My examination has led me to believe that in every case the potential aggressor made a rational calculation that the war would be won, and won promptly. In fact, the longest period of time calculated for victory through conventional attack seems to be the roughly six weeks predicted by the German General Staff as the time necessary to prevail on the Western Front in World War I under the Schlieffen Plan. Hitler believed in his attack on Poland that Britain and France would not take the occasion to go to war with him. And he believed in his 1941 Operation Barbarossa against the Soviet Union that "[we] have only to kick in the door and the whole rotten structure will come crashing down." n126 In contrast, following Hermann Goering's failure to obtain air superiority in the Battle of Britain, Hitler called off the invasion of Britain and shifted strategy to the nighttime bombing of population centers, which became known as the Blitz, in a mistaken effort to compel Britain to sue for peace. Planners of the North Korean attack on South Korea and Hussein's attack on Kuwait calculated that the operations would be complete in a matter of days. Indeed, virtually all principal wars in the twentieth century, at least those involving conventional invasion, were preceded by what I refer to as a "double deterrence absence." That is, the potential aggressor believed that they had the military force in place to prevail promptly and that nations that might have the military or diplomatic might to prevent this were not inclined to intervene. n127 This  [\*381]  analysis has also shown that many of the perceptions we have about the origins of particular wars are flatly wrong. Anyone who seriously believes that World War I was begun by competing alliances drawing tighter should examine the real historical record of British unwillingness to enter a clear military alliance with the French or to so inform the Kaiser. Indeed, this pre-World War I absence of effective alliance and resultant war contrasts sharply with the later robust NATO alliance and an absence of World War III. n128

Considerable other evidence seems to support this historical analysis as to the importance of deterrence. Of particular note, in 1995 Yale Professor Donald Kagan, a preeminent U.S. historian who has long taught a seminar on war, published a superb book On the Origins of War and the Preservation of Peace. n129 In this book he conducts a detailed examination of the Peloponnesian War, World War I, Hannibal's War, and World War II, among other case studies. A careful reading of these studies suggests that each war could have been prevented by achievable deterrence and that each occurred in the absence of such deterrence. n130 Game theory seems to offer yet further  [\*382]  support for the proposition that appropriate deterrence can prevent war. For example, Robert Axelrod's famous 1980s experiment in an iterated prisoner's dilemma, which is a reasonably close proxy for many conflict settings in international relations, repeatedly showed the effectiveness of a simple tit for tat strategy. n131 Such a strategy is at core simply a basic method of deterrence, influencing behavior through incentives. Similarly, much of the game-theoretic work on crisis bargaining (and the danger of asymmetric information) in relation to war and the democratic peace assumes the importance of deterrence through communication of incentives. n132 The well-known correlation between war and territorial contiguity seems also to underscore the importance of deterrence and is likely principally a proxy for levels of perceived profit and military achievability of aggression in many such settings.

It should further be noted that the democratic peace is not the only significant correlation with respect to war and peace, although it seems to be the most robust. Professors Russett and Oneal, in recently exploring the other elements of the Kantian proposal for "Perpetual Peace," have also shown a strong and statistically significant correlation between economically important bilateral trade between two nations and a reduction in the risk of war between them. Contrary to the arguments of "dependency theorists," such economically important trade seems to reduce the risk of war regardless of the size relationship or asymmetry  [\*383]  in the trade balance between the two states. In addition, there is a statistically significant association between economic openness generally and reduction in the risk of war, although this association is not as strong as the effect of an economically important bilateral trade relationship. n133 Russett and Oneal also show a modest independent correlation between reduction in the risk of war and higher levels of common membership in international organizations. n134 And they show that a large imbalance of power between two states significantly lessens the risk of major war between them. n135 All of these empirical findings about war also seem to directly reflect incentives. That is, a higher level of trade would, if foregone in war, impose higher costs in the aggregate than without such trade, n136though we know that not all wars terminate trade. A large imbalance of power in a relationship rather obviously impacts deterrence and incentives. Similarly, one might incur higher costs with high levels of common membership in international organizations through foregoing some of the heightened benefits of such participation or otherwise being presented with different options through the actions or effects of such organizations.

These external deterrence elements may be yet another reason why democracies have a lower risk of war with one another. For their freer markets, trade, commerce, and international engagement may place them in a position where their generally higher level of interaction means that aggression will incur substantial opportunity costs. Thus, the "mechanism" of the democratic peace may be an aggregate of factors affecting incentives, both external as well as internal factors. Because of the underlying truth in the relationship between higher levels of trade and lower levels of war, it is not surprising that theorists throughout human history, including Baron de Montesquieu in 1748, Thomas Paine in 1792, John Stuart Mill in 1848, and, most recently, the founders of the European Community, have argued that increasing commerce and interactions among nations would end war. Though by themselves these arguments have been overoptimistic, it may well be that some level of  [\*384]  "globalization" may make the costs of war and the gains of peace so high as to powerfully predispose to peace. Indeed, a 1989 book by John Mueller, Retreat From Doomsday, n137 postulates the obsolescence of major war between developed nations (at least those nations within the "first and second worlds") as they become increasingly conscious of the rising costs of war and the rising gains of peace.

In assessing levels of democracy, there are indexes readily available, for example, the Polity III n138 and Freedom House indexes. n139 I am unaware of any comparable index with respect to levels of deterrence that might be used to test the importance of deterrence in war avoidance. n140 Absent such an accepted index, discussion about the importance of deterrence is subject to the skeptical observation that one simply defines effective deterrence by whether a war did or did not occur. In order to begin to deal with the obvious objections to this method and to encourage a more objective methodology for assessing deterrence, I encouraged a project to develop a rough but objective measure of deterrence with a scale from -10 to +10 based on a large variety of contextual features that would be given some relative weighting in a complex deterrence equation before applying the scaling to different war and non-war settings. n141 An innovative first effort uniformly showed high deterrence scores in settings where war did not, in fact, occur. Deterring a Soviet first strike in the Cuban Missile Crisis produced a score of +8.5 and preventing a Soviet attack against NATO produced a score of +6. War settings, however, produced scores ranging from -2.29 (Saddam Hussein's decision to invade Kuwait in the Gulf War), -2.18 (North Korea's decision to invade South Korea in the Korean War), -1.85 (Hitler's decision to invade Poland in World War II), -1.54 (North Vietnam's decision to invade South Vietnam following the Paris Accords), -0.65 (Slobodan Milosevic's decision to defy NATO in Kosovo), +0.5 (the Japanese decision to attack Pearl Harbor), +1.25 (the Austrian decision, encouraged by Germany, to attack Serbia, which  [\*385]  was the real beginning of World War I), to +1.75 (the German decision to invade Belgium and France in World War I). As a further effort at scaling and as a point of comparison, I undertook to simply provide an impressionistic rating based on my study of each pre-crisis setting. That produced high positive scores of +9 for both deterring a Soviet first strike during the Cuban Missile Crisis and NATO's deterrence of a Warsaw Pact attack and even lower scores than the more objective effort in settings where wars had occurred. Thus, I scored North Vietnam's decision to invade South Vietnam following the Paris Accords and the German decision to invade Poland at the beginning of World War II as -6. I scored the North Korean/Stalin decision to invade South Korea in the Korean War as -5, the Iraqi decision to invade Kuwait as -4, Milosevic's decision to defy NATO in Kosovo and the German decision to invade Belgium and France in World War I as -2, and the Austrian decision to attack Serbia and the Japanese decision to attack Pearl Harbor as -1. Certainly even knowledgeable experts would be likely to differ in their impressionistic scores on such pre-crisis settings, and a more objective methodology for scoring deterrence would be valuable. Nevertheless, both exercises did seem to suggest that deterrence matters and that high levels of deterrence can prevent war.

Yet another piece of the puzzle, which may clarify the extent of deterrence necessary in certain settings, may also assist in building a broader hypothesis about war. In fact, it has been incorporated into the efforts at scoring deterrence just discussed. That is, newer studies of human behavior are increasingly showing that certain perceptions of decision makers can influence the level of risk they may be willing to undertake. It now seems likely that a number of such insights about human behavior in decision making may be useful in considering and fashioning deterrence strategies. Perhaps of greatest relevance is the insight of "prospect theory," which posits that individuals evaluate outcomes with respect to deviations from a reference point and that they may be more risk-averse in settings posing potential gain than in settings posing potential loss. n142 The evidence of this "cognitive bias,"  [\*386]  whether in gambling, trading, or, as is increasingly being argued, foreign policy decisions generally, is significant. Because of the newness of efforts to apply a laboratory-based "prospect theory" to the complex foreign policy process generally, and particularly due to ambiguities and uncertainties in framing such complex events, our consideration of it in the war/peace process should certainly be cautious. It does, however, seem to elucidate some of the case studies.

In the war/peace setting, "prospect theory" suggests that deterrence may not need to be as strong to prevent aggressive action leading to perceived gain. For example, there is credible evidence that even an informal warning to Kaiser Wilhelm II from British Foreign Secretary Sir Edward Grey, if it had come early in the crisis before events had moved too far, might have averted World War I. And even a modicum of deterrence in Kuwait, as was provided by a small British contingent when Kuwait was earlier threatened by an irredentist Iraqi government in 1961, might have been sufficient to deter Saddam Hussein from his 1990 attack. Similarly, even a clear U.S. pledge to defend South Korea before the attack might have prevented the Korean War. Conversely, following the July 28 Austrian mobilization and declaration of war against Serbia in World War I, the issue for Austria may have begun to be perceived as loss avoidance, thus requiring much higher levels of deterrence to avoid the resulting war. Similarly, the Rambouillet Agreement may have been perceived by Milosevic as risking loss of Kosovo and his continued rule of Serbia, and, as a result, may have required higher levels of NATO deterrence to prevent Milosevic's actions in defiance. Certainly NATO's previous hesitant response against Milosevic in the Bosnia phase of the Yugoslav crisis did not create a high level of deterrence. n143 One can only surmise whether the [\*387]  killing in Kosovo could have been avoided had NATO taken a different tack, both structuring the issue less as loss avoidance for Milosevic and considerably enhancing deterrence. Suppose, for example, NATO had emphasized that it had no interest in intervening in Serbia's civil conflict with the Kosovo Liberation Army (KLA) but that it would emphatically take action to punish massive "ethnic cleansing" and other humanitarian outrages, as had been practiced in Bosnia. And on the deterrence side, suppose it made clear in advance that any NATO bombardment would be severe, that ground troops would be introduced if necessary, that in any assault it would pursue a "Leadership Strategy" focused on targets of importance to Milosevic and his principal henchmen (including their hold on power), and that unlike earlier in Bosnia, NATO immediately would seek to generate war crime indictments of all top Serbian leaders implicated in any atrocities. The point here is not to second-guess NATO's actions in Kosovo but to suggest that taking into account potential "cognitive bias," such as "prospect theory," may be useful in fashioning effective deterrence. "Prospect theory" may also be relevant in predicting that it is easier to deter (that is, lower levels are necessary) an aggression than to undo that aggression. Thus, much higher levels of deterrence were probably required to compel Saddam Hussein to leave Kuwait than to prevent him from initially invading that State. In fact, not even the presence of a powerful Desert Storm military force and a Security Council Resolution directing him to leave caused Hussein to voluntarily withdraw. As this  [\*388]  real world example illustrates, there is considerable experimental evidence in "prospect theory" of an almost instant renormalization of reference point after a gain. That is, relatively quickly after Saddam Hussein took Kuwait, a withdrawal was framed as a loss setting, which he would take high risks to avoid. Indeed, we tend to think of such settings as settings of compellance, requiring higher levels of incentive to achieve compulsion producing an action, as opposed to lower levels of deterrence needed for prevention.

One should also be careful not to overstate the effect of "prospect theory" or fail to assess a threat in its complete context. We should remember that a belated pledge by Great Britain to defend Poland before the Nazi attack did not deter Hitler, who believed under the circumstances that the British pledge would not be honored. It is also possible that the greater relative wealth of democracies, which have less to gain in all out war, is yet another internal factor contributing to the "democratic peace." n144 In turn, this also supports the extraordinary tenacity and general record of success of democracies fighting in defensive settings, as they may also have more to lose.

In assessing the adequacy of deterrence to prevent war, we might also want to consider whether extreme ideology, strongly at odds with reality, is a factor requiring higher levels of deterrence for effectiveness. One example may be the extreme ideology of Pol Pot, which led to his false belief that his Khmer Rouge forces could defeat the Vietnamese. n145 He apparently acted on that belief in a series of border incursions against Vietnam that ultimately ended in his losing a war. Similarly, Osama bin Laden's 9/11 attack against America, hopelessly at odds with the reality of his defeating the Western World and producing for him a strategic disaster, seems to have been prompted by his extreme ideology rooted in a distorted concept of Islam at war with the enlightenment. The continuing suicide bombings against Israel, encouraged by radical rejectionists and leading to fewer and fewer gains for the Palestinians, may be another example. If extreme ideology is a factor to be considered in assessing levels of deterrence, it does not mean that deterrence is doomed to fail in such settings but only that it must be at higher levels (and properly targeted toward the relevant  [\*389]  decision elites behind the specific attacks) to be effective, as is also true in perceived loss or compellance settings. n146

Even if major war in the modern world is predominantly a result of aggression by nondemocratic regimes, it does not mean that all nondemocracies pose a risk of war all, or even some, of the time. Salazar's Portugal did not commit aggression. Nor, today, do Singapore or Bahrain or countless other nondemocracies pose a threat. That is, today nondemocracy comes close to a necessary condition in generating the high-risk behavior leading to major interstate war. But it is, by itself, not a sufficient condition for war. The many reasons for this, of course, include a plethora of internal factors, such as differences in leadership perspectives and values, size of military, and relative degree of the rule of law, as well as levels of external deterrence. n147 But where an aggressive nondemocratic regime is present and poses a credible military threat, then it is the totality of external factors, that is, deterrence, that become crucial.

### condo

#### Our model of pre-round conditionality actually mirrors real-world cost-benefit analysis--k2 topic specific education

Don Bradford **Hardin**, Jr., JD from Alabama Law, 20**08**, Alabama Law Review, 59 Ala. L. Rev. 1135

Against this background, CBA came to prominence as part of a larger **administrative law decisionmaking paradigm**--so-called **"comprehensive rationality"--**which supplanted the incrementalism of the previous era. Under the comprehensive rationality paradigm, a policymaker was to "specify the goal he seeks to attain[,] . . . **identify all possible methods** of reaching [the] objective[,] . . . evaluate how effective each method will be in achieving the goal[,] . . . [and] **select the alternative that will make the greatest progress toward the desired outcome."** "The most demanding aspect of [comprehensive rationality was] the care with which it require[d] policymakers to **consider the consequences of each policy option."** CBA was designed to meet this demand, and was touted as "a practical way of assessing the desirability of projects." As a result, Congress began to enact statutes that required various forms of CBA. Some of the earliest examples, such as the National Environmental Policy Act, passed in 1969, loosely applied CBA to administrative decisionmaking. As time passed, the requisite CBA became more concrete and particularized. For example, the Water Pollution Control Act Amendments, passed in 1972, required a "'limited cost-benefit analysis' . . . intended to 'limit the application of technology only where the [benefits are] wholly out of proportion to the costs of achieving such marginal level of reduction,'" and the Toxic Substances Control Act, passed in 1976, authorized the EPA to regulate substances that posed an "unreasonable risk" to health or safety and required consideration of the benefits of the substance and the economic costs of the contemplated regulation. While the late seventies saw a surge of legislative interest in CBA for government decisionmaking, it was the order of a President, not Congressional enactments, that **vaulted CBA to prominence as the regulatory decisionmaking paradigm of the administrative state.**

### Invisible committee

#### Framework – the k must prove that the whole plan is bad – weighing the AFF is vital to fair and educational engagement – isolated negation doesn’t invalidate our plan – the ballot should simulate its enactment – that has pedagogical value – they have to present a competing policy option, the impact is the case

Donohue, 13 [2013 Nation al Security Pedagogy: The Role of Simulations, Associate Professor of Law, Georgetown Law, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2172&context=facpub>]

C ONCLUDING R EMARKS The legal academy has, of late, been swept up in concern about the econom ic conditions that affect the placement of law school graduates. The image being conveyed , however, does not resonate in every legal field. I t is particularly inapposite to the burgeoning opportunities presented to students in national security. That th e conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one - size fits all approach currently dominating the conversation in legal education , however, appears ill - suited to this realm. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselv es. This does not mean that the goals identified are exclusive to, for instance, national security law , but it does suggest a greater nuance with regard to how the pedagogical skills present. With this approach in mind, I have here suggested six pedagogical goals for national security . For following graduation, s tudents must be able to perform in each of the areas identified — i.e., (1 ) understanding the law as applied , (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high - stakes, highly - charged environment, and (6) creating continued opportunities for self - learning . They also must learn how to integrate these different skills into one experience, ensuring that they will be most effective when they enter the field. The problem with the current structures in l egal education is that they fall short, in important ways, from helping students to obtain these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises49 These are important devices to introduce into the classroom. T he amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law, which allows for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, here may provide an important way forward. Such simulations also help to address shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within it . I t makes use of technology and physical space to engage students in a multi - day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve . While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for t he years to come.model above. NSL Sim 2.0 ce rtainly is not the only solution, but it does provide a starting point for moving forward.

#### Alt fails—political viability and finite demands key

**Žižek, 7 – actually on point this time** (Slavoj, Professor of Philosophy at Institute of Social Sciences at University of Ljubljana “Resistance Is Surrender”) BW

Simon Critchley’s recent book, Infinitely Demanding, is an almost perfect embodiment of this position.[\*] For Critchley, the liberal-democratic state is here to stay. Attempts to abolish the state failed miserably; consequently, the new politics has to be located at a distance from it: anti-war movements, ecological organisations, groups protesting against racist or sexist abuses, and other forms of local self-organisation. It must be a politics of resistance to the state, of bombarding the state with impossible demands, of denouncing the limitations of state mechanisms. The main argument for conducting the politics of resistance at a distance from the state hinges on the ethical dimension of the ‘infinitely demanding’ call for justice: no state can heed this call, since its ultimate goal is the ‘real-political’ one of ensuring its own reproduction (its economic growth, public safety, etc). ‘Of course,’ Critchley writes,

history is habitually written by the people with the guns and sticks and one cannot expect to defeat them with mocking satire and feather dusters. Yet, as the history of ultra-leftist active nihilism eloquently shows, one is lost the moment one picks up the guns and sticks. Anarchic political resistance should not seek to mimic and mirror the archic violent sovereignty it opposes.

So what should, say, the US Democrats do? Stop competing for state power and withdraw to the interstices of the state, leaving state power to the Republicans and start a campaign of anarchic resistance to it? And what would Critchley do if he were facing an adversary like Hitler? Surely in such a case one should ‘mimic and mirror the archic violent sovereignty’ one opposes? Shouldn’t the Left draw a distinction between the circumstances in which one would resort to violence in confronting the state, and those in which all one can and should do is use ‘mocking satire and feather dusters’? The **ambiguity** of Critchley’s position resides in a strange non sequitur: **if the state is** here to stay, if it is impossible to abolish it (or capitalism), why retreat from it? Why not act with(in) the state? Why not accept the basic premise of the Third Way? Why limit oneself to a politics which, as Critchley puts it, ‘calls the state into question and calls the established order to account, not in order to do away with the state, desirable though that might well be in some utopian sense, but in order to better it or attenuate its malicious effect’?

These words simply demonstrate that today’s liberal-democratic state and the dream of an ‘infinitely demanding’ anarchic politics exist in a relationship of mutual parasitism: anarchic agents do the ethical thinking, and the state does the work of running and regulating society. Critchley’s anarchic ethico-political agent acts like a superego, comfortably bombarding the state with demands; and the more the state tries to satisfy these demands, the more guilty it is seen to be. In compliance with this logic, the anarchic agents focus their protest not on open dictatorships, but on the hypocrisy of liberal democracies, who are accused of betraying their own professed principles.

The big demonstrations in London and Washington against the US attack on Iraq a few years ago offer an exemplary case of this strange symbiotic relationship between power and resistance. Their paradoxical outcome was that both sides were satisfied. The protesters saved their beautiful souls: they made it clear that they don’t agree with the government’s policy on Iraq. Those in power calmly accepted it, even profited **from** it: not only did the protests in no way prevent the already-made decision to attack Iraq; they also served to legitimise it. Thus George Bush’s reaction to mass demonstrations protesting his visit to London, in effect: *‘You see, this is what we are fighting for*, so that what people are doing here – protesting against their government policy – will be possible also in Iraq!’

It is striking that the course on which Hugo Chávez has embarked since 2006 is the exact opposite of the one chosen by the postmodern Left: far from resisting state power, he grabbed it (first by an attempted coup, then democratically), ruthlessly using the Venezuelan state apparatuses to promote his goals. Furthermore, he is militarising the barrios, and organising the training of armed units there. And, the ultimate scare: now that he is feeling the economic effects of capital’s ‘resistance’ to his rule (temporary shortages of some goods in the state-subsidised supermarkets), he has announced plans to consolidate the 24 parties that support him into a single party. Even some of his allies are sceptical about this move: will it come at the expense of the popular movements that have given the Venezuelan revolution its élan? However, this choice, though risky, should be fully endorsed: the task is to make the new party function not as a typical state socialist (or Peronist) party, but as a vehicle for the mobilisation of new forms of politics (like the grass roots slum committees). What should we say to someone like Chávez? ‘No, do not grab state power, just withdraw, leave the state and the current situation in place’? Chávez is often dismissed as a clown – but wouldn’t such a withdrawal just reduce him to a version of Subcomandante Marcos, whom many Mexican leftists now refer to as ‘Subcomediante Marcos’? Today, it is the great capitalists – Bill Gates, corporate polluters, fox hunters – who ‘resist’ the state.

The lesson here is that **the** truly subversive thing **is not** to insist on ‘infinite’ demands we know those in power cannot fulfil. Since they know that we know it, such an ‘infinitely demanding’ attitude presents no problem for those in power: ‘So wonderful that, with your critical demands, you remind us what kind of world we would all like to live in. Unfortunately, we live in the real world, where we have to make do with what is possible.’ The thing to do is, on the contrary, to bombard those in power with **strategically** well-selected**,** precise**,** finite **demands, which can’t be met with the same excuse**.

#### Violence down now – the system is the reason

**Gat, 13** (AZAR GAT, DPhil in History (University of Oxford, 1986); Ezer Weitzman Professor of National Security, Political Science Department, Tel Aviv University; recent books: War in Human Civilization (Oxford University Press, 2006); Victorious and Vulnerable: Why Democracy Won in the 20th Century and How It Is Still Imperiled (Hoover Institution, Rowman & Littlefield, 2010); Nations: The Long History and Deep Roots of Political Ethnicity and Nationalism (Cambridge University Press, 2013). Is war declining – and why? Azar Gat⇑ Department of Political Science, University of Tel Aviv azargat@post.tau.ac.il , March 19th 2013)

When quite **a number of scholars** **simultaneously and independently** of one another arrive at **very similar conclusions** on an **issue of cardinal theoretical and practical significance**, their thesis **deserves**, and has received, **great attention**. The thesis is that **war and violence** in general have progressively **decreased in recent times, during the modern era, and** even **throughout history.** Of course, despite their unanimity, all these scholars could still be wrong. Indeed, each of them tells a similar story of people’s **disbelief at their findings**, most notably that **we live in the most peaceful period in** human **history**. Some of them even explain the general incredulity by the findings of evolutionary psychology according to which we tend to be overly optimistic about ourselves but overly pessimistic about the world at large. Having myself written about the marked decrease in deadly human violence (Gat, 2006), I agree with the authors’ general thesis. However, their unanimity falters over, and they are less clear about, the historical trajectory of and the reasons for the decline in violence and war, questions that are as important as the general thesis itself. Previous Section Next Section Hobbes was right, and Rousseau wrong, about the state of nature Steven Pinker’s The Better Angels of Our Nature (2011) towers above all the other books surveyed here in size, scope, boldness, and scholarly excellence. It has deservedly attracted great public attention and has become a best-seller. Massively documented, this 800-page volume is lavishly furnished with statistics, charts, and diagrams, which are one of the book’s most effective features. The book, spanning the whole human past as far back as our aboriginal condition, points to two major steps in the decline of violence. The first is the sharp decline in violent mortality which resulted from the rise of the state-Leviathan from around 5,000 years ago. This conclusion is based on the most comprehensive studies of the subject published over the past 15 years (Keeley, 1996; LeBlanc, 2003; Gat, 2006), which demonstrate on the basis of anthropological and archaeological evidence that Hobbes’s picture of the anarchic state of nature as a very violent one was fundamentally true. Pinker rightly summarizes that violent mortality with the rise of states dropped from a staggering estimated 15% of the population, 25% of the men, in pre-state societies, to about 1–5%. The main reason for this drop is the enforcement of internal peace by the Leviathan, but also, less noted by Pinker, lower mobilization rates and a smaller exposure of the civilian population to war than with tribal groups, as will be explained shortly. This conclusion regarding the dramatic drop in violent mortality with the transition to the state is at odds with the claim made by Jack Levy & William Thompson in their book, The Arc of War (2011). As the book’s title implies, Levy & Thompson posit a great increase in warfare during history, before a decrease during the past two centuries. Thus, the book claims that mortality in fighting greatly increased, ‘accelerated’ in the authors’ language, with the transition to the state. They reach this conclusion by making several mistaken assumptions. First, although professing ignorance about the distant past because of the lack of evidence on the behavior of hunter-gatherer societies before the adoption of agriculture some 10,000 years ago, they cite and are heavily influenced by the old Rousseauite anthropology of the generation after the 1960s, which recent studies have refuted. Obviously, one does not have to accept the above findings regarding the pervasiveness and great lethality of prehistoric warfare. But Levy & Thompson simply do not engage with them. They accept as true the Rousseauite premise that sparse human population could not possibly have had that much to fight about. However, recently extant hunter-gatherer societies prove the opposite. Australia is our best laboratory of hunter-gatherer societies, because that vast continent was entirely populated by them and ‘unpolluted’ by agriculturalists, pastoralists or states until the arrival of the Europeans in 1788. And the evidence shows that the Australian tribes fought incessantly with one another. Even in the Central Australian Desert, whose population density was as low as one person per 35 square miles, among the lowest there is, conflict and deadly fighting were the rule. Much of that fighting centered on the water-holes vital for survival in this area, with the violent death rate there reckoned to have been several times higher than in any state society. In most other places, hunting territories were monopolized and fiercely defended by hunter-gatherers because they were quickly depleted. Even among the Inuit of Arctic Canada, who were so sparse as to experience no resource competition, fighting to kidnap women was pervasive, resulting in a violent death rate 10 times higher than the USA’s peak rate of 1990, itself the highest in the developed world. In more hospitable and densely populated environments casualties averaged, as already mentioned, 15% of the population and 25% of the men, and the surviving men were covered with scars (Gat, 2006: chs 2, 6). We are not dealing here with a piece of exotic curiosity. Ninety-five percent of the history of our species Homo sapiens sapiens – people who are like us – was spent as hunter-gatherers. The transition to agriculture and the state is very recent, the tip of the iceberg, in human history. Furthermore, the human state of nature turns out to be no different than the state of nature in general. Here too, science has made a complete turnabout. During the 1960s people believed that animals did not kill each other within the same species, which made humans appear like a murderous exception and fed speculations that warfare emerged only with civilization. Since then, however, it has been found that animals kill each other extensively within species, a point pressed on every viewer of television nature documentaries. There is nothing special about humans in this regard. Thus, lethal human fighting did not ‘emerge’ at some point in history, as Levy & Thompson posit. Previous Section Next Section Violent death sharply decreased with the rise of the Leviathan As mentioned earlier and as Pinker well realizes, violent mortality actually dropped steeply with the emergence of the state-Leviathan. Here is where Levy & Thompson make a second mistake. For measuring the lethality of warfare they use evidence of battle mortality, but this is highly misleading for various reasons. First, pre-state tribes’ main fighting modes were not the battle but the raid and the ambush – capturing the enemy by surprise and often annihilating entire sleeping camps: men, women, and children. Second, the size of battles merely indicates the size of the states and their armies, which are obviously larger than tribal groups in absolute terms. Yet **the main question is relative casualties**, what percentage of the population died violently. And here the fact is that while states and their armies grew by a factor of tens, hundreds, and thousands, giving a spectacular impression of large-scale fighting, **relative casualties actually decreased** under the state, and not only because of internal peace. Indeed, casualties decreased precisely because states grew large. Take Egypt, for example, part of the ‘acceleration’ of war with the emergence of states in Mesopotamia, Egypt, Greece, and China, according to Levy & Thompson. The size of the Egyptian army with which Pharaoh Ramses II fought the Hittite empire at the Battle of Kadesh (commonly dated 1274 BCE) was 20,000–25,000 soldiers. This was a very large army by the standards of the time. Yet the total population of Egypt was about 2–3 million, so the army constituted 1% of the population at most. This was very much the standard in large states and empires throughout history because of the great financial and logistical problems of maintaining large armies for long periods at great distances from home. Thus, in comparison to the high military participation rates of small-scale tribal societies, participation rates, and hence war casualties, in large states’ armies were much lower. Moreover, in contrast to the great vulnerability of women and children in small-scale tribal warfare, the civilian population of Egypt was sheltered by distance from the theaters of military operations and not often exposed to the horrors of war. Such relative security, interrupted only by large-scale invasions, is one of the main reasons why societies experienced great demographic growth after the emergence of the state. It is also the reason why civil war, when the war rages within the country, tends to be the most lethal form of war, as Hobbes very well realized. Warfare and feuds in the pre- and early-modern eras Levy & Thompson further posit that between the 14th and early 19th centuries, Europe was the scene of a second ‘acceleration’ in the historical trajectory of violence. This is very much in line with the prevailing perceptions regarding early modern European history, but these perceptions are most probably wrong, and for the same reason as before: Levy & Thompson count absolute battle casualties, and obviously states became more centralized during this period and armies grew in number, so battles also grew in size. Yet it was the anarchy and feudal fragmentation in Europe between the fall of the Roman Empire and 1200 that were responsible for the pervasive insecurity and endemic violence that characterized the Dark Ages and resulted in, among other things, a sharp demographic decline. Again, small-scale usually meant more, not less, violent mortality. The focus on early modern Europe is misleading also in another way: in the late Middle Ages the Mongol conquests inflicted on the societies of China, Central Asia, and Eastern Europe casualties and destruction that were among the highest ever suffered during historical times. Estimates of the sharp decline experienced by the populations of China and Russia, for example, vary widely. Still, even by the lowest estimates they were at least as great, and in China almost definitely much greater, than the Soviet Union’s horrific rate in World War II of about 15%. The receding of medieval anarchy in the face of the growing European state-Leviathans was the first step towards a steep decline in the continent’s violent mortality rate beginning in early modernity and continuing to the present day. The studies and data cited by Pinker with respect to the domestic aspect of this trend are strikingly paralleled by those of Robert Muchembled’s History of Violence (2012). The work of a historian, the book meticulously documents, on the basis of French legal records, a 20-fold decrease in homicide rates between the 13th and 20th centuries. Earlier studies of other parts of Europe, starting with Gurr (1981), have come up with similar findings. Like Pinker, Muchembled attributes the steep decline to the state’s growing authority, as its justice system effectively replaced and deterred ‘private justice’, vendetta, and pervasive violence, all of them endemic in unruly societies. Correspondingly, again like Pinker, Muchembled invokes Norbert Elias’s (2000) ‘civilizing process’, whereby the defense of honor by sword and knife, a social norm and imperative in most traditional societies, is gradually given up among both the nobility and the general populace. The civilizing process is partly a function of the growing authority of the state’s rule and justice system. But there were other factors involved, which Pinker excels in identifying and weaving together. Although he is not a historian, his historical synthesis is exemplarily rich and nuanced. He specifies the growing humanitarian sensibilities in Europe of the Enlightenment, which he traces to, among other things, the gradual improvement in living conditions, growing commercial spirit and, above all, the print revolution with the attendant values and habits of reasoning, introspection, and empathy that it inculcated among the reading elites. As Pinker points out, not only did homicide rates decline but also other previously common forms of violence, such as judicial disembowelment and torture, were becoming unacceptable by the 18th century. This was the beginning of a continuous process which during the following centuries would bring about, among other things, the abolition of slavery and the decline of capital punishment, tyranny, and political violence in the developed world – most notably in the areas where the values of Enlightenment humanitarianism triumphed. Both Pinker and Muchembled identify a change in the trend towards increased violence and homicide rates in the United States and Europe from the 1960s on. They attribute this change (Pinker is particularly elaborative here) to the erosion of public authority and some reversal of the ‘civilizing process’ with the cults of youth culture, defiance of authority, radical ideologies of violence by the ‘oppressed’, and the fragmentation of the stable family structure. Pinker identifies a return to a downward trend in violence from about 1990 on, which he attributes to an ebbing of much of the above through reasserted state action and changes in the public mood. A last point worth mentioning in this context: Muchembled reveals that throughout the steep decline in homicide rates, from medieval times to the present, 90% or more of all cases have been perpetrated by men, especially between the ages of 20 and 30 years old. As Daly & Wilson (1988: 145–149) have shown, this ratio is found in each and every society studied around the globe, from hunter-gatherers to agricultural and industrial societies, irrespective of the vastly different homicide rates among them. Previous Section Next Section The decline of war and the three `Long Peaces' after 1815 We now move to the decline of war, which is our main concern here. Most people are surprised to learn that the occurrence of war and overall mortality in war sharply decreased after 1815, most notably in the developed world. The ‘Long Peace’ among the great powers after 1945 is more recognized and is widely attributed to the nuclear factor, a decisive factor to be sure, which concentrated the minds of all the protagonists wonderfully. The (inter-)democratic peace has been equally recognized. But in actuality, the **decrease in war had been very marked before the nuclear era** **and encompassed both democracies and non-democracies**. In the century after 1815, wars **among economically advanced countries declined in their frequency to** about **one-third of** what they had been in the **previous centuries, an unprecedented change**. Indeed, the Long Peace after 1945 was preceded by the second longest peace among the great powers, between 1871 and 1914, and by the third longest peace, between 1815 and 1854 (Gat, 2006: 536–537, 608). Thus, the three longest periods of peace by far in the modern great powers system all occurred after 1815. Clearly, one needs to explain the entire trend, while also accounting for the glaring divergence from it: the two World Wars. Previous Section Next Section Is modern war more lethal and destructive than before? In his earlier works, Levy (1983) was among the first to document the much-reduced frequency of war after 1815. But what brought about this change? Levy & Thompson assume – this is perhaps the most natural hypothesis – that wars declined in frequency because they became too lethal, destructive, and expensive. Supposedly, a trade-off of sorts was created between the intensity and frequency of warfare: fewer, larger wars supplanting many smaller ones. This hypothesis barely holds, however, because, again, relative to population and wealth wars have not become more lethal and costly than earlier in history. Furthermore, as Levy & Thompson rightly document, the wars of the 19th century – the most peaceful century in European history – were particularly light, in comparative terms, so there is no trade-off here. True, the World Wars, especially World War II, were certainly on the upper scale of the range in terms of casualties. Yet, as already noted, they were far from being exceptional in history. Once more, we need to look at relative casualties, general human mortality in any number of wars that happen to rage around the world, rather than at the aggregate created by the fact that many states participated in the World Wars. I have already mentioned the Mongol invasions, but other examples abound. In the first three years of the Second Punic War, 218–16 BCE, Rome lost some 50,000 citizens of the ages of 17–46, out of a total of about 200,000 in that age demographic (Brunt, 1971). This was roughly 25% of the military-age cohorts in only three years, the same range as the Russian and higher than the German rates in World War II. This, and the devastation of Rome’s free peasantry during the Second Punic War, did not reduce Rome’s propensity for war thereafter. During the Thirty Years War (1618–48) population loss in Germany is estimated at between one-fifth and one-third – either way higher than the German casualties in World War I and World War II combined. People often assume that more developed military technology during modernity means greater lethality and destruction, but in fact it also means greater protective power, as with mechanized armor, mechanized speed and agility, and defensive electronic measures. Offensive and defensive advances generally rise in tandem. In addition, it is all too often forgotten that the vast majority of the many millions of non-combatants killed by Germany during World War II – Jews, Soviet prisoners of war, Soviet civilians – fell victim to intentional starvation, exposure to the elements, and mass executions rather than to any sophisticated military technology. Instances of genocide in general during the 20th century, much as earlier in history, were carried out with the simplest of technologies, as the Rwanda genocide horrifically reminded us. Nor have wars during the past two centuries been economically more costly than they were earlier in history, again relative to overall wealth. War has always involved massive economic exertion and has been the single most expensive item of state spending (e.g. massively documented, Bonney, 1999). Examples are countless, and it will suffice to mention that both 16th- and 17th-century Spain and 18th-century France were economically ruined by war and staggering war debts, which in the French case brought about the Revolution. Furthermore, death by starvation in premodern wars was widespread. Previous Section Next Section Is it peace that has become more profitable? So if wars have not become more costly and destructive during the past two centuries then why have they receded, particularly in the developed world? The answer is the **advent of the industrial–commercial revolution** after 1815, the most profound transformation of human society since the Neolithic adoption of agriculture. The correlation between the decline of war in the developed world and the process of modernization, both unfolding since 1815, is surely not accidental, and the causation is not difficult to locate. In the first place, given explosive growth in per capita wealth, about 30- to 50-fold thus far, the Malthusian trap has been broken. Wealth no longer constitutes a **fundamentally finite quantity**, and wealth acquisition progressively **shifted** away **from a zero-sum game**. Secondly, economies are no longer overwhelmingly autarkic, **instead having become increasingly interconnected** by specialization, scale, and exchange. Consequently, foreign devastation potentially depressed the entire system and was thus **detrimental to a state’s own wellbeing**. This reality, already noted by Mill (1848/1961: 582), starkly manifested itself after World War I, as Keynes (1920) had anticipated in his criticism of the reparations imposed on Germany. Thirdly, greater economic **openness has decreased the likelihood of war by disassociating economic access from the confines of political borders and sovereignty**. It is no longer necessary to **politically possess a territory in order benefit** from it. Of the above three factors, the second one – commercial interdependence – has attracted most of the attention in the literature. But the other two factors have been no less significant. Thus, the greater **the yield of competitive economic cooperation, the more counterproductive and less attractive conflict becomes**. Rather than war becoming more costly, as is widely believed, **it is in fact peace that has been growing more profitable.** Referring to my argument in this regard, Levy & Thompson (2011: 72–75) excused themselves from deciding on the issue on the grounds of insufficient information regarding the cost of premodern war. But as already noted, the information on the subject is quite clear.

#### This is statistically proven

Drezner, 5 [Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Senior Editor at the National Interest, M.A. in Economics and Ph.D. in Political Science from Stanford University, “Gregg Easterbrook, War, and the Dangers of Extrapolation”, <http://www.danieldrezner.com/archives/002087.html>]

Via Oxblog's Patrick Belton, I see that Gregg Easterbrook has a cover story in The New Republic entitled "The End of War?" It has a killer opening: Daily explosions in Iraq, massacres in Sudan, the Koreas staring at each other through artillery barrels, a Hobbesian war of all against all in eastern Congo--combat plagues human society as it has, perhaps, since our distant forebears realized that a tree limb could be used as a club. But here is something you would never guess from watching the news: War has entered a cycle of decline. Combat in Iraq and in a few other places is an exception to a significant global trend that has gone nearly unnoticed--namely that, for about 15 years, there have been steadily fewer armed conflicts worldwide. In fact, it is possible that a person's chance of dying because of war has, in the last decade or more, become the lowest in human history. Is Easterbrook right? He has a few more paragraphs on the numbers: The University of Maryland studies find the number of wars and armed conflicts worldwide peaked in 1991 at 51, which may represent the most wars happening simultaneously at any point in history. Since 1991, the number has fallen steadily. There were 26 armed conflicts in 2000 and 25 in 2002, even after the Al Qaeda attack on the United States and the U.S. counterattack against Afghanistan. By 2004, Marshall and Gurr's latest study shows, the number of armed conflicts in the world had declined to 20, even after the invasion of Iraq. All told, there were less than half as many wars in 2004 as there were in 1991. Marshall and Gurr also have a second ranking, gauging the magnitude of fighting. This section of the report is more subjective. Everyone agrees that the worst moment for human conflict was World War II; but how to rank, say, the current separatist fighting in Indonesia versus, say, the Algerian war of independence is more speculative. Nevertheless, the Peace and Conflict studies name 1991 as the peak post-World War II year for totality of global fighting, giving that year a ranking of 179 on a scale that rates the extent and destructiveness of combat. By 2000, in spite of war in the Balkans and genocide in Rwanda, the number had fallen to 97; by 2002 to 81; and, at the end of 2004, it stood at 65. This suggests the extent and intensity of global combat is now less than half what it was 15 years ago. Easterbrook spends the rest of the essay postulating the causes of this -- the decline in great power war, the spread of democracies, the growth of economic interdependence, and even the peacekeeping capabilities of the United Nations. Easterbrook makes a lot of good points -- most people are genuinely shocked when they are told that even in a post-9/11 climate, there has been a steady and persistent decline in wars and deaths from wars. That said, what bothers me in the piece is what Easterbrook leaves out. First, he neglects to mention the biggest reason for why war is on the decline -- there's a global hegemon called the United States right now. Easterbrook acknowledges that "the most powerful factor must be the end of the cold war" but he doesn't understand why it's the most powerful factor. Elsewhere in the piece he talks about the growing comity among the great powers, without discussing the elephant in the room: the reason the "great powers" get along is that the United States is much, much more powerful than anyone else. If you quantify power only by relative military capabilities, the U.S. is a great power, there are maybe ten or so middle powers, and then there are a lot of mosquitoes. [If the U.S. is so powerful, why can't it subdue the Iraqi insurgency?--ed. Power is a relative measure -- the U.S. might be having difficulties, but no other country in the world would have fewer problems.] Joshua Goldstein, who knows a thing or two about this phenomenon, made this clear in a Christian Science Monitor op-ed three years ago: We probably owe this lull to the end of the cold war, and to a unipolar world order with a single superpower to impose its will in places like Kuwait, Serbia, and Afghanistan. The emerging world order is not exactly benign – Sept. 11 comes to mind – and Pax Americana delivers neither justice nor harmony to the corners of the earth. But a unipolar world is inherently more peaceful than the bipolar one where two superpowers fueled rival armies around the world. The long-delayed "peace dividend" has arrived, like a tax refund check long lost in the mail. The difference in language between Goldstein and Easterbrook highlights my second problem with "The End of War?" Goldstein rightly refers to the past fifteen years as a "lull" -- a temporary reduction in war and war-related death. The flip side of U.S. hegemony being responsible for the reduction of armed conflict is what would happen if U.S. hegemony were to ever fade away. Easterbrook focuses on the trends that suggest an ever-decreasing amount of armed conflict -- and I hope he's right. But I'm enough of a realist to know that if the U.S. should find its primacy challenged by, say, a really populous non-democratic country on the other side of the Pacific Ocean, all best about the utility of economic interdependence, U.N. peacekeeping, and the spread of democracy are right out the window. UPDATE: To respond to a few thoughts posted by the commenters: 1) To spell things out a bit more clearly -- U.S. hegemony important to the reduction of conflict in two ways. First, U.S. power can act as a powerful if imperfect constraint on pairs of enduring rivals (Greece-Turkey, India-Pakistan) that contemplate war on a regular basis. It can't stop every conflict, but it can blunt a lot of them. Second, and more important to Easterbrook's thesis, U.S. supremacy in conventional military affairs prevents other middle-range states -- China, Russia, India, Great Britain, France, etc. -- from challenging the U.S. or each other in a war. It would be suicide for anyone to fight a war with the U.S., and if any of these countries waged a war with each other, the prospect of U.S. intervention would be equally daunting.

#### o.w

**Bostrom 2** – Oxford Philosophy Professor and director of the Future of Humanity Institute (Nick, Existential Risks, http://www.jetpress.org/volume9/risks.html, AG)

In this paper we shall discuss risks of the sixth category, the one marked with an X. This is the category of global, terminal risks. I shall call these existential risks. Existential risks are distinct from global endurable risks. Examples of the latter kind include: threats to the biodiversity of Earth’s ecosphere, moderate global warming, global economic recessions (even major ones), and possibly stifling cultural or religious eras such as the “dark ages”, even if they encompass the whole global community, provided they are transitory (though see the section on “Shrieks” below). To say that a particular global risk is endurable is evidently not to say that it is acceptable or not very serious. A world war fought with conventional weapons or a Nazi-style Reich lasting for a decade would be extremely horrible events even though they would fall under the rubric of endurable global risks since humanity could eventually recover. (On the other hand, they could be a local terminal risk for many individuals and for persecuted ethnic groups.) I shall use the following definition of existential risks: Existential risk – One where an adverse outcome would either annihilate Earth-originating intelligent life or permanently and drastically curtail its potential. An existential risk is one where humankind as a whole is imperiled. Existential disasters have major adverse consequences for the course of human civilization for all time to come. 2 The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[2] At any given time we must use our best current subjective estimate of what the objective risk factors are.[3] A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4]

Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century. The special nature of the challenges posed by existential risks is illustrated by the following points: \* Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. \* We cannot necessarily rely on the institutions, moral norms, social attitudes or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[5] **Our collective fear**-response **is** likely **ill calibrated** **to the magnitude of threat**. \* Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk. \* If we take into account the welfare of future generations, the harm done by existential risks is multiplied by another factor, the size of which depends on whether and how much we discount future benefits [15,16]. In view of its undeniable importance, it is surprising how little systematic work has been done in this area. Part of the explanation may be that many of the gravest risks stem (as we shall see) from anticipated future technologies that we have only recently begun to understand. Another part of the explanation may be the unavoidably interdisciplinary and speculative nature of the subject. And in part the neglect may also be attributable to an aversion against thinking seriously about a depressing topic. The point, however, is not to wallow in gloom and doom but simply to take a sober look at what could go wrong so we can create responsible strategies for improving our chances of survival. In order to do that, we need to know where to focus our efforts.

### puar

#### Alt doesn’t solve – binaries inevitable – systems focus key

Greenprof sociology @ U toronto 2k2(Adam, “Gay but not queer: Toward a post-queer study of sexuality” Theory and Society 31: 521^545)

In fact, we have good reason to keep the hetero/homo binary at the center of our research agendas, given the wide range of lesbian and gay identities, networks and communities that have been uncovered in the last three decades of sexuality scholarship. Like Newton’s research, this body of historical and social scienti fic work makes it clear that sexual classi fications have had an enormous impact on shaping the experience of homosexuals. In the twentieth and now twenty- first centuries, men and women of the Western world who feel sexual attraction for same-sex partners encounter a massive conceptual and institutional apparatus around which their social, sexual and political lives orbit. Fromch ildhood forward, local community attachments and informal structures of social control intervene in the project of becoming sexual, transmitting and enforcing classi fications of sexual orientation across the life-course. In this context, homosexual actors have been and will continue to be influenced fundamentally by sexological classi fications as they develop a self-concept,28 engage in sexual practices,29 maneuver in and out of the closet,30 encounter homophobia, 31 negotiate stigma,32 confront HIV/AIDS,33 participate in and observe local and national political events and religious struggles,34 and exist within or alongside gay communities.35 Indeed, in the information age, we can expect the impact of categories of sexual orientation to be ever more far reaching, as various media transmit and reproduce the sexological epistemology that undergirds Western conceptions of the erotic across the globe.36 Whats more, because the effects of classi fications of sexual orientation are con fined neither to sexological texts nor gay summer resorts, we deconstruct these at our peril. Regardless of how they self-identify, sexual actors know this intuitively every time they walk into or out of a gay bar, or hold hands with their same-sex partner in a public venue, or relay quietly details of the same-sex date they had the former evening to a friend in a restaurant flanked by heterosexual couples, families, or worse yet, teenage males. Indeed, **even as an individual gay man will intellectually apprehend the epistemological limitations of sexological classifications and their central historical role as a disciplining apparatus, it will do him** no good to cite Butler when confrontedwith a pack of gay bashers, (**or a homophobic landlord or employer**), and protest that his identity is multiple **and unstable,** thus exempting him from the ensuing beating (or discrimination).

#### Aff reverses utopian fundamentalism- overidentification with culture of death ignores queer successes in changing parenthood and childhood through political interventions. The plan destroys the complex multiplicity of queer politics with the fascism of the culture of death

**Balasopoulos, 06** (Antonis, Journal of American Studies, v. 40, projectmuse)

No Future is a work whose argument cannot be divorced from the experience of disillusionment with the failure of liberal sexual politics to prevail in a political struggle that the author suspects to have been doomed from the start. For political discourse is inconceivable, Edelman argues, without prior agreement to invest in the fantasy of the symbolic intelligibility of the social tissue. Such agreement, however, always turns out to involve a pledge of allegiance to the figure that embodies the promise of a meaning-fulfilling future at the same time that it affirms the transcendental meaningfulness of heterosexual union–the child. What is therefore exacted as entrance fee to the political is the perennial othering and exclusion of those who embody all that is queerly meaning-negating and thereby child-threatening as well: those whose forms of pleasure register as narcissistically antisocial, those whose sexuality refuses to be etherealized into an anodyne expression of subjectivity, those whose very existence appears as a threat to the innocence of the child and to the future-serving ethics of its self-declared protectors. Edelman’s defiant response to this ideological circuit (one made unmistakably visible in the resounding tactical success of the anti-gay marriage ballot in last November’s US presidential elections) is to affirm precisely what liberal defenses of queerness must necessarily seek to deny: an uncompromising “embrace of queer negativity,” whose ethical value would reside in its “radical challenge to the value of the social itself.” The bulk of what follows Edelman’s main thesis consists of three chapters, each of which psychoanalytically examines the vexed relation between the narrative exigencies of “reproductive futurism” and the figure of a subject whose queerness registers as an antisocial pursuit of jouissance and an enthrallment in the meaningless compulsions of the death drive–a subject Edelman, evoking Lacan, dubs the “sinthomosexual.” The first chapter anatomizes this relation through a reading of Victorian prose fiction (focusing on the misanthropic bachelor misers of Charles Dickens’s A Christmas Carol and George Eliot’s Silas Marner and the children who providentially straighten them out), while the remaining two focus on twentieth-century narrative cinema and on the future-negating figures inhabiting Hitchcock’s North by Northwest and The Birds. Edelman’s book takes obvious pleasure in provocation, stylistically indulging in the ironic hermeneutics it methodologically advocates with at times infelicitous results (an excess of largely gratuitous verbal punning and a partiality for highly convoluted syntax are cases in point). More disconcertingly, No Future involves a vision of queer subjectivity that is so strongly invested in transvaluating the homophobic linkage of homosexuality with a “culture of death” that it ends up ignoring the complexity and diversity of what has historically constituted queer (lesbian and transgender as well as gay) politics. Missing, for instance, is a serious and sustained attempt to engage with the multiple transformations the concepts of reproduction and parenthood have undergone in the last two decades, partly as a result of the interventions of queer theory itself. Equally absent is any analytical concern with the cultural and representational resonances of the queer child–a figure that certainly complicates the book’s one-dimensional treatment of the image of besieged childhood, while making apparent the unreflectively eclectic and historically untheorized nature of Edelman’s choice of primary texts. The effect of such exclusions–a highly repetitive account of texts that are treated as virtually interchangeable–is particularly troubling from a theoretical standpoint. For though Edelman’s argument largely rests on a theoretical distinction between an ideologically normative and a radically destabilizing kind of repetition compulsion, his analytical practice makes the difference between them less than obvious. Paying the reader diminishing dividends with each page, No Future bulldozes its way from Plato to the Victorians and from Hitchcock to Judith Butler by unwaveringly locating the same Manichean conflict between reproductive ideology and its queer negation, a struggle to the death between monolithic and unchanging absolutes. To declare No Future a timely work is hence not an unambiguous compliment; for its timeliness comes at the cost of intellectual surrender to the increasingly polarized and disconcertingly fundamentalist climate of American politics in the present.

#### Death’s symbolic value does not deny the value of life---the option to continue living should always be available

Amien Kacou 8 WHY EVEN MIND?On The A Priori Value Of “Life” Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) cosmosandhistory.org/index.php/journal/article/view/92/184

I. What we mean (in more detail)

Regardless of whether or not we find that it is the “fundamental question” of philosophy,[8] we can see that judging whether life is or is not worth living is, in one sense at least, when understood with a general character, a fundamentally philosophical question. The question calls on the living individual to make a value judgment (which seems of the most serious extent) about the condition it most basically, most generally, and in a sense most intimately, “finds itself” in—and in this sense, the question must be seen as a “personal” one.[9] But the judgment called for only becomes especially interesting for philosophical exercise once we attempt to make it “objective,” so to speak.

On the one hand, from a “subjective” point of view, the question whether life is or is not worth living **reduces simply to the question whether** **or not**—or how—**we the living** already in fact, in our variable situations, **desire or not to live**. Its answer is a function of descriptions of motivational dispositions as they may vary from individual to individual and circumstance to circumstance. (For instance, some may find certain cases of euthanasia justified, or find certain forms of suicide honorable.) In other words, from a subjective point of view, the answer would simply be that life is worth living to the extent that, while we could have a different attitude, we just happen to want it (to be disposed towards it), perhaps in light of circumstantial considerations. And, thus, the question could be **quickly addressed** in some cases, without much need for philosophical inquiry—except perhaps on collateral issues. Similarly, typical answers referring simply to how “fun” or “beautiful” life is, or (perhaps the contemporary scientist’s favorite) how “fascinating” or “mysterious”—these answers are, as stated, inadequate for our purposes, to the extent that they are primitive (uncritical) generalizations expressing our preexisting desire for (or infatuation with) life.

On the other hand, from a point of view that purports to be “objective,” we must have a more complex approach. We must “problematize” the value of life in general. The question is not simply whether (or how, or even why in the broad sense of an explanation) we happen to desire or not to live, but rather whether (or why in the narrow sense of a justification) we should or should not ever desire to live in the first place.

a. The objective approach

In seeking a justification, we must look, beyond the mere “freedom” (or given-ness) of any primitive desire, for something like a final “authority” that we could show through some fact or logical inference[10] to make us “right” (i.e., as a matter of reasoning) to have such a desire. In other words, we must try to present life as being instrumental or not to some uncontested value (or purpose)—and, thus, as either “useful” or “futile.” In this sense, the word “meaningful” (pertaining to life) would be basically synonymous with the word “useful”—a relation between objects and moments, on the one hand, and how what we value can be served, on the other hand.

In addition, we do not look for conditions that would sustain or increase the value of a proposed venture; we look for a demonstration that the venture can have any value. Accordingly, in order to find the objective position, we must avoid in our picture of life or death any variable circumstance that could be taken to make either one of them arbitrarily more or less attractive or pursuable. Furthermore, any description of how we desire to live **may well entail conditions under which we would not prefer to live**. **But** even if such conditions exist**, it does not necessarily follow that life is without value when those conditions prevail**. Indeed, by analogy, that we would prefer ten dollars to five dollars if we could choose does not mean at all that the five dollars would then have no value. Other example: that we would happily accept an ice cream cone if it were free but refuse it if we had to pay for it does not mean at all that ice cream has no value to us. The distinction can be expressed as follows: the value of ice cream in light of its cost, we call its a posteriori value; the value of ice cream irrespective of its cost, we call its a priori value.

What we seek in this inquiry is the a priori value of life-as-such—**the value that subsists in, or is essential to, or is the initial value in,** any life**,** irrespective of its circumstances, including, to any extent possible, any explanation for its existence.[11] (The objective question calls for an a priori answer.) In contrast, we are not interested in questions such as whether seppuku is honorable or how end-of-life decisions should be made. (The subjective question, the question of circumstances and the a posteriori answer coincide.)

#### Future oriented apocalyptic pedagogy is productive

**Junio and Mahnken 13**—Stanford AND Naval War College

(Timothy and Thomas, “Conceiving of Future War: The Promise of Scenario Analysis for International Relations”, International Studies Review Volume 15, Issue 3, pages 374–395, September 2013, dml)

This article introduces political scientists to scenarios—future counterfactuals—and demonstrates their value in tandem with other methodologies and across a wide range of research questions. The authors describe best practices regarding the scenario method and argue that scenarios contribute to theory building and development, identifying new hypotheses, analyzing data-poor research topics, articulating “world views,” setting new research agendas, avoiding cognitive biases, and teaching. The article also establishes the low rate at which scenarios are used in the international relations subfield and situates scenarios in the broader context of political science methods. The conclusion offers two detailed examples of the effective use of scenarios.

In his classic work on scenario analysis, The Art of the Long View, Peter Schwartz commented that “social scientists often have a hard time [building scenarios]; they have been trained to stay away from ‘what if?’ questions and concentrate on ‘what was?’” (Schwartz 1996:31). While Schwartz's comments were impressionistic based on his years of conducting and teaching scenario analysis, his claim withstands empirical scrutiny. Scenarios—counterfactual narratives about the future—are woefully underutilized among political scientists. The method is almost never taught on graduate student syllabi, and a survey of leading international relations (IR) journals indicates that scenarios were used in only 302 of 18,764 sampled articles. The low rate at which political scientists use scenarios—less than 2% of the time—is surprising; the method is popular in fields as disparate as business, demographics, ecology, pharmacology, public health, economics, and epidemiology (Venable, Li, Ginter, and Duncan 1993; Leufkens, Haaijer-Ruskamp, Bakker, and Dukes 1994; Baker, Hulse, Gregory, White, Van Sickle, Berger, Dole, and Schumaker 2004; Sanderson, Scherbov, O'Neill, and Lutz 2004). Scenarios also are a common tool employed by the policymakers whom political scientists study.

This article seeks to elevate the status of scenarios in political science by demonstrating their usefulness for theory building and pedagogy. Rather than constitute mere speculation regarding an unpredictable future, as critics might suggest, scenarios assist scholars with developing testable hypotheses, gathering data, and identifying a theory's upper and lower bounds. Additionally, scenarios are an effective way to teach students to apply theory to policy. In the pages below, a “best practices” guide is offered to advise scholars, practitioners, and students, and an argument is developed in favor of the use of scenarios. The article concludes with two examples of how political scientists have invoked the scenario method to improve the specifications of their theories, propose falsifiable hypotheses, and design new empirical research programs.

Scenarios in the Discipline

What do counterfactual narratives about the future look like? Scenarios may range in length from a few sentences to many pages. One of the most common uses of the scenario method, which will be referenced throughout this article, is to study the conditions under which high-consequence, low-probability events may occur. Perhaps the best example of this is nuclear warfare, a circumstance that has never resulted, but has captivated generations of political scientists. For an introductory illustration, let us consider a very simple scenario regarding how a first use of a nuclear weapon might occur:

During the year 2023, the US military is ordered to launch air and sea patrols of the Taiwan Strait to aid in a crisis. These highly visible patrols disrupt trade off China's coast, and result in skyrocketing insurance rates for shipping companies. Several days into the contingency, which involves over ten thousand US military personnel, an intelligence estimate concludes that a Chinese conventional strike against US air patrols and naval assets is imminent. The United States conducts a preemptive strike against anti-air and anti-sea systems on the Chinese mainland. The US strike is far more successful than Chinese military leaders thought possible; a new source of intelligence to the United States—unknown to Chinese leadership—allowed the US military to severely degrade Chinese targeting and situational awareness capabilities. Many of the weapons that China relied on to dissuade escalatory US military action are now reduced to single-digit-percentage readiness. Estimates for repairs and replenishments are stated in terms of weeks, and China's confidence in readily available, but “dumber,” weapons is low due to the dispersion and mobility of US forces. Word of the successful US strike spreads among the Chinese and Taiwanese publics. The Chinese Government concludes that for the sake of preserving its domestic strength, and to signal resolve to the US and Taiwanese Governments while minimizing further economic disruption, it should escalate dramatically with the use of an extremely small-yield nuclear device against a stationary US military asset in the Pacific region.

This short story reflects a future event that, while unlikely to occur and far too vague to be used for military planning, contains many dimensions of political science theory. These include the following: what leaders perceive as “limited,” “proportional,” or “escalatory” uses of force; the importance of private information about capabilities and commitment; audience costs in international politics; the relationship between military expediency and political objectives during war; and the role of compressed timelines for decision making, among others. The purpose of this article is to explain to scholars how such stories, and more rigorously developed narratives that specify variables of interest and draw on extant data, may improve the study of IR. An important starting point is to explain how future counterfactuals fit into the methodological canon of the discipline.

**Their conception of queerness defines itself solely as that which is outside the norm – IE something is queer because it is *not* heteronormative. This definition makes it impossible to escape from dominant power structures**

**Ruffolo** adjunct Professorships at the Ontario Institute for Studies in Education, University of Toronto (Department of Theory and Policy Studies in Education) and Ryerson University  **2k9** (David, Post Queer Politics. Pg 50-54)

Post-queer rhizomatic politics is one that is directed outwards rather than inwards. The continuous flows of dialogical-becomings--\_-the indefinite breaks and connections—are always moving forward where something new is always created out of something given. Unlike the arborescent-subject that is directed inwards, rhizomatic dialogical-becomings are always deterritorialized as they maintain an ongoing state of becoming a body without organs (BwO). The complex flows of desiring-machines described above persistently strive to become a BwO as their connections try to reach pure deterritorialization. In this section, I want to consider how the BwO is a virtual affect of dialogical-becomings. It does not encapsulate desiring-machines but is an additional (anti-)production together with desiring-machines. The BwO is a fundamental aspect of post- queer politics because it speaks to the production of intensities that emerge when the flows of desiring-machines stop. Deterritorializations are not finalized states or binary oppositions. They offer an important strategy for contemporary politics because they do not directly oppose a structure (such as the queer/ heteronormative dyad) but instead remap a system through creative lines of flight (the plateauing of queer and post-queer). We can think of the BwO as a limit that continuously seeks to deterritorialize without ever reterritorializing (even though, as you will see belo reterritorializations are often coupled with deterritorializations). As Brian Massumi writes: Think of the body without organs as the body outside any determinate state, poised for any action in its repertory; this is the body from the point of view of its potential, or virtuality. Now freeze it as it passes through a threshold state on the way from one determinate state to another. This is a degree of intensity of the body without organs. It is still the body as virmality but a lower level of virtuality, because only the potential states involved in the bifurification from the preceding state to the next are effectively superposed in the threshold state. (1992, 70) The BwO is therefore not opposed to desiring-machines but is instead in a constant tension with them. The term itself—Body without Organs—is not in opposition to the organism. It is against what the organism stands for: organization. We can think of the subject as such an organization where all meaning refers back to a central core and all movement corresponds with a central tendency. The BwO not only challenges the arboreal structures of life but also works within a different realm as that of the rhizome where it does not break flows (rhizomatic breaks and connections) but desires continuous flows. Unlike the subject that requires external agencies for meaning such as language structures or discursive realms, the BwO is pure intensity: The body without organs is nonproductive; nonetheless it is produced, at a certain place and a certain time in the connective synthesis, as the identity of producing and the product: the schizophrenic table is a body without organs. The body without organs is not the proof of an original nothingness, nor is it what remains of a lost totality. Above all, it is not a projection; it has nothing whatsoever to do with the body itself, or with an image of the body. It is the body without an image. This imageless, organless body, the nonproductive, exists right there where it is produced, in the third stage of the binary-linear series. It is perpetually reinserted into the process of production. (Deleuze and Guattari 1983, 8) We can think of the BwO as a plane of immanence rather than stratification.’3 It may seem as if desiring-machines and BwO are a part of two different systems. They are in fact two forms of the same principle: desiring-machines and BwO are both a part of the productions of productions of life. It is through the tension that they share that every production becomes an anti-production because dialogical-becomings, for instance, can not maintain a multiplicity of desiring-machines and are unable to fully become a BwO. Dialogical-becomings are schizo. Capital is perhaps the most widely referenced example of a BwO. It is the becoming-BwO of capitalism that creates the illusion that everything is produced through it. Although capital can be transformed into something concrete (i.e., money can purchase goods) it can not do anything on its own. Capital is a miraculating machine that creates the desire for a BwO to overcome the flows of desiring-machines: the BwO deterritorializes the organization of capitalism by opting for flows and smooth spaces. The capitalist machine transforms desiring- machines into BwO by creating the ultimate schizophrenic that “plunges further and further into the realm of deterritorialization, reaching the furthest limits of the decomposition of the socius on the surface of his own body without organs” (35). The capitalist-schizo becomes the surplus product of capitalism as it seeks the limits of capitalism itself. Although the BwO is unachievable, it becomes a seemingly preferred state: “You never reach the Body without Organs, you can’t reach it, you are forever attaining it, it is a limit” (Deleuze and Guattari 1987, 150). It is not a heightened awareness of the self, nor is it a fully embodied self. Unlike in significations, representations, and identifications, the BwO is no self at all. In fact, the BwO is prior to such a subjective capacity The tension between desiring-machines (reterritorializations) and BwO (deterritorializations) works within a different realm than, say, the subjective limits of identities categories where subjects become intelligible through their associations with identity norms. Everything for desiring-machines and BwO is pure difference. The intensities involved in such a relationship are before the coding structures of subjectivity that stratify subjects. It is the abovementioned intensities that make post-queer politics so creative because they challenge the structured organization of organs and biologically defined bodies. Desiring-machines and BwO offer a new language for thinking about life itself without reducing the experiences of such relationships to the stratification of language. The creativity of post-queer dialogical-becomings rests in the potential to deterritorialize stratified structures that limit life to predetermined organizations. Despite the BwO existing prior to the subjective capacities of, say, psychoanalysis and discursive norms, this certainly does not imply that deterritorializations can not offer strategies for rethinking life as it is accounted for through representations, significations, and identifications. We can, for example, think of the various codings of subjectivity that have permeated identity politics and subsequently the queer/heteronormative dyad as territorialized stratifications that are in concert with BwO. Stratifications, or strata, take hold of intensities by territorializing them. For instance, they appropriate the BwO’s flows of pure difference by organizing dialogical-becomings as subjects of reiterative norms. The strata codes and territorializes such becomings but the BwO constantly attempts to deterritorialize these territorializations. **Despite queer’s interest in a politics of identity that seeks to consider bodies as mobile and fluid, these movements can never escape the territorializations of identity norms because they are always in relation to heteronormative coding**

**and the overall arboreal organization of bodies that are directed inwards**. Deleuze and Guattari describe three types of strata that help to think through the territorializations of the queer/heteronormative dyad: the organism, signifiance, and sub jectification. The surface of the organism, the angle of signiflance and interpretation, and the point of subjectification or subjection. You will be organized, you will be an organism, you will articulate your body—otherwise you’re just depraved. You will be signifier and signified, interpreter and interpreted—otherwise you’re just a deviant**. You will be a subject, nailed down as one, a subject of the enunciation recoiled into a subject of the statement—otherwise you’re just a tramp**. To the strata as a whole, the BwO opposes disarticulation (or n articulation) as the property of the plane of consistency, experimentation as the operation on that plane (no signifier, never interpret!), and nomadism as the movement (keep moving, even in place, never stop moving, motionless voyage, desubjectification). (Deleuze and Guattari 1987, 159) This call to dismantle the organism does not imply that we just get rid of the subject or cut the body from stratification. We recall from above that the BwO and all its intensities comes before the subject and the organization of the body as an organism and so a politics of becoming calls for a return to these productive flows of desire: “opening the body to connections that presuppose an entire assemblage, circuits, conjunctions, levels and thresholds, passages and distributions of intensity, and territories and deterritorializations measured with the craft of a surveyor” (160). Post-queer dialogical-becomings seek to deterritorialize the three great strata that territorialize life through significations, representations, and identifications. This project is but one line of flight that can plateau subjugated sub jectivities. Its intent is to map various intensities so as to smooth these assemblages by moving towards a plane of immanence. The first step is to identify the strata involved and then consider the assemblages that constitute such strata. For example, the organism codes an aboreal life by creating various assemblages that define what it means to be “human”; sigmflance codes meaning through discourse where language has become the primary means for thinking about experience; and subjectification creates subjects by coding them through social norms. The purpose of this is to locate flows of intensities—not by discovering a BwO but by creating one in the process of deterritorializing the strata. The queer/heteronormativity dyad has resulted in an arboreal dyad. The extensions of an arboreal tree go through its central root that supports the whole tree. **The queer/heteronorrnative dyad is such a root where all politics emerge from it. Post-queer rhizomatic politics, in contrast, do not strictly move or extend from a main root such as the queer/heteronormative dyad**. With that said, dialogical-becomings can engage this binary by plateauing it through its rhizomatic connections that can spout from any point. The arboreal organization of queer/heteronormativity prohibits a politics of becoming because movement stops when there is a need to refer back to this dyad. In other words, the queer/heteronormative dyad halts queer politics when the politics of queer is predominantly concerned with disrupting heteronormative structures. Post-queer rhizomatic politics is about deterritorializing politics itself rather than opposing an a priori structure. This project is one line of flight amongst many that can remap contemporary politics as we know it today. Despite queer’s keen investment in a conceptualization of identity through mobilities and fluidities, **its politics can only go so far because of its arboreal references to heteronormativity**. Let me be clear that I am not demanding an outright rejection of the queer/heteronormative strata for, as we recall from above, this can result in further territorializations. I am also not suggesting an absolute denunciation of this relationship nor am I disputing the important developments that queer politics have made. I am instead calling for the production of different lines of flight and new assemblages that can smoothen the strata so as to not be limited by structural organizations.

## 1AR

### heg

#### Engagement inevitable – only a question of effectiveness—also proves the alt doesn’t solve

Dorfman, 12 [Zach Dorfman, Zach Dorfman is assistant editor of Ethics & International Affairs, the journal of the Carnegie Council, and co-editor of the Montreal Review, an online magazine of books, art, and culture, “What We Talk About When We Talk About Isolationism”, <http://dissentmagazine.org/online.php?id=605>, May]

The idea that global military dominance and political hegemony is in the U.S. national interest—and the world’s interest—is generally taken for granted domestically. Opposition to it is limited to the libertarian Right and anti-imperialist Left, both groups on the margins of mainstream political discourse. Today, American supremacy is assumed rather than argued for: in an age of tremendous political division, it is a bipartisan first principle of foreign policy, a presupposition. In this area at least, one wishes for a little less agreement. In Promise and Peril: America at the Dawn of a Global Age, Christopher McKnight Nichols provides an erudite account of a period before such a consensus existed, when ideas about America’s role on the world stage were fundamentally contested. As this year’s presidential election approaches, each side will portray the difference between the candidates’ positions on foreign policy as immense. Revisiting Promise and Peril shows us just how narrow the American worldview has become, and how our public discourse has become narrower still. Nichols focuses on the years between 1890 and 1940, during America’s initial ascent as a global power. He gives special attention to the formative debates surrounding the Spanish-American War, U.S. entry into the First World War, and potential U.S. membership in the League of Nations—debates that were constitutive of larger battles over the nature of American society and its fragile political institutions and freedoms. During this period, foreign and domestic policy were often linked as part of a cohesive political vision for the country. Nichols illustrates this through intellectual profiles of some of the period’s most influential figures, including senators Henry Cabot Lodge and William Borah, socialist leader Eugene Debs, philosopher and psychologist William James, journalist Randolph Bourne, and the peace activist Emily Balch. Each of them interpreted isolationism and internationalism in distinct ways, sometimes deploying the concepts more for rhetorical purposes than as cornerstones of a particular worldview. Today, isolationism is often portrayed as intellectually bankrupt, a redoubt for idealists, nationalists, xenophobes, and fools. Yet the term now used as a political epithet has deep roots in American political culture. Isolationist principles can be traced back to George Washington’s farewell address, during which he urged his countrymen to steer clear of “foreign entanglements” while actively seeking nonbinding commercial ties. (Whether economic commitments do in fact entail political commitments is another matter.) Thomas Jefferson echoed this sentiment when he urged for “commerce with all nations, [and] alliance with none.” Even the Monroe Doctrine, in which the United States declared itself the regional hegemon and demanded noninterference from European states in the Western hemisphere, was often viewed as a means of isolating the United States from Europe and its messy alliance system. In Nichols’s telling, however, modern isolationism was born from the debates surrounding the Spanish-American War and the U.S. annexation of the Philippines. Here isolationism began to take on a much more explicitly anti-imperialist bent. Progressive isolationists such as William James found U.S. policy in the Philippines—which it had “liberated” from Spanish rule just to fight a bloody counterinsurgency against Philippine nationalists—anathema to American democratic traditions and ideas about national self-determination. As Promise and Peril shows, however, “cosmopolitan isolationists” like James never called for “cultural, economic, or complete political separation from the rest of the world.” Rather, they wanted the United States to engage with other nations peacefully and without pretensions of domination. They saw the United States as a potential force for good in the world, but they also placed great value on neutrality and non-entanglement, and wanted America to focus on creating a more just domestic order. James’s anti-imperialism was directly related to his fear of the effects of “bigness.” He argued forcefully against all concentrations of power, especially those between business, political, and military interests. He knew that such vested interests would grow larger and more difficult to control if America became an overseas empire. Others, such as “isolationist imperialist” Henry Cabot Lodge, the powerful senator from Massachusetts, argued that fighting the Spanish-American War and annexing the Philippines were isolationist actions to their core. First, banishing the Spanish from the Caribbean comported with the Monroe Doctrine; second, adding colonies such as the Philippines would lead to greater economic growth without exposing the United States to the vicissitudes of outside trade. Prior to the Spanish-American War, many feared that the American economy’s rapid growth would lead to a surplus of domestic goods and cause an economic disaster. New markets needed to be opened, and the best way to do so was to dominate a given market—that is, a country—politically. Lodge’s defense of this “large policy” was public and, by today’s standards, quite bald. Other proponents of this policy included Teddy Roosevelt (who also believed that war was good for the national character) and a significant portion of the business class. For Lodge and Roosevelt, “isolationism” meant what is commonly referred to today as “unilateralism”: the ability for the United States to do what it wants, when it wants. Other “isolationists” espoused principles that we would today call internationalist. Randolph Bourne, a precocious journalist working for the New Republic, passionately opposed American entry into the First World War, much to the detriment of his writing career. He argued that hypernationalism would cause lasting damage to the American social fabric. He was especially repulsed by wartime campaigns to Americanize immigrants. Bourne instead envisioned a “transnational America”: a place that, because of its distinct cultural and political traditions and ethnic diversity, could become an example to the rest of the world. Its respect for plurality at home could influence other countries by example, but also by allowing it to mediate international disputes without becoming a party to them. Bourne wanted an America fully engaged with the world, but not embroiled in military conflicts or alliances. This was also the case for William Borah, the progressive Republican senator from Idaho. Borah was an agrarian populist and something of a Jeffersonian: he believed axiomatically in local democracy and rejected many forms of federal encroachment. He was opposed to extensive immigration, but not “anti-immigrant.” Borah thought that America was strengthened by its complex ethnic makeup and that an imbalance tilted toward one group or another would have deleterious effects. But it is his famously isolationist foreign policy views for which Borah is best known. As Nichols writes: He was consistent in an anti-imperialist stance against U.S. domination abroad; yet he was ambivalent in cases involving what he saw as involving obvious national interest….He also without fail argued that any open-ended military alliances were to be avoided at all costs, while arguing that to minimize war abroad as well as conflict at home should always be a top priority for American politicians. Borah thus cautiously supported entry into the First World War on national interest grounds, but also led a group of senators known as “the irreconcilables” in their successful effort to prevent U.S. entry into the League of Nations. His paramount concern was the collective security agreement in the organization’s charter: he would not assent to a treaty that stipulated that the United States would be obligated to intervene in wars between distant powers where the country had no serious interest at stake. Borah possessed an alternative vision for a more just and pacific international order. Less than a decade after he helped scuttle American accession to the League, he helped pass the Kellogg-Briand Pact (1928) in a nearly unanimous Senate vote. More than sixty states eventually became party to the pact, which outlawed war between its signatories and required them to settle their disputes through peaceful means. Today, realists sneer at the idealism of Kellogg-Briand, but the Senate was aware of the pact’s limitations and carved out clear exceptions for cases of national defense. Some supporters believed that, if nothing else, the law would help strengthen an emerging international norm against war. (Given what followed, this seems like a sad exercise in wish-fulfillment.) Unlike the League of Nations charter, the treaty faced almost no opposition from the isolationist bloc in the Senate, since it did not require the United States to enter into a collective security agreement or abrogate its sovereignty. This was a kind of internationalism Borah and his irreconcilables could proudly support. The United States today looks very different from the country in which Borah, let alone William James, lived, both domestically (where political and civil freedoms have been extended to women, African Americans, and gays and lesbians) and internationally (with its leading role in many global institutions). But different strains of isolationism persist. Newt Gingrich has argued for a policy of total “energy independence” (in other words, domestic drilling) while fulminating against President Obama for “bowing” to the Saudi king. While recently driving through an agricultural region of rural Colorado, I saw a giant roadside billboard calling for American withdrawal from the UN. Yet in the last decade, the Republican Party, with the partial exception of its Ron Paul/libertarian faction, has veered into such a belligerent unilateralism that its graybeards—one of whom, Senator Richard Lugar of Indiana, just lost a primary to a far-right challenger partly because of his reasonableness on foreign affairs—were barely able to ensure Senate ratification of a key nuclear arms reduction treaty with Russia. Many of these same people desire a unilateral war with Iran. And it isn’t just Republicans. Drone attacks have intensified in Yemen, Pakistan, and elsewhere under the Obama administration. Massive troop deployments continue unabated. We spend over $600 billion dollars a year on our military budget; the next largest is China’s, at “only” around $100 billion. Administrations come and go, but the national security state appears here to stay.

### k

#### At: reps

Kaufman, Prof Poli Sci and IR – U Delaware, ‘9

(Stuart J, “Narratives and Symbols in Violent Mobilization: The Palestinian-Israeli Case,” *Security Studies* 18:3, 400 – 434)

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