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#### The aff is an instrument of neoliberal lawfare—cements violent grand strategy and disdain for democracy

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A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are **neither exceptional nor indeed a departure from**, or perversion of, **liberal democracy**? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty”’ not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the **ultimate safeguard of democracy** is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries **the briefcase of rules and restrictions”** has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’; a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishisation of ‘security’ – as both a discourse and a technique of government – has **resulted in a world defined by anti-democratic** technologies of **power**.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been made possible by constant reference to a neoliberal ‘project of security’ registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

CONCLUSION: ENABLING BIOPOLITICAL POWER IN THE AGE OF SECURITIZATION

Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force.

— David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to critique our contemporary moment’s proliferation of practices of securitization – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of the US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has **amplified the role of background legal regulations** as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognised the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. **US lawfare** **focuses “the attention of the world on this or that excess”** whilst simultaneously arming “the most **heinous human suffering in legal privilege”,** **redefining horrific violence** as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilisation of the law that is precisely channelled towards “evasion”, securing classified Status of Forces Agreements and “**offering at once the experience of safe ethical distance and careful pragmatic assessment**, while parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and legally condition the ‘milieux’ of military commanders; and in so doing they render operational the pivotal spaces of overseas intervention of contemporary US national security conceived in terms of ‘global governmentality’.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a **profound power to invoke danger** as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective of risk management” seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that **ultimately enables the ‘toxic combination’** of US geopolitics and biopolitics defining the current age of securitization.

#### The impact is extinction

Tamás Szentes 8, Professor Emeritus at the Corvinus University of Budapest. “Globalisation and prospects of the world society” 4/22/08 http://www.eadi.org/fileadmin/Documents/Events/exco/Glob.\_\_\_prospects\_-\_jav..pdf

It’ s a common place that human society can survive and develop only in a lasting real peace. Without peace countries cannot develop. Although since 1945 there has been no world war, but --numerous local wars took place, --terrorism has spread all over the world, undermining security even in the most developed and powerful countries, --arms race and **militarisation** have not ended with the collapse of the Soviet bloc, but escalated and continued, extending also to weapons of mass destruction and misusing enormous resources badly needed for development, --many “invisible wars” are suffered by the poor and oppressed people, manifested in mass misery, poverty, unemployment, homelessness, starvation and malnutrition, epidemics and poor health conditions, exploitation and oppression, racial and other discrimination, physical terror, organised injustice, disguised forms of violence, the denial or regular infringement of the democratic rights of citizens, women, youth, ethnic or religious minorities, etc., and last but not least, in the degradation of human environment, which means that --the “war against Nature”, i.e. the disturbance of ecological balance, wasteful management of natural resources, and large-scale pollution of our environment, is still going on, causing also losses and fatal dangers for human life. Behind global terrorism and “invisible wars” we find striking international and intrasociety inequities and distorted development patterns , which tend to generate social as well as international tensions, thus **paving the way** for unrest and “visible” wars. It is a commonplace now that peace is not merely the absence of war. The prerequisites of a lasting peace between and within societies involve not only - though, of course, necessarily - demilitarisation, but also a systematic and gradual elimination of the **roots of violence**, of the causes of “invisible wars”, of the structural and institutional bases of large-scale international and intra-society inequalities, exploitation and oppression. Peace requires a process of social and national emancipation, a progressive, democratic transformation of societies and the world bringing about equal rights and opportunities for all people, sovereign participation and mutually advantageous co-operation among nations. It further requires a pluralistic democracy on global level with an appropriate system of proportional representation of the world society, articulation of diverse interests and their peaceful reconciliation, by non-violent conflict management, and thus also a global governance with a really global institutional system. Under the contemporary conditions of accelerating globalisation and deepening global interdependencies in our world, peace is indivisible in both time and space. It cannot exist if reduced to a period only after or before war, and cannot be **safeguarded in one part of the world** when some others suffer visible or invisible wars. Thus, peace requires, indeed, a new, demilitarised and democratic world order, which can provide equal opportunities for sustainable development. “Sustainability of development” (both on national and world level) is often interpreted as an issue of environmental protection only and reduced to the need for preserving the ecological balance and delivering the next generations not a destroyed Nature with overexhausted resources and polluted environment. However, no ecological balance can be ensured, unless the deep international development gap and intra-society inequalities are substantially reduced. Owing to global interdependencies there may exist hardly any “zero-sum-games”, in which one can gain at the expense of others, but, instead, the “negative-sum-games” tend to predominate, in which everybody must suffer, later or sooner, directly or indirectly, losses. Therefore, the actual question is not about “sustainability of development” but rather about the “sustainability of human life”, i.e. **survival of [hu]mankind** – because of ecological imbalance and globalised terrorism. When Professor Louk de la Rive Box was the president of EADI, one day we had an exchange of views on the state and future of development studies. We agreed that development studies are not any more restricted to the case of underdeveloped countries, as the developed ones (as well as the former “socialist” countries) are also facing development problems, such as those of structural and institutional (and even system-) transformation, requirements of changes in development patterns, and concerns about natural environment. While all these are true, today I would dare say that besides (or even instead of) “development studies” we must speak about and make “survival studies”. While the monetary, financial, and debt crises are cyclical, we live in an almost permanent crisis of the world society, which is multidimensional in nature, involving not only economic but also socio-psychological, behavioural, cultural and political aspects. The narrow-minded, election-oriented, selfish behaviour motivated by thirst for power and wealth, which still characterise the political leadership almost all over the world, paves the way for the final, last catastrophe. One cannot doubt, of course, that great many positive historical changes have **also taken place** in the world in the last century. Such as decolonisation, transformation of socio-economic systems, democratisation of political life in some former fascist or authoritarian states, institutionalisation of welfare policies in several countries, rise of international organisations and new forums for negotiations, conflict management and cooperation, institutionalisation of international assistance programmes by multilateral agencies, codification of human rights, and rights of sovereignty and democracy also on international level, collapse of the militarised Soviet bloc and system-change3 in the countries concerned, the end of cold war, etc., to mention only a few. Nevertheless, the crisis of the world society has extended and deepened, approaching to a point of bifurcation that necessarily puts an end to the present tendencies, either by the final catastrophe or a common solution. Under the circumstances provided by rapidly progressing science and technological revolutions, human society cannot survive unless such profound intra-society and international inequalities prevailing today are soon eliminated. Like a single spacecraft, the Earth can no longer afford to have a 'crew' divided into two parts: the rich, privileged, wellfed, well-educated, on the one hand, and the poor, deprived, starving, sick and uneducated, on the other. Dangerous 'zero-sum-games' (which mostly prove to be “negative-sum-games”) can hardly be played any more by visible or invisible wars in the world society. Because of global interdependencies, the apparent winner becomes also a loser. The real choice for the world society is between negative- and positive-sum-games: i.e. between, on the one hand, continuation of visible and “invisible wars”, as long as this is possible at all, and, on the other, transformation of the world order by demilitarisation and democratization. No ideological or terminological camouflage can conceal this real dilemma any more, which is to be faced not in the distant future, by the next generations, but in the coming years, because of global terrorism soon having nuclear and other mass destructive weapons, and also due to irreversible changes in natural environment.

#### The alternative is to look beyond law for solutions to complex problems

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Constitutional space is envisaged to be a linear multidimensional space99 in which the distance between the information set'00 and the solution set'0' is constructed via the Euclidean geometric' set of straight lines. The contours of this constitutional space is created by the statutes and texts created under the assumption by the Framers that all possible abuses of power at the highest level had been considered with due incorporation of relevant checks and balances. That the Framers envisioned a constitutional space containing Newtonian references of physical characteristics is evident in their exclusive invocation of forces and counter forces.' Under this Newtonian framework, the Constitution ought to be assumed as a discrete multi-dimensional space, providing the necessary checks and balances under a linearly applicable force in nature. Within this framework, the forces and counter forces would be applied" 4 to the **presidential** exertion of **war power**, and the operating control requirement would be applied to Congressional oversight.'05 Reminding ourselves that the shortest distance between two points is assumed to be a straight line, the controlling assumption is that, the existing legal paradigm can fully evaluate the outcome of a legal scenario. The legal reasoning proceeds by constructing a set of linearly placed stimuli or sources of information along the constitutional space. The determinacy of the Newtonian framework can be tested if a legal outcome could be determined with reasonable certainty under the shared power doctrine of concurrent authority. Setting aside the subjectivity inherent within the legal paradigm, the concept of false consciousness and **presidential manipulation introduces sufficient distortion** in the constitutional space, causing us to question the sustainability of the Newtonian framework envisioned by the Framers.1 °6 In the Newtonian framework, the constitutional space is envisioned as empty, unstructured, and physically disconnected from the objects acting within that space. Whereas, a parallel framework in the legal universe would hold the law to untangle itself from the environment in which it is to unfold. Applying this principle to the Supreme Court jurisprudence of presidential power would hold that the laws surrounding presidential assertion of war power can step back and operate in an environment without meddling itself with issues emerging from false consciousness or presidential manipulation. What the legal universe requires is that the legal reasoning process take a determining role **in** the process without being shaped **by** the process. While, this may be a viable process, clearly, as the legal consequences of Iraq War has proven, 10 7 merely being viable is neither satisfactory legal outcome nor logically acceptable. Here, I am not challenging the existing modalities of law on grounds of inadequacy. Rather, I am questioning whether some aspects of jurisprudence have lagged behind in their ability to incorporate the shared wisdom of other disciplines. However, as I believe that through every legal consequence, we must question the outcome. We must verify whether the law is operating within perceptible bounds of logical certainty, as the law must reinvent itself with every significant change that society goes through. Therefore, in light of our enhanced understanding of the relationship between law and the society within which it operates, jurisprudence may be slow in reacting to the change in pace. This was echoed by Professor Tribe: "[L]egal problems in general, and constitutional problems in particular, have not always kept pace with widely shared perceptions of what makes sense in thinking and talking about the state, about courts, and about the role of both in society." 08 I do not hold the view that the legal universe is parallel to the Newtonian framework premised on checks and balances on every conceivable action that is untenable. I do, however, reject the framework that rests on the static assumption0 9 of conceiving an exhaustive set of actions within the changing dynamics of the society, and **expecting legal solutions for all such actions**." 0 The assumption that every legal question can be answered within a legal environment, in which counter balancing forces provide adequate checks and balances, fails to address some particularized conflicting situations and is too farfetched. For example, the existing constitutional space is not able to devise an appropriate solution for the proper allocation of war power between Congress and the President in a concurrent authority scenario, nor does it properly identify limits of presidential power under exigent scenarios. This is because the existing constitutional grants were devised in accordance with a static conception, under the assumption that legal formalism can be separated from the background of society, much like the Newtonian framework. In this framework the space is extracted from the forces and objects playing within. The existing jurisprudence refuses to entangle itself in the learning process and refuses to recreate itself like the society in operates within. On the contrary, if laws were to follow the parallel universe of Einstein, in which the space could not be detached from the objects,"' we would not suffer the constitutional inaction of legal consequences that the law cannot interpret.112 In the post-Newtonian physical world of Einstein, space cannot be detached from the objects that are undergoing motions inside of it. The characteristics and actions of these objects under the application of force are primarily manifested by their relative distances and flight times of traversals within that space. The distances and times, however, are shaped by the construction of the space, more specifically by the curved nature of it. As a result, the space in the universe of Einstein is a continuum composed of both space and time, continually being altered amongst one another objects inside that space. The enquiry therefore shifts to whether the constitutional space can be characterized by some other form than linear discrete multidimensional space. Perhaps, it is time to lend credence to the concept of curved space of the Constitution as proposed by Professor Laurence Tribe.'13 Does the Constitution have curvature where the shortest distance between two stimuli may not be arrived by traversing a straight line? Should we incorporate a different notion of the Constitution itself? I am referring to the very nature of the Constitution itself here, as opposed to the interpretive technique of static versus dynamic. While static constitutionalism is frozen in the eighteenth century meaning of the text and statutes, dynamic constitutionalism traces its meaning with the evolving context of the current times. I have dissected this issue in greater detail in an earlier work. 114 F. Definitional difficulties in Euclidean Constitutional Geometry If the constitutional space is thought to be composed of texts, statutes, supporting historical documents and jurisprudential opinions, then the confluence of events that could potentially trigger the determination of an outcome may not always travel in a straight line. This is because the events or stimuli might be hidden relative to another stimuli or event. This can be explained by referring back to the various scenarios depicted in Section IV. In the first scenario, all the information available as the set of preconditions for going to war has responses that can be either constitutional or unconstitutional. Thus, the scenario can be properly handled within the existing legal paradigm. In contrast, let us take a look at both scenarios 3 and 4. Scenario 3 brings in a rather undefined conception of presidential excesses, and the legal reasoning yields an indeterminate solution to this particularized conflict. Similarly, scenario 4 presents the ideas of false consciousness and presidential excesses, both of which are difficult to incorporate for yielding a legitimate legal consequence. Without actually engaging in the dialectic process of how false consciousness lowers the probative value of imminent danger for application of presidential authority, it is clearly not feasible to engage in constitutional analysis of the limits of presidential war power. However, if the process of legal reasoning does not get embroiled in the subjective discussion of executive excesses, the existing paradigm remains impotent to determine the legitimacy of presidential action of imposing war. These two scenarios reveal situations in which the needed information remains occluded from view. It appears there is an information barrier preventing it from coming within the purview of legal reasoning. This is because the existing legal paradigm did not consider the information relevant for determination purposes, which would have required the legal reasoning process to engage laws with the actual environment. Similarly, in the parallel invocation in the physical universe, Newtonian conception of space could occlude objects that do not fall along the straight path between two objects." 5 On the contrary, in the curved space of Einsteinian framework, the objects could traverse the space along the curvature. 116 As a result, any object, anywhere along the path between two other objects, can be both connected and viewed from any vantage point. In addition, as the objects operate within a space-time continuum, 17 in which both the space and time move relative to each other, the exact location of each object can be determined in relation to any other object. Similarly, in the legal paradigm of curved constitutional space, laws become part of the changing societal structure and as such, are better equipped to deal with uncertainties of changing socio-legal environment. When complex reasoning structures, borne out of diverging and continually expanding set of social circumstances, suffers from inadequacy from a static view of an indeterminate legal paradigm, while failing to become subsumed within the limited set of legal reasoning available, they can easily find their legitimate place within the confines of this new legal paradigm. If we take out the detached neutrality of Archimedean indeterminacy from the legal process, it becomes more efficient to handle particularized conflicts like the preconditions for the Iraq War. Therefore, by shaping the legal reasoning process to mimic objects moving along the dimensions of a curved space, a much higher determinacy can be rendered into the legal paradigm. If the development of constitutional jurisprudence were to follow such trajectory, it would be reasonable to infer that **the required complexity cannot be captured** within the current legal reasoning methodology. How shall the explication of law proceed along the curvature space of the Constitution? This is a very difficult proposition, not addressed here. However, presenting an analysis to illuminate further the shadowy areas of curved constitutional space may provide greater recognition of the uniqueness of this paradigm. G. False Consciousness and Curvature of the Constitution I discussed in the preceding section, the organic way in which the false consciousness develops and allows the maximum point of authority for the President. The sticking point is to determine how the fundamental values within law allow such a scenario to develop. If law is based on strict formalism, which is in turn based on a proven (or provable) collection of facts,11 how could there be an evolving fluid concept like false consciousness, which affects constitutional decision making? The problem resides in our inability to look for what is not there. This originates from a static conception of law, in which law is strictly prohibited from enmeshing itself into the changing dynamics of the society. **We must therefore look beyond existing laws, and in some cases, we must go outside of law to understand law**. The existing formalistic paradigm of legal reasoning does not always comport to a legal solution for complex, evolving problems we encounter in the society. As a result, the legal framework guiding the courts, are unable to provide solutions based on adequate reasoning. In my view, a lack of reliance on interdisciplinary application in law is one of the difficulties we currently have within the existing legal reasoning process. Distressed by the inability of existing laws to adequately respond in the particularized conflicts of today's complexity, I am thus compelled to support Professor Tribe's constitutional curvature analogy119 in pleading for the recognition of an evolving paradigm. I have shown12° the drawbacks of Justice Jackson's tripartite solution elsewhere, which would have worked perfectly had the Constitution been of straightforward Newtonian design. 1 Under this framework, the three discrete scenarios of Justice Jackson would neatly fit within the conceptualized framework with its carefully balanced counter forces combating the forces, along the way providing bullet proof checks and balances. Unfortunately, as I have shown, this is indeed not the case. If the constitutional space would be a perfect three dimensional space of Euclidian geometry, we would witness literal reasoning based on strict explication of 'if-then-else' rules applied perfectly. These rules would provide all the determinate outcomes and perfect solutions in all cases. In this construct, the background can be easily separable from the objects that interlink with each other, exerting forces on each other. In other words, in a simple constitutional space, the actors on this space, the courts, legislators, the executives, populist, and the external entities could all be liable to a rigid set of laws and be subjected to binding legal outcomes. However, as Professor Tribe mentioned, in a curved space, the objects cannot be separated from the space. 22 The newer legal paradigm of curved constitutional space cannot separate the subject of the law from the law itself. Here, the law must be continuously shaping, evolving, and structuring based on the existing circumstances. An obvious question to consider at this point is, why did I bring in the concept of false consciousness along with the vision of constitutional curvature? The question can be more efficiently addressed by responding by showing how false consciousness gives rise to curved space phenomenon. In the Newtonian world of linear geometric space, ideas are arranged linearly with respect to each other, and objects travel along straight lines. Therefore, nothing can be hidden from view for determination purposes. Similarly, in the parallel universe of legal reasoning, the law must be able to incorporate all pertinent information into the adjudication process. False consciousness is a difficult concept, yet highly relevant to the issue at hand. On one hand, it is hidden from the conceptual construct that engages in the legal reasoning of specific conflict in the existing paradigm. On the other hand, the curved space is composed of continually moving space and time, and every object can easily be identified. False consciousness needs such a paradigm. It needs a process of determination, which can capture the incremental juridical information and can contribute towards constitutional determination of legal conflicts. We can corroborate the difficulty in specific constitutional issues by taking a comparative look at two opinions by two different Supreme Court Justices. In the first, Justice Jackson postulates a tripartite framework where he pigeonholes three occurrences of fluctuating presidential power. Justice Rehnquist, on the other hand alludes to a continuous spectrum at some point in between the maximum and minimum controlling powers of Congress, and it is at this point where the President's absolute authority could remain. This Rehnquist jurisprudential development can be more closely recognized within a curved constitutional space. A space that is not bounded by the limitations of linearity of dimensions is evident in Newtonian framework. If we refrain from identifying specific sets of actions under which the President can assert his power, we can map the possibilities and scenarios more efficiently. For example, if the Constitution's objective is to create rules that can be applied to a set of predictable scenarios, by virtue of trying to identify them, we have **already limited the possibilities**. However, if we create a framework that is applicable under most scenarios, but may not be perfect fit for every one of the scenarios, we can ensure that the framework is more robust and efficient. By incorporating the environment in which the legal process unfolds, we can enhance the power of law in providing specific legal outcome for a complex scenario. This is much the same way as in a curved space, the motion of an object is determined by taking into consideration the impact due to the space that surrounds the object. In my view, we could derive an understanding of the allowable limits of presidential power by considering the shaping effect of the social environment in which the President is applying the laws of the nation. Grasping this shaping effect becomes easier as it follows a similar reasoning like the mechanics of objects in a curved space that takes account of the curvature the object has to traverse. Herein resides a very significant utility in bringing the curved space concept of physics into the legal universe. As I have shown earlier, the prudent observer or the **logical decision-maker** can never be assumed to be completely decoupled from the scenarios or circumstances being called to judge upon. I therefore, lend my fidelity to Professor Tribe's observation regarding curved constitutional space. Although highly primitive in construction at this stage, this mode of legal reasoning promises to illuminate countless legal areas which still remain within constitutional black holes, unable to achieve legal certainty under the existing norm. I am not suggesting that the current adjudication process itself is flawed. Rather, I am suggesting the possibility that the neutrality can never be achieved and therefore the validity of the adjudicated process has to be questioned. How can we prove whether there is a constitutional curvature? In a curved space, the object being observed can never be separated from the observer or the background. In other words, the relative distance or the relative mechanism of the space time continuum becomes the driving factor for a determination of the any information for the object.123 Transferring this analogy in the legal universe, we can infer that the President's process of adjudication of the events to determine if there is an imminent danger should not be taken at face value in determining whether the President's actions are constitutional. The President's relationships to the events that are unfolding in the political arena have to be taken into account. The implicit assumption here is that the President's own objective cannot be completely decoupled from the legal reasoning process. Therefore, legal reasoning must be decoupled from the shaping effect stemming from a multitude of complex, fuzzy phenomena, such as, personal aspiration of the executive, and injection of false beliefs and monolithic tendencies into the masses. What does false consciousness have to do with the shaping of the constitutional space or constitutional geometry? As I demonstrated earlier, false consciousness is the culmination in a chain of events that creates a collective consciousness that gives an illusion of a real consciousness. So the question that comes into focus is whether the false consciousness alters the geometry of the constitutional space and if it does, how does it do that? False consciousness creates a distorted prism, and by definition, anything or any input that goes through this distorted prism will provide a distorted output. Therefore, legal reasoning based on such distorted output will provide us with a completely wrong legal output. Evidence uncovered from the days leading to the Iraq War suggests that the President invoked significant danger by emphatically underscoring a **doomsday** scenario. This injected an illusionary reality into the collective consciousness of the nation. As a result, the collective consciousness inherited factors that contributed to its distortion by the process discussed in Section III.124 Under these circumstances, the collective consciousness of the nation transformed via the injection of a false consciousness: believing in the existence of significant immediate danger from Iraq.125 The President invoked his expansive power under Article II of the Constitution 12 6 and imposed war on both the nation and the world by using an indifferent and inert Congress. 127 The linear geometry of the constitutional space made erroneous assumptions on several grounds. First, it assumed that the distance between the nation's observation of imminent danger and the legal consequence of such imminent danger as engaging in war is connected by a simple straight line. If we take the analogy of a direct deductive reasoning as a geometric straight line, the imminent danger of a nation must result in an invasion of the aggressor. Second, the legal reasoning assumed that the President is a neutral adjudicator with detached neutrality in the proceedings, which turned out to be erroneous. 128 Third, this assumption that the legal consequence of unleashing war on the aggressor will cause either a minimization or complete removal of the source of the imminent danger was not founded upon provable facts. This limited set of fact patterns and legal reasoning within the constitutional analysis is therefore, proven to be completely inadequate for any substantive determination of constitutional consequence. The assumption that the imminent danger doctrine must automatically give rise to the invasion of Iraq is plain wrong. The constitutional geometry is not delineated and separable with easily identifiable objects and therefore, it may not be possible to reach directly into an outcome of war from a source of imminent danger. There are alternative destinations that could be attempted first. For example, is danger imminent as a result of false consciousness? Or, are the assumptions that come into play to define and identify imminence completely wrong? Second, false consciousness may have mischaracterized the intensity of the threat and therefore may have misdiagnosed or mislabeled the imminent danger aspect. If the characterization of imminent danger is not credible, then the conclusion of imposition of war cannot be validated. In a constitutional space characterized by a curvature or multiple explaining points that could lead to the genesis of a false belief of the imminent danger, we are provided with multiple options like negotiating with Iraq, developing consciousness of the world community, embargos, sanctions, negotiation vis-A-vis a neutral third party, **or simply waiting** for more data. Third, once we are convinced that there is neutral detachment involved, then the rationale or action of the President is better characterized and analyzed in its proper light. Because it is possible that the President may not be acting in the best interests of the nation or without due prudence or even with vengeance, it is easy to see the produced outcome of going to war may be untenable. In my view, if we analyze events of extreme significance during the process of legal observation, we must consider that the factors taken into account for making judgment may be misperceived due to false consciousness. Therefore, we must operate in a curvature space-type legal geometry. In this curved geometry of constitutional space, the legal terrain will continue to reshape the inputs that the adjudicative process incorporates into decision-making. Additionally, the relative relationship between the scenarios that are used to make judgment and adjudicate have to be analyzed carefully to deconstruct the relative merits and the explanatory power that it possesses. If these factors are influenced by false consciousness, then I propose minimizing the explanatory power. This would result in a presidential authority far lesser than the one which led the country into war with Iraq. VI. CONCLUSION In the wake of presidential transgressions related to use of manufactured intelligence for foreign invasion, unilateral excesses of executive power has suddenly sprung to life. Notwithstanding the countless calamities that resulted from such misadventure, scholars diverge on the legality of presidential usurpation of power. Constitutional uncertainty regarding the nature of concurrent authority between Congress and the President, has been debated, **yet nothing** concrete **has come** out **of those discussions**. My earlier research has thrown light on this narrow swath of constitutional significance, where I have established that the debate over optimal allocation of power between Congress and the President is far from being over. I embark on an exploration to trace whether there is **a better legal paradigm** that can explain the complex constitutional quandaries in this area. In this article, I brought in the concept of false consciousness to provide a benchmark for examining how the issues of presidential power cannot be determined with logical certainty within the current legal paradigm. This examination presents sufficient evidence to show that the parallels from the world of physics can help us in this endeavor. By assuming the texts and statutes of the Constitution mimic the dynamic nature of time-space theory of Einstein, rather than the Newtonian framework of linear space, we are able to capture the uncertainties and complexities better. On one hand, false consciousness can distort the realities to eventually shape the contours of presidential power. On the other hand, the curvature concept of the Constitution provides the inspiration for a powerful legal reasoning technique. Therefore, this Article's evidence of false consciousness' shaping effect provides us with a strong reminder that we should embrace post-modernity in our jurisprudential discourse, and attempt to inculcate concepts, such as, the curved constitutional space. In the end, my hope is to retain proximate fidelity to the Constitution, not by blindly acquiescing to the indeterminacy of the controlling legal paradigm, but by seeking ways to meld disciplines to illuminate the dark shadows of the constitutional curvature.

### 1nc politics da

#### Patent reform will pass, but PC’s key and it’s a fight

**Meyers, 3/5/14** (Jessica, “Lawmakers: Patent reform will advance” Politico, <http://www.politico.com/story/2014/03/patent-reform-104278.html>)

Two lawmakers immersed in patent reform efforts suggested Wednesday that the president could see a bill on his desk in coming months.

“It’s a pretty good bet you could see something on this, this year,” Sen. Mike Lee (R-Utah), who is co-sponsoring the Senate’s main patent reform bill with Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), said at a POLITICO event. The committee plans to mark up the bill by mid-April. Rep. Jared Polis (D-Colo.), a champion of patent reform in the House, pointed to broad support in the lower chamber but warned that Congress should “make sure it is a substantial bill that actually deals with patent trolls.” The issue has drawn the attention of numerous industries, from tech to retail, who say they face frivolous litigation from trolls. Benjamin Berman, the deputy general counsel at KAYAK.com, likened such firms to “today’s mafia “ and “extortion at its finest.” Congress needs to pass legislation “that addresses the need to make money off patents,” he said at the event. Other companies, along with some universities, argue reforms could go too far and weaken legitimate intellectual property rights. Anything too broad “will cripple the system and we will pay a heavy price,” said John Vaughn, executive vice president of the Association of American Universities. The House passed a patent reform bill, known as the Innovation Act, in December. The Senate has held four briefings on Leahy’s bill, but reform advocates want to speed up the pace. The White House has pushed hard on the issue, announcing a series of executive actions and urging lawmakers to work through legislation this year. Polis applauded the administration’s focus and said it gave momentum to a wonky topic. “When it comes to a patent bill, people say, ‘OK, the president likes it so I’m going to give it a look,’” he said. “It opened the bill on the Democratic side.” The Leahy-Lee bill is expected to serve as the Senate’s main patent vehicle, and currently does not include controversial proposals such as expanding a review program for “business method” patents. Leahy said Tuesday that he is “working closely with members of the Committee to incorporate their ideas into a bipartisan compromise.” Lee said he and Leahy want to find a way to incorporate an amendment from Sen. John Cornyn (R-Tex.) that would force the loser to pay the winner’s fees in patent lawsuits. This “could produce something that ends up being pretty close to what passed in the House,” he said. Not everyone wants it that way. Russ Merbeth, chief policy council for Intellectual Ventures, said such fee shifting could “chill” the ability of businesses to enforce their patent rights. “It’s one of the tougher nuts to crack in this whole debate,” he said. The company, which holds a vast array of patents, is often criticized as one of the biggest trolls. KAYAK’s Berman, attacked Intellectual Ventures as the real problem. “It’s about him,” he said. The last patent overhaul, the America Invents Act, took place only three years ago. But supporters of reform don’t believe it resolved the troll issue. Even if a new bill moves forward in the Senate, the two chambers must settle on a compromise in the midst of an election year. That timing, Berman said, “concerns me greatly.”

#### Plan kills capital

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### That closes the window and alienates Dems

**Wild, 14** (2/23, Joff, “Concerns in Senate and approaching election could stymie patent litigation reform moves” Intellectual Asset Management Magazine, <http://www.iam-magazine.com/Blog/Detail.aspx?g=0fe92d4e-915d-4f15-925e-60b452f2e093>)

The window of opportunity for the passing of a federal patent litigation reform law in the US is slowly **beginning to close** and could soon be shut tight, according to sources that IAM has spoken to over the last few days. The head of steam for change that culminated in the House of Representatives’ overwhelming, bipartisan approval of the Goodlatte Innovation Act has now begun to dissipate in the face of growing concerns among some senators that there is not enough evidence to justify wide-ranging reforms and that the potential for unintended harms has not been properly explored. What’s more, in what is an election year, plans for much wider application of loser pays are beginning to cause significant concerns among Democrat lawmakers, who have traditionally raised significant amounts of campaign money from trial lawyers, a constituency that is overwhelmingly opposed to the move. If the legislation is not agreed during the 113th Congress, the whole process will have to start from scratch during the 114th Congress, which begins sitting in January 2015. Over the last week, IAM has had a number of conversations with very well-informed individuals about where things stand. While not everyone agrees that getting a new law before the mid-term elections is out of the question, there is a widespread recognition that the clock is ticking. All seats in the House of Representatives are up for grabs on 4th November, as well as 33 of the 100 Senate seats. At some stage pretty soon, that is going to become everyone’s primary focus on Capitol Hill.

#### The impact is clean tech and innovation

**Gerschel-Clarke, 13** – independent design strategist specialising in the societal aspects of design and a contributing writer at Sustainable Brands (Adam, The Guardian, “Are patent trolls strangling sustainable innovation?” 11/14, <http://www.theguardian.com/sustainable-business/patent-trolls-sustainable-innovation>)

Disputes over intellectual property have risen dramatically over the last few years and, despite the global advantage green technologies offer, they have not been immune from these battles over ownership. According to the latest figures published by the World Intellectual Property Organisation, applications to patent greentech have risen by over 6% since 2011, making it one of the leading growth areas for IP. Over the same period we've seen increasingly urgent global efforts to preserve the environment and avert lasting impact on society. So how is the **volatile IP climate** affecting the development of green technologies and the pace of progress towards a sustainable future? Patents were originally conceived as temporary defensive measures to protect and promote innovation. They grant the holder exclusive rights to make, use or sell an invention for up to 20 years. The aim was to ensure businesses investing time and effort into developing technology have the opportunity to commercialise it without competition from firms that haven't made the same commitment. Trolling However, the ability to sell or licence patents for a fee has led to a slow proliferation of patent 'trolling' which is now threatening the creation of new sustainable systems and products. Patent trolls are non-manufacturing companies which acquire and exploit libraries of patents to extract licensing fees from creative firms. Small entities, such as entrepreneurs, are particularly at risk from trolling, as their limited budgets often prevent them from contesting spurious claims. Although multi-million pound battles between wealthy technology firms may dominate media coverage, recent figures suggest that 60% of patent litigation is now brought by patent trolls mostly against firms with low annual incomes. For sustainable development, the danger is that trolling replaces the financial protection that patents offer with financial encumbrance. This reduces the incentive to turn green ideas into green technology and impairs the creativity that is at the core of sustainable progress. Stifling green growth But there are even greater risks with the patent system. By using patents on essential components and concepts, established manufacturers can keep a tight grip on emerging new technology as well as on creative talent in the field. Potential innovators and entrepreneurs – the driving force behind economic progress - are faced with the choice of either starting a business at the risk of being crushed by patent litigation, or going to work for one of the same companies that would have sued them. And to add insult to injury, the price of choosing the latter often includes complete surrender of those ideas - Matt Stanford, 2012 Often it is not in the interests of incumbent firms to develop new technology. This is especially true of sustainable development, where progress can involve the retirement of serviceable and profitable technology, in favour of alternatives that may threaten existing revenue streams or that cannot yet offer the same economies of scale. This conflict of interest between progress and profit can mean that socially and environmentally beneficial technology is shelved. Worse, it can also provide a temptation to strategically purchase sustainable innovation **purely to obstruct** its development. In 1989, for example, innovator Stanford Ovshinsky invented a new nickel-based battery that was cheaper, safer and more powerful than contemporary battery technology. In 1994 he sold the patent to General Motors, to help develop the world's first mass-produced electric car, the EV1. After testing the technology GM opted to stick with their conventionally powered vehicles and sold the battery patent to Texaco, an oil retailer. Ovshinsky's battery technology has since been licensed by a succession of petrochemical companies. The licence conditions for his batteries limit their application in hybrid vehicles and effectively prohibit use in fully electric vehicles. The effect of this restriction can be seen in the pace of EV development today. Lithium-based batteries, used in contemporary vehicles such as the Nissan Leaf and Mitsubishi i-MiEV, are only just approaching the range and performance of the original EV1 technology and they cost considerably more to produce. Even though it seems the patents are failing to promote and protect sustainable innovation, arguably sustainable development would be worse off without them. The system includes an obligation to publish details of protected technology. Without patents, manufacturers may keep valuable scientific and technological knowledge secret, starving the global community of the building blocks of future innovation. Future of sustainable technology We need to update the existing patent system to reflect the changing face of innovation. The process of finding solutions and meeting societal needs has become a community undertaking, increasingly motivated by concerns over human and environmental welfare, alongside potential profit. The traditional influence of financiers on the innovation process is diminishing as crowdfunding platforms enable communities to develop products and services without banks and loans. Similarly in business, social enterprises have grown in strength and look set to play a significant role in our future economy. An effective system to promote and protect innovation must recognise the complete spectrum of stakeholders in technological development, valuing innovation for environmental and social benefit as highly as for financial gain. We need a better regulation of the patent system, to restore the protection and incentives that patents were intended to offer all innovation. This means **reducing the influence** of incumbent manufacturers and trolls on emerging green technologies by limiting the breadth of patents and regulating licences on basic technologies.

#### Extinction

**Klarevas 9** – Professor of Global Affairs

Louis, Professor at the Center for Global Affairs – New York University, “[Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony](http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html)”, Huffington Post, 12-15, <http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html>

By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to **secure its global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to **outmaneuver potential great power rivals** seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and **global stability**. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously **providing it with** means of **leverage that can** be employed to **keep potential foes in check.**

#### Key to medical biotech innovation – universities are under economic pressure to sell patents to trolls

**Feldman, 3/28/14 -** professor of Law, Harry & Lillian Hastings Chair, and director of the Institute for Innovation Law at the University of California Hastings College of Law.(Robin, “Next patent troll victims: Pharma and bio?” The Hill, <http://itk.thehill.com/blogs/congress-blog/judicial/201945-next-patent-troll-victims-pharma-and-bio>)

Conventional wisdom has always held that bio and pharma are safe from patent trolling. Unfortunately, that conventional wisdom is wrong.

Not only are we starting to see evidence of patent trolls moving into the biopharmaceutical space, our recent study of university patent holdings shows that the bio and pharmaceutical industries are at serious risk of the same type of **destabilizing activity** that has plagued the technology industry and main street businesses in recent years.

Non-practicing entities—also called NPEs or more colorfully, patent trolls—have pursued a lucrative business model in recent years based on the following simple concept: Offer a settlement comfortably below the high costs and risks of a patent lawsuit, and a rational company may settle, regardless of whether the patent properly applies to the company’s product. This business model, which has troubled the technology industry, has now moved into coffee houses and retail stores. Bio and pharma are safe, however. Or at least, that’s what we have told ourselves.

With scattered signs showing that patent trolls are beginning to purchase biopharmaceutical patents, however, my co-author and I wondered whether the industry was really as safe as assumed. In particular, we wondered whether university holdings could provide a tempting pool of ammunition to launch against current biopharmaceutical products.

To test that theory, we looked at the life science patent holdings of five major research universities: University of California, University of Texas, MIT, CalTech, and the University of South Florida. Our study identified dozens of patents that could be deployed against current bio and pharma industries, following the patterns that NPEs have used against other industries. These include patents on drug formulas, methods of treatments, research methods, dosage forms, and others.

If patents like these are around and threatening, why hasn’t the biopharmaceutical industry found and dealt with them? The answer may be that up until now, university holdings have has posed little threat, particularly peripheral patents that could be used for the type of bargaining leverage popularized in modern patent trolling. Another recent study of mine—an extensive academic study of all 13,000 patent lawsuits filed over the last four years—showed that universities filed less than half of 1 percent of all of the patent lawsuits. Thus, the threat of university holdings may have been too low to justify the costs of searching out and licensing every patent that could potentially be launched against a product.

That safety net, however, may be coming down. Last fall, the Association of University Technology Managers began revisiting its policy against selling patents to NPEs. Pressure on university technology offices to bring in more revenue is causing the Association to rethink its position. That re-evaluation, however, could have serious consequences for the biopharmaceutical industry and for universities themselves.

Many university patents are developed at least in part with federal funds, and there are concerns when government-funded inventions end up as NPE lawsuits. For example, in what economists are calling the “leaky bucket,” only an estimated 20 percent of the money paid to NPEs gets back to the original inventors or into any internal R&D. And that’s a very small amount. On the flip side, the majority of NPE lawsuits are filed against small businesses. These perspectives raise concerns that government-funded research is being used to harm American businesses with little return to innovation.

As a result, dancing with NPEs could be a risky business for universities. If public anger about patent trolling focuses on universities, they have much more to lose in terms of federal dollars than they have to gain from NPEs.

Concerns about university portfolios and patent trolling are particularly relevant as Congress considers reform proposals. Some of the proposals would exempt universities and those working with universities. It is critical for legislative drafters to understand the potential for problems within university portfolios in general and as they might be aimed at the life sciences in particular.

The study is intended to sound a warning bell. Technology trolling seeped in silently under the radar, growing to extraordinary dimensions before lawmakers had time to react. In contrast, life sciences trolling is predictable and in its infancy. If reforms are implemented before the problem proliferates throughout the industry, legislators and regulators have a chance to cabin the activity before it becomes deeply entrenched and before too much harm occurs.

#### That’s key to solve the aging crisis by decreasing health care costs

**Alliance for Aging Research, 6** (“Medical Innovation: A Long-Term Vision,” Spring, <http://www.agingresearch.org/content/article/detail/1369>)

As the first members of the Baby Boom generation turn 60, a national dialogue is gaining momentum concerning the impact that our exploding senior demographics will have on our already over-burdened health care system. Our society is aging, living longer, and facing a new challenge of unprecedented levels of chronic disease. The public and policymakers are understandably worried about soaring health care costs and what the future will bring. While people are living longer, healthier lives as a result of ever-improving medical care, we are also seeing that increased life-spans are revealing chronic disease, which disproportionately affect the elderly. Almost half of all Americans have a chronic condition, and by 2030, the number of Americans with one or more chronic conditions is expected to increase by 37%. The personal and financial toll that these diseases impose is enormous, with chronic conditions often requiring ongoing, expensive medical care. With chronic disease often come functional limitations, dependency, and increased medical bills. Chronic disease also consumes far more than its share of our nation’s health care resources because people with chronic illnesses visit their doctors more, stay longer in hospitals, take more prescription drugs, and require more medical care across the board. Because chronic disease tends to strike later in life, this is an issue that is coming into focus as our nation faces the doubling of its older population in the next 25 years. Vulnerability to chronic disease increases exponentially after middle age, as the risk for many age-related conditions doubles every five to seven years after age 50. By age 65, nearly nine out of ten people have at least one chronic condition. Health care expenditures in the United States rose to $1.9 trillion in 2004 and were increasing by nearly 8 percent per year. With figures like this health care is already in the national spotlight, but as this vital debate continues and calls for cost-cutting measures continue to dominate, we must shine the spotlight on the true driver of costs – chronic disease. With people with chronic conditions accounting for 83% of all health care spending, we must focus on reducing these chronic diseases with medical innovations. Medical innovations have already proven their value in not only improving the length and quality of life, but also in helping to contain medical costs. Resulting improvements in health care often far outweigh increased spending – every dollar invested in health care produces up to three dollars in health care gains. As we discuss and plan the direction we must take to keep our country’s health care system alive, we must turn to the potential of medical innovation in reducing mortality, increasing independence and productivity, cutting down on hospital stays and doctors visits, and preventing, treating, and curing more debilitating diseases. We must shift the debate away from policies and solutions that will save short-term dollars but shortsightedly put our future health at risk, and turn instead to investing in research that will yield significant returns. We need a long-term vision that addresses the impact of chronic diseases and reduces their impact on our nation’s pocketbook and on our lives.

#### Nuclear war – us leadership key

**Howe and Jackson, 9** - Researchers at the Center for Strategic and International Studies and co-authors of "The Graying of the Great Powers: Demography and Geopolitics in the 21st Century." (Neil and Richard, “The World Won't Be Aging Gracefully. Just the Opposite.”, Washington Post, Jan 4, <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/02/AR2009010202231.html>)

America certainly faces some serious structural challenges, including an engorged health-care sector and a chronically low savings rate that may become handicaps as we age. But unlike Europe and Japan, we will still have the youth and fiscal resources to afford a major geopolitical role. The declinists have it wrong. The challenge facing America by the 2020s is not the inability of a weakening United States to lead the developed world. It is the inability of the other developed nations to be of much assistance -- or indeed, the likelihood that many will be in dire need of assistance themselves. A major reason the wealthy countries will need strong leadership are the demographic storms about to hit the developing world. Consider China, which may be the first country to grow old before it grows rich. For the past quarter-century, China has been "peacefully rising," thanks in part to a one-child policy that has allowed both parents to work and contribute to China's boom. But by the 2020s, as the huge Red Guard generation born before the country's fertility decline moves into retirement, they will tax the resources of their children and the state. China's coming age wave -- by 2030 it will be an older country than the United States -- may weaken the two pillars of the current regime's legitimacy: rapidly rising GDP and social stability. Imagine workforce growth slowing to zero while tens of millions of elders sink into indigence without pensions, without health care and without children to support them. China could careen toward social collapse -- or, in reaction, toward an authoritarian clampdown. Russia, along with the rest of Eastern Europe, is likely to experience the fastest extended population decline since the plague-ridden Middle Ages. Amid a widening health crisis, the Russian fertility rate has plunged and life expectancy has collapsed. Russian men today can expect to live to 59, 16 years less than American men and marginally less than their Red Army grandfathers at the end of World War II. By 2050, Russia is due to fall to 20th place in world population rankings, down from fourth place in 1950. Prime Minister Vladimir Putin flatly calls Russia's demographic implosion "the most acute problem facing our country today." If the problem isn't solved, Russia will weaken progressively -- raising the nightmarish specter of a failed state with nukes. Or this cornered bear may lash out in revanchist fury rather than meekly accept its demographic fate. Of course, some developing regions will remain extremely young in the 2020s. Sub-Saharan Africa -- which is afflicted with the world's highest fertility rates and ravaged by AIDS -- will still be racked by large youth bulges. So will several Muslim-majority countries, including Afghanistan, Iraq, the Palestinian territories, Somalia, Sudan and Yemen. In recent years, most of these countries have demonstrated the correlation between extreme youth and violence. If that correlation endures, chronic unrest and state failure could persist through the 2020s -- or even longer if fertility fails to drop. Many fast-modernizing countries where fertility has fallen very recently and very steeply will experience an ominous resurgence of youth in the 2020s. It's a law of demography that when a population boom is followed by a bust, it causes a ripple effect, with a gradually fading cycle of echo booms and busts. In the 2010s, a bust generation will be coming of age in much of Latin America, South Asia and the Muslim world. But by the 2020s, an echo boom will follow -- dashing economic expectations, swelling the ranks of the unemployed and perhaps fueling political violence, ethnic strife and religious extremism. These echo booms will be especially large in Pakistan and Iran. In Pakistan, the number of young people in the volatile 15- to 24-year-old age bracket will contract by 3 percent in the 2010s, then leap upward by 20 percent in the 2020s. In Iran, the youth boomerang will be even larger: minus 31 percent in the 2010s and plus 30 percent in the 2020s. These echo booms will be occurring in countries whose social fabric is already strained by rapid development. One teeters on the brink of chaos, while the other aspires to regional hegemony. One already has nuclear weapons, and the other seems likely to obtain them. All told, population trends point inexorably toward a more dominant U.S. role in a world that will need us more, not less. For the past several years, the U.N. has published a table ranking the world's 12 most populous countries over time. In 1950, six of the top 12 were developed countries. In 2000, only three were. By 2050, only one developed country will remain -- the United States, still in third place. By then, it will be the only country among the top 12 with a historical commitment to democracy, free markets and civil liberties. Abraham Lincoln once called this country "the world's last best hope." Demography suggests that this will remain true for some time to come.

### 1nc cp

#### On January 1, 2015, The United States Federal Government should repeal public law 107-40’s authorization to use force, effective within one month.

#### Solves the aff—they don’t have ev that one day delay implicates solvency BUT it competes since they specified in the plan—the net benefit is announcing now links to politics. The counterplan does nothing whatsoever until next year but makes it effective right away.

### 1nc consult congress cp

Effective December 31st, 2014, Congress should establish by statute a permanent, joint Congressional committee on international strategic policy, requiring the President consult this committee prior to use of force authorized by Public Law 107-40.  This committee should recommend prohibition of the aforementioned uses of force but lack the authority to veto Presidential actions. The full Congress should be required to vote on a resolution of approval no later than 30 days following consultation. The President should publicly proclaim the end to the armed conflict with al Qaeda and renounce actions based on the legal authority of the AUMF.

#### The net benefit is inter-branch conflict –

#### Inter-branch tensions are escalating now over the CIA – they’ll wreck foreign policy coherence

**Samuelsohn, 3/23/14 -** senior policy reporter for POLITICO Pro.(Darren, Politico, “Dianne Feinstein-CIA feud enters uncharted territory” <http://www.politico.com/story/2014/03/dianne-feinstein-cia-feud-104927.html>)

Sen. Dianne Feinstein’s battle with the CIA has entered dangerous, uncharted territory.

Caught in the crossfire of the powerful California Democrat’s fight with the nation’s most recognized intelligence agency: America’s ability to manage **multiple geopolitical hotspots**, top national security nominations and senior Senate and CIA officials who could lose their jobs or possibly even end up in jail.

Managing relations between Congress and the intelligence community is always tricky — an outgrowth of closed-door oversight into sensitive national security issues where lawmakers often complain that they must ask the right questions to get the right answers.

But now that the Justice Department is involved in the dispute between Feinstein’s Intelligence Committee staff and the CIA — deciphering whether the CIA violated the Constitution or federal law by searching Senate computers, or whether Democratic staffers hacked into the CIA’s system to obtain classified documents — things have escalated to an unprecedented level.

While President Barack Obama won’t take sides publicly for fear of interfering with a possible criminal matter, that hasn’t stopped Senate Majority Leader Harry Reid. The Nevada Democrat last week defended Feinstein, warning in a letter to Attorney General Eric Holder that the recent back-and-forth accusations she’s had with CIA Director John Brennan could have historic ramifications for constitutional separation of powers.

“Left unchallenged, they call into question Congress’s ability to carry out its core constitutional duties and risk the possibility of an unaccountable Intelligence Community run amok,” Reid wrote.

With no clear resolution in sight, Capitol Hill and the CIA are stuck in the awkward spot of trying to maintain business as usual, when the reality is it’s anything but.

“This is the most serious feud since the Intelligence committees were established,” said Amy Zegart, a former National Security Council staffer and senior fellow at Stanford University’s Hoover Institution.

Most alarming, Zegart explained, is Feinstein’s Senate floor broadside earlier this month against the CIA. The senator’s remarks broke from her well-established reputation as a staunch defender of another wing of the intelligence community, the National Security Agency, amid scores of Edward Snowden-inspired leaks to the media.

“When someone who says they can be trusted now says they can’t, it’s really bad,” Zegart said.

Brennan said in a Friday memo to CIA employees that he’s “committed to finding a way forward” with the Senate. And senior intelligence officials insist that tensions should ease once the committee can release a redacted version of the panel’s exhaustive five-year investigation into the George W. Bush-era CIA interrogation and detention programs. A vote to declassify the report is expected before the end of the month.

But even if a portion of the Senate’s investigation were to be made public, sources on and off Capitol Hill still caution that the bad blood will linger because of the harsh accusations exchanged over how Feinstein’s aides obtained an internal CIA analysis and the lines that the intelligence agency may have crossed to find out what they did.

Feinstein and Brennan are standing by their contradictory explanations of what happened in the course of the Democratic staff’s investigation into the Bush-era CIA programs. Absent a meeting of the minds, some say the only way for the chairwoman to save face is for Brennan to go.

“Those are bridges burned,” said former Rep. Pete Hoekstra, a Michigan Republican who chaired the House Intelligence Committee.

“The real question it will come down to is whether Dianne Feinstein believes she can have a working relationship with John Brennan,” Hoekstra added. “And if she believes that relationship is beyond repair and it’s going to be difficult to rebuild that trust between the oversight committee and the CIA, … then there’s really only one alternative. And that’s Brennan has to step aside.”

Feinstein aides declined comment when asked about Brennan’s future, saying the senator’s 40-minute floor speech earlier this month speaks for itself — “for now.” At the conclusion of those remarks, Feinstein called the impasse a “defining moment for the oversight for our Intelligence Committee.”

“How Congress and how this will be resolved will show whether the Intelligence Committee can be effective in monitoring and investigating our nation’s intelligence activities or whether our work can be thwarted by those we oversee,” Feinstein said.

Senior members of the House and Senate intelligence panels are cautioning against jumping to conclusions on the Feinstein-CIA fight, though members from both sides of the aisle also expressed concern that it could still spiral out of control.

“Our oversight is alive and well and robust. That won’t change,” House Intelligence Committee Chairman Mike Rogers said in an interview. But the Michigan Republican also warned that the dispute needed to be resolved, and soon — otherwise there could be consequences.

“I think if this doesn’t get handled right in the next short period of time this has the potential of having other broader implications, and I hope it doesn’t get to that,” Rogers said.

“You don’t want everything to become adversarial,” he added. “The oversight will continue. If it’s adversarial or not, it will continue. It’s always better when both sides agree to a framework on what will be provided; otherwise, it becomes a subpoena exchange, and that’s just not helpful.”

Rep. Dutch Ruppersberger (D-Md.), the ranking member of the House Intelligence Committee, said he’d never seen a dispute like the one between Feinstein and the CIA during his 12 years on the panel.

“When Sen. Feinstein has a concern, I think we must listen,” he told POLITICO. “These are serious allegations. If true, it has a chilling effect on all of our intelligence agencies, especially our two committees that oversee all of the intelligence agencies, including the CIA.”

In the absence of answers of what happened, several intelligence veterans said the Feinstein-CIA dispute is taking up lawmakers’ limited oxygen supply on complex issues ranging from Snowden’s revelations about government surveillance overreach to cybersecurity threats and tensions flaring in Ukraine, Syria, Egypt and other global hotspots.

#### The CP establishes a consultative framework for executive-legislative cooperation but avoids fights over authority

**Baker and Hamilton 11 -** James A. Baker III was secretary of state from 1989 to 1992. Lee H. Hamilton is a former Democratic representative from Indiana who chaired the House Committee on Foreign Affairs (“Breaking the war powers stalemate” Washington Post, 6/9, http://www.washingtonpost.com/opinions/breaking-the-war-powers-stalemate/2011/06/08/AGX0CrNH\_story.html)

With our country engaged in three critical military conflicts, the last thing that Congress and the White House should be doing is squabbling over which branch of government has the final authority to send American troops to war. But that is exactly what has been happening, culminating with the House’s rebuke of the Obama administration last Friday for the way it has gone about the war in Libya.

On one hand is a bipartisan group of House members who argue that President Obama overreached because he failed to seek congressional approval for the military action in Libya within 60 days of the time the war started, as required by the War Powers Resolution. The lawmakers are particularly upset because the administration sought, and received, support from the United Nations — but not from them.

On the other hand is the White House, which argues that history is on its side. The 1999 NATO-led bombing over Kosovo lasted 18 days longer than the resolution’s 60-day requirement before the Serbian regime relented.

Stuck in the middle are the American people, particularly our soldiers in arms. They would be best served if our leaders debated the substantive issues regarding the conflict in Libya — and those of Afghanistan and Iraq — rather than engaging in turf battles about who has ultimate authority concerning the nation’s war powers.

There is, unfortunately, no clear legal answer about which side is correct. Some argue for the presidency, saying that the Constitution assigns it the job of “Commander in Chief.” Others argue for Congress, saying that the Constitution gives it the “power to . . . declare war.” But the Supreme Court has been unwilling to resolve the matter, declining to take sides in what many consider a political dispute between the other branches of government.

We believe there is a better way than wasting time disputing who is responsible for initiating or continuing war.

Almost three years ago, we were members of the Miller Center’s bipartisan National War Powers Commission, which proposed a pragmatic framework for consultation between the president and Congress. Co-chaired by one of us and the late Warren Christopher, the commission could not resolve the legal question of which branch has the ultimate authority. Only the court system can do that. Instead, the commission strove to foster interaction and consultation, and reduce unnecessary political friction. The commission — which represented a broad spectrum of views, from Abner Mikva on the liberal end to Edwin Meese on the conservative end — made a unanimous recommendation to the president and Congress in 2008.

The commission’s proposed legislation would repeal and replace the War Powers Resolution. Passed over a presidential veto and in response to the Vietnam War, the 1973 resolution was designed to give Congress the ability to end a conflict and force the president to consult more actively with the legislative branch before engaging in military action. The resolution, a hasty compromise between competing House and Senate plans, stated that the president must terminate a conflict within 90 days if Congress has not authorized it. But no president has ever accepted the statute’s constitutionality, Congress has never enforced it and even the bill’s original sponsors were unhappy with the end product. In reality, the resolution has only further complicated the issue of war powers.

Our proposed War Powers Consultation Act offers clarity. It creates a consultation process, defines what constitutes “significant armed conflict” and identifies specific actions that both the president and Congress must take.

On the executive side, the president would be required to confer with a specific group of congressional leaders before committing to combat operations that last or are expected to last more than a week. Reasonable exemptions exist, including training exercises, covert operations or missions to protect and rescue Americans abroad. Likewise, if an emergency precedes engagement, or secrecy is required that precludes prior consultation, then consultation can follow within three days. Under this proposal, the strike on Osama bin Laden would plainly fall within the president’s prerogative, while an action such as our current engagement in Libya would require advance consultation and congressional action at the appropriate time.

On the legislative side, Congress would have to vote on a resolution of approval no later than 30 days after the president had consulted lawmakers. If Congress refused to vote yea or nay, it would do so in the face of a clear requirement to the contrary. Inaction would no longer be a realistic option.

Given the Constitution’s ambiguity, no solution is perfect. But Congress and the White House should view the War Powers Consultation Act as a way out of the impasse. It is what the American people want when their leaders confront the serious questions of war and peace.

#### Solves case without binding restrictions – fosters debate and accountability and creates de facto political constraint

**Hamilton, 9** - The Honorable Lee H. Hamilton is president and director of the Woodrow

Wilson International Center for Scholars and director of the Center on

Congress at Indiana University (Rivals for Power: Presidential-Congressional Relations, ed: Thurber, p. 297-298)

By forcing Congress to take an up or down vote, the legislation directs Congress to state its support for or opposition to military action on the record and to assert itself in a way it has been hesitant to do in the last sixty years. If the resolution is defeated in one or both houses, any member of Congress— representative or senator—“may file a joint resolution of disapproval of the significant armed conflict, and the joint resolution shall be highly privileged, shall become the pending business of both Houses, shall be voted on within five calendar days thereafter, and shall not be susceptible to intervening motions, except that each house may adjourn from day to day.” The president can veto this joint resolution, but Congress can override that veto.

This provision does not provide Congress the power to stop the president from committing U.S. troops to military action. As one critic of the proposed legislation writes, “No matter how many conditions Congress might try to place on the president’s use of force in such a concurrent resolution, the president would be under no legal obligation to comply because the provisions would have no force or effect outside Congress. This is because concurrent resolutions are mere sense-of-Congress expressions.”34 However, in practice, it appears that presidents already have no obligation to engage Congress in initiating hostilities. Barring judicial intervention, there is not an enforceable legal obligation to guarantee the sharing of war powers. The joint resolution is, therefore, a mechanism to reinsert Congress into the process.

James Wilson’s words—“This system will not hurry us into war”—express a core objective of the War Powers Consultation Act. It would force debates of costs and benefits of proposed military action into the public domain. The president would have to confront questions and criticisms. The executive would not be able to assume Congress’s silent acceptance of his war-making authority—though Congress certainly could respond to the executive’s military initiatives weakly as it has done in the past. There is, after all, no legislative panacea for an unassertive Congress. Yet in each of these respects, the War Powers Consultation Act would be an improvement over the present state of affairs.

#### The aff’s restriction cements an adversarial model of inter-branch relations which breaks consultation

**Mann, 90 –** senior fellow in governance studies, at Brookings (Thomas,A Question of Balance : the president, the Congress, and foreign policy, relevant chapter here: <http://cas.uwo.ca/documents/political_science/Mann%20p1-34.pdf>)

Collaboration entails consultation with Congress before executive action. It requires the initiation of serious discussions on Capitol Hill with key members of both parties before policies are set in stone. It means the president must provide timely information to Congress on major foreign policy developments and demonstrate a capacity to change his mind in the face of reasonable opposition. By dealing honestly and openly with influential and knowledgeable legislators, the president can strengthen the hand of responsible forces in Congress and thereby increase his chances of attracting majority support for his policies and preserving as much discretion as possible over the conduct of foreign policy.

No formal mechanisms can guarantee collaboration between the branches; presidents will pursue this approach only when they believe it will advance their interests. But some changes in law and organization would make consultation a more routine feature of presidential-congressional relations. The spirit, if not the letter, of laws and mechanisms presently in place for the oversight of intelligence activities could well be applied to war powers, arms control, diplomacy, and foreign economic policy. The Select Intelligence committees give the administration a secure setting for advice and criticism but also for support of covert activities. When used in the manner that was intended, these procedures provide the benefits of democratic accountability without compromising the president's ability to act quickly and decisively on behalf of American security interests.

These virtues are noticeably absent in the spheres of war powers and arms control. As Katzmann recommends, the War Powers Act should be amended by substituting an explicit consultation mechanism for the provision requiring the withdrawal of troops as a consequence of congressional inaction. And in line with Blechman's advice, the president would strengthen his position in arms control policy and reduce the maneuvering room for congressional initiatives on the details of negotiating positions by devising informal arrangements whereby Congress can help shape negotiating objectives and strategies.

The same general strategy of reform—seeking to substitute early congressional involvement in the setting of broad policy goals for a reliance on detailed, restrictive, often punitive measures after the fact— can be pursued fruitfully in other areas of foreign policy. The Hamilton- Gilman initiative to revamp the foreign assistance program, discussed by Jentleson, is a good case in point. Another attractive proposal recently advanced calls for new congressional select oversight committees on the dollar and the national economy to focus attention on exchange rate policy and its connection with fiscal, monetary, and trade issues.45

Reformers should be wary of reorganization plans that put a premium on simplification and hierarchy. Despite the surface appeal of joint oversight committees in foreign policy (less burden on executive officials, fewer leaks), separate House and Senate committees provide significant policymaking advantages. Competition between the chambers and their committees can energize congressional oversight and keep collaboration and consultation from degenerating into cooptation. Increased opportunities for service on the committees help build a critical mass of knowledgeable and experienced members in each chamber. Separate committees have more credibility in their respective chambers and thus are in a better position to facilitate more constructive and predictable involvement by the full House and Senate in foreign policy. By the same token, mechanisms for consultation can be effective only insofar as those being consulted can speak for the full Congress. While contemporary congressional leaders are necessarily sensitive to and solicitous of rank-and-file opinion, it would be wise to include some less senior members, particularly the relevant subcommittee chairs, in formal and informal discussions between the branches.

While contemporary congressional leaders are necessarily sensitive to and solicitous of rank-and-file opinion, it would be wise to include some less senior members, particularly the relevant subcommittee chairs, in formal and informal discussions between the branches. Another trap that reformers on Capitol Hill should avoid is the "never again" genre of statutory restriction that, like generals' tendency to fight the last war, follows episodes in which the executive branch fails to honor the letter and spirit of its foreign policy partnership with Congress. While it was perfectly natural for Congress to move to close possible loopholes in existing law following the revelations of the abuse of White House power in the Iran-contra affair, efforts to codify limits and criminalize executive behavior can be counterproductive to interbranch relations. Examples of legislative overkill include proposals requiring notice of all covert operations within forty-eight hours and making it a crime for any government official to try to provide aid indirectly to any foreign country or group that is prohibited by law from receiving direct U.S. aid. Remedies of this sort, designed to prevent the recurrence of what was almost certainly the exception, not the norm, in executive behavior, are of dubious constitutionality and certain to provoke opposition from any occupant of the White House. Instead, Congress should replace its passive-aggressive syndrome in foreign policy with a steadier, more mature posture toward the president. Congress should monitor executive behavior vigilantly and punish presidents for clear transgressions of law and procedure, but not rewrite the rules that govern their normal interactions.

#### Extinction

**Hamilton 2** [Lee H., President and Director of the Woodrow Wilson International Center for Scholars, Vice Chairman of the 9/11 Commission, President's Homeland Security Advisory Council, Former Member of the United States House of Representatives for 34 Years, Co-Chair of the Iraq Study Group, Formerly Special Assistant to the Director at the Woodrow Wilson Center, A Creative Tension: The Foreign Policy Roles of the President and Congress, p. 3-7]

We face many dangers, however. The diversity of the security and economic threats around the globe is daunting. Terrorism, which has already struck the united states brutally, will be a continuing threat in the years ahead, and it may become more deadly if weapons of mass destruction proliferate and reach the wrong hands. the greatest security threat might be the danger that nuclear weapons or materials in russia could be stolen and sold to terrorists or hostile nations and used against americans at home or abroad. groups and individuals that do not wish us well will also attempt to attack us with weapons of mass disruption, such as information warfare, which could assault our economic, financial, communications, information, transportation, or energy infrastructures. there are numerous other threats to national security. The world's population will increase substantially during the first half of the twenty-first century, placing added strain on natural resources, including water, and possibly intensifying interstate conflicts and civil strife. Economic crises will likely be a regular occurrence, throwing some nations into turmoil and occasionally creating widespread financial instability. International crime, the illegal drug trade, global warming, infectious diseases, and other transnational problems will challenge national sovereignty and threaten our security, prosperity, and health. yet these dangerous threats are balanced by many opportunities. as the world's most powerful nation, the United States has a tremendous capacity to influence the world for good—to protect international peace, root out terrorism, resolve conflicts, spread prosperity, and advance democracy and freedom. Other nations look to us for leadership and to set an example of responsible and principled international action. our values of freedom, justice, the rule of law, and equality of opportunity are increasingly the values of peoples around the globe. In the coming decades, the spread of these values and incredible advances in science and technology will give us the capacity to disseminate knowledge, cure diseases, reduce poverty, protect the environment, and create jobs in the farthest-flung corners of the world. so our new world is as full of hope as it is of danger. To meet the threats and take advantage of the opportunities, the United States will need strong leadership, expertise in many fields, and large measures of foresight and resolve. Again and again, I have been impressed with the need for U.S. leadership on the most pressing international challenges. If something important has to be done—from fighting international terrorism to bringing peace to the middle east—no other country can take our place. We may not get it right every time, but our leadership is usually constructive and helpful. We must, however, be aware of the limits to American power. The united states is neither powerful enough to cause all of the world's ills, nor powerful enough to cure them. So it is critical that we maintain good relations with our international allies and friends, manage prudently our sometimes difficult relationships with Russia and China, and support and strengthen international institutions. A world that is committed to working together through effective international institutions and partnerships will be the world most capable of protecting peace and security and advancing prosperity and freedom. Equally important for a successful foreign policy will be cooperation between the president and Congress. Today's moment of U.S. preeminence has not come to this nation by chance. Sound policies shaped by past presidents and congresses helped to place us in this desirable position. To remain secure, prosperous, and free, the united states must continue to lead. That leadership requires the president and Congress to live up to their constitutional responsibilities to work together to craft a strong foreign policy. The great constitutional scholar Edward Corwin noted that the constitution is an invitation for the president and congress to struggle for the privilege of directing foreign policy. Although the president is the principal foreign policy actor, the Constitution delegates more specific foreign policy powers to congress than to the executive. it designates the president as commander-in-chief and head of the executive branch, whereas it gives Congress the power to declare war and the power of the purse. The president can negotiate treaties and nominate foreign policy officials, but the senate must approve them. Congress is also granted the power to raise and support armies, establish rules on naturalization, regulate foreign commerce, and define and punish offenses on the high seas. This shared constitutional responsibility presupposes that the president and Congress will work together to develop foreign policy, and it leaves the door open to both of them to assert their authority. On some basic foreign policy issues, the president and congress agree on their respective roles. For instance, Congress generally does not question the president's power to manage diplomatic relations with other nations, and presidents accept that congress must appropriate funds for diplomacy and defense. But on a panoply of other issues—from oversight of foreign aid and responsibility for trade policy to authorization of military deployments and funding for international institutions—Congress and the president battle intensely to exert influence and advance their priorities. Of course, I approach the executive–legislative relationship from the perspective I gained during my congressional experience. That experience has convinced me that Congress plays a very important role in foreign policy, but does not always live up to its constitutional responsibilities. Its tendency too often has been either to defer to the president or to engage in foreign policy haphazardly. I recognize that political pressures, institutional dynamics, and the heavy domestic demands placed on Congress can make it difficult for it to exercise its foreign policy responsibilities effectively. But I believe that Congress could improve its foreign policy performance markedly if it made a concerted effort to do so. Although the president is the chief foreign policy maker, Congress has a responsibility to be both an informed critic and a constructive partner of the president. The ideal established by the founders is neither for one branch to dominate the other nor for there to be an identity of views between them. Rather, the founders wisely sought to encourage a creative tension between the president and Congress that would produce policies that advance national interests and reflect the views of the American People. Sustained consultation between the president and Congress is the most important mechanism for fostering an effective foreign policy with broad support at home and respect and punch overseas. In a world of both danger and opportunity, we need such a foreign policy to advance our interests and values around the globe.

### Solvency

#### the Executive to shift justifications and accelerate strikes based on self-defense---that destroys solvency and triggers global instability

Beau D. Barnes 12, J.D., Boston University School of Law, M.A. in Law and Diplomacy, The Fletcher School of Law and Diplomacy at Tufts University, 2012, “Reauthorizing the 'War on Terror': The Legal and Policy Implications of the AUMF's Coming Obsolescence,” Military Law Review, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150874&download=yes>

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 Only then can the President’s efforts be sustained and legitimate.

2. Effect on the International Law of Self-Defense

A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of self-defense— the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144 This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the Obama Administration has disclaimed this manner of broad authority because the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’”146 relying solely on the international law of self defense would likely lead to precisely such a result.

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148

Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”15

#### Obama circumvents the plan

Wolfgang 1/16/14

Ben, White House Correspondent for the Washington Times, “Little change expected in U.S. surveillance policy,” http://www.washingtontimes.com/news/2014/jan/16/little-change-expected-in-us-surveillance-policy/

If the skeptics are correct, President Obama is about to **embrace** and endorse many of the controversial national-security tools and tactics introduced by his predecessor, despite railing against those policies while campaigning for the Oval Office in 2008. Expectations for Friday's long-awaited address, in which Mr. Obama will outline changes to U.S. spying, surveillance and data-collection efforts, are exceedingly low among privacy advocates and others. They expect the president, while paying lip service to the notion of privacy protections and limited government power, to continue the practices first established by the Bush administration in the aftermath of the Sept. 11, 2001, terrorist attacks. Mr. Obama's shift shouldn't come as a surprise, political analysts say, and can be partly attributed to the fact that **it's simply difficult for a president to ever** give up authority**,** **especially if that authority is meant to protect American lives.** It also may come from the fact that the president fears being viewed by history as the commander in chief who curtailed intelligence-gathering only to see a terrorist attack occur, said William Howell, a politics professor at the University of Chicago who has written extensively on presidential power. "When you're running for office, you may espouse the benefits of a limited executive, but when you assume office, there are profound **pressures** **to claim** and nurture **and exercise authority** at every turn **and not** to **relinquish** the **powers available to you**," Mr. Howell said. Leading up to and during his 2008 presidential campaign, Mr. Obama made it a point to separate himself from Mr. Bush on the national security front, but there remain many **notable similarities**. Guantanamo Bay still is operational, **despite** repeated **pledges** from the president that he'd close the U.S. detentional facility in Cuba and house enemy combatants elsewhere. Mr. Obama has dramatically increased the use of drones to target terrorists abroad — a step the administration vehemently defends as being quicker, more effective and far less dangerous to American personnel than sending in ground troops. U.S. surveillance efforts, rather than having been reined in, have in some ways **expanded**. In the process, they have caused Mr. Obama significant foreign policy headaches.

### Heg

#### Alt cause – budget

**Rundio, 13** (Steve, “Speakers tell Kind that sequester hurts military readiness, morale” Jackson County Chronicle, 7/13, <http://lacrossetribune.com/jacksoncochronicle/news/local/speakers-tell-kind-that-sequester-hurts-military-readiness-morale/article_3ca16ab0-fa0f-11e2-b73c-001a4bcf887a.html>)

Automatic federal budget cuts have resulted in shrunken paychecks, plunging morale and compromised military operations, a group of 30 people told U.S. Rep. Ron Kind, D-La Crosse. Kind discussed sequestration and its impact on the area during a town hall meeting Monday at the Sparta American Legion Hall. “This whole thing is tragic, and we did nothing to cause it,” said Lori Ames of Sparta, a federal employee and president of American Federation of Government Employees Local 1882. “The people who caused it are getting bigger salaries and bigger bonuses than they did before the crash.” Federal civilian employees at Fort McCoy, Volk Field and Camp Williams began taking furloughs one day a week starting July 1. The furloughs are part of a federal sequestration — automatic, across-the-board cuts to government agencies, totaling $1.2 trillion over 10 years. The cuts are split evenly between defense and domestic discretionary spending. The cuts don’t apply to active military personnel. Kind didn’t promise any relief. Congress and President Barack Obama are far apart on a budget agreement necessary to repeal the sequester. “There is a very real possibility this will carry over into the next fiscal year,” Kind said. The cuts affect 1,500 Fort McCoy employees and 60 from Volk Field and Camp Williams. Ames said her net paycheck shrunk by $220. Two other Fort McCoy employees told Kind they were in danger of losing their homes. Chris Hanson, executive director of the Tomah Chamber of Commerce, Convention and Business Bureau, said the furloughs will impact the local economy. “Places where people spend their discretionary income — the movie theaters, the restaurants — those are the things that are going to take the biggest hits first,” Hanson said. Ames said the sequester already is taking a toll on training at Fort McCoy. “Troops are getting trained but not at the level they would normally,” Ames said. “It’s something that might not show up right away, but it will show up eventually.”

#### No impact to decline---\*decline of conflict is unrelated to hegemony

Christopher J. Fettweis 11, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### It leads to Court re-interpretation

**Johnson, 11** – Jeh, Pentagon General Counsel, being cited by Benjamin Wittes (“Jeh Johnson on Reaffirming the AUMF,” LAWFARE, 10/20/11, <http://www.lawfareblog.com/2011/10/jeh-johnson-on-reaffirming-the-aumf/> //Red)

JEH JOHNSON: I have a couple thoughts about that. There is in the House Authorization Bill a provision to essentially renew the AUMF from 2001 and makes express reference to–as I recall the bill–the Taliban, Al Qaeda, and associated forces. The Senate version of the Defense Authorization Bill renews the AUMF in the respect of detention only, not to imply that it’s not renewed in other respects, or it’s not viable in other respects. But the Senate bill makes an express reference to detention authority. I was asked about this in March by the House Armed Services Committee, and I testified then and continue to believe that the authorities we have now in the Department of Defense **are adequate**, given our interpretations of those authorities, **to address the threats** that I have had occasion to evaluate. And I think that’s almost exactly what I said word for word. Now having said that, I do think that the, I think that the provisions, particularly the House provision, have become very controversial. There was a lot of debate about the House provision on the House floor, when it came to the House floor as part of the Authorization Bill. And a lot of people in debate interpreted that language as an effort somehow to prolong the operations in Afghanistan. That frankly is not my…there is not an effort to make some sort of global war on terror indefinite. And, in that respect I think that the political debate [h]as become somewhat overheated. My understanding of the intent of the draftsman of that provision was to more or less codify what they believed to be our existing interpretation of our authorities. Now, I think the reason that we in this administration have concerns about efforts to do that is because at the end of the political process what I don’t want to end up with is something less than what we thought we already had by way of legal authorities through the authorities on the books and our interpretation of our authorities that are on the books. And in the detention context, as I said earlier, **the courts have largely accepted our interpretation.** So, at the end of this process, at the end of this legislative season, and I have been very plain about this with those involved in this that we don’t want to end up with less than what we thought we already have. So, I am sure that this will work its way through, once the Authorization Bill gets to the Senate floor, once they get to conference, but those are my thoughts.

### Terror

#### AQ dead—affiliates are hype and not a threat

Zachary Keck, associate editor of The Diplomat, 3/17/14, Al Qaeda's Brand is Dead, nationalinterest.org/print/commentary/al-qaedas-brand-dead-10059

As Al Qaeda’s operational capability has withered, [3]some observers have sought [3] to reframe the terrorism threat to the U.S. and the West in terms of Al Qaeda’s ideological appeal. According to this perspective, Al Qaeda continues to be a potent threat to the United States and the Western world because its ideology is spreading across the Arab world, and inspiring new groups that will attack the West.

Framing the threat in this way has the advantage of ensuring the Global War on Terror’s longevity. Indeed, by this measurement the U.S. is still embroiled in WWII given that neo-Nazi groups continue to exist, and sometimes carry out terrorist attacks in the West.

But the larger problem with the argument that Al Qaeda’s ideology is spreading is that it is completely inaccurate. The “Al Qaeda brand” was never as popular in the Arab world as it was portrayed in the West, and far from growing, its popularity has been rapidly declining in recent years. In fact, there are signs that **Al Qaeda itself no longer believes in it.**

Much of the confusion about Al Qaeda’s popularity is rooted in the Western tendency to conflate Al Qaeda with Islamic terrorism more generally. If one defines Al Qaeda’s brand as simply being any terrorist attack or insurgency carried out in the name of Islam, an argument could be made that the threat is growing. But, of course, this is not what Al Qaeda’s ideology is, nor is it what made Al Qaeda such a threat to the United States and its Western allies.

Islamic-inspired terrorism long predated the formation of Al Qaeda. It was, for instance, a constant reality in the Arab world during the Cold War thanks to the many groups that were inspired by the writings of Sayyid Qutb. These groups sought to be vanguard movements that used terrorism and leadership assassinations to overthrow Arab regimes [the “near enemy”] that they viewed as insufficiently Islamic.

Al Qaeda was an entirely different story, as a few astute individuals in the U.S. national security establishment realized during the 1990s. Al Qaeda had a very precise ideology, which was seen as a competitor to the ideology espoused by the domestic jihadists.

Like the domestic jihadists, Al Qaeda’s ultimate goal was to topple local regimes and replace them with ones based on Sharia Law (and ultimately a single Caliphate). However, Al Qaeda leaders claimed that the domestic jihadists were failing in this goal because of the support the local regimes received from the United States and its Western allies. According to Al Qaeda, the U.S. and its Western allies would never allow their allied governments in the Arab world to be toppled. Therefore, in order for jihadists to overthrow these hated regimes, and set up more Islamic governments in their place, they must first target the far enemy—the U.S. and the West. Only when the jihadists had forced the U.S. to stop supporting these local regimes could the latter be overthrown.

Ayman al-Zawahiri, the current leader of Al Qaeda, explained this ideological argument nicely in his [4]famous 2005 letter to [4]Al Qaeda [5] in Iraq’s leader [4], Abu Musab al-Zarqawi. In the letter, al-Zawahiri wrote:

“It is my humble opinion that the Jihad in Iraq requires several incremental goals:

The first stage: Expel the Americans from Iraq.

The second stage: Establish an Islamic authority or emirate [in Iraq]….

The third stage: Extend the jihad wave to the secular countries neighboring Iraq.”

Al Qaeda’s ideology was also evident in the way it operated before 9/11. Specifically, the group set up shop in countries like Sudan and Afghanistan, where sympathetic governments existed. Although Al Qaeda provided some limited support to these regimes to shore up support, and provided some funds to domestic jihad groups, living in friendly territory allowed bin Laden and Al Qaeda to concentrate the bulk of their energies and resources on attacking the United States. Even after 9/11, Al Qaeda Central has operated primarily from Pakistan, where the government at least supports its allies, the Afghan Taliban.

**None of the so-called Al Qaeda franchises have replicated this model**. Only Al Qaeda in the Arabian Peninsula (AQAP) in Yemen has shown any real commitment to attacking the U.S. or other Western homelands. Even so, **this commitment has been extremely limited**, particularly when compared with AQAP’s commitment to fighting the Yemeni government.

For the most part, the attacks in the U.S. that are often attributed to AQAP consisted of homegrown terrorists who contacted Anwar al-Awlaki, the Yemin-born American cleric killed by a U.S. drone strike in 2011, to get his approval for their attacks. Although al-Awlaki was happy to encourage these homegrown terrorists, AQAP didn’t devote any of its own resources to support them. Similarly, al-Awaki and some of his associates published an English-language publication, Inspire Magazine, which urged Muslims living in Western countries to orchestrate their own attacks.

One of the exceptions to this model is Umar Farouk Abdulmutallab, the Nigerian who unsuccessfully tried to down a commercial airplane flying to Detroit on Christmas Day 2009. Abdulmutallab had been in Yemen studying Arabic when he decided to join the international jihad. After making contact with AQAP, the group built him a specially designed underwear bomb that would not be detected by airport security. Thus, the group did devote some resources to the attack—namely, building the bomb and possibly financing Abdulmutallab’s airfare—but it wasn’t willing to sacrifice any of its own members to attacking the U.S. Furthermore, the original impetus for the attack came from Abdulmutallab, who contacted the group on his own initiative.

Another exception to AQAP’s usual model came in 2010, when the group attempted to ship two cargo bombs to Chicago. Tipped off by Saudi intelligence, the packages were discovered before the bombs exploded. Unlike the previous attacks, the initial impetus to launch this attack didn’t come from outside the group. Still, the amount of resources AQAP devoted to the attack were minimal, a fact that the group publicly bragged about.

While these events demonstrate that AQAP does pose some threat to the U.S. homeland, they hardly suggest the group is modeling itself off Al Qaeda’s ideology. In contrast to the limited resources it has devoted to attacking the United States, the group has spent the bulk of its energies on waging war against the Yemeni government. This has at times included launching conventional style attacks in south Yemen, and holding territory, which they have tried to govern. Clearly, then, AQAP is far more invested in attacking the near enemy, and only casually interested in attacks on the far enemy.

All the other Al Qaeda affiliates have focused exclusively on trying to overthrow local regimes and establishing Sharia governments in their place—which is **a direct refutation to Al Qaeda’s ideology**. This cannot be attributed entirely to a lack of viable options for attacking the West. For years now Somali Americans have traveled to Somalia to join al-Shabaab in its fight for control over that country. [6]According to U.S. intelligence estimates [6], the group counted at least fifty U.S.-passport holders as members in 2011, and as many as twenty today. Al-Shabaab leaders could have directed any one of these members to return to the United States to carry out attacks there given the ease with which they could gain entry into America.

Yet there is no evidence al-Shabaab has decided to use a single one of these members for the purpose of attacking the United States. Instead, it has felt they are of more use staying in Somalia to fight in the civil war there. The only external attacks it has precipitated have been against African countries that have troops in Somalia fighting al-Shabaab. The goal of these attacks is to force those African countries to withdraw their troops from Somalia, and therefore increase the chances that al-Shabaab will prevail in its effort to seize control of the country.

The actions of Al Qaeda in Iraq (AQI) are also telling. The group publicly claimed it was established to defend Iraq against the U.S.-led occupation, and for years it had easy access to U.S. and coalition troops in Iraq. True to its word, AQI did carry out brutal attacks against the U.S. and other international troops stationed in Iraq. Still, the bulk of AQI’s efforts went towards attacking the Iraqi government and the country’s Shi’a populations, despite al-Zawahiri’s plea that it focus instead on the infidels. Once again, in contrast to Al Qaeda’s ideology, AQI chose the near enemy over the far one. It has since expanded into Syria, where it once again is battling a near enemy rather than the West.

More recently, even Al Qaeda Central has seemingly abandoned its own ideology, as evidenced by al-Zawahiri calling on Muslims wage jihad everywhere from Syria to Russia. While it’s far too early to proclaim that the remnants of Al Qaeda Central are no longer interested in attacking the U.S. homeland, the fact that the group’s public statements now seem to be gravitating towards focusing on the near enemy or different far enemies suggest that even it is amending its ideology.

Symbolic of the [7] lack of support for Al Qaeda’s mission is the fact that newer Islamist groups with supposed Al Qaeda links haven’t adopted the Al Qaeda name. Even groups that formerly took the Al Qaeda name, such as AQAP and AQI (long before being disavowed by Al Qaeda Central), have dropped Al Qaeda from their names.

Instead of Al Qaeda’s ideology spreading, then, what we are seeing is Islamist groups revert back to the domestic-jihad model that was prevalent in the Cold War but had lost steam in the 1990s. Al Qaeda had always considered itself an ideological competitor to these domestic jihadists. Increasingly, it is becoming one of them.

None of this should be surprising for at least two reasons. First, the Arab Spring unequivocally refuted Al Qaeda’s central premise that the U.S. would never allow one of its local allies to be toppled by domestic uprisings. Al Qaeda leaders trying to make this argument today would sound absurd and gain few followers. The larger implication of this, however, is that **it makes little sense for terrorist groups** seeking to govern Muslim states **to attack the U.S**. Far from being necessary to achieve their ultimate objective, it is almost certainly counterproductive given that it attracts the attention of the formidable counterterrorism capabilities the U.S. has amassed since 9/11. This may explain why AQAP hasn’t attempted to attack the U.S. homeland **since the Arab Spring began**.

The other reason it is not surprising that Al Qaeda has increasingly adopted the domestic jihadist ideology is because al-Zawahiri is now the leader of Al Qaeda Central. [8]According to many accounts [8], even during the pre-9/11 years al-Zawahiri was always far more interested in trying to seize control of his native Egypt than attacking the United States, which was bin Laden’s main preoccupation. Reportedly, al-Zawahiri only joined bin Laden’s global jihad out of desperation after the group he was running at the time, Egyptian Islamic Jihad, had run out of resources to fight the Egyptian government. With bin Laden no longer in charge, al-Zawahiri can now use Al Qaeda’s resources to focus on what was always his true ambition in life, overthrowing local regimes.

#### Terrorists won’t use WMD

Forest 12 (James, PhD and Director of Terrorism Studies and an associate professor at the United States Military Academy, “Framework for Analyzing the Future Threat of WMD Terrorism,” Journal of Strategic Security, Volume 5, Number 4, Article 9, Winter 2012, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1193&context=jss>) \*\*NOTE---CBRN weapon = chemical, biological, radiological or nuclear weapon

The terrorist group would additionally need to consider whether a WMD attack would be counterproductive by generating, for example, condemnation among the group's potential supporters. This possible erosion in support, in turn, would degrade the group's political legitimacy among its constituencies, who are viewed as critical to the group's long-term survival. By crossing this WMD threshold, the group could feasibly undermine its popular support, encouraging a perception of the group as deranged mass murders, rather than righteous vanguards of a movement or warriors fighting for a legitimate cause.16 The importance of perception and popular support—or at least tolerance—gives a group reason to think twice before crossing the threshold of catastrophic terrorism. A negative perception can impact a broad range of critical necessities, including finances, safe haven, transportation logistics, and recruitment. Many terrorist groups throughout history have had to learn this lesson the hard way; the terrorist groups we worry about most today have learned from the failures and mistakes of the past, and take these into consideration in their strategic deliberations. Furthermore, a WMD attack could prove counterproductive by provoking a government (or possibly multiple governments) to significantly expand their efforts to destroy the terrorist group. Following a WMD attack in a democracy, there would surely be a great deal of domestic pressure on elected leaders to respond quickly and with a massive show of force. A recognition of his reality is surely a constraining factor on Hezbollah deliberations about attacking Israel, or the Chechen's deliberations about attacking Russia, with such a weapon.

#### and retaliation

Smith and Herron 5, \*Professor, University of Oklahoma, \* University of Oklahoma Norman Campus, (Hank C. Jenkins-Smith, Ph.D., and Kerry G., "United States Public Response to Terrorism: Fault Lines or Bedrock?" Review of Policy Research 22.5 (2005): 599-623, <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=hjsmith>)

Our final contrasting set of expectations relates to the degree to which the public will support or demand retribution against terrorists and supporting states. Here our data show that support for using conventional United States military force to retaliate against terrorists initially averaged above midscale, but did not reach a high level of demand for military action. Initial support declined significantly across all demographic and belief categories by the time of our survey in 2002. Furthermore, panelists both in 2001 and 2002 preferred that high levels of certainty about culpability (above 8.5 on a scale from zero to ten) be established before taking military action. Again, we find the weight of evidence supporting revisionist expectations of public opinion.

Overall, these results are inconsistent with the contention that highly charged events will result in volatile and unstructured responses among mass publics that prove problematic for policy processes. The initial response to the terrorist strikes demonstrated a broad and consistent shift in public assessments toward a greater perceived threat from terrorism, and greater willingness to support policies to reduce that threat. But even in the highly charged context of such a serious attack on the American homeland, the overall public response was quite measured. On average, the public showed very little propensity to undermine speech protections, and initial willingness to engage in military retaliation moderated significantly over the following year.

Perhaps most interesting is that the greatest propensity to change beliefs between 2001 and 2002 was evident among the best-educated and wealthiest of our respondents— hardly the expected source of volatility, but in this case they may have represented the leading edge of belief constraints reasserting their influence in the first year following 9/11. This post-9/11 change also reflected an increasing delineation of policy preferences by ideological and partisan positions. Put differently, those whose beliefs changed the most in the year between surveys also were those with the greatest access to and facility with information (the richest, best educated), and the nature of the changes was entirely consistent with a structured and coherent pattern of public beliefs. Overall, we find these patterns to be quite reassuring, and consistent with the general findings of the revisionist theorists of public opinion. Our data suggest that while United States public opinion may exhibit some fault lines in times of crises, it remains securely anchored in bedrock beliefs.

## 2nc

### 2nc solvency frontline

#### The CP solves the aff – 1nc Hamilton says it creates an obligation for the President to consult, which means decisions have to be made with Congressional input. It’s not a legal restriction on authority but still has the political effect of improving decision-making.

#### The CP is the best balance of war powers – it establishes a cooperative model for shared powers, rather than making Congress ascendant – this is key to every aspect of foreign policy – that’s Hamilton.

#### Consultation will challenge erroneous Executive assumptions and persuade the President to change course if necessary – the CP solves better than an authorization requirement where the President has incentives to rally the public first to make Congress back down

**Atwood, 8** - DEAN, HUBERT H. HUMPHREY INSTITUTE OF PUBLIC AFFAIRS, UNIVERSITY OF MINNESOTA (Brian, “WAR POWERS FOR THE 21ST CENTURY: THE EXECUTIVE BRANCH PERSPECTIVE” House Hearing, 4/28)

Goldsmith is assuming that consultations will produce consensus and that the Executive, with its superior access to information and analysis, inevitably will persuade Congress that its preferred course is correct. This may happen, but it is just as likely that senior members with vast experience in these matters will challenge assumptions and warn against a particular path.

When I hear worries that a special committee will be co-opted by the Executive, I hear the argument that ignorance is bliss. If we don’t know the arguments of the Executive, we won’t be compromised by them. Yet, we have seen entire Congresses co-opted by the political environment created by a Commander-in-Chief who, in lieu of consulting with Congress, decides to issue a public call to arms. When that happens, the Executive is in the political driver’s seat.

Congress needs to institutionalize its capacity to provide advice and counsel and it should trust its most senior members to represent the interests of the entire body. If they succumb to the appeal of the Executive, perhaps, just perhaps, they will be acting in the national interest. In any case, when it comes to war, Congress is going to be more effective acting a priori than it will be when acting ex post facto

If a president publicly requests authority to go to war, the recommendations of this senior committee will be telling. One cannot institutionalize good judgment, but one can create a process wherein it is more likely that the hard questions are asked. When Congress votes to give authority to a president to enter hostilities, it is, as we have seen, providing that authority for the duration, as defined by the Commander- in-Chief. The evidence of a threat to the national interest must be examined carefully in advance by Congress. It is far better to have the House and Senate influenced by the best judgment of its senior members, staffed by experts, than by the president acting alone and influencing the decision through the court of public opinion.

#### The CP is a middle ground that spurs dialogue and joint development of war powers decisions without giving Congress a veto

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B. A MECHANISM FOR CONSULTATION

Commentators disagree about which consultation mechanism the Constitution requires. n163 To be consistent with the constitutional scheme, Congress' role must be more than post hoc ratification or silent approval of presidential action. n164 However, it need not rise to the level of enabling legislation. n165 This note proposes a middle ground in which the President must meet with the House and Senate leadership to discuss policy options, solicit advice, and inform them of his selected course of action. n166

Consultation with congressional leadership would constrain the President because it would force him to justify his war powers decisions. It would have [\*445] this chilling effect whether consultation takes place before military forces are deployed, as required when the President's actions fail the test described in Part III, or after military forces are deployed, as permitted when his actions pass the test.

To protect the secrecy necessary for many military operations, the President need only consult with a small joint committee of senior members of Congress. n167 In addition, the President would not need to disclose the specific parameters of the military operation as long as he presents the general problem and policy options to the committee.

An alternative to consultation, endorsed by at least one prominent public figure, would require the President to document the reasons for his war powers decisions. n168 The documents would not be immediately available for public scrutiny but would be released after a set period of time. n169 Theoretically, this procedure would constrain the President by revealing the justifications, or lack thereof, behind specific decisions. But this mechanism is flawed. First, records maintained by presidential aides may not be reliable. Second, fear of historical scrutiny may not influence a President during times of crisis. Third, because of executive privilege n170 and statutory exemptions, n171 certain aspects of the record may be protected and not subject to disclosure. Most importantly, this alternative fails to satisfy the constitutional requirement for congressional input into war powers decisions. For this reason alone, it is inferior to consultation as a means to reconcile the accretion of executive warmaking power with the majoritarian principles underlying the Constitution.

The consultation mechanism raises practical questions regarding enforcement. Should the President resist consultation and the courts refuse to intervene, Congress would have two options. The first would be impeachment. n172 But [\*446] impeachment is rarely used. n173 The second option would be publicly opposing the President. Specifically, Congress could withhold any endorsement of the President's action and could even condemn the action. As a final and perhaps drastic matter, Congress could use its appropriations power to deny funding for the activity at issue.

The war powers cannot, and perhaps should not, be removed from the political arena. If Congress and the President are to have political parity, politics may be one of the most effective constraints on presidential warmaking. But this is true only if Congress is willing to assert itself. A mechanism for consultation would provide an important step toward achieving the political equilibrium necessary for sound decisionmaking in matters of war and peace.

V. CONCLUSION

The war powers of Congress and the President are products of politics. Since 1789, the President has gradually assumed the dominant warmaking role. By virtue of congressional and judicial acquiescence in forceful executive actions, the President now enjoys an extreme advantage in the political arena. To restore the political balance that the Framers envisioned, Congress must reassert itself in warmaking decisions. This is particularly important for preemptive military actions, which offer the President an opportunity to seize even more warmaking authority.

This note has argued that the President is constitutionally obligated to consult with Congress when he orders preemptive military strikes. The proposed three-element model identifies the legitimacy of the President's authority in a given war powers scenario, thereby determining whether the President must consult prior to taking preemptive action or whether he may delay consultation until after the event.

Finally, this note has proposed a mechanism for consultation. The mechanism is designed to ensure majoritarian participation in war powers decisions while promoting efficiency and executive accountability. By facilitating congressional participation in war powers decisionmaking, the mechanism moves Congress toward political parity with the President. Such parity is necessary for Congress to compete and cooperate better with the powerful modern Presidency.

**Footnote 165**

n165 But cf. INS v. Chadha, 462 U.S. 919, 959 (1983) ("exercise of legislative power" is constitutional only if Congress respects the bicameralism and presentment clauses). The principles underlying Chadha pose no barrier to the policy dialogue between Congress and the President that this note envisions. Chadha requires Congress to conform with specific procedural requirements when exercising legislative power. Id. at 952. If congressional action, regardless of what that action is called, alters "legal rights and duties," presentment and bicameralism apply. Id. But consultation merely provides the President with advice and dialogue. The leadership cannot alter any of the President's "legal rights or duties." Chadha invalidated the one-house veto -- it does not apply to the consultation mechanism.

#### Consultation spurs inter-branch dialogue and better overall outcomes – regardless of legal authority to act

**Griffin, 13 –** professor of law at Tulane (Stephen, Long Wars and the Constitution, p. 239-240) **Italics in original**

Decisions for war are among the most serious any government can make. Yet few are satisfied with either the process or the outcome of those decisions. Since 1945 the United States has enjoyed many discrete successes in combat in the major military conflicts it has fought—the Korean War, the Vietnam War, the 1991 Gulf War, and the wars following 9/11 in Afghanistan and Iraq. These wars have cost the nation hundreds of thousands of casualties and trillions of dollars.3 Yet few regard them as unalloyed successes because they have been wrapped in larger failures of **political decisionmaking** and national security strategy.

How these deliberative failures are connected to the Constitution has been obscured by the standard war powers debate. Congressionalist scholars who hold that Congress alone has the power to decide not only for “war” but also any sort of military action have tended to focus on the formal issue of whether wars are authorized rather than on whether robust interbranch deliberation took place before and during the war. In response, presidentialist scholars have contended that a Congress concerned largely with domestic issues has little to contribute to the president’s responsibility to order military action as part of his conduct of foreign policy.

One reason the war powers debate has generated more heat than light is because recent major wars *have* been authorized by Congress. The 1991 Gulf War and the wars in Afghanistan and Iraq were all accompanied by congressionally approved “AUMFs”—Authorizations to Use Military Force. To this extent, the proponents of the War Powers Resolution were successful in getting the idea across that major military undertakings must be legislatively authorized. As we saw in Chapter 1, constitutional scholars agree that these authorizations are the legal equivalent of declarations of war.4 Nonetheless, the debate has gone stale and has recently featured extreme claims. Presidentialists assert, essentially, that the “declare war” clause is obsolete and that there is therefore no check on presidential authority other than through the appropriations process. For their part, congressionalists have claimed that presidents should be impeached (!) when they fail to get congressional authorization for any military intervention, regardless of the circumstances.5

The most important constitutional issue posed by the wars fought since 1945 is not formal authorization but rather meaningful interbranch deliberation. Although presidents may have acquired the habit of going to Congress, this does not mean that any president ever truly acknowledged a constitutional requirement to do so, instead viewing such authorizations as politically convenient (although the case of President Obama is discussed below). Presidents thus have not based their decisionmaking around the assumption that Congress could effectively veto a military proposal. This accounts for the inadequate quality of the deliberation around the three AUMFs for the Gulf War, Afghanistan, and Iraq. Virtually no one believes, for example, that the deliberation both inside the executive branch and in Congress prior to the 2003 Iraq War was adequate, yet this is somehow *not* the issue to which constitutional scholars have devoted most of their attention.6 This failure of analysis is similar to what happened with respect to Vietnam. Scholars focused so much on the 1964 Tonkin Gulf Resolution that they neglected inquiring into the adequacy of the deliberation that occurred in 1965, a far more significant and consequential issue.

#### It improves Presidential decision-making and creates the perception of joint foreign policy development—link turns public

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]

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? 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. 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.

### joyner

#### Adopting non-binding constraints sets a middle-ground norm that is capable of actually restraining most instances of preemptive force

**Joyner, 8 -** Associate Professor, University of Alabama School of Law (Daniel, “JUS AD BELLUM IN THE AGE OF WMD PROLIFERATION” 40 Geo. Wash. Int'l L. Rev. 233, lexis)

This Article will discuss the normative question of what should be the character of the rules and institutions of international law covering international uses of force, in the age of proliferation of weapons of mass destruction (WMD) technologies. It will posit that international use of force law is currently in a state of crisis, precipitated by the proliferation of WMD technologies and the revised set of national security calculations, which determine when and why states choose to use force internationally, that have been thrust upon states as a result. It will review a number of options which have been proposed for changing the substance of international laws and institutions which currently regulate this area, in order to make them responsive to this change in international security realities, and more effective and useful to states. However it will conclude that none of these proposals truly grasps the nettle of the problems facing states in the post-proliferated age, and the challenge of designing and maintaining effective and supportable rules and institutions in this area. It will argue that more fundamental changes to the character of these rules and institutions are necessary if they are to fulfill a needed role in providing standards for international behavior in this most vital area of international relations. Using both international legal theory and international relations theory, it will argue specifically that international law regulating uses of force should be deformalized, and maintained not as legally binding rules, but as politically persuasive norms. This change in the character of rules in this area, it will be argued, would help to preserve the integrity of the rest of the formal corpus of international law, while accomplishing virtually the same results in influencing state behavior and in normativizing international relations in this area, as do the current formal rules of the jus ad bellum.

[\*234] A word on the intent of this Article before proceeding. The analysis and proposals in this Article are the result of long deliberation regarding the crisis moment which the jus ad bellum currently faces largely as a result of WMD proliferation. The resulting analysis and proposals will no doubt be considered by some to be somewhat revolutionary, and perhaps even radical. While they are indeed intended to be new and challenging, it will be argued that they are in fact based upon sound theoretical underpinnings, to be found in both international legal theory and international relations theory. It will further be argued that they are a rational product of a realistic assessment of the current crisis and its consequences for international legal regulation in this area.

It cannot be overemphasized that the proposals contained herein are not intended to undermine international law. Quite the contrary, they are specifically intended to bring the character of international law in the area of international uses of force into harmony with the reality of the modern security landscape which states face, and thus ultimately to strengthen the formal corpus of international law generally. With regard specifically to the jus ad bellum, the deformalization thesis advanced herein should be understood not simply as a normative regression, but rather as a tactical normative retreat made necessary by fundamental changes in circumstance. This normative direction could, and should, be reversed in the future when the infrastructure of the international legal system is better able to provide effective regulation in this most sensitive and important area of international relations.

### AT: Permutation

#### The CP institutionalizes formal consultation and revitalizes a Congressional foreign policy role without having binding authorization requirements - the difference is the plan is a prior authorization requirement that says the President has to obtain authorization first. The CP doesn’t prevent Congress from blocking an operation, but it doesn’t require the President to obtain it in advance.

**Baker and Hamilton, 9 –** former secretary of state and former member of Congress (“WAR POWERS IN THE 21ST CENTURY “ Senate Hearing, 4/28, <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg54641/html/CHRG-111shrg54641.htm>)

Mr. Hamilton. And the important thing there is that the President must consult in that situation. He doesn't have an option. If he's going to commit troops for a significant armed conflict, he shall consult, which is----

Mr. Baker. But, not obtain approval. No requirement in here for approval, but there's a mandatory requirement of consultation.

The Chairman. Right, but there is, then, a mandatory requirement for a vote within 30 days----

Mr. Baker. That's correct.

Mr. Hamilton. Correct.

The Chairman. So you are triggering a requirement for Congress to engage, which has been significantly absent with respect to war powers. I mean, you know, it seems to me that the constitutional mandate, ``Congress shall declare war,'' does not require Congress to declare war.

Mr. Baker. No.

The Chairman. It simply gives them the power to declare war, if they choose to do so. Correct?

Mr. Baker. That's correct.

The Chairman. And, in effect, Congress has complicated this significantly, not the least of which, for instance, in the longest war in our history, Vietnam, where they refused to ever step up and either do the purse or make the declaration.

Mr. Baker. That's correct, sir. And we think, in something as important and serious as this, and particularly given the fact that the polls over the last 50-plus years have showed that the American people really want both the Congress and the President involved when the Nation sends its young men and women into battle, we don't think it's unreasonable to say Congress, after 30 days, should take a position on the issue.

Now, if a vote--if a Resolution of Approval does not pass, our statute provides that any Member of the House or Senate could introduce a Resolution of Disapproval. If that Resolution of Disapproval passes, it would not have the force of law unless the constitutional requirement of the presentment clause was met and it was presented to the President for his signature or veto. If he vetoed it and Congress overrode the veto, then, of course, you would have an actionable event of disapproval.

The Chairman. All of which, in total, I believe, actually-- and this is what I think is very significant about your proposal and one of the reasons why I think it threads the needle very skillfully--is that you actually wind up simultaneously affording the President the discretion, as Commander in Chief, and the ability to be able to make an emergency decision to protect the country, but you also wind up empowering Congress. And, in fact, subtly, or perhaps not so subtly, asking Congress to do its duty. I think that's not insignificant at all, and I think you've found a very skillful way of balancing those without even resolving the other issues that have previously been so critical, in terms of the larger constitutional authority, one way or the other.

#### The resolutions plank just forces Congress to take a stand on foreign policy decisions – it’s not binding and if it fails, all that means is any member can introduce a resolution of disapproval. It doesn’t require a vote for disapproval – it’s a choice and hence an effect of the CP, and it’s only binding if the President signs it – the main effect is political, not legal

**Howell, 11 –** professor of political science at the University of Chicago (William, “THE FUTURE OF THE WAR PRESIDENCY The Case of the War Powers Consultation Act”, in The Presidency in the Twenty-First Century By: Charles W. Dunn, p. 88)

To foster such consultation, the Commission recommends that we replace the War Powers Resolution with the Commission’s own legislative initiative, the WPCA. The WPCA requires the president to consult with—as distinct from merely notify—a newly created Joint Congressional Consultation Committee, on which will sit high-ranking party officials as well as chairpersons and ranking minority members of those congressional committees dealing with foreign affairs. Though urged to meet with the Joint Committee before a military venture, under exigent circumstances the president may choose to wait as many as three days after the initiation of conflict before doing so. Furthermore, consultation is required only for “significant” wars, which the statute defines as military operations that are expected to last at least one week. Predeployment consultation requirements are waived for minor ventures, training exercises, or emergency defensive actions. Once troops are in the field, though, the president must meet with the Joint Committee every two months and honor a variety of reporting requirements.

Under the WPCA, members of Congress have obligations of their own. If Congress fails to authorize a war before it begins, then within thirty days of its initiation the chair and vice chair of the Joint Committee must introduce to both the House and the Senate identical concurrent resolutions calling for the war’s approval. Should these resolutions fail in either chamber, any member of Congress can introduce a resolution expressing Congress’s disapproval of the military venture. Such a resolution must be voted on within five days of its submission. Although a resolution of disapproval is not binding unless the president signs it or Congress overrides a presidential veto, the Commission anticipates that the mere act of forcing members to vote will “promote accountability and provide members of the Joint Congressional Consultation Committee incentive to actively engage the president.”12

By all indications, the Commission does not expect that congressional resolutions, by themselves, will redirect U.S. foreign policy. Rather, these resolutions are viewed as means to an end: they are valuable to the extent that they foster intra- and interbranch consultations about war. Rather than blindly call for more deliberation, the Commission offers the vehicle for its actual realization, because its members fully expect that demands for further information, active debate, and introspection will precede the casting of public votes on war. The Commission’s work intends to serve a single objective: to encourage greater consultation between the executive and legislative branches. The word consultation appears more than one hundred times in the Commission’s final report and in the title of its proposed statute. If we take the Commission on its own terms, then, the success or failure of the WPCA unambiguously rides on its ability to encourage each branch of government to share its opinions and information about prospective and ongoing military ventures far more than it currently does; and, one hopes, Congress and the president will factor these opinions and this information into the decisions they make about war.

#### Prior authorization requirements ruin cooperation and wreck foreign policy

**Spiro, 13** – Peter, Charles Weiner Chair in international law at Temple University (“Syria Insta-Symposium: Obama’s Constitutional Surrender?,” Opinio Juris, <http://opiniojuris.org/2013/08/31/syria-insta-symposium-obamas-constitutional-surrender/> //Red)

Whatever happens with regard to Syria, the larger consequence of the president’s action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. . . . Obama has reversed decades of precedent regarding the nature of presidential war powers — and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. **foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history**. . . . Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will **soon be coming to a foreign policy decision near you.** The request makes all the difference. Just compare this episode to Kosovo, in which Congress tried and failed to get its act together to agree on an institutional position on the NATO bombing. But President Clinton had not requested authorization, and so there was no concession that congressional approval was needed. So he left himself free to ignore Congress’ failure to approve the action. Obama will have no such out. (He claimed authority to go it alone in his statement today, but this is a context in which actions speak louder than words.) If Congress doesn’t authorize the use of force in Syria, his hands will be tied. The request shifts the default position. In the past, presidents have been able unilaterally to initiate uses of force short of real war so long as Congress doesn’t formally disapprove. Institutional incentives have always pointed away from such disapproval. In fact there are only two partial examples of Congress limiting presidential uses of force in the modern era — Lebanon (Reagan) and Somalia (Clinton) — and that happened only after unilateral presidential actions had headed south. But of course those incentives also point against formally approving these sorts of lesser operations. Kosovo proved both sides of the coin, as measures both to approve and disapprove went down in defeat. Over at Lawfare, Jack Goldsmith congratulates Obama for the move. Future presidents will not be so thankful, and maybe the rest of us shouldn’t be, either. Assuming a limited operation with no American casualties, Obama could have sweated the political heat just like he did during Libya. Through Democrat and Republican administrations presidents have for the most part used the power to initiate lesser uses of force in ways that served the national interest. **American power would have been embarrassed by the** requirement of congressional approval**, which in many cases wouldn’t have been forthcoming.** The rest of the world can basically forget about the US going to military bat in these kinds of situations if congressional action is a precondition. This is a huge development with broad implications not just for separation of powers but for the global system generally.

### Kriner

#### Statutory restrictions telegraph U.S. disunity and undermine military action

**Kriner, 10 –** associate professor of political science and the Director of Undergraduate Studies at Boston University(Douglas, After the Rubicon : Congress, Presidents, and the Conduct of Waging War, p. 157-158)

Conversely, binding legislative actions to cut off funding for an operation, invoke the War Powers Resolution, or mandate a timetable for withdrawal have greater repercussions for the president and are more serious challenges to perceived presidential prerogatives as commander in chief. 13 They clearly signal to the president that he is perilously close to the limits of what Congress will accept, and they encourage him to adjust his conduct of military affairs accordingly to avoid a potentially costly showdown with the legislature. Legally binding congressional challenges to presidential authority remove any political cover the president may have previously enjoyed from congressional silence. Such actions also send **unambiguous signals** of American disunity to the targets of a military venture. They encourage the target state to continue to resist and thereby raise the tangible costs of continued military action. Because binding actions represent genuine institutional challenges to presidential power over the conduct of military operations, the coefficient on this variable is expected to be strongly negative, as binding actions to constrain the executive should decrease the expected duration of the use of force. 14

### panda = refine aumf

**No Fights over the plan**

**Panda 3/12**, Ankit Panda is Associate Editor of The Diplomat. He was previously a Research Specialist at Princeton University where he worked on international crisis diplomacy, international security, technology policy, and geopolitics , Time to Review the AUMF, http://thediplomat.com/2014/03/time-to-review-the-aumf/

**The AUMF became a point of controversy among libertarians, non-interventionists, and civil rights groups once it became apparent that it offered a legal smokescreen to pursue extra-judicial assassinations** of American citizens affiliated with al-Qaeda, denying them the right to due process. The United States’ widely condemned practice of indefinite detention of “enemy combatants” is also a result of the AUMF. Overall, there seems to be no political consensus about what the AUMF should become. I reckon that Lumpkin’s right that the AUMF needs to be “re-looked” at. The timing is rather impeccable considering that the United States is formally ending its war in Afghanistan this year. President **Obama** himself **noted** in a speech at the National Defense University last year that **he looks forward “to engaging Congress and the** American **people in** efforts to refine, and ultimately repeal, the AUMF’s mandate.” Those who disagree with repealing the AUMF note that it would regress the United States’ counter-terrorism readiness to “a law-enforcement model of counterterrorism.” There is some truth in that assertion. However, the United States’ national security apparatus has matured significantly since 9/11 and the failures in intelligence and lack of inter-agency communication that allowed that attack to happen have had time to be patched up. The future of the AUMF will have important ramifications for the manner in which the United States pursues non-state national security threats in the future. **Expect this debate to expand as President Obama’s second term carries forward**.

### tea party da

#### Current Presidential control sets a ceiling on how much the Tea Party can materially affect foreign policy---empowering Congress means empowering isolationist Tea Partiers

Bruce Stokes 14, director of global economic attitudes at the Pew Research Center, 2/12/14, “The Tea Party's worldview,” http://www.europeanvoice.com/article/2014/february/the-tea-party-s-worldview/79627.aspx

About half of Tea Party sympathisers among Republicans and Independents who lean Republican say the United States is doing too much in solving world problems, according to a recent Pew Research Centre survey. This wariness of an activist American foreign policy merely mirrors the sentiment of the broader public.

Similarly, roughly eight in ten Tea Party supporters say it is more important for President Barack Obama to focus on domestic issues rather than foreign policy. In turning inward, the Tea Party is no different from the American public at large.

But such neo-isolationist sentiment should not be equated with protectionism. Tea Party backers agree with the broader public that trade is good for the United States and that American involvement in the global economy is a good thing.

However, Tea Party adherents are far more concerned about declining American influence around the world than is the public at large: 86% say the US plays a less important role today, compared with just 53% of the public who are so concerned.

This is particularly galling to Tea Party supporters because nearly three in four say the United States should be the world's only military superpower, while over half the general public puts a priority on such defence superiority. And Tea Party sympathisers are willing to back up their concerns with spending. Nearly half want to increase the Pentagon's budget, while only about a quarter of the public would do so.

One distinguishing characteristic of Tea Party foreign-policy beliefs is their animosity toward some US foes and the fierceness of their support for traditional friends.

Roughly three-quarters of Tea Party adherents have an unfavourable view of China, compared with the negative view of just over half of the general public. And two-thirds see China's emergence as a world power as a threat to the US. Roughly half the public agrees.

Iran is a particular Tea Party concern: 39% say that the country poses the gravest danger to the US. The general public is less troubled. (Tea Party sympathisers are more concerned about Iran than about China.) And they are far more sceptical about current efforts to curb Tehran's nuclear programme: 84% of Tea Party adherents say Iranian leaders are not serious about addressing international concerns about their country's nuclear enrichment programme compared with 60% of the public that is sceptical.

At the same time, 86% of Tea Party backers have a favourable opinion of Israel, compared with the pro-Israel sentiment by 61% of the general public. This may be one reason 38% of Tea Party supporters say the US should be more involved in resolving the dispute between Israel and the Palestinians. Just 21% of the general public agrees.

Tea Party members of Congress do not set American foreign policy. That is a presidential prerogative in the United States. And Tea Party sympathisers represent only a minority of Congress, although their influence in the Republican party belies the number of their supporters. But their foreign-policy views do have an impact on the US's posture in the world, through the budgetary process. And Tea Party voters and their views of the world shape the US political debate.

So the Tea Party worldview bears watching in 2014. It has global implications.

#### Empowering Congress triggers an isolationist withdrawal from global engagement---extinction

Nicholas Burns 14, professor of the practice of diplomacy and international politics at Harvard’s Kennedy School of Government, 1/30/14, “The new American isolationism,” <https://www.bostonglobe.com/opinion/2014/01/30/new-american-isolationism/Kvnzv4gNdDCOabdWgdjAKP/story.html>

ARE AMERICANS turning inward, tiring of our immense global responsibilities, just when our leadership may be needed most?

That is the unsettling conclusion from a poll conducted last autumn by The Pew Research Center and Council on Foreign Relations (where I serve on the board of directors). The poll found:

■ 53 percent of respondents say the United States is less powerful than a decade ago;

■ 70 percent believe the United States is less respected;

■ 52 percent agreed that “the US should mind its own business internationally and let other countries get along the best they can on their own.”

For Bruce Stokes, director of Global Economic Attitudes at Pew, these findings describe “an unprecedented lack of support for American engagement with the rest of the world.”

On the surface, American public skepticism about our global role is understandable. Since the 9/11 attacks, the United States has fought two deeply unpopular land wars in Afghanistan and Iraq — the longest in our history. We suffered through the most damaging economic crisis since the Great Depression and watched as pressures rose on the poor and middle class. President Obama spoke for millions of Americans when he said in 2011 that it was “time to focus on nationbuilding here at home.”

But there are worrisome signs that support for US international leadership is breaking down in Congress. On the far left of the Democratic Party, there is visibly less support for sustaining world-class military and diplomatic capabilities. Meanwhile, the Tea Party sometimes gives the impression it wants to dig a giant moat around the country with drawbridges pulled up — permanently — to separate us from the rest of the world.

The problem with this line of thinking, of course, is that while isolation and retreat may have been perfectly rational responses to the world of 1814, they are recipes for foreign policy failure in the more highly integrated world of 2014. The Atlantic and Pacific oceans did not stop the 9/11 hijackers and won’t deter cyber criminals and terrorists waiting to strike in the future. The global economy knits together every nation on earth. That is why an increasing number of American jobs depend on our ability to export, trade, and invest competitively overseas.

In a very real way, the fate of every person on earth is now linked as never before. That is the tangible import of climate change, human trafficking, and the drug and crime cartels that plague every country in the world.

The United States serves, as Princeton’s John Ikenberry puts it, as the global “system operator.” By any metric of power — political, military, economic — the United States is still, by far, the most influential country in the world. China, India, and Brazil — the three great rising powers — are neither ready nor willing to replace us. And we should not want to live in a world dominated in the future by an autocratic and bullying Beijing.

In her gripping 2013 book, “Those Angry Days,” Lynne Olson chronicled the titanic public battle between the isolationist hero Charles A. Lindbergh and the interventionist President Franklin D. Roosevelt on the eve of the Second World War. It was not at all a given in 1939 to 1941 that FDR would finally defeat the isolationists who would have kept us criminally neutral in the battle against Hitler.

Fortunately, we face no isolationist movement in 2014 as dramatically powerful as Lindbergh and his allies in the US Senate before Pearl Harbor. The main lesson of that time, however, applies today. The United States needs to lead internationally, however burdensome that may sometimes be.

But, many of America’s closest friends are worried about us. In London last week, I listened to a litany of concerns about the consistency and durability of US global leadership. Could it be, some wondered, that in our understandable desire to withdraw from Iraq and Afghanistan, we may have pulled back too much from the rest of the Middle East, especially Syria and Egypt?

In a recent column that should be read carefully in Washington’s corridors of power, the influential British Financial Times columnist Philip Stephens warned starkly: “The US remains the only power that matters everywhere, but Washington no longer thinks that everywhere matters.”

## 1nr

### toon

#### Toon – disproven by nuclear testing, says it’s the equivalent of a counterforce exchange, not actual thermonuclear exchange

**Coates 2009** – former adjunct professor at George Washington University, President of the Kanawha Institute for the Study of the Future and was President of the International Association for Impact Assessment and was President of the Association for Science, Technology and Innovation, M.S., Hon D., FWAAS, FAAAS, (Joseph F., Futures 41, 694-705, "Risks and threats to civilization, humankind, and the earth”, ScienceDirect, WEA)

The opportunity for setting off a nuclear device, a dirty bomb, in a city is real. It appears to be a practical matter to acquire, illegally, nuclear material or a device, particularly some of those that may have been smuggled out of Russia during the breakup of the USSR. Again, suppose the device went off in one of our largest cities—New York, Chicago, Philadelphia, Los Angeles—it could kill as many as several million people, an event of 6 or 7 on my scale. It would probably injure more and create chronic disorders and shortening of life for millions of others. But that would be it. There would be no substantial effects leading to loss of civilization in the nation or the world from that kind of event. The political responses are difficult to anticipate and a distraction to conjecture about here.

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#### It’s legit—our ev is highly specific and engages a core substantive issue—their faith in legalist methodology brackets out the important questions and causes policy failure

**Glennon 2014** – Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University (Michael, Harvard National Security Journal, Vol. 5, “National Security and Double Government”, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf)

V. Is Reform Possible? Checks, Smoke, and Mirrors

Madison, as noted at the outset,543 believed that a constitution must not only set up a government that can control and protect the people, but, equally importantly, must protect the people from the government.544 Madison thus anticipated the enduring tradeoff: the lesser the threat from government, the lesser its capacity to protect against threats; the greater the government’s capacity to protect against threats, the greater the threat from the government.

Recognition of the dystopic implications of double government focuses the mind, naturally, on possible **legalist cures** to the threats that double government presents. Potential remedies fall generally into two categories. First, strengthen systemic checks, either by reviving Madisonian institutions—by tweaking them about the edges to enhance their vitality— or by establishing restraints directly within the Trumanite network. Second, cultivate civic virtue within the electorate.

A. Strengthening Systemic Checks

The first set of potential remedies aspires to tone up Madisonian muscles one by one with ad hoc legislative and judicial reforms, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving congressional oversight of covert operations, including drone killings and cyber operations; or strengthening statutory constraints like FISA545 and the War Powers Resolution.546 **Law reviews brim with such proposals**. But their stopgap approach has been tried repeatedly since the Trumanite network’s emergence. **Its futility is now glaring**. Why such efforts would be any more fruitful in the future is hard to understand. The Trumanites are committed to the rule of law and their sincerity is not in doubt, but the rule of law to which they are committed is largely devoid of meaningful constraints.547 **Continued focus on legalist band-aids** merely buttresses the illusion that the Madisonian institutions are alive and well—and with that illusion, an entire narrative premised on the assumption that it is merely a matter of identifying a solution and looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is a **fundamental change in the** very **discourse within which** U.S. national **security policy is** **made**. For **the question is no longer: What should the government do?** The questions now are: What should be done about the government? What can be done about the government? What are the responsibilities not of the government but of the people?

A second approach would inject legal limits directly into the Trumanites’ operational core by, for example, setting up de facto judges within the network, or at least lawyers able to issue binding legal opinions, before certain initiatives could be undertaken.548 Another proposed reform would attempt to foster intra-network competition among the Trumanites by creating Madisonian-like checks and balances that operate directly within the Trumanite network.549 The difficulty with these and similar ideas is that the checks they propose would **merely replicate and relocate** failed Madisonian institutions without controlling the forces that led to the hollowing-out of the real Madisonian institutions. There is scant reason to believe that pseudo-Madisonian checks would fare any better. Why would the Trumanite network, driven as it is to maintain and strengthen its autonomy, subject itself behind the scenes to internal Madisonian constraints any more readily than it publicly has subjected itself to external Madisonian constraints? Why, in Bagehot’s terms, would the newly established intra-Trumanite institutions not become, in effect, a new, third institutional layer that further disguises where the real power lies?

Indeed, intra-Trumanite checks have already been tried. When questions arose as to whether Justice Department lawyers inappropriately authorized and oversaw warrantless electronic surveillance in 2006, its Office of Professional Responsibility commenced an investigation—until its investigators were denied the necessary security clearances, blocking the inquiry.550 The FBI traditionally undertakes an internal investigation when an FBI agent is engaged in a serious shooting; “from 1993 to early 2011, FBI agents fatally shot about seventy ‘subjects’ and wounded about eighty others—and every one of those [shootings] was justified,” its inspectors found.551 Following the NSA surveillance disclosures, President Obama announced the creation of an independent panel to ensure that civil liberties were being respected and to restore public confidence—a panel, it turned out, that operated as an arm of the Office of the Director of National Intelligence, which oversees the NSA.552 Inspectors general were set up within federal departments and agencies in 1978 as safeguards against waste, fraud, abuse, and illegality,553 but the positions have remained vacant for years in some of the government’s largest cabinet agencies, including the departments of Defense, State, Interior, and Homeland Security.554 The best that can be said of these inspectors general is that, despite the best of intentions, they had no authority to overrule, let alone penalize, anyone. The worst is that they were trusted Trumanites who snored through everything from illegal surveillance to arms sales to the Nicaraguan contras to Abu Ghraib to the waterboarding of suspected terrorists. To look to Trumanite inspectors general as a reliable check on unaccountable power would represent the ultimate triumph of hope over experience.

“Blue-ribbon” executive commissions also have been established, but they have done little to check the power of the Trumanite network. Following disclosures of illegal CIA domestic surveillance by the New York Times,555 President Ford created a commission within the Executive Branch to, as he put it, “[a]scertain and evaluate any facts relating to activities conducted within the United States by the Central Intelligence Agency which give rise to questions of compliance with the” law.556 Vice President Nelson Rockefeller headed the commission.557 Rockefeller’s driving resolve to “ascertain and evaluate” was disclosed in a confidential comment to William Colby, then Director of Central Intelligence, that Colby recalled in his memoirs. “Bill,” Rockefeller asked him privately, “do you really have to present all this material to us?” 558 He continued: “We realize that there are secrets that you fellows need to keep and so nobody here is going to take it amiss if you feel that there are some questions that you can’t answer quite as fully as you feel you have to.”559 The Commission’s report said nothing about the CIA’s efforts to assassinate Fidel Castro, though it did reaffirm the findings of the Warren Commission.560

A third internal “check,” the Foreign Intelligence Surveillance Court, subsists formally outside the executive branch but for all practical purposes might as well be within it; as noted earlier, it approved 99.9% of all warrant requests between 1979 and 2011.561 In 2013, it approved the NSA collection of the telephone records of tens of millions of Americans, none of whom had been accused of any crime.562 An authentic check is one thing; smoke and mirrors are something else.

The first difficulty with such proposed checks on the Trumanite network is circularity; all rely upon Madisonian institutions to restore power to Madisonian institutions by exercising the very power that Madisonian institutions lack. All assume that the Madisonian institutions, in which all reform proposals must necessarily originate, can somehow magically impose those reforms upon the Trumanite network or that the network will somehow merrily acquiesce. **All suppose that the forces that gave rise to the Trumanite network can simply be ignored**. All assume, at bottom, that Madison’s scheme can be made to work—that an equilibrium of power can be achieved—without regard to the electorate’s fitness.

Yet Madison’s theory, again,563 presupposed the existence of a body politic possessed of civic virtue. It is the personal ambition only of officeholders who are chosen by a virtuous electorate that can be expected to translate into institutional ambition. It is legislators so chosen, Madison believed, who could be counted upon to resist encroachments on, say, Congress’s power to approve war or treaties because a diminution of Congress’s power implied a diminution of their own individual power. Absent a virtuous electorate, personal ambition and institutional ambition no longer are coextensive. Members’ principal ambition564 then becomes political survival, which means accepting, not resisting, Trumanite encroachments on congressional power. The Trumanites’ principal ambition, meanwhile, remains the same: to broaden their ever-insufficient “flexibility” to deal with unforeseen threats—that is, to enhance their own power. The net effect is imbalance, not balance.

This imbalance has suffused the development of U.S. counterterrorism policy. Trumanites express concerns about convergence, about potentially dangerous link-ups among narco-terrorists, cyber-criminals, human traffickers, weapons traders, and hostile governments.565 Yet their concerns focus largely, if not entirely, on only one side of Madison’s ledger —the government’s need to protect the people from threats—and little, if at all, on the other side: the need to protect the people from the government. As a result, the discourse, dominated as it is by the Trumanites, **emphasizes potential threats and deemphasizes tradeoffs** that must be accepted to meet those threats. The Madisonians themselves are not troubled about new linkages forged among the newly-created components of military, intelligence, homeland security, and law enforcement agencies—linkages that together threaten civil liberties and personal freedom in ways never before seen in the United States. The earlier “stovepiping” of those agencies was seen as contributing to the unpreparedness that led to the September 11 attacks,566 and after the wearying creation of the Department of Homeland Security and related reorganizations, the Madisonians have little stomach for re-drawing box charts yet again. And so the cogs of the national security apparatus continue to tighten while the scaffolding of the Madisonian institutions continues to erode.

It is no answer to insist that, whatever the system’s faults, the Madisonian accountability mechanisms have at least generated a political consensus.567 Even if consensus exists among the Madisonians themselves, the existence of a public consensus on national security policy is at best doubtful.568 Further, if the application of Bagehot’s theory to U.S. national security policy is correct, whatever consensus does exist at the political level is synthetic in that it derives not from contestation among the three branches of the federal government but from efforts of the Madisonian institutions to remain in sync with the Trumanite network. That network is the moving force behind any consensus. It has forged the policies that the consensus supports; it has orchestrated Madisonian support. Finally, even if real, the existence of a Madisonian/Trumanite consensus says nothing about the content of the consensus—nothing about whether Madison’s second great goal of protecting the people from the government has been vindicated or defeated. Autocracy can be consensus-based. The notion of a benign modern-day consensus on national security policy is, indeed, reminiscent of the observation of Richard Betts and Leslie Gelb who, reviewing agreements that emerged from national security deliberations during the Johnson Administration, concluded that “the system worked.”569 Well, perhaps; the result was Vietnam.

The second difficulty with legal and public-opinion based checks on the Trumanite network is the assumption in Madison’s theory that the three competing branches act independently. “[I]t is evident that each department should have a will of its own,” says The Federalist.570 This is achieved by ensuring that each is “so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.”571 Different policy preferences will obtain because the three Madisonian branches will act upon different motives. But when it counts, the branches do not. Each branch has the same ultimate incentive: to bring its public posture into sync with the private posture of the Trumanites.572

The net effect is “balance,” after a fashion, in the sense that the end result is outward harmony of a sort easily mistaken for Madisonian-induced equipoise. But the balance is not an equilibrium that results from competition for power among three branches struggling “for the privilege of conducting American foreign policy,” as Edward S. Corwin memorably put it.573 The “system” that produces this ersatz consensus is a symbiotic tripartite co-dependence in which the three Madisonian branches fall over themselves to keep up with the Trumanites. The ostensible balance is artificial; it reflects a juridical legerdemain created and nurtured by the Trumanite network, which shares, defends, and begins with the same static assumptions. Bagehot relates the confidential advice of Lord Melbourne to the English Cabinet: “It is not much matter which we say, but mind, we must all say the same.”574 The Madisonian institutions and the Trumanite network honor the same counsel.

There is a third, more fundamental, more worrisome reason why the Madisonian institutions have been eclipsed, as noted earlier in this Article.575 It is the same reason that repairs of the sort enumerated above likely will not endure. And it is not a reason that can be entirely laid at the feet of the Trumanites. It is a reason that goes to the heartbeat of democratic institutions. The reason is that Madisonian institutions rest upon a foundation that has proven unreliable: a general public possessed of civic virtue.

Civic virtue, in Madison’s view, required acting for the public interest rather than one’s private interest.576 Madison, realist that he was, recognized that deal-making and self-interest would permeate government; this could be kept in check in part by clever institutional design, with “ambition . . . to counteract ambition”577 among governmental actors to maintain a power equilibrium. But no such institutional backup is available if the general public itself lacks civic virtue—meaning the **capacity to participate** intelligently in self-government and to elect officials who are themselves virtuous.578 Indeed, civic virtue is thus even more important,579 Madison believed, for the public at large than for public officials; institutional checks are necessary but not sufficient. Ultimately, the most important check on public officials is, as Madison put it, “virtue and intelligence in the community . . . .”580 Institutional constraints are necessary but not sufficient for the survival of liberty, Madison believed; they cannot be relied upon absent a body politic possessed of civic virtue.581 Madison was not alone in this belief, though other leading political theorists have since put it differently. Minimal levels of economic wellbeing, education, and political intelligence,582 Bagehot believed, are essential conditions for the universal franchise and “ultra-democracy,” as he called it, that has come to exist in the United States.583 Lord Bryce observed that “[t]he student of institutions as well as the lawyer is apt to overrate the effect of mechanical contrivances in politics.”584 The various repairs that have been proposed—and, ultimately, the very Madisonian **institutions themselves**—are in the end mechanical contrivances. Whatever their elegance, these **“parchment barriers,”** as Madison described laws that stand alone,585 cannot compensate for a want of civic virtue. Bagehot concurred:

“No polity can get out of a nation more than there is in the nation . . . .” “[W]e must first improve the English nation,” he believed, if we expect to improve Parliament’s handiwork.586 This insight was widely shared among 19th-century English constitutionalists. John Stuart Mill (whose work on the English Constitution was published shortly before Bagehot’s) shared Bagehot’s and Bryce’s doubts about the ultimate impotence of free-standing legal rules. “In politics as in mechanics,” Mill wrote, “the power which is to keep the engine going must be sought for outside the machinery; and if it is not forthcoming, or is insufficient to surmount the obstacles which may reasonably be expected, the confidence will fail.”587

The force of these insights was not lost on prominent American jurists. Learned Hand wrote that “[l]iberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.”588

#### Investigating the historical production of war via colonial ideology is key to solve the root causes of global violence

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¶ The Necropolitics of Global Civil War¶ As with other civil wars, global civil war affects society as a whole. It "tends," as Hardt and Negri argue, "towards the absolute" (2004, 18) in that it polices civil society through elaborate security and surveillance systems, negates the rule of law, militarizes quotidian space, diminishes civil rights to the degree in which it increases torture, illegal incarceration, disappearances, and emergency regulations, and fosters a culture of fear, intolerance, and violent discrimination. Hardt and Negri, therefore, rightly argue that war itself has become "a permanent social relation" and thereby the "primary organizing principle of society, and politics merely one of its means or guises" (ibid., 12). What Hardt and Negri suggest is new about today's global civil war is its biopolitical agenda. "War," they write, "has become a regime of biopower, that is, a form of rule aimed not only at controlling the population but producing and reproducing all aspects of social life" (ibid., 13). For example, the biopolitics of war entails the production of particular economic and cultural subjectivities, "creating new hearts and minds through the construction of new circuits of communication, new forms of social collaboration, and new modes of interaction" (ibid., 81). The ambiguity of Hardt and Negri's notion of biopower subtly resides in their adaptation of the language of social and political revolution, for it seems to be the regime of biopower, rather than the multitude, that absorbs and transvalues the revolutionary, that is, anti-colonial, spirit inscribed in the rhetoric of "new hearts and minds." At the same time, they argue, that a biopolitical definition of war "changes war's entire legal framework" (ibid., 21-22), for "whereas war previously was regulated through legal structures, war has become regulating by constructing and imposing its own legal framework" (ibid. 22). If none of this, at least in my mind, is marked by a particular originality of thought, then this may have to do with Hardt and Negri's reluctance to address the historical continuities between earlier wars of decolonization and contemporary global wars, the legacies of imperialism, and the imperative of race in orchestrating imperial, neo-colonial, and today's global civil wars. ¶ In fact, while biopolitical global warfare might be a new phenomenon on the sovereign territory of the United States of America, specifically after 11 September 2001, it is hardly news to "people in the former colonies, who," as Crystal Bartolovich points out, "have long lived ???at the 'crossroads' of global forces" (2000, 136), violence, and wars. For example, in Sri Lanka global civil war has been a permanent, everyday reality since the country's Sinhala Only Movement in 1956, and become manifest in the normalization of racialized violence as a means of politics since President Jayawardene's election campaign for a referendum in 1982, which led to the state-endorsed anti-Tamil pogrom in 1983. Similarly, according to Achille Mbembe, biopolitical warfare was intrinsic to the European imperial project in "Africa," where "war machines emerged" as early as "the last quarter of the twentieth century" (2003, 33). In other words, although Hardt and Negri argue convincingly that it is the ubiquity of global war that restructures social relationships on the global and local level, their concept tends to dehistoricize different genealogies and effects of global civil war. Indeed, not only do Hardt and Negri refrain from reading wars of decolonization as central to the construction of what David Harvey sees as the uneven "spatial exchange relations" (2003, 31) necessary for the expansion of capital accumulation and of which global war is an intrinsic feature, but they also dissociate global civil wars from the nation-state's still thriving ability to implement and exercise rigorous regimes of violence and surveillance. As for the term's epistemological formation, global civil war has been sanitized and no longer evokes the conventional association of civil war with "insurrection and resistance" (Agamben 2005, 2). Instead, it has become the effect of a diffuse new sovereignty (i.e., Hardt and Negri's Empire), a sovereignty that no longer decides over but has itself become a disembodied, that is, denationalized and normalized, state of exception. Yet, to talk about the disembodiment of global war not only reinforces media-supported ideologies of high-tech precision wars without casualties, but it also represses narratives about the ways in which the modi operandi of global war come to be embodied differently in different sites of war.¶ In her short story "Man Without a Mask" (1995), the Sri Lankan writer Jean Arasanayagam describes the global dimensions of a war that is usually considered an ethnic civil war restricted to internally competing claims to territorial, cultural, and national sovereignty between the country's Sinhalese and Tamil population. Told by an elite mercenary who clandestinely works for the ruling members of the government and leads a group of highly trained assassins, the story follows the thoughts of its narrator and contemplates the politicization of violence and death. As a mercenary and possibly an ex-SAS (British Special Air Service) veteran the Sri Lankan Government hired after the failure of the Indo-Lankan Accord, the narrator signifies the "privatization of [Sri Lanka's] war" (Tambiah 1996, 6) and, thus, the reign of a global free market economy through which the state hands over its institutions and services to private corporations, including its army, and profits from the unrestricted global and illegal trade in war technologies. Like a craftsman, the mercenary finds satisfaction in the precision and methodical cleanliness of his work, in being, as he says, "a hunter. Not a predator" in his ability to leave "morality" out of "this business" (Arasanayagam 1995, 98). He is an extreme and perverted version of what Martin Shaw describes as the " 'soldier-scholar,'???the archetype of the new [global] officer" (1999, 60). As a self-proclaimed "scholar or scribe" (ibid., 100), the mercenary plots maps of death. Shortly before he reaches his victim, a politician who underestimated the political ambition of his enemy, he comments that bullet holes in a human body comprise a new kind of language: "The machine gun splutters. The body is pitted, pricked out with an indecipherable message. They are the braille marks of the new fictions. People are still so slow to comprehend their meaning" (ibid., 100). These new maps or fictions of global war, I suggest, describe what Etienne Balibar calls ultra-objective and ultra-subjective violence and characterize how global civil war both generates bare life and manages and instrumentalizes death.¶ According to Balibar, ultra-objective violence suggests the systematic "naturalization of asymmetrical relations of power" (2001, 27) brought about, for instance, by the Sri Lankan government's prolonged abuse of the Prevention of Terrorism Act, which, in the past plunged the country into a permanent state of emergency, facilitated the random arrest of and almost absolute rule over citizens, and thus created a culture of fear and a reversal of moral and social values. As the story clarifies, under conditions of systematic or ultra-objective violence, "corruption" becomes "virtue" and "the most vile" man wears the mask of the sage and "innocent householder" (Arasanayagam 1995, 102). In this milieu, the mercenary has no need for a mask, because he bears a face of ordinary violence that is "perfectly safe" (ibid., 102) in a society structured by habitual and systemic violence. But the logic of the "new fictions" of political violence is also ultra-subjective because it is "intentional" and has a "determinate goal" (Balibar 2001, 25), namely the making and elimination of what Balibar calls "disposable people" in order to generate and maintain a profitable global economy of violence. The logic of ultra-subjective violence presents itself through the fictions of ethnicity and identity as they are advanced and instrumentalized in the name of national sovereignty. The mercenary perfectly symbolizes what Balibar means when he writes that "we have entered a world of the banality of objective cruelty" (ibid.). For if the fictions of global violence are scratched into the tortured bodies of war victims, the mercenary's detached behavior dramatizes a "will to 'de-corporation'," that is, to force disaffiliation from the other and from oneself ??? not just from belonging to the community and the political unity, but from the human condition" (ibid.). In other words, while global civil war becomes embodied in those whom it negates as social beings and thereby reduces to mere "flesh," it remains a disembodied enterprise for those who manage and orchestrate the politics of death of global war. It is through the dialectics of the embodiment and disembodiment of global violence that the dehumanization of the majority of the globe's population takes on a normative and naturalized state of existence.¶ Arasanayagam's short story also casts light on the limitations of Hardt and Negri's understanding of the biopolitics of global civil war, for the latter can account neither for the new fictions of violence in former colonial spaces nor for what Mbembe calls the "necropolitics" (2003, 11) of late modernity. Mbembe's term refers to his analysis of global warfare as the continuation of earlier and the development of new "forms of subjugation of life to the power of death" and its attendant reconfiguration of the "the relationship between resistance, sacrifice, and terror" (2003, 39). 4 Despite the many theoretical intersections of Hardt and Negri's and Mbembe's work, Mbembe's notion of necropolitics sees contemporary warfare as a species of such earlier "topographies of cruelty" (2003, 40) as the plantation system and the colony. Thus, in contrast to Hardt and Negri, Mbembe argues that the ways in which global violence and warfare produce subjectivities cannot be dissociated from the ways in which race serves as a means of both deciding over life and death and of legitimizing and making killing without impunity a customary practice of imperial population control. If global civil war is a continuation of imperial forms of warfare, it must rely on strategies of embodiment, that is, of politicizing and racializing the colonized or now "disposable" body for purposes of self-legitimization, specifically when taking decisions over the value of human life. After all, on a global level, race propels the ideological dynamics of ethnic and global civil war, while, on the local plane, it serves to orchestrate the brutalization and polarization of the domestic population, reinforcing and enacting patterns of racist exclusion and violence on the non-white body. In contrast to Hardt and Negri, then, Mbembe invites us to articulate imperial genealogies for the necropolitics of today's global civil wars.¶ In other words, if imperialism was a form of perpetual low-intensity global war, the biopolitics of imperialism aimed at creating different forms of subjectivization. For example, while in India, the imperial administration sought to create a functional class of native informants, in Africa and the Caribbean, the British Empire created the figure of homo sacer. The latter, as Agamben argues, refers to the one who can be killed but not sacrificed. Homo sacer, Agamben clarifies, constitutes "the originary exception in which human life is included in the political order in being exposed to an unconditional capacity to be killed" (1998, 85). Thus, the native is included in the imperial order only through her exclusion, while, simultaneously her humanity is stripped of social life and transformed into bare life, ready to be commodified on slavery's auction blocs and foreclosed from the dominant imperial psyche. Agamben's understanding of bare life derives from his reading of the Nazi death camps as the paradigmatic space of modernity in which the distinction between "fact and law" (ibid., 171), "outside and inside, exception and rule, licit and illicit" (ibid., 170) dissolves and in which biopolitics takes the place of politics and "homo sacer" replaces the "citizen" (ibid., 171). While the notion of bare life is instrumental for theorizing biopolitics and the normalization and legalization of state violence under the pretense of, for example, protective arrests and preemptive strikes, it also suggests that the human body can be read as pure matter or in empirical terms. What goes unnoticed is to what extent the production of bare life depends on ideologies of race, that is, on the racialization of bodies, citizenship, and the concept of the human. For instance, under imperial rule, bare life is subjected to death and its politics in ways slightly different from those suggested by Agamben. More specifically, the killing of natives or slaves as bare life ??? then and today, as Rwanda's race-based genocide clarifies ??? not only configures human life in terms of its "capacity to be killed" (Agamben 1998, 114), that is as homicide and genocide outside of law and accountability, but also measures the value of human life on grounds of race. The making of bare life is a racialized and racializing process rooted within the necropolitics of colonialism. For, killing the native or slave presupposes the remaking of the human into bare life both through ideologies of pseudo-scientific racism and by subjecting them to what Orlando Patterson calls the "social death" (1982, 38) of the slave, that is, to a symbolic death of the human as a communal and social being that precedes physical death. 5 Thus, imperialism's necropolitics involves the making of disposable lives through practices of zombification and the "redefinition of death" itself (Agamben 1998, 161). In this sense, imperialism not only facilitated the extreme forms of racialized violence characteristic of global civil war, but it also helped create the conditions for making bare life the acceptable state of being for the present majority of the globe's population.¶ Not unlike Jean Arasanayagam's short story, Mbembe's account of the Rwandan genocide and the Palestinian intifada suggests that the new global subjectivities are not so much the networked multitude Hardt and Negri imagine. Rather, emerging from the "new fictions" of global war, they are the suicide bomber, the mercenary, the martyr, the child soldier, the victim of mass rape, the refugee, the woman dispossessed of her family and livelihood, the mutilated civilian, and the skeleton of the disappeared and murdered victims of global civil war. What these subjectivities witness is that, on one hand, living under conditions of global civil war means to live in "permanent???pain" (Mbembe 2003, 39) and, on the other hand, they refer back to the dialectical mechanisms of colonial violence. For under the Manichaean pressures of colonialism, colonial violence always inaugurates a double process of subjection and subject formation. Frantz Fanon famously argues that anti-colonial violence operates historically on both collective and individual subject formation. For, on the one hand, "the native discovers reality [colonial alienation] and transforms it into the pattern of this customs, into the practice of violence and into his plan for freedom" (1963, 58), and on the other, a violent "war of liberation" instills in the individual a sense of "a collective history" (ibid., 93). Thus, as Robert Young suggests, anti-colonial violence "functions as a kind of psychotherapy of the oppressed" (2001, 295). Yet, it seems that read through the necropolitics of imperialism, global civil warfare no longer aims at the "pacification" of the colonial subject or the "degradation" of the "postcolonial subject" (ibid., 293) but, as I suggested earlier, at the complete abolishment of the human per se. We may therefore say that if global civil war produces new subjectivities, it does so through, what I have referred to as a process of zombification. Understood as sustained acts of negation, zombification ??? a term that harks back to Fanon ??? refers to a dialectical process of the embodiment and disembodiment of global war. The former refers to the exercise of ultra-objective violence ??? that is, the systematic "naturalization of asymmetrical relations of power" (Balibar 2001, 27) ??? in order to regulate, racialize, and extinguish human life at will, while the latter suggests the production of narratives of "de-corporation" (ibid., 25) and detachment by those who manage and administrate global civil war. The notion of zombification, however, connotes not only the exercise of, but also the exorcism of, the ways in which global war is scripted on and through the racialized body. Thus, a post-colonial understanding of global war needs to think through the necropolitics of war, including the uneven value historically and presently assigned to human life and the politicization of death. The latter issue will be addressed in the last section of this paper. The next section examines the cultural production and perpetuation of normative narratives of global warfare.¶ The Rhetoric of the Archaic and Michael Ondaatje's "Anil's Ghost"¶ Published shortly after Sri Lanka's civil war became entangled with the global politics of the South and the rise of the Sri Lankan nation-state to one of the war's principal and most corrupt actors, Ondaatje's novel Anil's Ghost dramatizes both the transformation of the country's civil war into a permanent state of exception and the failure of global non-governmental organizations (NGOs) to intervene in the war's rising human rights abuses and violent excesses. While the novel presents an extraordinary search for social justice through narrative and seeks to understand the operative modes of violence beyond their historical and social configurations, it also tends to sublimate and aestheticize violence by treating it as a normative element of human and, indeed, planetary life. My purpose here is to indicate that the novel's own project of dramatizing the complicity between religious and secular, anti-colonial and nationalist agents of war, and civilians and global actors (i.e., NGOs) remains compromised by the novel's aesthetic investment in a particular rhetoric of the archaic. The latter, I argue, unwittingly coincides with normative narratives of global war and facilitates the reader's detachment from the ways in which the Global North has reconstructed global life as a permanent state of exception.¶ Ondaatje's novel (2000) opens with an Author's Note that locates the narrative at a time when "the antigovernment insurgents in the south and the separatist guerrillas in the north???had declared war on the government" and "legal and illegal government squads were???sent out to hunt down" both groups. In this instance, the Hobbesian rhetoric of a "war of all against all" is more than a clich??. In fact, it is symptomatic of the novel's ambiguous critique of the role of the Sri Lankan nation-state and its elaborate, modernist discourse of violence. The Note foreshadows what the narrator later repeats on several occasions, namely that Sri Lanka's war is a war fought "for the purpose of war" (ibid., 98) and for which "[t]here is no hope of affixing blame" (ibid., 17). In short, the "reason for war was war" (ibid., 43). At first glance, the narrative's emphasis on the war's self-perpetuating dynamics implies a Hobbesian understanding of violence as the natural state of human existence. At the same time, it translates the actual politics of Sri Lanka's war into the Deleuzean idiom of the "war machine." For, according to Deleuze and Guattari, armed conflict functions outside the control and accountability of the "state apparatus???prior to its laws" (1987, 352), and beyond its initial causes. Although such an interpretation of Sri Lanka's war reflects what the political scientist Jayadeva Uyangoda calls the "intractability of the Sri Lankan crisis" (1999, 158), its political and ethical stakes outweigh its gains. 6¶ To begin with, the novel's leitmotif of "perpetual war" situates Sri Lanka's conflict within a general context of global war, because, as the narrator reports, it is fought with "modern weaponry," supported by "backers on the sidelines in safe countries," and "sponsored by gun-and drug-runners" (Ondaajte 2000, 43). In this scenario, the rule of law has deteriorated into "a belief in???revenge" (ibid., 56), and the state is either absent or part of the country's all-consuming anarchy of violence. This absence suggests that the state no longer functions, in Max Weber's famous words, as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (2002, 13). It is of course possible to argue that the novel's critique of the Sri Lankan nation-state lies in its absence. It seems to me, however, that the narrative's tendency to locate the dynamics of Sri Lanka's war outside the state and within a post-national vision of a new global order generates a normative narrative of global war. On the one hand, it resonates with the popular ??? though misleading ??? notion that the "appearance of 'failed states'," as Samuel Huntington argues in his controversial study The Clash of Civilizations, intensifies "tribal, ethnic, and religious conflict" and thus "contributes to [the] image of a world in anarchy" (1996, 35). On the other, situating Sri Lanka's war outside the institutions of the state re-inscribes a Hobbesian notion of violence that helps legitimize and cultivate structural violence as a permissive way of conducting politics. Such a reading of violence, however, overlooks that in a global context violence has become "profoundly anti-Hobbesian" (Balibar 2001, xi). Balibar usefully suggests that the twentieth century history of extreme violence has made it impossible to regard violence as "a structural condition that precedes institutions." Instead, he maintains, "we have had to accept???that extreme violence is not post-historical but actually post-institutional." It "arises from institutions as much as it arises against them" (ibid., xi). Thus, in such popular post-colonial narratives of war as Anil's Ghost, the normalization of violence figures as a forgetting of the institutional entrenchment and historical use of violence as a state-sanctioned political practice.¶ If Ondaatje's novel presents Sri Lanka's war as an "inherently violent" event (Das 1998), it is also an event narrated through the symbolism and logic of archaic primitivism. For example, in the novel's central passage on the nature of human violence, the narrator observes, "The most precisely recorded moments of history lay adjacent to the extreme actions of nature or civilisation ???Tectonic slips and brutal human violence provided random time-capsules of unhistorical lives???A dog in Pompeii. A gardener in Hiroshima" (Ondaatje 2002, 55). The symbolic leveling of the arbitrariness of primordial chaos and the apparently ahistorical anarchism of violence create a rhetoric of the archaic that is characteristic, as Nancy argues, of "anything that is properly to be called war" (2000, 128). He convincingly argues that archaic symbolism "indicates that [war] escapes from being part of 'history' understood as the progress of a linear/or cumulative time" and can be rearticulated as no more than a "regrettable" remnant of an earlier age (ibid., 128). In that, Nancy's observation coincides with Hardt and Negri's that the "war on terror" employs a medievalist rhetoric of just and unjust wars that moralizes rather than legitimizes the use of global violence by putting it outside the realm of reason and critique. In Nancy's observation, however, two things are at stake. First, what initially appears to be a postmodern critique of the grand narratives of history in fact demonstrates that a non-linear account of history may lend itself to the transformation of extreme violence into exceptional events. In this way violence is normalized as a transhistorical category that fails to address the unequal political and economic relations of power, **which lie at the heart of global wars**.¶ Second, Nancy rightly warns us against treating war as an archaic relic that is "tendentiously effaced in the progress and project of a global humanity" (2000, 128). For not only does war return in the process of negotiating sovereignty on a global and local plane, but the representation of war in terms of archaic images also repeats a primordialist explanation of what are structurally new wars. As theorists such as Appadurai and Kaldor have argued, the primordialist hypothesis of global wars merely reinforces those mass mediated images of global violence that dramatize ethnic wars as pre-modern, tribalist forms of strife. Huntington's notion of civilization or "fault-line" wars as communal conflicts born out of the break-up of earlier political formations, demographic changes, and the collision of mutually exclusive religions and civilizations presents the most prominent and politically influential version of a primordialist and bipolar conceptualization of global war. In contrast to Huntington's approach, however, the narrative of Anil's Ghost contends that all forms of violence "have come into their comparison" (Ondaatje 2000, 203). Notwithstanding its universalizing impetus, the novel thus insists on the impossibility to think the nation and a new global order outside the technologies of violence and modernity. Indeed, in the novel's narrative it is the suffering of all war victims that "has come into their comparison" and suggests that the new wars breed a culture of violence that shapes everyone's life yet for which no one appears to be accountable. On the one hand, then, the novel's self-critical humanitarian project seeks to initiate a communal and individual process of mourning by naming, and therefore accounting for, in Anil's words, "the unhistorical dead" (ibid, 56). On the other hand, read as its critical investment in the war's politics of complicity, the novel's humanitarian endeavor is countered by the narrator's tendency to articulate violence in archaic and anarchistic terms. For, to revert to the symbolic language of "primitivism and anarchy" and "to treat [the new wars] as natural disasters," as Kaldor observes (2001, 113), designates a common way of dealing with them. Thus the rhetoric of the archaic not merely dehistoricizes violence but contributes to the making of a normative and popular imaginary through which to make global wars thinkable and comprehensible. Thus, their violent excesses appear to be rooted in primordialist constructions of the failed post-colonial nation-state rather than a phenomenon with deep-seated roots in the global histories of the present. Such a normative imaginary of global war is produced for the Global North so as to dehistoricize its own position in the various colonial processes of nation formation and global economic restructuring of the Global South. In this way, as Ondaatje's novel equally demonstrates, the Global North can detach itself from the Global South and create the kind of historical and cultural distance needed to accept ultra-objective violence as a normative state of existence.¶ Conceptualizing war as a phenomenon of criminal and anarchistic violence, however, may do more than merely conform to the popular imagination about the chaotic and untamable nature of contemporary warfare. Indeed, anarchistic notions of violence tend to compress the grand narratives and petite recits of history into a total, singular present of perpetual uncertainty, fear, and political confusion and generate what the post-colonial anthropologist David Scott sees as Sri Lanka's "dehistoricized" history. Given the important role the claiming of ancient Sinhalese and Hindu history played in the violent identity politics that drive Sri Lanka's war, Scott suggests that devaluing or dehistoricizing history as a founding category of Sri Lanka's narrative of the nation breaks the presumably "natural???link between past identities and the legitimacy of present political claims" (1999, 103). This strategy seems useful because it uncouples Sri Lanka's colonially shaped and glorified Sinhalese past from its present claims to political power. We need to note, however, that, according to Scott, dehistoricizing the past does not suggest writing from a historical vacuum. Rather, it refers to a process of denaturalizing and, thus, de-legitimizing the normative narratives of ethnicized and racialized narratives of national identity.¶ Anil's Ghost engages in this process of "dehistoricizing" by foregrounding the fictitious and fragmented, the elusive and ephemeral character of history. Indeed, as the historian Antoinette Burton suggests, the novel offers "a reflection on the continued possibility of History itself as an exclusively western epistemological form" (2003, 40). The latter clearly finds expression in what Sarath's brother, Gamini, condemns as "the last two hundred years of Western political writing" (Ondaatje 2000, 285). Steeped in the imperial project of the West, such writing is facilitated by and serves to erase the figure of the non-European cultural Other in order to produce and maintain what Jacques Derrida famously called the "white mythology" (1982, 207) of Western metaphysics. The novel usefully extends its reading of violence into a related critique of knowledge production, so that the latter becomes legible as being complicit in the production of perpetual violence and war. This critique is perhaps most articulated through the character of Palipana, Sarath's teacher and Sri Lanka's formerly renowned but now fallen anthropologist. Once an agent of Sri Lanka's anti-colonial liberation movement, Palipana represents the generation of cultural nationalist who sought history and national identity in an essentially Sinhalese culture and natural environment. Rather than employing empirical and colonial methods of knowledge production and historiography, Palipana had left the path of scientific objectivity, tinkered with translations of historical texts, and "approached runes???with the pragmatic awareness of locally inherited skills" (Ondaatje 2000, 82) until "the unprovable truth emerged" (ibid., 83). Now, years after his fall from scientific grace, Palipana lives the life of an ascetic, following the "strict principles of" a "sixth-century sect of monks" (ibid., 84). To him, history and nature have become one, for "all history was filled with sunlight, every hollow was filled with rain" (ibid., 84). Yet, Ondaatje's construction of Palipana and his account of the eye-painting ritual of a Buddha statue ??? a ritual that assumes a central place in the novel's cosmopolitan vision of artisanship as a practice of cultural and religious syncretism in the service of post-conflict community building ??? are themselves built on a number of historical texts listed in the novel's "Acknowledgment" section. As Antoinette Burton astutely observes, "the orientalism of some of the texts on Ondaatje's list is astonishing, a phenomenon which suggests the ongoing suppleness of 'history' as an instrument of political critique and ideological intervention" (2003, 50). Rather than effectively "dehistorizing" the character of Palipana, then, Ondaatje bases this character and the eye-painting ceremony on a central Sri Lankan modernist text, Ananada K. Coomaraswamy's Mediaeval Sinhalese Art (1908/1956).¶ Cont ¶ For Hardt and Negri, then, the state of exception functions as the universal condition and legitimization of global civil war, while positioning the United States as a global power, which transforms war "into the primary organizing principle of society" (2004, 12). They rightly observe that the state of exception blurs the boundaries between peace and war, violence and mediation. Yet, curiously enough, Hardt and Negri's understanding of the state of exception largely emphasizes the concept's regulatory and pragmatic politics, so that the United States emerges as a sovereign power on grounds of its ability to decide on the state of exception. By exempting itself from international law and courts of law, protecting its military from being subjected to international control, allowing preemptive strikes, and engaging in torture and illegal detention (ibid., 8), the United States instrumentalizes and maintains war as a state of exception in the name of global security and thus seeks to consolidate its hegemonic role within Empire. Although Hardt and Negri openly disagree with Agamben's reading of the state of exception as defining "power itself as a 'monopoly of violence' " (2004, 364), it seems to me that Agamben's theory of the state of exception, as put forward in Homo Sacer rather than in States of Exception, might be usefully read alongside Hardt and Negri's crucial claim that global civil war as well as resistance movements depend on the "production of subjectivity" through immaterial labour (2000, 66). What this argument overlooks is that, according to Agamben, the state of exception constitutes an abject space or "a zone of indistinction between outside and inside, exclusion and inclusion" (1998, 181), where subjectivity enters a political and legal order solely on grounds of its exclusion. Moreover, the sovereign ??? albeit a nation, sovereign power, or global network of power ??? can only transform the rule of law into the force of law by suspending the legal system from a position that is simultaneously inside and outside the law. Through these mechanisms of exclusion and contradiction, subjectivity is not so much created as it is deprived of its social and political relationships. Thus the "originary activity" of global civil war is the violent conflation of political and social relationship and thereby the "production of bare life" (ibid., 83), of life that need not be accounted for, as is the case with the civilian casualties of the US-led war against Iraq. The state of exception, however, also figures as a prominent concept in post-colonial theory, for it raises questions not only about the ways in which we configure the human but also how we understand imperial or global war. ¶ In 1940, Benjamin famously wrote, "the tradition of the oppressed teaches us that the 'state of emergency' in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight" (1968, 257). Benjamin's statement, as Homi Bhabha reminds us half a century later in his essay "Interrogating Identity," can be usefully advanced for a critical analysis of the dialectical ??? if not revolutionary ??? relationship between oppression, violence, and anti-colonial historiography. Indeed, "the state of emergency," as Bhabha says, "is also always a state of emergence" (1994, 41). Read in the context of today's global state of exception, namely the recurrence and intensification of ethnic civil wars across the globe and the coincidence of democratic and totalitarian forms of political rule, Bhabha's statement entails a number of risks and suggestions for a post-colonial historiography of global civil war.¶ First, Bhabha's notion of emergency/emergence reflects his critical reading of Fanon's vision of national identity and thus reconsiders the state of emergency as a possible site of "the occult instability where the people dwell" (Fanon 1963, 227) and give birth to popular movements of national liberation. In this context, the state of exception might be understood as both constitutive to the alienation that is intrinsic to liberation movements and instrumental for a radical euphoria and excessive hope that create and spectralize the post-colonial nation-state as a deferred promise of decolonization. It is through this perspective that we can critically evaluate Hardt and Negri's endorsement of what they call "democratic violence" (2004, 344). This kind of violence, they argue, belongs to the multitude. It is neither creative nor revolutionary but used on political rather than moral grounds. When organized horizontally, according to democratic principles of decision making, democratic violence serves as a means of defending "the accomplishments" of "political and social transformation" (ibid., 344). Notwithstanding the concept's romantic and utopian inflections, democratic violence also derives from Hardt and Negri's earlier argument that "the great wars of liberation are (or should be) oriented ultimately toward a 'war against war,' that is, an active effort to destroy the regime of violence that perpetuates our state of war and supports the systems of inequality and oppression." This, they conclude, is "a condition necessary for realizing the democracy of the multitude" (ibid., 67). In one quick stroke, Hardt and Negri move anti-colonial liberation wars into their post-national paradigm of Empire and divest them of their cultural and historical particularities. Moreover, translating explicitly national liberation movements into a universalizing narrative of global pacifism precludes a critique of violence within its particular historical and philosophical formation. In contrast, a post-colonial analysis of global war must tease out the intersections between the ways in which racialized violence constitutes colonial and post-colonial processes of nation formation and helps construct an absolute enemy through which to legitimize global war and to abdicate responsibility for the dehumanizing effects of global economic restructuring.¶ Second, while Bhabha's pun is symptomatic of the resisting properties that he sees as operative in the various practices of colonial ambiguity, it also, despite Benjamin's opinion, draws attention to the possibility that oppression alters the linear flow of Western history and challenges "the transparency of social reality, as a pre-given image of human knowledge" (Bhabha 1994, 41). Here, Bhabha rightfully asks to what extent do states of emergency or acts of extreme violence constitute a historical rupture and, more importantly, call into question the nature of the human subject. It is at this point that a post-colonial reading of the state of exception fruitfully coincides with Agamben's notion of exception. For in both cases, the focus of inquiry is the construction of disposable life through the logic of necropower and the collapse of social and political relationships that enable the exercise of particularly racialized forms of violence, including torture and disappearances.¶ Third, Bhabha's notion of the double movement of emergency and emergence envisions an anti-colonialist historiography in terms of a dialectical process of perpetual transformation. It is at this point, however, that the coupling of emergency or exception and emergence becomes problematic for at least two reasons. First, combining both terms prematurely translates the violence of the political event into that of metaphor and risks erasing the micro- or quotidian narratives of violence ??? such as Arasanayagam's account of war ??? that both legitimate and are perpetuated by political and social states of emergency. In order to examine the relationship between global and communal forms of violence, a critical practice of post-colonial studies, I suggest, must reassess the term "transformation" and, concurrently, the assumption that acts of extreme global violence can be advanced in the service of "making history" (Balibar 2001, 26). In other words, if, as Hannah Arendt argues, there has been a historical "reluctance to deal with violence as a separate phenomenon in its own right" (2002, 25), it is time to examine the possibility of employing post-colonial studies in the service of a non-dialectical critique of global war. This kind of critique must ask to what extent those on whose bodies extreme violence was exercised are a priori excluded from articulating any transformative theory of violence. How, in other words, does bare life ??? if at all possible ??? attain the status of subjectivity within the dehumanizing logic of exception or global civil war?¶ Fourth, like Bhabha, we need to take seriously Benjamin's insight into **the intrinsic relationship between violence and the conceptualization of history**. Notwithstanding Bhabha's pivotal argument that the violence of a "unitary notion of history" generates a "unitary," and therefore extremely violent, "concept of man" (1994, 42), I wish to caution, alongside Benjamin's analysis of fascism, that what enables today's global civil war is that even "its opponents treat it as a historical norm" (Benjamin 1968, 257). What is at stake, then, in dominant as well as critical narratives of global civil war is their representation as natural rather than political phenomena, and the acceptance of globalization as a political fait accompli. Both of these aspects, I believe, contribute to the proliferation of dehistoricized concepts of the global increase of racialized violence and war. It seems to me, however, that the enormous rise of violence inflicted by global civil wars requires a post-colonial historiography and critique of global war that questions notions of history based on cultural fragmentation, rupture, and totalization. Instead, such a historiography must seek out patterns of connection and connectivity. But more importantly, as I have argued in this paper, it must trace the post-colonial moment of global civil war and begin to read contemporary war through the interconnected necropolitics of global and imperial warfare. Thus, to understand the logic and practice of global war we need to develop a greater understanding precisely of those civil wars and national liberation wars that do not appear to threaten the new global order. Furthermore, a post-colonial critique of global civil war should facilitate the decoding and rescripting of both the normalizing narratives and racialized embodiment of global civil warfare.¶

#### Structural violence outweighs—don’t be fooled by neoliberal claims of inevitability

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From Johan Galtung, famous Norwegian peace ‘guru’, still alive and heads up TRANSCEND University on-line, has been working since 1960s on showing that violence is not OK. His Ghandian approach is designed to convince those who advocate violent means to restore social justice to the poor, that he as a pacifist does not turn a blind eye to social injustices and inequality. He extended therefore our understanding of what is violent, coercion, force, to include the economic and social system’s avoidable injustices, deaths, inequalities. Negative peace is the absence of justice, even if there is no war. Injustice causes structural violence to health, bodies, minds, damages people, and must therefore be resisted (non-violently). Positive peace is different from negative (unjust and hence violent) peace. Positive peace requires actively combating (struggling peacefully against) social injustices that underpin structural violence. Economic and social, political justice have to be part of peacebuilding. This is the mantra of most NGOs and even some agencies (we will look later at NGO Action Aid and DFID as examples). Discrimination has to end, so does the blatant rule of money, greater equality is vital wherever possible. All of **this is the opposite of neo-liberal recipes** for success, which in Holland as in Indonesia, tolerate higher and higher levels of social inequality in the name of efficiency. **Structural violence kills far more people than warfare –** for example one estimate in DRC is that 4 million people have been killed in war since 1998, but NGOs estimate that an additional 6 million people have died in DRC since then, from disease, displacement and hunger, bringing the total to an unthinkable 10 million of 90 million est. population. “**Since there exists far more wealth in the world than is necessary to address** the main **economic** causes of structural **violence, the real problem is one of priorities**”…p. 307 “**Structural violence…is neither natural nor inevitable**”, p. 301 (Prontzos).

#### No uniqueness – collapse inevitable now – the plan’s neoliberal policy – their impact d also assumes resource susbstitution which is false

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The problem is that the basic costs of all production have risen remarkably. There are the personnel expenses of all kinds -- for unskilled workers, for cadres, for top-level management. There are the costs incurred as producers pass on the costs of their production to the rest of us -- for detoxification, for renewal of resources, for infrastructure. And the democratization of the world has led to demands for more and more education, more and more health provisions, and more and more guarantees of lifetime income. To meet these demands, there has been a significant increase in taxation of all kinds. Together, these costs have risen beyond the point that permits serious capital accumulation. Why not then simply raise prices? Because there are limits beyond which one cannot push their level. It is called the elasticity of demand. The result is a growing profit squeeze, which is reaching a point where the game is not worth the candle.

What we are witnessing as a result is chaotic fluctuations of all kinds -- economic, political, sociocultural. These fluctuations cannot easily be controlled by public policy. The result is ever greater uncertainty about all kinds of short-term decision-making, as well as frantic realignments of every variety. Doubt feeds on itself as we search for ways out of the menacing uncertainty posed by terrorism, climate change, pandemics, and nuclear proliferation.

**The only sure thing is that the present system cannot continue**. The fundamental political struggle is over what kind of system will replace capitalism, not whether it should survive. The choice is between a new system that replicates some of the present system's essential features of hierarchy and polarization and one that is relatively democratic and egalitarian.

The extraordinary expansion of the world-economy in the postwar years (more or less 1945 to 1970) has been followed by a long period of economic stagnation in which the basic source of gain has been rank speculation sustained by successive indebtednesses. The latest financial crisis didn't bring down this system; it merely exposed it as hollow. Our recent "difficulties" are merely the next-to-last bubble in a process of boom and bust the world-system has been undergoing since around 1970. The last bubble will be state indebtednesses, including in the so-called emerging economies, leading to bankruptcies.

Most people do not recognize -- or refuse to recognize -- these realities. It is wrenching to accept that the historical system in which we are living is in structural crisis and will not survive.

Meanwhile, the system proceeds by its accepted rules. We meet at G-20 sessions and seek a futile consensus. We speculate on the markets. We "develop" our economies in whatever way we can. **All this activity simply accentuates the structural crisis.** The real action, the struggle over what new system will be created, is elsewhere.

#### They prefigured the discussion on neoliberal terms—without contesting that framing, alternatives are powerless—proves our sequencing disad and that their impacts are only deflection tactics

**Knox 12** – PhD Candidate, London School of Economics and Political Science (Robert, paper presented at the Fourth Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law and the Towards a Radical International Law workshop, “Strategy and Tactics”)

this warning is of great relevance to the type of ‘strategic’ interventions advocated by the authors. there are **serious perils** involved in making any intervention in liberal-legalist terms for critical scholars. the first is that – as per their own analysis – liberal legalism is not a neutral ground, but one which is likely to favour certain claims and positions. Consequently, it will be incredibly difficult to win the argument. Moreover, even if the argument is won, the victory is likely to be a very particular one – inasmuch as it will foreclose any wider consideration of the structural or systemic causes of any particular ‘violation’ of the law. All of these issues are to some degree considered by the authors.44 However, given the way in which ‘strategy’ is understood, the effects of these issues are generally confined to the immediate, conjunctural context. As such, the emphasis was placed upon the way that the language of liberal legalism blocked effective action and criticism of the war.45 Much less consideration is placed on the way in which advancing such argument impacts upon the long term effectiveness of achieving the strategic goals outlined above. Here, the problems become even more widespread. **Choosing to couch the intervention in liberal legal terms** ultimately reinforces the structure of liberal legalism, rendering it more difficult to transcend these arguments.46 In the best case scenario that such an intervention is victorious, this victory would precisely seem to underscore the liberal position on international law. Given that international law is in fact bound up with processes of exploitation and domination on a global scale, such a victory contributes to the legitimation of this system, making it very difficult to argue against its logic. this process takes place in three ways. Firstly, by intervening in the debate on its own terms, critical scholars reinforce those very terms, as their political goals are incorporated into it.47 It can then be argued the law is in fact neutral, because it is able to encompass such a wide variety of viewpoints. Secondly, in discarding their critical tools in order to make a public intervention, these scholars abandon their structural critique at the very moment when they should hold to it most strongly. that is to say, that at the point where there is actually a space to publicise their position, they choose instead to cleave to liberal legalism. thus, even if, in the ‘purely academic’ context, they continue to adhere to a ‘critical’ position, in public political terms, they advocate liberal legalism. Finally, from a purely ‘personal’ standpoint, in advocating such a position, they undercut their ability to articulate a critique in the future, precisely because they will be contradicting a position that they have already taken. the second point becomes increasingly problematic absent a guide for when it is that liberal legalism should be used and when it should not. Although the ‘embrace’ of liberal legalism is always described as ‘temporary’ or ‘strategic’, there is actually very little discussion about the specific conditions in which it is prudent to adopt the language of liberal legalism. It is simply noted at various points that this will be determined by the ‘context’.48 As is often the case, the term ‘context’ is invoked49 without specifying precisely which contexts are those that would necessitate intervening in liberal legal terms. Traditionally, such a context would be provided by a strategic understanding. that is to say, that the specific tactics to be undertaken in a given conjunctural engagement would be understood by reference to the larger structural aim. But here, there are simply no considerations of this. It seems likely therefore, that again context is understood in purely tactical terms. Martti Koskenniemi can be seen as representative in this respect, when he argued: What works as a professional argument depends on the circumstances. I like to think of the choice lawyers are faced with as being not one of method (in the sense of external, determinate guidelines about legal certainty) but of language or, perhaps better, of style. the various styles – including the styles of ‘academic theory’ and ‘professional practice’ – are neither derived from nor stand in determinate hierarchical relationships to each other. the final arbiter of what works is nothing other than the context (academic or professional) in which one argues.50 On this reading, the ‘context’ in which prudence operates seems to the immediate circumstances in which an intervention takes place. this would be consistent with the idea, expressed by the authors, that the ‘strategic’ context for adopting liberal legalism was that the debate was conducted in these terms. But the problem with this understanding is surely evident. As critical scholars have shown time and time again, the contemporary world is one that is deeply saturated with, and partly constituted by, juridical relations.51 Accordingly, there are really very few contexts (indeed perhaps none) in which political debate is not conducted in juridical terms. A brief perusal of world events would bear this out.52 the logical conclusion of this would seem to be that in terms of abstract, immediate effectiveness, the ‘context’ of public debate will almost always call for an intervention that is couched in liberal legalist terms. This raises a final vital question about what exactly distinguishes critical scholars from liberal scholars. If the above analysis holds true, then the ‘strategic’ interventions of critical scholars in legal and political debates will almost always take the form of arguing these debates in their own terms, and simply picking the ‘left’ side. thus, whilst their academic and theoretical writings and interventions may (or may not) retain the basic critical tools, the public political interventions will basically be ‘liberal’. The question then becomes, in what sense can we really characterise such interventions (and indeed such scholars) as ‘critical’? The practical consequence of understanding ‘strategy’ in essentially tactical terms seems to mean always struggling within the coordinates of the existing order. Given the exclusion of strategic concerns as they have been traditionally understood, there is no practical account for how these coordinates will ever be transcended (or how the debate will be reconfigured). As such, we have a group of people struggling within liberalism, on liberal terms, who may or may not also have some ‘critical’ understandings which are never actualised in public interventions. We might ask then, apart from ‘good intentions’ (although liberals presumably have these as well) what differentiates these scholars from liberals? Because of course liberals too can sincerely believe in political causes that are ‘of the left’. It seems therefore, that **just as** – in practical terms – **strategic essentialism collapses into essentialism, so too does ‘strategic’ liberal legalism collapse into plain old liberal legalism**.53