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(Former Defence Adviser to Australia and New Zealand and Sec. General of Pakistan Forum for Security and Development, “A Threat in the Making,” http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/columns/19-Mar-2012/a-threat-in-the-making)

Such a US dominated independent unified Balochistan would literally cut Pakistan to size, unleashing powerful centrifugal forces that will send it splintering. This will kick-start an unstoppable ethno-regional chain reaction. All divided ethnic-tribal-sectarian populations across the Iran-Afghanistan-Pakistan-India-Nepal-Bangladesh-Sri Lanka complex and beyond will find cause to redraw the existing political borders to create similar states for themselves too. This will massively destabilise the whole South Central Asian Region (SCAR) and the Greater Middle East Region (GMER) and unleash uncontrollable upheavals, turmoil and strife - creating fertile grounds for further exploitation by the US-led West! The geostrategic imperatives: A severely truncated Pakistan is presumed to be more amenable to pressures applied by the US and its protégé India, the “regional cop-in-waiting”. However, as a natural corollary to this ‘proposed dismemberment’ of Pakistan, there would be an immediate and critical lowering of nuclear thresholds in the SCAR-GMER! The ramifications would be severe and with extra regional connotations! Balochistan constitutes the most vital and critical strategic space for Pakistan and it will “employ all elements of its power to protect this vital space so critical for the province’s solidarity, territorial integrity and survival as a unified nation!” Were the US to base forces in this proposed territory of Balochistan, it would acquire the strategic central position in SWA. It will effectively control all Pakistani ports on the Arabian Sea/Mekran Coast and dominate the Iranian ports of Chabahar and Port Abbas. It will also be able to project power through the Straits of Hormuz, the Persian Gulf, the Arabian Sea and by implication the Indian Ocean. Russia, China and the CARs will be contained, while the envelopment of Iran would be complete. Iran’s dominance of the Straits of Hormuz would be critically circumscribed and its bargaining position severely slashed. Pakistan’s and Iran’s nuclear installations would remain vulnerable under hawkish US oversight. US-Indian-Israeli dominance of the SCAR-GMER will be complete! The geo-economic imperatives: Such a proposed state of Balochistan would greatly facilitate the US and the West to exploit and harvest its and Afghanistan’s enormous mineral deposits. Furthermore, Balochistan provides the only viable natural trade corridor to link the world’s largest fossil fuel deposits of the GMER and the CARs to the energy deficient and voracious economies of India and China. The US would like to create and control such east-west and north-south trade corridors. The USA’s New Silk Road Project (NSRP) is a step in this very direction. This would also deny China, Russia and the CARs these trade corridors and the warm waters of the Arabian Sea. Most critically it would deprive China of a most important pearl in its “strategy of string of pearls - Gwadar!” The USA will thus have a stranglehold over the economic jugular of the region. The modus operandi: Extensive bipartisan support in the US Congress will be sought to make these bills part of the US government policy. A sympathetic international environment and opinion will be crafted through the United Nations (UN), European Union (EU), their various organisations and other international fora, and the Western, Indian and some elements of Pakistani media. The “Baloch case” will, probably, hinge upon “the right of self-determination”, “ethnic cleansing” and “human rights violations” - a la Bosnia Herzegovina (ethnic cleansing) and Sudan and East Timor (rights of self-determination). At the appropriate time, a Baloch government-in-exile will announce a Unilateral Declaration of Independence (UDI), which will be immediately accepted by the UN, the US and its allies. A pliant UN Security Council (UNSC) will then pass the requisite resolution for international intervention in Balochistan. A plebiscite for Baloch independence under UN auspices will follow. An international expeditionary force will also be assembled for strategic effect. The reality: Of all the Baloch tribes, the errant ones are but a small part! The large majority of the Baloch as well as the Pashtun/Hazaras/settlers are not inclined towards independence or secession. Therefore, there is no casus belli for any international intervention - diplomatic, informational, political or military - in Balochistan, Pakistan. Sure, there are issues in Balochistan that need to be tackled post-haste. But the solution has to be homemade and essentially political in nature. An alien solution cannot be rammed down Pakistan’s throat. This is an internal matter for Pakistan, indeed! All actions have to be taken by the Pakistanis, for the Pakistanis and strictly within the ambit of Pakistan and Pakistan alone. Period. Once challenged, **nuclear Pakistan will react** very **violently and decisively** to safeguard its solidarity and territorial integrity. All options, by default, will always stay on the table! All regional and global powers like China, Russia and fora, like the UN, the EU, the OIC, the SCO, the ECO etc, must play their due pre-emptive roles at the UNSC and all other related international platforms to forestall any such gargantuan misadventures.

## 1nc

### 1nc lawfare

#### 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 T – restriction not jurisdiction 1nc

#### A restriction is a limitation on action that prevents the executive from doing something

Barbadoro, 2k – Chief Judge, US District Court for New Hampshire (Tommy Hilfiger Retail, Inc. v. North Conway Outlets LLC Civil No. 99-C-147-B UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE 2000 DNH 38; 2000 U.S. Dist. LEXIS 1448, lexis)

Assuming without deciding that Hilfiger has proffered a plausible construction of the term "governmental restrictions" it interpretation is by no means the only plausible construction. A commonly accepted dictionary definition of "restriction" is "something that restricts; a restrictive condition or regulation; limitation." Random House Unabridged Dictionary 1642 (2d ed. 1993). To "restrict" means "to confine or keep within limits, as of space, action, choice, intensity, or quantity." Id. A governmental restriction, therefore, reasonably can be understood as any limitation on action, or restrictive condition, imposed by the government that prevents NCO from completing construction. The context in which the term is used in the lease gives no hint that the parties intended a more restrictive interpretation.

#### In the war powers context, a restriction on authority means limiting the actions the executive can take based on that authority

**Lobel, 8** - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### This also true for judicial restrictions – it’s distinct from just creating a role for the courts

**Bradley, 10** - \* Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School (Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>)

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1

For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3

The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

Violation – the aff doesn’t limit specific uses of the executive’s authority; merely subjects executive

Limits – there are countless alternate juridictions- many international forums, not just the UN, but regional courts governing regional relations in specific areas, like the CARICOM human rights court, as well as statutory codes adopted by international organizations. And even ONE new aff is highly unpredictable and bypasses the core topic literature

#### Negative ground – they bypass all core topic generics and make it impossible to be neg

#### Authority means “authorization” – they restrict Congress, not the executive

**Hohfeld,** Yale Law,19**19** (Wesley, <http://www.hku.hk/philodep/courses/law/HohfeldRights.htm>)

Many examples of legal powers may readily be given. Thus, X, the owner of ordinary personal property "in a tangible object" has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts known as abandonment; and-simultaneously and correlatively-to create in other persons privileges and powers relating to the abandoned object,-e. g., the power to acquire title to the latter by appropriating it. Similarly, X has the power to transfer his interest to Y, that is to extinguish his own interest and concomitantly create in Y a new and corresponding interest. So also X has the power to create contractual obligations of various kinds. Agency cases are likewise instructive. By the use of some metaphorical expression such as the Latin, qui facit per alium, facit per se\* the true nature of agency relations is only too frequently obscured. The creation of an agency relation involves, inter alia, the grant of legal powers to the so-called agent, and the creation of correlative liabilities in the principal. That is to say, one party, P, has the power to create agency powers in another party, A,-for example, the power to convey P's property, the power to impose (so called) contractual obligations on P, the power to discharge a debt owing to P, the power to "receive" title to property so that it shall vest in P, and so forth. In passing, it may be well to observe that the term "authority," so frequently used in agency cases, is very ambiguous and slippery in its connotation. Properly employed in the present connection, the word seems to be an abstract or qualitative term corresponding to the concrete "authorization," the latter consisting of a particular group of operative facts taking place between the principal and the agent. All too often, however, the term in question is so used as to blend and confuse these operative facts with the powers and privileges thereby created in the agent. A careful discrimination in these particulars would, it is submitted, go far toward clearing up certain problems in the law of agency.

### 1nc hobby lobby

#### Kennedy is the key swing vote in Hobby Lobby vs. Sebelius – hell side with the government, but it will be close

Lancaster Online 3/26/14

(“Supreme Court justices appeared divided in Conestoga Wood Specialties case,” pg online @ http://lancasteronline.com/news/local/live-coverage-conestoga-wood-specialties-and-hobby-lobby-at-the/article\_9d7545b2-b389-11e3-b4f1-001a4bcf6878.html //um-ef)

Swing vote? Advocates and legal experts across the spectrum said it appeared Justice Anthony Kennedy might emerge as the swing vote, a role he has played in other decisions. In one exchange, Kennedy appeared concerned about a precedent being set that would outrage opponents of abortion. He asked Verrilli if it's the government's view that Congress would be within its rights to require for-profit and pro-life employers to pay for abortion. "If such a law like that were enacted," Verrilli responded, "then you're right, under our theory, that the for-profit corporation wouldn't have an ability to sue" the government for a religious exemption. But Verrilli was careful to add that "there is no law like that on the books." Wenger, representing Conestoga Wood, said afterward that said he thinks Verrilli's response confirmed Kennedy's concern "that there really needs to be some kind of escape valve here so that corporations aren't forced to do things that violate their most deeply held convictions." Chief justice's query Michael Geer, president of Pennsylvania Family Institute, a Christian Right advocacy organization, said he was heartened by Chief Justice John Roberts' follow-up to Verrilli's statement that there is no law forcing employers to fund abortions. "Isn't that what we are talking about in terms of (the Hahns') religious beliefs?" the chief justice asked. "One of the religious beliefs is that they have to pay for the four methods of contraception that they believe provide abortions." Geer was heartened by Roberts' statement, calling it "a jaw-dropping moment that got to the crux of the case." If Roberts is sympathetic to the Hahns' objection to contraception methods they fear are akin to abortion, Geer said, "hopefully, this court will give them some relief." Nelson Tebbe, a professor at Brooklyn Law School, agreed the spotlight has again fallen on Kennedy and the stand he'll take. But Tebbe said Kennedy might be siding with the government. He noted the justice's concern for how the loss of contraceptive coverage would affect women employees of Conestoga Wood and Hobby Lobby. "It seems like Justice Kennedy was receptive to that argument, just from the question he was asking," Tebbe said.

#### Kennedy key– he”ll limit his decision to avoid controversy

Deniston 3/26

(“Lyle Denniston is the National Constitution Center’s adviser on constitutional literacy. He has reported on the Supreme Court for 55 years, currently covering it for SCOTUSblog, an online clearinghouse of information about the Supreme Court’s work,” pg online @ http://blog.constitutioncenter.org/2014/03/analysis-if-justice-kennedy-writes-the-hobby-lobby-decision/ //um-ef)

Later this week, the Supreme Court will meet in private to cast its first votes on how they are to decide the religious rights controversy over the new federal health care law’s birth-control mandate. One can imagine, based on Tuesday’s lengthy hearing at the court on two cases, now known as the Hobby Lobby cases, that Justice Anthony M. Kennedy will be in the majority and that he might wind up being the author for a majority opinion (assuming a divided court, which seems predictable). The reasons that one might focus on him are he was the only one of the Justices who showed some sympathy with both sides of the cases, and he often turns out to hold the deciding vote on a split court. What might Kennedy write? Some answers actually were suggested by his comments and questions on Tuesday. First, and maybe of most importance for the meaning of the Constitution, he probably would want to decide the case not based on the First Amendment, but on the protection for religious rights provided in a 1993 federal law, the Religious Freedom Restoration Act. His very first question was how the court could avoid the tough constitutional question about whether corporations can “exercise” religion in the constitutional sense. The court never before has given profit-making corporations a constitutional right to an exemption from laws that must be obeyed by everyone in the general public, and Kennedy’s first question suggested that he was not ready to do so in these cases. Ruling only on the RFRA issue would be fairly easy to do, since that law extends its protection to “persons,” and Kennedy did show some sympathy for the notion that religiously devout owners do have rights and he might well accept that they use a corporation as an entity – as he put it — to “vindicate the religious rights” of the owners. (On that point, he might well accept the suggestion by Chief Justice John G. Roberts, Jr., that this might be allowed only for corporations that are so tightly held by a small group of owners that they really are not like big, publicly owned companies.) Kennedy also showed sympathy for religiously devout business owners in two other notable ways: He expressed clear hostility to any notion that the government would have power to order a firm to pay for abortions (a point that also showed some sympathy for owners who believe that access to birth control leads to abortion), and he expressed deep reservations about a government agency having the power to decide which institutions – business or otherwise – are entitled to exemptions from laws in order to protect their religious beliefs. At the same time, however, Kennedy was not content for the lawyers on Tuesday to be focusing only on the rights of business owners. He explicitly wanted advice on how the court was to “think about the rights of the employees.” The workers might not share the religious objections that the company’s owners have to birth control, he said, so he wondered if the workers’ interests were “just trumped” by the owners’ beliefs. His tone indicated he was not content with that. But, if Kennedy on the one hand wants to protect the rights of religious devout business owners, and on the other to protect the interests of their female workers, he would face the judicial puzzle of finding a way to do both in these cases. One possibility is to allow the owners to make a claim under RFRA, but then rule that they have not shown that the “contraceptive mandate” fails the test of RFRA for a valid government action toward a religious person or entity. That law only forbids government action that imposes a “substantial burden” on the practice of one’s faith, and only if such a burden is not offset by a “compelling” government interest. The government’s argument for a “compelling interest” in this case is that women workers of child-bearing age very much need access to pregnancy-prevention services. Kennedy did not say anything that suggested he would reject that argument. But he did talk about the other side of the RFRA equation: Does the “contraceptive mandate” actually burden the practice of faith by religiously devout business owners? He joined in a discussion among several Justices over whether the Affordable Care Act (which contains the mandate at issue) gives corporations some choices other than obeying its requirements. And Kennedy said explicitly that, at least from a financial standpoint, it would be “a wash” if the corporations opted out of providing any health care coverage for their workers, and paid a penalty to the government for doing so – a penalty not much greater, if at all, than what they might spend on providing the contraceptive coverage for their workers. Then, according to this scenario, the company would have to raise its workers’ wages in order to keep them or stay competitive in the labor market, and the women workers could then use their higher pay to pay for contraceptive materials or services. Under that kind of a compromise decision, the government would not be mandating the higher wages from a company opting out of health care coverage, but the Court might anticipate that that would be the result. One impression that Kennedy left very strongly on Tuesday was that, as is often true for him, he would rather the Court not stray too far beyond what it has to decide to get a result in the specific dispute up for decision. If a decision raises sequel questions, there will be time enough to reach them when they actually arise. That, of course, was the approach he took last June on the same-sex marriage issue, deciding no more than seemed necessary at the time, but generating a host of follow-up disputes that lower courts confront, in the first instance.

#### Ruling on war powers directly trades off and hurts the Court’s perceived legitimacy – that results in deference on individual rights

Devins and Fitts 97 (Neal, Ernest W. Goodrich Professor of Law and Lecturer in Government – College of William and Mary, and Michael A., Robert G. Fuller, Jr. Professor of Law – University of Pennsylvania, “The Triumph of Timing: Raines v. Byrd and the Modern Supreme Court's Attempt to Control Constitutional Confrontations,” Georgetown Law Journal, November, 86 Geo. L.J. 351, Lexis)

In contrast, the Supreme Court has good reason to steer clear of these cases. Concerns of interbranch harmony matter more to a Court whose influence and reputation do not hinge on the resolution of separation of powers and administrative law disputes. For example**,** to maximize its power to speak the last word on individual rights disputes**,** the Court may find it advantageous to trade off to the elected branches the power to sort out foreign affairs, war powers, and other structural matters. n67 Beyond the Court's particularized interest in individual [\*364] rights, the Supreme Court is far more likely than lower courts to take social and political forces into account. Acknowledging that it can neither appropriate funds nor command the military, the Court recognizes that its power lies "in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary." n68 As psychologists Tom Tyler and Gregory Mitchell observed, the Court seems to believe that "public acceptance of the Court's role as interpreter of the Constitution -- that is, the public belief in the Court's institutional legitimacy -- enhances public acceptance of controversial Court decisions." n69 Throwing itself into the middle of disputes between disappointed lawmakers and either the Congress or the White House opens the Court up to political retaliation and, as such, is a gambit the Court is disinclined to take. n70 The Court in Raines was well aware of these high stakes, acknowledging the "risk[s]" to its "public esteem" by "improperly and unnecessarily" participating in political battles over the separation of powers. n71

#### Economic collapse

McDonough 3/25

(Katie, “What's at stake in the case and why it matters -- regardless of your take on contraception,” pg online @ http://www.salon.com/2014/03/25/4\_things\_you\_need\_to\_know\_about\_the\_hobby\_lobby\_scotus\_case/ //um-ef)

The United States Supreme Court on Tuesday will hear oral arguments in Sebelius v. Hobby Lobby Inc., and what’s at stake should probably scare you — whether or not you use birth control. Hobby Lobby, a for-profit corporation owned by a family of devout Christians, sued the Department of Health and Human Services in September 2012 contending that the contraception mandate of the Affordable Care Act was an unconstitutional violation of its sincerely held religious beliefs. Notice here my use of “its.” No one is contesting that Hobby Lobby founder and CEO David Green and his family are sincere in their religious beliefs (much as many people may disagree with them); the family has demonstrated its faith by closing stores on Sundays, piping in religious music for shoppers to listen to while purchasing macramé supplies and working to build a “Museum of the Bible” in the nation’s capital. But the Greens are not on the hook to provide their 13,000 full-time employees with contraceptive coverage — their privately held corporation is. Because that’s what it means to be incorporated. So the question here is whether the company itself can have sincerely held religious beliefs, and — if the court is willing to recognize corporate religion — whether the contraception mandate places an “undue burden” on those beliefs. While there are outcomes in which the justices may be able to avoid the question of corporate religion (possible punts here and here), that doesn’t change the core argument the plaintiffs (and co-plaintiff Conestoga Wood Specialties Corp.) are advancing in the case: that corporations are people of faith and effectively indistinct from corporate owners and executives. In 2010, the justices granted corporations the same free speech rights as individuals; Hobby Lobby is hoping they will do the same with the free exercise of religion. The case is basically Citizens United — under God. Four things to know as the case heads to the high court: 1. Hobby Lobby built its case on an extreme interpretation of medically refuted pseudo-science. Here’s the thing about the Hobby Lobby challenge to the contraception mandate: The company was already doing 80 percent of what’s legally required before it sued the government in 2012. Hobby Lobby already covered 16 of the 20 methods of contraception mandated under the Affordable Care Act, but it didn’t cover Plan B One-Step, Ella (another brand of emergency contraception) and two forms of intrauterine devices. This is because the owners of Hobby Lobby have incorrectly labeled these methods of birth control and emergency contraception as “abortifacients,” a claim popular among anti-choice ideologues but refuted by scientific evidence and major reproductive health associations. “These medications are there to prevent or delay ovulation,” Dr. Petra Casey, an obstetrician-gynecologist at the Mayo Clinic, told the New York Times in a piece on the science behind emergency contraception. “They don’t act after fertilization.” As the Times noted, there is no credible evidence to support the claim that emergency contraception like Plan B and ella prevent fertilized eggs from implanting in the womb. Instead, the pills delay ovulation and hormonal IUDs thicken cervical mucus to prevent sperm from reaching the egg, meaning that fertilization never even occurs. When used as a form of emergency contraception, the copper IUD can interrupt implantation, but this still does not mean a pregnancy has occurred. There are actual abortion-inducing pills on the market (they are incredibly safe and widely used) — emergency contraception is not one of them. Hobby Lobby is hoping the Supreme Court will swallow pseudo-science as medical fact, which, put politely, requires some serious chutzpah. 2. The Religious Freedom Restoration Act was created to protect the little guy — not corporations. Hobby Lobby has grounded its claim in protections it believes it’s entitled to under the Religious Freedom Restoration Act (RFRA), a law passed in 1993 to protect individuals from having their private rights trampled by the government. A court decision in support of this claim — holding that corporations can have sincerely held religious beliefs — would be a major break with centuries of legal history, and a particularly egregious distortion of RFRA. Congress passed RFRA in response to a 1990 Supreme Court decision that allowed the state of Oregon to deny unemployment benefits to two Native American men who were fired for using peyote — which was illegal in the state at that time — as part of a religious ceremony. The majority opinion in that case was written by Antonin Scalia, who argued that, “To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.” The decision held that a person’s religious beliefs are not sufficient grounds to break laws that are considered “neutral” or generally applicable, but Congress passed RFRA after many religious groups raised concerns that the ruling would infringe on the rights of individuals who belong to minority religion groups. It was supposed to be a safeguard against big entities (the government, for example) stomping all over the rights of individuals. Hobby Lobby is invoking it to do quite the opposite. Seeing the law invoked as a blunt instrument against employees’ rights is a shocking development to many in Congress who backed the bill. “It was never intended as a sword as opposed to a shield,” Democratic Rep. Jerry Nadler, D-N.Y., one of the House architects of RFRA, told Irin Carmon and Adam Serwer at MSNBC. “Once you went into the commercial sector, you couldn’t claim a religious liberty to discriminate against somebody. That never came up. It was completely obvious we weren’t talking about that.” 3. The business community isn’t rooting for Hobby Lobby to win this one. If the Supreme Court sides with Hobby Lobby and agrees that corporations are people with religious convictions, the ruling would basically destroy what’s known as the corporate veil (which means to treat a corporation as a distinct entity from its owners or shareholders) — a precedent that would have far-ranging consequences. Which may explain why corporate America has been unusually quiet about the case. As David H. Gans recently noted at Slate, “Not one Fortune 500 company filed a brief in the case. Apart from a few isolated briefs from companies just like Hobby Lobby and Conestoga Wood, the U.S. business community offered no support for the claim that secular, for-profit corporations are persons that can exercise religion.” The Chamber of Commerce and other groups — which were falling over themselves to file amicus briefs in support of Citizens United — likely recognize that a ruling for the corporate right to the free exercise of religion would cause complete chaos, both in terms of corporate governance and market stability. By treating corporations as the same thing as their owners, a ruling in support of Hobby Lobby wouldn’t just pierce the corporate veil, it would effectively shred it and light it on fire. Which is basically what a group of corporate and criminal law scholars had to say about the issue in a brief filed in opposition to Hobby Lobby: The essence of a corporation is its “separateness” from its shareholders. It is a distinct legal entity, with its own rights and obligations, different from the rights and obligations of its shareholders. This Court has repeatedly recognized this separateness. Shareholders rely on the corporation’s separate existence to shield them from personal liability. When they voluntarily choose to incorporate a business, shareholders cannot then decide to ignore, either directly or indirectly, the distinct legal existence of the corporation when it serves their personal interests. The separateness between shareholders and the corporation that they own (or, in this case, own and control) is essential to promote investment, innovation, job generation, and the orderly conduct of business. This Court should not adopt a standard that chips away at, creates idiosyncratic exceptions to, or calls into question this legal separateness. In the same brief, these experts note how Hobby Lobby is effectively asking to have it both ways — protection from liability and an à la carte menu of individual rights: Hobby Lobby and Conestoga argue that they should be exempt from federal law because of the religious values of their controlling shareholders, while seeking to maintain the benefits of corporate separateness for all other purposes. These corporations have benefited from their separateness in countless ways and their shareholders have been insulated from actual and potential corporate liabilities since inception. Yet now they ask this Court to disregard that separateness in connection with a government regulation applicable solely to the corporate entity. Hobby Lobby and Conestoga want to argue, in effect, that the corporate veil is only a one-way street: its shareholders can get protection from tort or contract liability by standing behind the veil, but the corporation can ask a court to disregard the corporate veil on this occasion. Hobby Lobby and Conestoga cannot have it both ways. 4. Corporate religion will be really bad news for basically everyone who isn’t a business owner with a self-interested ax to grind. Sincere as the Greens may be in their Christian faith, the case they’ve built reeks of political opportunism and the troubling trend of claiming “religious liberty” as a justification to make plain old discrimination the law of the land. As noted above, the company was already complying with most of what’s required by the mandate, and the parts of the law that the Green family doesn’t like are based on total pseudo-science (which has even been rejected by other anti-choice Christians). And Hobby Lobby doesn’t even have the support of the business community — which is usually pretty reliable about coming out on the wrong side of things — on this one. So what gives? As Ian Millhiser at ThinkProgress recently wrote, the Hobby Lobby case — if successfully argued — would effectively make the kind of discrimination conservative lawmakers in Arizona tried to pass with SB 1062 the law. Only a much harder to undo law imposed by justices without term limits and who no one elected. “Denying birth control to your workers because of your own religious objections to it superimposes your own personal beliefs about conscience and faith onto your employees. So does refusing to serve a gay person due to a religious objection to their sexual orientation,” noted Millhiser. “If the Supreme Court winds up holding that one person’s faith can impose itself on another, which is exactly what the plaintiffs in Hobby Lobby and Conestoga Wood want them to do, then all the nightmare scenarios” — rampant anti-LGBTQ discrimination among them — “imagined in the debate over the Arizona bill could become very real.” In fact, such a ruling could provide cover for almost any kind of law corporations don’t want to comply with — as long as it’s cloaked in the language of sincerely held beliefs.

#### Extinction

**Kemp 10**

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The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 1nc advisory dicta cp

#### The Supreme Court should order/rule that individuals captured in the United States should not be indefinitely detained. The Supreme Court should attach dicta to the holding that suggest that the clear statement principle may be used in war powers authority cases.

#### It competes – the CP only creates a legal rule on the facts of the case; the plan generates a broad ruling to create binding precedent. The CP is a suggestion to political branches of how it would interpret future cases, confined in dicta. It solves the aff but preserves the power of other branches

**Katyal, 98 -** Associate Professor of Law, Georgetown University Law Center (on leave 1998); Special Assistant to the Deputy Attorney General, U.S. Department of Justice (Neal, “Judges As Advicegivers” 50 Stan. L. Rev. 1709, July, lexis)

Today's academic debate, waged in spectacular terms over the tension between democracy and judicial review, has obscured the various other roles courts play in our republican government. In addition to striking down legislation as unconstitutional, the judiciary performs a host of other tasks, from settling concrete disputes between parties to interpreting and even making law in areas such as antitrust and federal common law. This article concentrates on one other judicial task - advicegiving. The article claims that the judiciary has used, and should continue to use, a range of interpretive and decisionmaking techniques to give advice to the political branches and state governments.

Advicegiving occurs when judges recommend, but do not mandate, a particular course of action based on a rule or principle in a judicial case or controversy. Despite advicegiving's deployment in cases and controversies, the Court often expresses ambivalence about dispensing advice. Consider the following: the Court delivers "an advisory opinion unnecessary to today's decision" by "deciding an issue that is not in dispute"; n3 the Court should "declare legal principles only in the context of specific factual situations, and ... avoid expounding more than is necessary for the decision of a given case"; n4 the Court "is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied"; n5 and a litigant "cannot upon mere supposition that the Act will be [\*1711] unconstitutionally construed and applied ... obtain an advisory decree that the Act must not be so administered." n6

Despite these declarations, this article argues that the Justices often act to provide advice in their published opinions. Indeed, advicegiving is a natural adaptation in a world in which judges fear deciding issues due to the countermajoritarian difficulty; those jurists who want to avoid interference with legislative power announce narrow holdings, but superimpose broad advice (a form of dicta) by fully explicating the rationale and assumptions behind a decision. The combination of "narrow holding + advicegiving dicta" enjoys a natural advantage over a broad holding in terms of democratic self-rule, flexibility, popular accountability, and adaptability. Many commentators have noticed some aspect of these concepts, most notably in connection with the Bickelian passive virtues and the role of clear statement rules. n7 This article contends that these devices and many others such as Pullman abstention n8 and the political question doctrine can be linked to the advicegiving function.

There are, of course, different types of advice, such as constitutional and statutory advice. There are also different recipients of advice - for example, the political branches, lower courts, litigants, and the public. This article will not attempt to defend advicegiving's use in all situations, nor will it defend advicegiving's use by all courts. Rather, this article will defend a single type of advice within a particular context: constitutional advicegiving by the Supreme Court. n9 It outlines a proactive theory of judging under which the Justices may recommend courses of action to provide advice, clarify constitutional issues, or shine light on particular matters. In this capacity, the Court can provide federal and state governments with ways to avoid constitutional problems and sort out the constitutional issues politically, instead of relegating such questions to the judiciary. The Court, by providing advice, enters into a conversation with the political branches and embraces its partnership. As the only federal officials with life tenure and guaranteed salary, n10 federal [\*1712] judges have structural advantages that enable them to stand above the political fray and provide other officials with a detached, perhaps unpopular, perspective. This article unveils a portrait of the Court that depicts it as guiding the political branches not only through its coarse mechanism of judicial review, but also through its more subtle power of nonbinding counseling.

Examples abound. A court that writes an opinion striking down a law might provide a blueprint of a new law that might be constitutional. n11 A court that is procedurally barred from reaching a constitutional issue in a death penalty case can call out to the state's courts or governor for review of the case for commutation. n12 Or that court might at least make clear that its decision not to hear the case because of a procedural bar is not an endorsement of the execution's constitutionality, thus precluding state officials from hiding behind what they claim to be a legitimization of the execution by the federal courts. Because of a misguided focus on interbranch and intergovernmental autonomy, doctrines of justiciability, abstention, political questions, and the like have been phrased largely in negative terms as doctrines that preserve respect for states and politically accountable branches of the federal government by minimizing the judicial role. But once the advicegiving view is adopted, a space develops for courts to act affirmatively without compromising the power of these other political entities.

#### Solves the aff without binding rules

Deeks 13 (Ashley, Associate Professor of Law – University of Virginia Law School, “The Observer Effect: National Security Litigation, Executive Policy Changes, and Judicial Deference,” Vol. 82, November, <http://fordhamlawreview.org/assets/pdfs/Vol_82/Deeks_November.pdf>)

Legal scholarship lacks a sustained theoretical account of how and why this phenomenon works to influence executive policymaking.9 Courts are not the only audiences for executive policies, and as a result the observer effect is not the executive’s only source of incentives to alter those policies. However, because courts can strike down executive policies, force the executive to comply with specific policies crafted by the courts, and mandate the creation of new policies as a matter of law, courts are a key audience for the executive’s national security policies. As a result, it is important to understand when, how, and why the observer effect works.

The observer effect, however, does more than simply inform why and how the executive changes its national security policies. It also can (and should) inform ongoing descriptive and normative debates about national security deference. Some scholars claim that “in crises, the executive governs nearly alone, at least so far as law is concerned,”10 and that the courts’ monitoring function is broken.11 Scholars are sharply divided about whether that is a good thing or a bad thing. The existence of the observer effect calls into question a key premise of the debate by revealing that the executive does not in fact govern “nearly alone,” at least **when the executive reasonably can** foresee **that a court may step in** to review particular security policies. Yet the way **the observer effect operates allows the executive to preserve and utilize its functional advantages to craft pragmatic security policies,** avoiding **what critics see as the more problematic effects of judicial involvement** in national security decisionmaking.

[Continues to Footnote 9]

9. See Keith E. Whittington, Judicial Checks on the President, in THE OXFORD HANDBOOK OF THE AMERICAN PRESIDENCY 646, 661–62 (George C. Edwards III & William G. Howell eds., 2009) (“Even more intriguing, however, is the possibility of further work examining the executive and how it responds to the courts, or fails to do so. . . . [U]nderstanding how both institutions think about and react to one another will ultimately be essential to understanding the operation of the judicial check. Relatively little is known about how judicial signals are processed within the executive branch and how legal interpretations are made, permeated, and implemented through the executive branch. . . . In short, the judicial check will matter more if the executive branch anticipates it and adjusts its behavior accordingly. Further theoretical and empirical investigation is needed to flesh out whether and under what conditions the executive anticipates judicial action.”); see also Cass R. Sunstein, Reviewing Agency Inaction After Heckler v. Chaney, 52 U. CHI. L. REV. 653, 656 (1985) (“[I]t is important to keep in mind the fact, traditionally overlooked in discussions of judicial review of agency action, that the **availability of review** will often serve as an important constraint on regulators during the decisionmaking process long before review actually comes into play.”).

### 1nc Courts CP

#### The United States Supreme Court should apply apply the clear statement principle to decide that neither the 2001 Authorization to Use Military Force nor the (2012/2013) National Defense Authorization Act entirely establishes authority to indefinitely detain persons captured within the United States.

#### It competes – clear statement principle doesn’t have to be a restriction, it just declares that Congress hasn’t delineated authority – court politics is a net benefit because they issue a ruling that restricts the President

**Erickson-Muschko, 13** - Georgetown University Law Center, J.D. expected 2013 (Sarah, “Beyond Individual Status: The Clear Statement Rule and the Scope of the AUMF Detention Authority in the United States” 101 Geo. L.J. 1399, June, lexis)

The National Defense Authorization Act of 2012 (NDAA 2012) n2 contained a provision explicitly confirming that the Authorization for Use of Military Force (AUMF) n3 includes the authority to hold individuals in indefinite military detention without trial. n4 Congress was unable to agree on whether the provision should apply to U.S. citizens or persons arrested on U.S. territory. n5 The issue was the subject of intense floor debate, and an amendment that would have exempted U.S. citizens from its reach was rejected. n6 Ultimately, in an effort to avoid President Obama's threatened veto, Congress adopted language in the final bill instructing that the provision is not to be construed as "affect[ing] existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are [\*1401] captured or arrested in the United States." n7 However, the Supreme Court in Hamdi v. Rumsfeld had already recognized that the AUMF contained within it the authority to detain as "a fundamental incident of waging war." n8 Read in its entirety, and in light of precedent construing the AUMF, § 1021 of the NDAA 2012 therefore says nothing new. n9

What do "existing law or authorities" say about whether the AUMF authorizes indefinite military detention without trial of individuals captured in the United States? There is a troubling level of ambiguity in all three branches of government on this question. The floor debate accompanying passage of § 1021 of the NDAA 2012 revealed sharp divisions in Congress. n10 The past two administrations have likewise taken vastly different positions. n11 President Obama [\*1402] announced in his signing statement to the NDAA 2012 that his administration would "not authorize the indefinite military detention without trial of American citizens," regardless whether such detention would be permissible under the AUMF. n12 President Bush, in contrast, read the AUMF as authorizing the capture and indefinite detention without trial of anyone, anywhere, whom the President deemed to be a threat--including persons captured on U.S. territory. n13 He exercised such authority on two occasions: in the cases of Ali Saleh Kahlah al-Marri and Jose Padilla. n14 The federal courts that reviewed the resulting habeas petitions were likewise sharply divided over the issue, and the Supreme Court declined to resolve it when it was presented in Rumsfeld v. Padilla? n15

This Note argues that courts should apply the clear statement principle whenever the AUMF--or the NDAA 2012--is invoked to detain individuals arrested in the United States in indefinite military detention without trial, so long as their status as an enemy combatant is in dispute. The clear statement principle serves the purpose of the constitutional avoidance canon. n16 It rests on the principle that "[i]n traditionally sensitive areas . . . the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." n17 Reading § 1021 of the NDAA 2012 and the AUMF broadly would raise serious due process and separation of powers concerns. It would amount to displacing civilian law enforcement with martial law on U.S. territory, thereby circumventing the individual rights and the restraints on government provided for in the Constitution. Supreme Court precedent in cases involving ambiguous wartime statutes raising similar concerns supports the application of a clear statement [\*1403] principle in this context. n18

### CMR

#### No impact – empirics prove

Feaver and Kohn 5 - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new and in fact go back to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

#### Alt causes

Schake 3-6 (Kori Schake, Ph.D., fellow at Stanford University’s Hoover Institution, formerly worked in the Departments of Defense and State, was the director of defense strategy and requirements on the NSC, and held the distinguished chair in international security studies at West Point, “THIS QDR IS A BUDGET DOCUMENT, NOT A STRATEGY DOCUMENT,” War on the Rocks, 3-6-2014, <http://warontherocks.com/2014/03/this-qdr-is-a-budget-document-not-a-strategy-document/>)

Secretary Hagel claims that the fiscal year (FY) 2015 defense budget “matches our strategy to our resources…Our updated defense strategy,” that is. Updated because the Chairman of the Joint Chiefs of Staff memorably said the defense strategy could not be executed if a single dollar was cut from the budget, right before Congress cut about $50 billion of them.¶ The only update in this Quadrennial Defense Review from earlier strategic guidance looks to consist of narrowing the force-sizing demand to defeat a regional adversary while “imposing unacceptable costs” on another. Otherwise it’s all the usual about the world becoming more volatile, global connectedness, building partner capacity, rebalancing to Asia without diminishing effort anywhere else, the need for “exceptional agility” in our forces and efficiencies in the defense effort. There’s lots of talk about innovation, but little evidence of it—the QDR details forces that would be cut if sequestration goes into effect, but does not explore different ways of achieving our defense objectives.¶ Even this updated strategy is, by Hagel’s own admission, unexecutable without $115 billion more than the top line legislated in 2010 (separate from the $26 billion “Opportunity, Growth, and Security Initiative” submitted as a wish list along with the budget itself). That completely negates the $113 billion in cuts that the President’s budget “imposes.” So, they’re actually cutting nothing. The Defense Department has had three budget cycles to bring its spending into line with the law, and—even with an $80 billion annual slush fund of war operations—it has not complied. Hagel says “it would have been irresponsible not to request these additional resources.” That twists the argument: it was irresponsible not to develop a strategy consistent with available resources. This QDR has failed in its fundamental purpose.¶ Perhaps the central issue this QDR should have addressed in detail is where to accept risk as resources become less plentiful: in what areas can we afford to reduce our margin of error, and where would unacceptable dangers be incurred? What missions ought we to stop doing and stop preparing for in order to ensure we are able to meet our highest priorities? Where do redundancies exist that can be eliminated to free up resources? The Department of Defense claimed that the QDR would initiate a serious debate about risk. While the press statements emphasize greater risk in carrying out the strategy, there’s no actual discussion in the QDR about how risk is assessed. The QDR does say we “continue to experience gaps in training and maintenance over the near term and will have a reduced margin of error in dealing with risks of uncertainty,” but does not explain how different choices might aggravate or mitigate those risks. If DOD actually wants a debate about where to accept risk—instead of simply brandishing it as a threat to budget hawks—it will need to establish a metric for evaluating risk.¶ Secretary Hagel claims that the QDR prioritizes America’s highest security interests by focusing on three strategic pillars: defending the homeland against all threats; building security globally by projecting U.S. influence and deterring aggression; and remaining prepared to win decisively against any adversary should deterrence fail.¶ It is difficult to discern how these three fundamental purposes of defense activity constitute priorities—they comprise the entirety of the defense effort. What program or activity could not be justified on their bases? The purpose of priorities is to allow apportionment of resources.¶ And where is the politicking with Congress to gain adoption of this approach? The Hagel budget has zero probability of being adopted by either authorizers or appropriators on the Hill. By neglecting his own fundamental responsibility, which is to be the Department of Defense’s interface with the political processes of governance, Secretary Hagel has set the DOD up for another year of ineffectual bleating by the service chiefs that the end is nigh. It didn’t change a single vote in the past two years of sequestration and absent a serious effort, it won’t change a single vote this year. Where is the private horse-trading and, if need be, public shaming, to get Senator Kelly Ayotte off her hobby horse about the A-10s? Where is the flinty insistence that continuing the galloping pace of military entitlements is creating a hollow force? Where is the orchestration of presidential involvement to raise the political stakes? That ought not be the uniformed military’s job; and in any event, the Obama White House has selected service chiefs who demonstrably cannot deliver that kind of political heft. If Congress is to be cajoled into doing the right things, it needs to be confronted politician-to-politician. That Secretary Hagel sent the third echelon and a press statement to announce this tells us that the administration is going to mail it in, which will result in attaining neither the top line it seeks nor the latitude to implement its priorities.¶ Hagel has failed in the essential work of gaining support for his strategy and his budget among the people with the constitutional responsibility for making it into law. This is not only bad politics, it is bad for civil-military relations because DOD’s civilian leadership is already busy blaming Congress rather than getting on with the business of effectively programming the world’s largest defense budget. The Obama administration is encouraging the uniformed military to attack the legislative branch for any shortfalls of funding they have no right to expect receiving.¶ Secretary Hagel’s press release sternly intones that “it would be dishonest and irresponsible to present a QDR articulating a strategy disconnected from the reality of resource constraints. A strategy must have the resources for its implementation.” This is a welcome acceptance of responsibility, overdue from a department submitting its first budget consistent with the law that has been in force for nearly three years. It would be a lot more persuasive if Hagel had submitted a budget consistent with the top line or had done the hard political work of ensuring legislative support for his priorities. The QDR itself gives the right refutation to DOD’s strategy:¶ …the longer critical decisions are delayed in the hope that budget caps will be raised, the more difficult and painful those decisions will be to implement, and the more damaging they will be to our ability to execute the strategy.¶ Exactly.

#### Civil-military conflict inevitable

#### Davidson 13

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In the 2010 bestselling book, Obama’s Wars, Bob Woodward recounts President Barack Obama’s friction with his military chain of command as he sought options for ending the war in Afghanistan.1 Woodward paints a compelling picture of a frustrated president who felt “boxed in” by his military commanders who were presenting him with only one real option—deploy 40,000 more troops for a comprehensive counterinsurgency strategy and an uncertain timeline. The president and his civilian advisors could not understand why the military seemed incapable of providing scalable options for various goals and outcomes to inform his decision-making. Meanwhile the military was frustrated that their expert advice regarding levels of force required for victory were not being respected (Woodward 2010). Such mutual frustration between civilian leadership and the military is not unique to the Obama administration. In the run-up to the Iraq War in 2002, Secretary of Defense Donald Rumsfeld famously chastised the military for its resistance to altering the invasion plan for Iraq. The military criticized him for tampering with the logistical details and concepts of operations, which they claimed led to the myriad operational failures on the ground (Gordon and Trainor 2006; Ricks 2007; Woodward 2004). Later, faced with spiraling ethnic violence and rising U.S. casualties across Iraq, George W. Bush took the advice of retired four-star General Jack Keane and his think tank colleagues over the formal advice of the Pentagon in his decision to launch the so-called surge in 2007 (Davidson 2010; Feaver 2011; Woodward 2010). A similar dynamic is reflected in previous eras, from John F. Kennedy’s famous debates during the Cuban Missile Crisis (Allison and Zelikow 1999) to Lyndon Johnson’s quest for options to turn the tide in Vietnam (Berman 1983; Burke and Greenstein 1991), and Bill Clinton’s lesser-known frustration with the military over its unwillingness to develop options to counter the growing global inﬂuence of al-Qaeda.2 In each case, exasperated presidents either sought alternatives to their formal military advisors or simply gave up and chose other political battles. Even Abraham Lincoln resorted to simply ﬁring generals until he got one who would fight his way (Cohen 2002). What accounts for this perennial friction between presidents and the military in planning and executing military operations? Theories about civilian control of the military along with theories about presidential decision making provide a useful starting point for this question. While civilian control literature sheds light on the propensity for friction between presidents and the military and how presidents should cope, it does not adequately address the institutional drivers of this friction. Decision-making theories, such as those focused on bureaucratic politics and institutional design (Allison 1969; Halperin 1974; Zegart 2000) motivate us to look inside the relevant black boxes more closely. What unfolds are two very different sets of drivers informing the expectations and perspectives that civilian and military actors each bring to the advising and decisionmaking table. This article suggests that the mutual frustration between civilian leaders and the military begins with cultural factors, which are actually embedded into the uniformed military’s planning system. The military’s doctrine and education reinforce a culture of “military professionalism,” that outlines a set of expectations about the civil-military decision-making process and that defines “best military advice” in very speciﬁc ways. Moreover, the institutionalized military planning system is designed to produce detailed and realistic military plans for execution—and that will ensure “victory”—and is thus ill suited to the rapid production of multiple options desired by presidents. The output of this system, framed on specific concepts and definitions about “ends,” “ways,” “means,” and expectations about who provides what type of planning “guidance,” is out of synch with the expectations of presidents and their civilian advisors, which in turn have been formed from another set of cultural and institutional drivers. Most civilian leaders recognize that there is a principal-agent issue at work, requiring them to rely on military expertise to provide them realistic options during the decision-making process. But, their definition of “options” is framed by a broader set of political objectives and a desire to winnow decisions based, in part, on advice about what various objectives are militarily feasible and at what cost. In short, civilians’ diverse political responsibilities combined with various assumptions about military capabilities and processes, create a set of expectations about how advice should be presented (and how quickly), how options might be defined, and how military force might or might not be employed. These expectations are often considered inappropriate, unrealistic, or irrelevant by the military. Moreover, as discussed below, when civilians do not subscribe to the same “hands off” philosophy regarding civilian control of the military favored by the vast majority of military professionals, the table is set for what the military considers “meddling” and even more friction in the broken dialogue that is the president’s decision-making process. This article identifies three drivers of friction in the civil-military decision-making dialogue and unpacks them from top to bottom as follows: The first, civil-military, is not so much informed by theories of civilian control of the military as it is driven by disagreement among policy makers and military professionals over which model works best. The second set of drivers is institutional, and reflects Graham Allison’s organizational process lens (“model II”). In this case, the “outputs” of the military’s detailed and slow planning process fail to produce the type of options and advice civilians are hoping for. Finally, the third source of friction is cultural, and is in various ways embedded into the first two. Powerful cultural factors lead to certain predispositions by military planners regarding the appropriate use of military force, the best way to employ force to ensure “victory,” and even what constitutes “victory” in the American way of war. These cultural factors have been designed into the planning process in ways that drive certain types of outcomes. That civilians have another set of cultural predispositions about what is appropriate and what “success” means, only adds more fuel to the flame.

#### Policy disagreements don’t spill over --- no turns case

Hansen 9 – Victor Hansen, Associate Professor of Law, New England Law School, Summer 2009, “SYMPOSIUM: LAW, ETHICS, AND THE WAR ON TERROR: ARTICLE: UNDERSTANDING THE ROLE OF MILITARY LAWYERS IN THE WAR ON TERROR: A RESPONSE TO THE PERCEIVED CRISIS IN CIVIL-MILITARY RELATIONS,” South Texas Law Review, 50 S. Tex. L. Rev. 617, p. lexis

According to Sulmasy and Yoo, these conflicts between the military and the Bush Administration are the latest examples of a [\*624] crisis in civilian-military relations. n32 The authors suggest the principle of civilian control of the military must be measured and is potentially violated whenever the military is able to impose its preferred policy outcomes against the wishes of the civilian leaders. n33 They further assert that it is the attitude of at least some members of the military that civilian leaders are temporary office holders to be outlasted and outmaneuvered. n34 If the examples cited by the authors do in fact suggest efforts by members of the military to undermine civilian control over the military, then civilian-military relations may have indeed reached a crisis. Before such a conclusion can be reached, however, a more careful analysis is warranted. We cannot accept at face value the authors' broad assertions that any time a member of the military, whether on active duty or retired, disagrees with the views of a civilian member of the Department of Defense or other member of the executive branch, including the President, that such disagreement or difference of opinion equates to either a tension or a crisis in civil-military relations. Sulmasy and Yoo claim there is heightened tension or perhaps even a crisis in civil-military relations, yet they fail to define what is meant by the principle of civilian control over the military. Instead, the authors make general and rather vague statements suggesting any policy disagreements between members of the military and officials in the executive branch must equate to a challenge by the military against civilian control. n35 However, until we have a clear understanding of the principle of civilian control of the military, we cannot accurately determine whether a crisis in civil-military relations exists. It is to this question that we now turn.

#### Afghanistan will be stable regardless of US presence – Afghan security forces are resilient and can handle a transition

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<http://www.delawareonline.com/story/opinion/columnists/2014/01/06/reasons-for-optimism-on-afghanistan-/4305679/>

From my trips to the region and my former role as a member of the CIA’s external advisory board, I know many U.S. intelligence analysts who focus on Afghanistan. In my experience, they are, without exception, diligent, hardworking, brave and thoughtful. In this case, they also are wrong. Or, to be fairer, a bumper-sticker interpretation of their report that confidently makes fatalistic prognostications about Afghanistan’s future cannot be substantiated. To be sure, there are numerous scenarios under which Afghanistan could falter or even fail in the years ahead. That could mean a possible return to power of the Taliban and its allies, as well as future sanctuaries on Afghan soil for al-Qaida, Lashkar-e-Taiba (the terror organization that carried out the 2008 Mumbai attacks) and other extremists. But there is little reason to consider this the most likely outcome and no basis for confidently predicting it. Given the U.S. national mood of fatigue, doom and gloom toward Afghanistan, this kind of report, however well-intentioned and well-informed, requires rebuttal. It is also worth remembering that, as a breed, intelligence analysts tend toward pessimism because it is far less professionally embarrassing to be pleasantly surprised by developments in a given country than to appear complacent as troubles brew. But premature predictions of failure in some places can be as harmful to the national interest as blind optimism. The case for hopefulness on Afghanistan is built largely on what were probably its three most notable developments of 2013: ? The Afghan army and police held their ground. The number of U.S. troops declined steadily in 2013 and will soon total 34,000, down two-thirds from the peak in 2011. NATO and other international forces have been reduced by a comparable percentage. Last year was the first that Afghan security forces have been in the lead in most operations throughout the country at all times. NATO’s fatality figures, down nearly 75 percent from the peaks of recent years, prove the point. The Taliban made few inroads into major cities and put few major transportation arteries at risk, the occasional spectacular attack notwithstanding. Cities such as Kabul, Kandahar, Mazar-e Sharif, Herat, Jalalabad and Khost are safer today than many Latin American and African cities. No one knows whether Afghan forces, which sustained large losses, can continue to absorb punishment at the same pace. But in broad terms the record has been good so far.

#### Carafono is about a cut and run strategy which is happening because of the lack of a BSA now and Byman is about a troop surge

#### Their evidence isn’t reverse causal- tons of alt causes to Afghan instability and a terrible justice system

Human Right Watch 12 (<http://www.hrw.org/world-report-2012/world-report-2012-afghanistan>)

Rising civilian casualties, increased use of “night raids” by the International Security Assistance Force (ISAF), and abuses by insurgents and government-backed militias widened the impact of the war on ordinary Afghans. Stability was further undermined by a political crisis following parliamentary elections and panic caused by the near-collapse of the country’s largest private bank. The Afghan government continues to give free rein to well-known warlords and human rights abusers as well as corrupt politicians and businesspeople, further eroding public support. And it has done far too little to address longstanding torture and abuse in prisons and widespread violations of women’s rights. In 2011 support grew within the government and with its international partners for a negotiated peace agreement with the Taliban, given waning international willingness to continue combat operations. However, moves toward a peace agreement proved difficult with several false starts, the killing by the Taliban of a key government negotiator, pressure from Pakistan for a key role in the process, and lack of trust and differing priorities among the government and its international partners. The possibility of an agreement raised fears (and, reportedly, re-arming) among non-Pashtun communities, who are concerned about an alliance between the government and the Taliban. It also renewed grave concerns that human rights, especially women’s rights, would be bargained away in the negotiation process. Flawed parliamentary elections in September 2010 led to fallout that, in 2011, threatened to seriously destabilize the country. Following the certification of election results by the Independent Election Commission (IEC), President Hamid Karzai took the unprecedented step of creating a special court to review the results. After street protests in Kabul and eight months during which parliament was immobilized by uncertainty, the special court disqualified 62 members of parliament out of 249 seats. A compromise in September 2011 resulted in nine members of parliament being removed. The Armed Conflict The armed conflict escalated in 2011. The Afghan NGO Security Office (ANSO) reported that opposition attacks increased to 40 a day in the first six months of the year, up 119 percent since 2009 and 42 percent since 2010. ANSO also reported a 73 percent increase since 2010 in attacks against aid workers, which included a fatal mob attack—sparked by the burning of the Koran by an American pastor in Florida—against a United Nations office in the city of Mazar-e-Sharif. Insurgent attacks reached previously secure areas including Parwan and Bamiyan as the war spread to many new parts of the country. Civilian casualties rose again, with the UN Assistance Mission in Afghanistan (UNAMA) recording 1,462 conflict-related civilian deaths in the first six months of the year, a 15 percent increase since 2010. Some 80 percent were attributed to anti-government forces, most commonly caused by improvised explosive devices (IEDs). Most IEDs that the ISAF encounters are victim-activated devices detonated by pressure plates, effectively antipersonnel landmines, which the 1997 Mine Ban Treaty—to which Afghanistan is a party—prohibits. The death of 368 civilians in May was the highest monthly toll since UNAMA began tracking figures in 2007. The use of “night raids” by international forces—nighttime snatch operations against suspected insurgents widely despised by Afghans because of their infringement on family life—increased to a reported 300 per month. While pro-government forces succeeded in reducing the number of civilian deaths directly caused by their operations, more could still be done to protect civilian lives. The NATO mission aimed to train a 134,000-strong police force and 171,600 soldiers by October 2011 to replace foreign forces. But the effort faces serious challenges, including attrition, insurgent infiltration, and illiteracy and substance abuse among recruits. In multiple incidents, trainees attacked and killed their international mentors. One in seven Afghan soldiers, a total of 24,000, deserted in the first six months of the year, twice as many as in 2010.There are concerns that the buildup of the armed forces is moving too fast for necessary training and vetting, and that the size of the force will be financially unsustainable. In an effort to combat insurgency the Afghan government continues to arm and provide money, with little oversight, to militias in the north that have been implicated in killings, rape, and forcible collection of illegal taxes. As part of its exit strategy, the United States is backing “Afghan Local Police” (ALP), village-based defense forces trained and mentored primarily by US Special Forces, which have been created since 2010 in parts of the country with limited police and military presence. In its first year ALP units were implicated—with few consequences for perpetrators—in killings, abductions, illegal raids, and beatings, raising serious questions about government and international efforts to vet, train, and hold these forces accountable. A campaign of assassinations of public figures by the Taliban in the north and the south seeks to destabilize the government. Prominent figures killed included the mayor of Kandahar, Ghulam Haidar Hameedi; a northern police commander, Gen. Daud Daud; and President Karzai’s half-brother, Ahmad Wali Karzai, a key southern powerbroker. Shifting power structures have led to the appointment of individuals implicated in serious human rights abuses, including Matiullah Khan as Uruzgan police chief and Abdur Rezaq Razziq as Kandahar police chief. The Taliban and other insurgent groups continue to target schools, especially those for girls. The Taliban also use children, some as young as eight, as suicide bombers. Detainee Transfers Torture and abuse of detainees in Afghan jails in 2011 led the ISAF to temporarily suspend the transfer of prisoners in eight provinces. Abuses in these jails documented by the UN Assistance Mission in Afghanistan include beatings, application of electric shock, threats of sexual assault, stress positions, removal of toenails, twisting and wrenching of genitals, and hanging detainees by their wrists. Inadequate due process protections for detainees held within the parallel US-administered system and for those prosecuted under Afghan law following US detention also continue to be a serious concern. Violence and Discrimination against Women and Girls Attacks and threats against women continue, frequently focusing on women in public life, school girls, and the staff of girls’ schools. The incarceration of women and girls for “moral crimes” such as running away from home—even when doing so is not prohibited by statutory law—also continues to be a major concern, with an estimated half of the approximately 700 women and girls in jail and prison facing such charges. A government-proposed regulation in 2011 would have prevented NGOs from independently operating shelters for women and jeopardized the existence of Afghanistan’s few existing shelters. Afghanistan at present has 14 shelters, each able to house an average of around 20 to 25 women and their children. This does not meet even a small fraction of the need in a country where an estimated 70 to 80 percent of marriages are forced and 87 percent of women face at least one form of physical, sexual, or psychological violence or forced marriage in their lifetimes. Although the regulation was significantly improved following strong domestic and international criticism, it exemplifies the hostility felt by many parts of Afghan society, including within the government, to women’s autonomy and ability to protect themselves from abuse and forced marriage. Weak Rule of Law and Endemic Corruption Afghanistan’s justice system remains weak and compromised, and a large proportion of the population relies instead on traditional justice mechanisms, and sometimes Taliban courts, for dispute resolution. Human rights abuses are endemic within the traditional justice system, with many practices persisting despite being outlawed. For example Baad, where a family gives a girl to another family as compensation for a wrong, continues even though it is banned by the 2009 Law on Elimination of Violence against Women. Prison overcrowding is extreme and increasing at an alarming rate, with the number of prisoners increasing from 600 in 2001 to 19,000 in 2011. Following the escape of 476 prisoners from Sarposa Prison in Kandahar, the government ordered the transfer of responsibility for prisons from the Ministry of Justice to the Ministry of Interior, despite international concerns that doing so would increase the likelihood of abusive interrogation and lead to gaps in training, management, and oversight. Key International Actors For many international actors, particularly the US, a desire to bow out of what increasingly appears to be an unwinnable war has entirely overshadowed concerns about human rights. Activists’ demands that negotiations with the Taliban not imperil human rights, especially women’s rights, have been met by bland international assurances that any agreement would require the Taliban to commit to respecting the constitution. Such promises are of little use when many in Afghanistan, both government and insurgent supporters, interpret the constitution as elevating religious principles over international human rights obligations. The Taliban has in practice shown no willingness to respect international human rights laws and norms. Internationally supported efforts to promote human rights, civil society, education, rule of law, governance, and access to health care are imperiled by declining international aid. Aid budgets are expected to decline precipitously in 2012. The looming date of 2014 for withdrawal of most international troops—which is advancing against a backdrop of rising civilian casualties particularly from insurgent attacks, increased use of “night raids,” abuses by armed groups, and persistent human rights violations—begs the question of exactly what kind of Afghanistan the troops will be leaving behind.

1ac Szusterman is about nato mechanisms

(Director of the Latin America Programme at the Institute for Statecraft, “Latin America and Learning from NATO’s Experience,” 12/20, http://www.statecraft.org.uk/sites/statecraft.org.uk/files/documents/NATO%20Papers%2011-Latin%20America%20and%20NATO.pdf

However, despite this regional framework for economic cooperation, “democratic governments […] have not established a democratic process of decision‐making, particularly where security issues are concerned.” Furthermore, **the absence of adequate democratic civilian control over the military in several countries of the region could “potentially undermine the consolidation of democracy in Latin America**”. This is exactly the kind of situation where the NATO political mechanisms discussed above could be of assistance. The north of the region is more challenging from a security and democracy perspective. Venezuela and Ecuador remain suspicious of US involvement in Colombia, while at the same time they have not been prepared to help their neighbour with its own internal security problems, allowing FARC guerrillas to establish havens across the borders. These countries too, despite their mistrust of NATO, would have a lot to gain from adopting Alliance mechanisms and processes. Because Mercosur has not addressed the fundamental security issues it is not evolving and growing and may even be in danger of decline. Protectionist trade policies adopted recently by Argentina, and to a lesser extent, by Brazil, have strained relations. Economic integration and increasingly regionalisation, as in seen in the creation of UNASUR – the Union of South American Nations, have added a **new dimension to Argentina’s claim over the Falkland/Malvinas Islands**. Argentina uses the UNASUR annual summit conferences to exert pressure on the United Kingdom to undertake negotiations for the transfer of sovereignty without reference to the wishes of the population of the Islands. But UNASUR also has no adequate political mechanisms on the NATO model to address such security disputes, and is most certainly another worthy candidate for the introduction of such political tools for regional conflict prevention and resolution. New security challenges are a further reason to follow NATO’s example. In the 1960s state weakness justified the need for US military intervention and reinforced the internal security role of local armies, to the detriment of democracy. Today, there is a danger that new security challenges (organised crime, drug trafficking, illegal migration, the spilling of domestic instability across borders) might do the same unless steps are taken to confront these challenges in a different way. Although social violence has deep historical roots in countries like Mexico, Colombia, Brazil and Bolivia, it is relatively new in countries like Argentina and Chile. But it is Central America where the new security challenges related to organised crime are most serious. Experts believe that the transit route for up to 90% of all South American produced cocaine destined for the US market goes through this region. This has turned it, and especially Guatemala, Honduras and El Salvador, into the area with the highest peacetime murder rates in the world. The increase in violence has overwhelmed the police forces in the area, many of them accused of involvement in arms and drug trafficking. **NATO-style political mechanisms are urgently needed to improve the regional security collaboration without which these threats will multiply.**

#### Falklands is from 2011 crisis – no 2014 evidence – pepsi challenge

#### And, Rozoff is from a word prezz website

### SOP

#### No solvency---will just use replace detention w/ drones or rendition

Robert Chesney 11, Charles I. Francis Professor in Law, University of Texas School of Law, “ARTICLE: WHO MAY BE HELD? MILITARY DETENTION THROUGH THE HABEAS LENS”, Boston College Law Review, 52 B.C. L. Rev 769, Lexis

The convergence thesis describes one manner in which law might respond to the cross-cutting pressures associated with the asymmetric warfare phenomenon—i.e., the pressure to reduce false positives (targeting, capture, or detention of the wrong individual) while also ensuring an adequate capacity to neutralize the non-state actors in question. One must bear in mind, however, that detention itself is not the only system of government action that can satisfy that latter interest. Other options exist, including the use of lethal force; the use of rendition to place individuals in detention at the hands of some other state; the use of persuasion to induce some other state to take custody of an individual through its own means; and perhaps also the use of various forms of surveillance to establish a sort of constructive, loose control over a person (though for persons located outside the United States it is unlikely that surveillance could be much more than episodic, and thus any resulting element of “control” may be quite weak).210¶ From the point of view of the individual involved, all but the last of these options are likely to be far worse experiences than U.S.-administered detention. In addition, all but the last are also likely to be far less useful for purposes of intelligence-gathering from the point of view of the U.S. government.211 Nonetheless, these alternatives may grow attractive to the government in circumstances where the detention alternative becomes unduly restricted, yet the pressure for intervention remains. The situation is rather like squeezing a balloon: the result is not to shrink the balloon, but instead to displace the pressure from one side to another, causing the balloon to distend along the unconstrained side. So too here: when one of these coercive powers becomes constrained in new, more restrictive ways, the displaced pressure to incapacitate may simply find expression through one of the alternative mechanisms. On this view it is no surprise that lethal drone strikes have increased dramatically over the past two years, that the Obama administration has refused to foreswear rendition, that in Iraq we have largely (though not entirely) outsourced our detention operations to the Iraqis, and that we now are progressing along the same path in Afghanistan.212¶ Decisions regarding the calibration of a detention system—the¶ management of the convergence process, if you will—thus take place in the shadow of this balloon-squeezing phenomenon. A thorough policy review would take this into account, as should any formal lawmaking process. For the moment, however, our formal law-making process is not directed at the detention-scope question. Instead, clarification and development with respect to the substantive grounds for detention takes place through the lens of habeas corpus litigation.

#### Studies disprove the impact

**Brooks and Wohlforth 8** (Stephen Brooks and William Wohlforth 8, IR @ Dartmouth, World Out of Balance, p. 158-170)

According to the logic of institutionalist theory, the United States thus now faces very significant constraints on its security policy due to the institutional order: the United States must be strongly cooperative across the board to maintain cooperation in those aspects of the order that it favors. As it turns out, the institutionalist argument for why the United States needs to pursue a highly cooperative approach regarding all parts of the institutional order is premised on a particular view of how reputations work. Institutionalist theory rests on the notion that "states carry a general reputation for cooperativeness that determines their attractiveness as a treaty partner both now and in the future. A defection in connection with any agreement will impose reputation costs that affect all current and future agreements."36 Despite the fact that this conception of a general reputation does a huge amount of work within institutionalist theory, the theory's proponents have so far not provided a theoretical justification for this perspective .17 Rather, they have simply assumed this is how reputation works. In the most detailed theoretical analysis of the role that reputation plays within international institutions to date, Downs and Jones argue that there is no theoretical basis for viewing states as having a "a single reputation for cooperation that characterizes its expected reliability in connection with every agreement to which it is a party."" Downs and Jones maintain that it is more compelling to view states as having multiple, or segmented, reputations: "states develop a number of reputations, often quite different, in connection with different regimes and even with different treaties within the same regime."" In other words, there is reason to think that a state's reputation within the security realm cannot be different from the reputation that it has within the economic realm, or, indeed, that a state cannot have varying reputations within different parts of the security realm. As an illustrative example, Downs and Jones note: The United States has one simple reputation for making good on its financial commitments with workers in the UN Office of the Secretary General and another quite different simple reputation with officials of European states in connection with its financial commitments to NATO. Neither group is much concerned with characterizing the reliability of the United Stales in meeting its financial commitments in general. Those inside the Office of the Secretary General are aware of the fact that the United States has paid its NATO bills, and NATO workers know that the United States is behind on its UN dues. However, they design their policies in response to the behavior of the United States in the subset of contexts that is relevant to them.43

#### One ruling doesn’t solve

Rex Glensy, Associate Professor, Drexel University College of Law, 11 [“THE USE OF INTERNATIONAL LAW IN U.S. CONSTITUTIONAL ADJUDICATION,” International Law in U.S. Constitutional Adjudication, Vol. 25, 2011]

The other side of the coin is represented by the consequences for the United¶ States if it decides to forego the increasing judicial conversation that is taking¶ place between courts of different countries. The failure of U.S. courts to¶ engage in this enterprise “weakens Amer¶ ica’s voice as a principled defender of¶ human rights around the world and diminishes America’s moral influence and¶ stature.”¶ 182¶ In fact, because of the raised profile of the United States in the¶ world, its actions are routinely more heavily scrutinized than those of other¶ nations, and any notion of the United States disengaging from international¶ dialogue, or behaving in a manner that is considered inappropriate by the¶ international community, results in a greater diminution of influence than if¶ those same actions were to be performed by another nation.¶ 183¶ This diminution¶ of influence is already beginning to take its course, in large part due to the¶ current Supreme Court’s predominantly regressive jurisprudence that has¶ shown hostility to ideas and authority that originate from abroad.¶ 184¶ Thus, even¶ though historically the Un¶ ited States has provided, through its Constitution,¶ inspiration to many fledgling democracies,¶ 185¶ “the recent direction of United¶ States constitutional jurisprudence has led most constitution-makers to seek¶ alternative models.”¶ 186¶ Unfortunately, the United Stat¶ es is increasingly used by courts of other nations as a “counter-example” because “as a global¶ constitutionalism begins to flourish, this failure to engage [by the United States¶ Supreme Court (in particular)] threat¶ ens increasingly to marginalize the¶ experience of the constantly evolving United States Constitution that was once¶ the inspiration of all constitutionalists.”¶ 187¶ Concerns about the reputation of the United States’s legal system similarly¶ motivate an integration of comparative law within American jurisprudence.¶ Reputation is an important component¶ of a nation’s ability to function on the¶ international stage, and historically, the United States, through its international¶ leadership and its “commitment to the rule of law and to the betterment of the¶ human situation,” obtained a reputation that drew other nations towards¶ adopting its values and outlook.¶ 188¶ But reputation is a characteristic that needs constant feeding, and resting on its past laurels, or worse, showing disinterest¶ or contempt for the international stage,¶ 189¶ will result in long-term damage to¶ the United States’s reputation (which takes a long time to rebuild), with the¶ consequent diminution of its ability to impact other nations.¶ 190¶ By showing¶ willingness to consult legal ideas derive¶ d from international law principles,¶ courts in the United States can go some way towards increasing their clout on¶ the international stage, with the consequent improvement of the United States’s¶ international reputation on the whole. Ultimately, it is in the interest of the¶ United States to do so.¶ Nevertheless, the “pursuit of self-interest is tempered by recognition of the¶ legitimate interests of other players and a desire to encourage reciprocal¶ behavior.”¶ 191¶ That is, because of the assured interaction between the United¶ States (either through its institutions or its citizens) and foreign countries in the¶ future, the United States would want to guarantee itself a modicum of¶ treatment equal to the level of treatment such foreign countries (or their citizens) would receive in the United States.¶ 192¶ Thus, reciprocity, assisted by¶ “transjudicial communication,”¶ 193¶ gives a regime a “longer shelf life”¶ 194¶ as it is¶ helped along by international cooperation (or non-interference) of foreign¶ nations.¶ Many scholars have noted that the current lack of reciprocity (personified¶ by the reticence of U.S. courts to participate in the comparative enterprise) is¶ not going unnoticed in international bodies and foreign countries.¶ 195¶ International judges too have noticed this retrenchment by the U.S. Supreme¶ Court and its failure to cite interna¶ tional sources, particularly from those¶ international tribunals that referred, or used to refer, to the U.S. Supreme¶ Court’s own decisions, thereby noting that (through reciprocity) those same¶ international tribunals are going to rely on the U.S. Supreme Court’s decision¶ with less and less frequency.¶ 196¶ This attitude is exemplified by a Canadian¶ Supreme Court decision preventing the extradition from Canada to the United¶ States of two defendants who faced the death penalty.¶ 197¶ It cited, among other¶ international authorities, Justice Breyer’s dissent in¶ Knight v. Florida¶ in¶ concluding that the death penalty was being phased out.¶ 198¶ The need to provide reciprocal treatment to other nations of the world has¶ been exacerbated by the fact that the world has become more interconnected,¶ and consequently, domestic law and activity increasingly have international consequences, and vice versa.¶ 199¶ As a result of this interconnection, the United¶ States has demonstrated that it holds no reservations to imposing laws and¶ regulations over activities occurring abroad that supposedly have effect within¶ its territory.¶ 200¶ It seems inconsistent to advocate a one-way ratchet approach to¶ the effects of globalization that allows for exports but is resistant to imports,¶ particularly when imports serve the same interests as do the exports. In fact,¶ this excessive nation-centric view of the world, with the premise that any legal¶ thought of any importance can only originate from the United States, seems¶ largely obsolete in the new world order,¶ and has already been rejected by the¶ United States in areas such as international trade.¶ 201¶ Like recent developments¶ in the area of international trade, the use of international law as persuasive¶ authority for domestic cases merely acknowledges today’s global reality and¶ serves the United States by offering reciprocity to other nations, thus¶ enhancing its stature on the international legal stage.

#### Democracy doesn’t cause peace – statistical models are spurious and don’t assume economic growth\*\*\*

Mousseau, 12 (Michael – Professor IR Koç University, “The Democratic Peace Unraveled: It’s the Economy” International Studies Quarterly, p 1-12)

Model 2 presents new knowledge by adding the control for economic type. To capture the dyadic expectation of peace among contract-intensive nations, the variable Contract- intensive EconomyL (CIEL) indicates the value of impersonal contracts in force per capita of the state with the lower level of CIE in the dyad; a high value of this measure indicates both states have contract-intensive economies. As can be seen, the coefficient for CIEL ()0.80) is negative and highly significant. This corroborates that impersonal economy is a highly robust force for peace. The coefficient for DemocracyL is now at zero. There are no other differences between Models 1 and 2, whose samples are identical, and no prior study corroborating the democratic peace has considered contractintensive economy. Therefore, the standard econometric inference to be drawn from Model 2 is the nontrivial result that all prior reports of democracy as a force for peace are probably spurious, since this result is predicted and fully accounted for by economic norms theory. CIEL and DemocracyL correlate only in the moderate range of 0.47 (Pearson’s r), so the insignificance of democracy is not likely to be a statistical artifact of multicollinearity. This is corroborated by the variance inflation factor for DemocracyL in Model 2 of 1.85, which is well below the usual rule-of-thumb indicator of multicollinearity of 10 or more. Nor should readers assume most democratic dyads have both states with impersonal economies: While almost all nations with contract-intensive economies (as indicated with the binary measure for CIE) are democratic (Polity2 > 6) (Singapore is the only long-term exception), more than half—55%—of all democratic nation-years have contract-poor economies. At the dyadic level in this sample, this translates to 80% of democratic dyads (all dyads where DemocracyBinary6 = 1) that have at least one state with a contract-poor economy. In other words, not only does Model 2 show **no evidence of causation from democracy to peace** (as reported in Mousseau 2009), but it also illustrates that this absence of democratic peace includes the vast majority—80%—of democratic dyad-years over the sample period. Nor is it likely that the causal arrow is reversed—with democracy being the ultimate cause of contract-intensive economy and peace. This is because correlations among independent variables are not calculated in the results of multivariate regressions: Coefficients show only the effect of each variable after the potential effects of the others are kept constant at their mean levels. If it was democracy that caused both impersonal economy and peace, then there would be some variance in DemocracyL remaining, after its partial correlation with CIEL is excluded, that links it directly with peace. The positive direction of the coefficient for DemocracyL informs us that no such direct effect exists (Blalock 1979:473–474). Model 3 tests for the effect of DemocracyL if a control is added for mixed-polity dyads, as suggested by Russett (2010:201). As discussed above, to avoid problems of mathematical endogeneity, I adopt the solution used by Mousseau, Orsun and Ungerer (2013) and measure regime difference as proposed by Werner (2000), drawing on the subcomponents of the Polity2 regime measure. As can be seen, the coefficient for Political Distance (1.00) is positive and significant, corroborating that regime mixed dyads do indeed have more militarized conflict than others. Yet, the inclusion of this term has no effect on the results that concern us here: CIEL ()0.85) is now even more robust, and the coefficient for DemocracyL (0.03) is above zero.7 Model 4 replaces the continuous democracy measure with the standard binary one (Polity2 > 6), as suggested by Russett (2010:201), citing Bayer and Bernhard (2010). As can be observed, the coefficient for CIEL ()0.83) remains negative and highly significant, while DemocracyBinary6 (0.63) is in the positive (wrong) direction. As discussed above, analyses of fatal dispute onsets with the far stricter binary measure for democracy (Polity = 10), put forward by Dafoe (2011) in response to Mousseau (2009), yields perfect prediction (as does the prior binary measure Both States CIE), causing quasi-complete separation and inconclusive results. Therefore, Model 5 reports the results with DemocracyBinary10 in analyses of all militarized conflicts, not just fatal ones. As can be seen, the coefficient for DemocracyBinary10 ()0.41), while negative, is not significant. Model 6 reports the results in analyses of fatal disputes with DemocracyL squared (after adding 10), which implies that the likelihood of conflict decreases more quickly toward the high values of DemocracyL. As can be seen, the coefficient for DemocracyL 2 is at zero, further corroborating that even very high levels of democracy do not appear to cause peace in analyses of fatal disputes, once consideration is given to contractintensive economy. Models 3, 4, and 6, which include Political Distance, were repeated (but unreported to save space) with analyses of all militarized interstate disputes, with the democracy coefficients close to zero in every case. Therefore, the conclusions reached by Mousseau (2009) are corroborated even with the most stringent measures of democracy, consideration of institutional distance, and across all specifications: The **democratic peace appears spurious**, with contract-intensive economy being the more likely explanation for both democracy and the democratic peace.

#### Autocratic peace true- DPT isn’t

Erik Gartzke, University of California, and Alex Weisiger 2013, University of Pennsylvania. “Permanent Friends? Dynamic Difference and the Democratic Peace” http://dss.ucsd.edu/~egartzke/publications/gartzke\_weisiger\_isq\_2013.pdf

The “autocratic peace” involves a class of arguments¶ about the conflictual consequences of regime similarity¶ and difference. Theories disagree over whether demo-¶ cratic and autocratic relations are distinct or equivalent.¶ Early studies of the autocratic peace typically focused on¶ certain geographic regions. Despite having little democ-¶ racy, low levels of economic development, arbitrary¶ national borders, and widespread civil conflict, Africa¶ experiences surprisingly little interstate war. Several stud-¶ ies attribute the “African peace” to historical norms and¶ to the strategic behavior of insecure leaders who recog-¶ nize that challenging existing borders invites continental¶ war while encouraging secessionist movements risks reci-¶ procal meddling in the country’s own domestic affairs¶ (Jackson and Rosberg 1982; Herbst 1989, 1990).¶ 6¶ How-¶ ever, these arguments fail to address tensions between¶ individual (state, leader) interests and social goods. The¶ security dilemma implies precisely that leaders act aggres-¶ sively despite lacking revisionist objectives (Jervis 1978).¶ Initial statistical evidence of an autocratic peace¶ emerged in a negative form with the observation that¶ mixed democratic¶ –¶ autocratic dyads are more conflict¶ prone than either jointly democratic or jointly autocratic¶ dyads (Gleditsch and Hegre 1997; Raknerud and Hegre¶ 1997). Studies have sought systematic evidence for or¶ against an autocratic peace. Oren and Hays (1997) evalu-¶ ate several data sets, finding that autocracies are less war¶ prone than democracy¶ –¶ autocracy pairs. Indeed, they find¶ that socialist countries with advanced industrialized econ-¶ omies are more peaceful than democracies. Werner¶ (2000) finds an effect of political similarity that coexists¶ with the widely recognized effect of joint democracy. She¶ attributes the result to shared preferences arising from a¶ reduced likelihood of disputes over domestic politics.¶ Peceny, Beer and Sanchez-Terry (2002) break down the¶ broad category of autocracy into multiple subgroups and¶ find evidence that shared autocratic type (personalistic¶ dictatorships, single-party regimes, or military juntas)¶ reduces conflict, although the observed effects are less¶ pronounced than for joint democracy. Henderson (2002)¶ goes further by arguing that there is no empirically verifi able democratic peace. Instead, political dissimilarity¶ causes conflict. Souva (2004) argues and finds that simi-¶ larity of both political and economic institutions encour-¶ ages peace. In the most sophisticated analysis to date,¶ Bennett (2006) finds a robust autocratic peace, though¶ the effect is smaller than for joint democracy and limited¶ to coherent autocratic regimes. Petersen (2004), in con-¶ trast, uses an alternate categorization of autocracy and¶ finds no support for the claim that similarity prevents or¶ limits conflict. Still, the bulk of evidence suggests that similar polities are associated with relative peace, even¶ among nondemocracies.¶ The autocratic peace poses unique challenges for demo-¶ cratic peace theories. Given that the democratic peace¶ highlights apparently unique characteristics of joint¶ democracy, many explanations are predicated on attributes¶ found only in democratic regimes. An autocratic peace¶ implies that scholars should focus on corollaries or conse-¶ quences of shared regime type, in addition to, or perhaps¶ even instead of democracy. In this context, arguments¶ about democratic norms (Maoz and Russett 1993; Dixon¶ 1994), improved democratic signaling ability (Fearon 1994;¶ Schultz 1998, 1999, 2001), the peculiar incentives imposed¶ on leaders by democratic institutions (Bueno de Mesquita¶ et al. 1999, 2003), and democratic learning (Cederman¶ 2001a) all invite additional scrutiny. While it is theoretically¶ possible that a democratic peace and an autocratic peace¶ could arise from independent causal processes, logical ele-¶ gance and the empirical similarities inherent in shared¶ regime type provide cause to explore theoretical argu-¶ ments that spring from regime similarity in general.¶

#### Iraq instability doesn’t spill over

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To be sure, whether Iraq “succeeds” (i.e., continues on its current trajectory of reduced violence and some degree of political reconciliation) or “fails” (i.e.,returns to widespread sectarian or ethnic violence and instability) will greatly affect the long-term position and prospects of the Iraqi state. But while regional actors are by no means insulated from such developments, regional trend lines are unlikely to shift significantly in response to internal Iraqi outcomes**.** For example, renewed violence in Iraq and massive repression and exclusion of the Sunni minority would no doubt anger Sunni Arab regimes and publics and would undermine Iran’s outreach efforts to the broader region. But Iran’s regional influence does not depend just on its leverage in Iraq, which, even under the best of circumstances, would still face resistance because of Iraqi nationalist sentiment. Even in the event of failure in Iraq, Iran is likely to continue its pursuit of other regional levers of influence that are of greater concern to its Arab neighbors, such as its ties to militant groups fighting Israel, as well as its pursuit of nuclear capabilities. Indeed, such levers would prove valuable to any type of Iranian leadership, but they are certainly valuable to hard-liners, who are attempting to consolidate power after the contested 2009 elections. Or, on the other hand, if the United States successfully withdraws from Iraq, leaving it with some level of stability, its improved regional credibility is not likely to deter regional states from continuing to pursue a hedging strategy with respect to Iran and to diversify extraregional security relationships by developing closer ties to such states as China and Russia.

Although the surge has been credited with restoring a measure of stability to Iraq, tensions had surfaced by mid-2009 regarding the integration of the Majalis al-Sahwa [Awakening Councils], intra Shi‘a power struggles, and the legitimacy of provincial governance. 18 Regional Arab states, particularly in the Gulf, remain fundamentally suspicious of the Maliki government, and promises to open embassies made in mid-2008 have not materialized.

This hesitation suggests deep ambivalence among Iraq’s neighbors about Iraq’s place in the regional order and, in particular, about the prospect of a return to sectarian internecine conflict. Should this happen, however, the trend lines identified in this monograph, particularly in the domestic societal realm, would not significantly change— in many respects, the worst effects of “failure” in Iraq have already been felt in the 2006–2007 time frame, and neighboring states have proven largely resilient. Saudi interlocutors in particular had noted that the kingdom had nearly written of Iraq to Iranian influence and sectarian chaos by late 2006 and were pursuing a policy of containing the state’s implosion up until mid-2008. 19

If internal stability deteriorates, the impetus to intervene would certainly be stronger in the absence of a significant U.S. troop presence, although conventional military intervention is probably remote, with the exception of Turkey. Jordan, Saudi Arabia, Syria, and other Gulf states are likely to pursue a mix of subversion, strategic communication, and the funding of tribal allies and political partners while eschewing conventional military intervention. Much will depend on the trajectory of Iraq’s weakening: he emergence of ungovernable areas outside the central government’s control, viable political opposition movements, smuggling networks, or tribal or sectarian-based militias would be compelling magnets for outside intervention, both through official channels and from actors outside the government’s control.

#### No ME war

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Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, **the region has** also **developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.**

#### Byman from 2006 – obviously doesn’t assume post withdrawal climate

#### All the reasons countries go to war still apply—they don’t solve governance, which is key

Baliga 11—prof of managerial economics and decision sciences at Kellog School of Business, NU. PhD from Harvard—AND—Tomas Sjöström—chaired prof of economics at Rutgers—AND—David O. Lucca—economist with the Federal Reserve Board (Sandeep, Domestic Political Survival and International Conflict: Is Democracy Good for Peace?, The Review of Economic Studies, July 2011, 78;3)

Theoretical and empirical work in economics and political science has investigated the relationship between political systems and war. Jackson and Morelli (2007) formalize the idea that leaders start wars when their preferences are sufficiently biased away from their citizens' preferences. Levy and Razin (2004) provide a theory of the democratic peace based on incomplete information. They assume the representative citizen is less well informed about the benefit of concessions than the leader and show that democratically elected leaders are more likely to reveal information truthfully. In Bueno De Mesquita et al. (1999), political leaders must bribe key supporters to stay in power when foreign policy fails. A dictator has to bribe fewer supporters and is therefore more likely to go to war than a democratically elected leader. On the other hand, in order to avoid being replaced, a leader may “gamble for resurrection” with an aggressive foreign policy (Downs and Rocke, 1994, Bueno De Mesquita and Silverson, 1995, Hess and Orphanides, 1995). Fearon (1994) assumes leaders suffer “audience costs” if they back down during a war of attrition. If audience costs are higher in democracies, then democracies are more committed to a conflict and may be more reluctant to enter into one. Tangeras (2008) assumes that leaders have private information about the probability of winning a war. Democratically elected leaders are more reluctant to start a war because they will lose power if the war ends badly. According to Leeds (1999), democratic leaders are more able to commit to honouring agreements and thus more able to cooperate.

These theories provide underpinnings for the democratic peace hypothesis, but it is not obvious how they can be extended to explain the non-monotonicity we find in the data. For example, a natural extension of Fearon (1994) model would be to assume the audience costs of limited democracies lie between those of dictatorships and full democracies, but this would not produce non-monotonicity. Similarly, if the leader of a limited democracy has less biased preferences than a dictator, then the Jackson and Morelli (2007) model would predict that limited democracies go to war less often than dictatorships.

Our theory incorporates an important feature of Bueno De Mesquita et al. (1999): the support for the leader's action is derived from heterogeneous preferences among the citizens. In our model, leaders of full and limited democracies suffer audience costs (as in Fearon, 1994) if they are dovish when the opposing leader is hawkish; in addition, a leader of a full democracy faces audience costs (from the median voter) if he is hawkish against a dovish opponent; a dictator faces no audience costs at all. The result is a non-monotonic relationship between democracy and peace.

Mansfield and Snyder (2005) argue that increased nationalism can cause conflict during a period of transition when a regime is being democratized. However, in our baseline empirical model, dyads of limited democracies are the most conflict ridden even when controlling for regime transitions (using Mansfield and Snyder's, 2005, transitional dummies). This suggests that limited democracies are not only prone to conflict during periods of transition.

Several articles have investigated the hypothesis that dyads consisting of countries with similar regime types, and thus perhaps “shared values” are relatively peaceful. Peceny, Beer and Sanchez-Terry (2004) classify autocratic regimes as personalist, military and single-party dictatorships and find evidence that dyads consisting of two autocracies of the same type are relatively peaceful. Bennett (2006) analyses plots of conflict probabilities for dyads with different Polity scores. He finds that the hypothesized relationship between similarity and peace holds for dyads with either very high or very low Polity scores, but not in the intermediate range. This is consistent with our finding that dyads of two limited democracies (which have intermediate Polity scores by definition) are relatively conflict prone. However, it is challenging within Bennett's pooled logit specification to formally test for non-monotonicity and to assess robustness within higher-order parametric specifications because the functional form is bidimensional and marginal effects are non-linear functions of explanatory variables. In addition, his specification cannot include dyadic fixed effects. Our dummy variable non-parametric approach has dyad-specific fixed effects, and non-monotonicity can be assessed through simple tests on coefficients. Unlike Bennett's continuous specification, we define limited democracies by cut-off Polity scores, but we verify the robustness of our results by varying the cut-off points.

Other authors have analysed limited democracies along other dimensions and found reasons for why such regimes might experience conflicts. Fearon and Laitin (2003) find that limited democracies are more prone to civil wars, as insurgencies are more likely to succeed in weaker political regimes. Epstein et al. (2006) find that political transitions from limited democracies to other political regimes are harder to explain than political transitions of autocracies and full democracies.

Determining the underlying motives behind conflicts, based on a subjective reading of history, will always leave scope for disagreement. Our theoretical model, building on Baliga and Sjöström (2004), assumes that conflicts can be sparked by fear (“Schelling's dilemma”). Historians have uncovered many examples of such “fear spirals”.3 For example, Thucydides (1.23, p. 49 1972) argued that the Peloponnesian War was caused by “the growth of Athenian power and the fear which this caused in Sparta.” The period that preceded World War I was characterized by mutual distrust and fear (Sontag, 1933, Tuchman, 1962, Wainstein, 1971). A spiral of fear was evident during the Cold War arms race (Leffler, 1992). The India–Pakistan arms race is a current example of escalation fuelled by mutual distrust, and Bobbitt (p. 10 2008) suggests a similar logic will continue to operate in the wars of the twenty-first century: “We think terrorists will attack; so they think we think the terrorists will attack; so they think we shall intervene; so they will attack; so we must.” Nevertheless, there is disagreement about the number of large-scale wars that can be said to have been triggered by fear (see Van Evera, 1999, Reiter, 2000). Reiter (1995) argues that leaders who understand the spiraling logic can prevent conflict by communicating. Baliga and Sjöström (2004) verify that, in theory at least, cheap talk can sometimes prevent a conflict, but it cannot always do so. Our current model assumes that leaders are partly motivated by domestic political concerns and may behave hawkishly in order to maintain political support. Thus, fear is not the only reason for starting a war, and the argument by Reiter (1995) that World War I was not a pure fear spiral is consistent with our model:

Domestic politics in a number of nations set the stage for war, though some …have gone further to argue that Germany sought war … to shore up the threatened domestic political order at home (Reiter, 1995, p. 22).

#### Democratic/autocratic wars—Institutions, norms and security communities ensure conflict

Chris **Dasse 6** Professor of International Relations at the University of Munich. “Democratic Wars Looking at the Dark Side of Democratic Peace” p. 75

This hypothesis postulates a causal relationship between democratic community building, which draws on shared institutions, common values and security cooperation on the one hand, and democratic belligerence vis-à-vis non-democratic states on the other, which is based on non-recognition, exclusion and enmity. A process seems to be at work in international relations that works similarly to the mechanism Charles Tilly described as the state-building process in Europe, in which internal pacification was achieved through external war-making (Tilly, 1975a, 1985). In the international system of today, an analogous mechanism is contributing to democratic community building and the renunciation of violence through coalition warfare and collective conflict management (Cederman, 2001). That means that the very same reasons that generate peaceful relations among democracies also provoke democracies to wage war against non-democracies. If this is the case, it might be helpful to draw on explanations of democratic peace in order to generate hypotheses about ‘democratic war’ and to explain the war-proneness of democracies vis-à-vis nondemocratic states. Throughout this, it is important not to focus on the reasons for the use of force alone but also to look at the way in which military means are applied. For Alexis de Tocqueville observed that changing reasons for war also lead to changing forms of warfare. Therefore, to explain democratic war, Tocqueville seems to be more helpful than Kant. While Kant focuses on the singular decision to go to war, Tocqueville takes the processes into account by which democracies engage in military action. By doing so, he is able to analyse some of the dynamics that create the democratic war puzzle. In his famous book on ‘Democracy in America’ he summarized his findings: ‘There are two things which a democratic people will always find very difficult – to begin a war and to end it’ (Tocqueville, 1840, p. 393). In what follows, I will focus on three reasons why democracies might be peaceful to each other, but abrasive or even bellicose towards nondemocracies. The first reason is an institutional one: domestic institutions 76 Democratic Wars dampen conflicts among democracies but aggravate conflicts between democracies and non-democracies. The second reason is a normative one: shared social values and political ideals prevent wars between democracies but make wars between democracies and non-democracies more likely and savage. The third reason is a structural one: the search for safety encourages democracies to create security communities by renouncing violence among themselves but demands assertiveness against outsiders and the willingness to use military means if enlargement of that community cannot be achieved peacefully. To illustrate this, I will draw mainly on the United States as an example following a Tocquevillean tradition, but knowing that not all democracies behave in the same way or that the US is the only war-fighting democracy. It is clear that the hypotheses are first conjectures and that more case studies and quantitative tests are needed to reach more general conclusions

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#### This just means the executive has the power to act now – not the authority to do it – they have to revoke permission to be topical

**Silverstein, 9** - Fellow in the Program on Law & Public Affairs and a Visiting Assistant Professor in the Woodrow Wilson School of Public Affairs at Princeton (Gordon, Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics, p.211, footnote 1)

This is well explained by Richard Neustadt, who has long distinguished between formal authority and power. As he put it in the 1990 revision and expansion of his 1960 classic on presidential power we should "keep in mind the distinction between two senses in which the word *power* is employed." One sense is when it is used "to refer to formal constitutional, statutory or customary authority," and the other is in the "sense of effective influence on the conduct of others." Neustadt suggests that the word *authority* might be substituted for power in the formal sense, whereas *influence* might be substituted for power in the more informal sense. Richard Neustadt, !and the Modern Presidents, New York: Free Press, 1990, p. 321

#### The constitutional basis for authority requires express constitutional authorization, not an implied power

#### Branum, Associate, Fulbright & Jaworski L.L.P., 2002 (Tara, Journal of Legislation, “President or King? The use and abuse of executive orders in modern-day America,” lexis)

To have the force of law, a presidential directive must have clear statutory or constitutional authority. [318](https://www.lexis.com/research/retrieve?_m=fde990b4dd5e311ea5da539d8f901eae&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAt&_md5=d63235763c20f27cec85b18b6b6372c6&focBudTerms=TITLE%20%28executive%20order%29&focBudSel=all" \l "n318" \t "_self) Where the claim to authority is based on a statute, the inquiry into the legitimacy of the action tends to be fact-specific and may involve a discussion of whether a delegation of authority was appropriate. [319](https://www.lexis.com/research/retrieve?_m=fde990b4dd5e311ea5da539d8f901eae&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAt&_md5=d63235763c20f27cec85b18b6b6372c6&focBudTerms=TITLE%20%28executive%20order%29&focBudSel=all" \l "n319" \t "_self) This type of claim is the most common manner in which presidents tend to justify their actions. [320](https://www.lexis.com/research/retrieve?_m=fde990b4dd5e311ea5da539d8f901eae&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAt&_md5=d63235763c20f27cec85b18b6b6372c6&focBudTerms=TITLE%20%28executive%20order%29&focBudSel=all" \l "n320" \t "_self) However, where the claim to authority is based on the President's constitutional authority, academics differ on the appropriate basis for presidential action. Some assert that a president may only issue presidential directives in accordance with his enumerated powers in Article II of the Constitution. [321](https://www.lexis.com/research/retrieve?_m=fde990b4dd5e311ea5da539d8f901eae&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAt&_md5=d63235763c20f27cec85b18b6b6372c6&focBudTerms=TITLE%20%28executive%20order%29&focBudSel=all" \l "n321" \t "_self) Others claim that action may be taken based on so-called "inherent  [\*66]  powers," "implied powers," or an "aggregate of powers." [322](https://www.lexis.com/research/retrieve?_m=fde990b4dd5e311ea5da539d8f901eae&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAt&_md5=d63235763c20f27cec85b18b6b6372c6&focBudTerms=TITLE%20%28executive%20order%29&focBudSel=all" \l "n322" \t "_self) Despite such assertions that presidential authority may be implied, courts have failed to uphold such a theory and instead require express, not implied, constitutional authority. [323](https://www.lexis.com/research/retrieve?_m=fde990b4dd5e311ea5da539d8f901eae&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAt&_md5=d63235763c20f27cec85b18b6b6372c6&focBudTerms=TITLE%20%28executive%20order%29&focBudSel=all" \l "n323" \t "_self)

#### Violation—judicial review doesn’t remove authority

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Conclusion

The judiciary can perform the critical function of judicial review of cases involving the military **without** unconstitutionally impinging upon the authority of Congress and the President. In matters of policy [\*224] concerning the conduct or preparation of war, courts can cautiously examine the facts to determine the propriety of their review. The greater the nexus to national security and to the conduct of purely military affairs, the greater the hesitancy courts should exercise in their review. In today's military, which is increasingly used for actions other than military operations, the concern with harming good order and discipline is less material.

By interpreting the framers' intent to grant virtually exclusive, plenary control of the military to the Congress, which regulates and maintains the armed forces, and to the President, who is the Commander-in-Chief of the armed forces, the Supreme Court removes the judiciary from the issue of civil-military relations. Entrusting the other two branches of the government to lawfully care for the military results in strengthening the authority of civilian control by two branches of Government but only at the cost of removing civilian control which should be exercised by the courts.

### glennon

#### It’s legit—our ev is highly specific on a core substantive issue—the question of your relation to legal methodology is more important than legalist bandaids themselves

**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

### knox

#### 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

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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

### symptom not cause

#### Al-Marri is a symptom not a cause—proves our ethics framing is slayer versus this aff

Atwood, 9

(Et. Al, Frmr. USAID Administrator, Amicus Brief, Al-Marri v Spagone, Brief of Frmr. US Diplomats, 1/28, http://www.brennancenter.org/sites/default/files/legacy/Justice/20090128.Almarri.v.Sapgone.Amicus.Brief-Former.U.S.Diplomats.pdf)

One hallmark of a dictatorship is the government’s assertion of a right to arrest and indefinitely imprison anyone within its borders, citizen or non-citizen, without criminal trial or charges, and to confine such individuals in harsh and inhumane conditions. Aside from undercutting our ability to exercise moral suasion against such regimes, a decision upholding such a claimed right by the United States Executive will ill-serve our country as we seek to restore our international reputation and to obtain more cooperation from our allies in combating terrorism, in supporting our efforts in the wars in Afghanistan and Iraq, and in dealing with the Israeli-Palestinian conundrum. Our professional experience informs us that the United States faces an international credibility gap resulting from a “do as I say not as I do” foreign policy that placed perceived threats to American security as the paramount ethic above its once venerated respect for freedom from unjustified restraints on liberty. Indeed, in its prosecution of the war on terror, the United States has largely dispensed with its most valuable diplomatic asset – its values – and adopted a duplicitous stance that exempts our country from the same standard to which we expect others to adhere. We have come to believe, in our representation of this country to other nations, that those nations are more willing to accept American leadership and counsel to the extent that they see us as true to the principle of freedom under the law. Yet, the evidence is clear that the world has taken notice of, and reacted negatively to, our government’s increasing willingness to dispense with first principles of individual liberty. The State Department Legal Advisor in the previous Administration has acknowledged Guantanamo’s disastrous impact on our foreign relations, calling it a “huge black eye for the United States – an albatross round our neck.”3 The group Human Rights Watch now lists Petitioner’s detention as an “enemy combatant” in annual reports detailing world-wide human rights abuses.4 The group specifically warns of the increasing danger of U.S. policy in applying war-time powers against its residents and the perilous path upon which the U.S. has embarked. As elaborated in its 2004 World Report: The U.S. Government asserts that its treatment of … al-Marri is sanctioned by the laws of war (also known as international humanitarian law) …. But the U.S. government is **seeking to make the entire world a battlefield in the amorphous, ill-defined, and most likely never ending “war against terrorism**.” By its logic, any individual believed to be affiliated in any way with terrorists can be imprisoned indefinitely …. The laws of war were never intended to undermine the basic rights of persons, whether combatants or civilians, but **the administration’s rereading of the law does just that**.5 Before the House Subcommittee on International Relations, a former Assistant Secretary of State for Democracy, Human Rights and Labor, testified that current U.S. policy detracts from our long term diplomatic goals in that it “needlessly antagoniz[es] our allies …. [and] unwittingly diminish[es] our capacity for exceptional leadership to address the global human rights challenges ahead.”6 Petitioner’s detention is specifically cited as an example of a practice that “encourage[s] other countries to commit similar abuses in the name of fighting terrorism and [as] undermin[ing] our ability to protest when they do.”7 The double standards of the U.S. approach to human rights abroad and at home with regard to Petitioner, as well as Guantanamo, **present an insurmountable challenge to our diplomatic mission. This is so because our most effective diplomatic weapon – our nation’s moral standing – is lost when our government holds itself to a different standard than it would have other countries apply.** Consider that the United States Department of State provides an annual report to the Speaker of the House of Representatives and the Senate Committee on Foreign Relations offering “a full and complete report regarding the status of internationally recognized human rights” for essentially all countries in the world.8 Among the offenses against “internationally recognized human rights” acknowledged and reported by the State Department are instances of “arbitrary arrest or detention” and “denial of fair public trials” – precisely what has happened to the Petitioner here.9 Petitioner has been held without criminal trial or legal justification for nearly eight years. He also alleges that he was held for periods as long as sixteen months incommunicado, when his family was denied access to see him, as were his attorneys. Petitioner further alleges that he was interrogated repeatedly in ways that bordered on torture, including sleep deprivation, painful stress positions, extreme sensory deprivation, and threats of violence or death.10 Compare this treatment with the further State Department report on human rights abuses in Iran, one of the most notorious totalitarian regimes in the world. For Iran, the State Department catalogued as human rights abuses the fact that: Detainees often went weeks or months without charges or trial, frequently were denied prompt contact with family, and often were denied access to legal representation for prolonged periods ….[M]any detainees were held incommunicado …. In practice there was neither a legal time limit for incommunicado detention nor any judicial means to determine the legality of the detention ….11 This same State Department report on human rights abuses for Iran also describes common methods of prisoner abuse “includ[ing] prolonged solitary confinement with sensory deprivation, … long confinement in contorted positions, … [and] threats of execution if individuals refused to confess ….”12 The United States has historically been viewed as a beacon of light for its commitment to a basic tenet of Anglo-American law – that no one may be subjected to indefinite detention without charge, and that the conditions of justified confinement shall be humane. In our professional experience, we have found our commitment to these fundamental precepts of human dignity to be the strongest asset of American diplomacy. The admiration and respect for this nation abroad is a function of our own commitment to liberty under law and we have led the world in this cause. When our nation is perceived as applying these principles selectively, or ignoring them all together, our voice abroad is not only weakened but our adversaries are also emboldened to conduct the very type of treatment against which we have historically rallied. For example, explaining the detention of militants without trial, Malaysia’s law minister said that the practice was “just like the process in Guantanamo Bay.”13 Egypt has also moved to detain human rights campaigners as threats to national security, as have Ivory Coast, Cameroon and Burkina Faso.14 Russia, in its recent campaign in Georgia and brutality in Chechnya, has also heralded the war on terror as its primary justification.

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### mahmud sovereignty link

#### Sovereignty is a western construct that ignores alternative forms of political organization—their legal regimes fail to contain violence and result in violent backlash

Tayyab Mahmud 10, Professor of Law and Director, Center for Global Justice, Seattle University School of Law. ARTICLE: COLONIAL CARTOGRAPHIES, POSTCOLONIAL BORDERS, AND ENDURING FAILURES OF INTERNATIONAL LAW: THE UNENDING WARS ALONG THE AFGHANISTAN-PAKISTAN FRONTIER, 36 Brooklyn J. Int'l L.

During the phase of decolonization, borders became a crucial issue for postcolonial states. In most cases, the inherited borders were in large measure determined by geopolitical, economic, and administrative policies of colonial powers that had occupied these territories. Colonial claims were often carved up with little regard to the coherence of historic, cultural, and ethnic zones. As a result, historical and cultural units were split, and different cultures, religions, languages, identities, and affiliations were enclosed in demarcated territorial units. The connection between a people and their territory, assumed and prescribed by Eurocentric theories of the "nation-state," found no room in these configurations. These inherited colonial demarcations, reinforced by postcolonial states, often provoke challenge and resistance from below by assertions of identity and difference. Power-blocs of postcolonial formations, in an effort to legitimize their new-found hegemony, impose a firm control over the inherited borders to draw "sharper lines between citizens, invested with certain rights and duties, and 'aliens' or 'foreigners.'" n135 The [\*26] result is territorial disputes with adjacent polities and/or suppression of difference within, two intractable issues that quickly become the primary preoccupations of the postcolonial states. The career of the Durand Line is an evocative story of these intractable conflicts and the inability of existing legal regimes to resolve them. III. IMPERIAL GREAT GAMES AND DRAWING OF LINES What the map cuts up, the story cuts across. n136 A. Great Game I: The Genesis of the "Buffer to a Buffer" The Durand Line emerged as an instrumentality in the so-called Great Game, n137 the contest between British colonial expansion in India and eastward colonial expansion of Czarist Russia, one that turned the intermediate region into "a cockpit of international rivalry." n138 During the nineteenth century, issues of frontiers, boundaries, and borders within the Persian Plateau as a geographical unit were contentious. n139 Imperial efforts to fix boundaries of control that conflicted with the practices and experience of native populations for whom frontiers were essentially mobile and porous, compounded these contentions. This mobility and porosity stemmed from the region's location at the junction of historic trade routes between China, India, Central Asia, Persia, and the Arab [\*27] world. n140 The Great Game was a contest, both overt and shadowy, over territory where different imperial orders came into volatile proximity. The conflicts turned on questions of territory, zones of influence, and spatial buffers. The British were unequivocal about their empire's need to have "scientific frontiers" that had to be demarcated under "European pressure and by the intervention of European agents." n141 Lord Curzon, the arch-imperialist and Viceroy of India, proposed a specific recipe for colonial India--a "threefold Frontier." n142 British imperial strategists were mindful of the simultaneous expansion of British and Russian empires in the heartland of Asia. A "frontier of separation" rather than a "frontier of contact" was to be the solution which led to the creation of protectorates, neutral zones, and buffers in between. n143 This policy of a "three-fold frontier" was choreographed and implemented in the northwest of colonial India. The first frontier, at the edge of directly controlled territory, enabled the colonial regime to exercise full authority and impose its legal and political order. The second frontier, just beyond the first, was a zone of indirect rule where colonial domination proceeded through existing institutions of social control. The third frontier was a string of buffer states which, while maintaining formal political autonomy and trappings of statehood, aligned foreign relations with the interests of the British. [\*28] Fig. 2: Contemplated Northwest Frontier of Colonial India n144 The story of the Durand Line shows that colonial map-making simultaneously exhibits "both delusions of grandeur and delusions of engulfment." n145 Historically, the river Indus was seen as the western boundary of India. n146 The region west of the Indus and south of the Oxus river, was home to the dominant ethnic group of the region, the Pashtun, who have a recorded history going well before 500 B.C. n147 Located at the southern [\*29] edge of Central Asia and flanking the Chinese, Persian, and Indian empires, the Pashtun saw different phases of unity and fragmentation, along with Hindu, Buddhist, and Muslim cultural influences. Regional geopolitical maneuverings shaped the formation of the modern state of Afghanistan out of shards of rival tribal fiefdoms, ethnic loyalties, and shifting alliances and allegiances. n148 In 1747, as the Mughal and Persian empires were imploding, Ahmad Khan Durrani, a Pashtun military commander, took control of the region and created an Afghan tribal confederacy dominated by the Pashtuns, as a distinct political entity in the region--giving birth to what came to be called Afghanistan. n149 Given the circumstances of its emergence, Lord Curzon was to call the state "purely accidental." n150 The Durrani dynasty came to an end only in 1974, when Afghanistan became a republic. Just as Afghanistan was emerging as a unified political entity, the British East India Company established political control over the fertile delta [\*30] of Bengal in 1757, and began the process of colonizing India. n151 Over the next century, British colonial rule in India expanded westward. At the time, Russia's sense of its eastern border was "vague and protean, shaped by the constellation of power on its frontiers at any given moment." n152 Imperial Russia started to expand southwards and eastwards through the Caucasus, just when British colonial rule was expanding westward and northward in India. n153 Unavoidably, Central Asia, the zone of confluence of two expanding imperial empires, became the terrain of the Great Game. As the frontlines of two empires approached each other, the Great Game intensified. n154 To check Russia's growing presence in Central Asia in the early nineteenth century, the British aimed to turn Afghanistan into a "buffer state" governed by a compliant ruler. The "three fold frontier," that Curzon was later to articulate, n155 came into play. An internal struggle for the throne of Kabul in the 1830's gave the British their first opening to play kingmakers in Afghanistan. In June 1838, the British signed a secret agreement with Ranjit Singh, the Sikh ruler of Punjab, and Shah Shujah, a claimant to the Kabul throne. n156 In return for their help in putting him in power, Shujah renounced Afghan claims to Kashmir and substantial areas between the Indus river and the Khyber Pass in favor of Ranjit Singh and agreed to become an ally of the British in their struggle with Russia. This agreement triggered what mainstream history styles the First Afghan War, when a 21,000-strong British "Army of the Indus" invaded Afghanistan in 1839 and installed Shujah as the Amir. n157 The license to colonize and dominate granted by contemporaneous international law to the "Great Powers" of the day [\*31] proved useful. However, the initial British success proved short-lived--resistance against the occupation force and their puppet leader broke out, and in 1842 the deposed Amir, Dost Mohammad Kahn, was returned to power, and the British invasion force was decimated. n158 During the subsequent twenty years, the British started to bring the region west of the Indus river under colonial rule. Occupation of the Punjab in 1849, until then an independent state, brought under British control traditionally Afghan areas up to the eastern end of the legendary Khyber Pass that Punjab had annexed before the First Afghan War. n159 In 1857, India erupted in an anti-colonial revolt ignited by a mutiny of the Bengal Army. The revolt proved to be a watershed moment in the history of colonial rule, and led to a reordering of the Punjab as the "sword arm of the Raj." n160 British forces finally suppressed the revolt, and the governance of colonial India passed from the East India Company to the Crown, but "British fears of rebellion, conspiracies, holy wars, and possible foreign provocation" heightened. n161 Through innovative colonial legal regimes, a "military-fiscal state" was turned into a "military state," the Bengal Army was disbanded, and a reconstituted Punjab began to serve as "the military bulwark of the Raj." n162 The British deployed a racist recruiting doctrine known as the "martial race theory," to raise a new "Indian Army," with over half of it recruited from the Punjab, to serve as the "Empire's 'fire brigade.'" n163 This army was to be "the iron fist in the velvet glove of [\*32] Victorian expansionism . . . the major coercive force behind the internationalization of industrial capitalism." n164 As the pace of Russian eastward expansion picked up after the Crimean War (1854-56), the British "became obsessed with the Great Game," and the Punjab as "the garrison province of the Raj . . . [was] reoriented . . . to meet[] the challenge of an external danger." n165 The rapid transformation of the Punjab into a "garrison state" involved novel colonial legal orders of land tenure, revenue extraction, military recruitment, resettlement of indigenous communities, rural social control, and political governance. n166 Colonial social engineering included refashioning of religious affiliations, identities, and practices. n167 To orchestrate this enterprise, a suitable administrative system was fashioned for the Punjab that "in both form and spirit . . . had a strong military flavor." n168 A century later, this reconstruction of the Punjab became the grounds for "Punjabisation of the state" n169 of Pakistan, its praetorian tenor, and the source of its "post-independence propensity towards a military-dominated state." n170 [\*33] British occupation and reordering of the Punjab in the middle of the nineteenth century produced the northwest border problem in the territories to the west of the river Indus that remains a source of conflict to this day. The northwest edge of this region, a great belt of mountains stretching over 1200 miles from Pamir to Persia, was home of scores of Pashtun tribes that had a long history of effective armed resistance against encroachers and of retaining their autonomy from the political orders around them. n171 Fierce resistance by these tribes started as soon as colonial rule came to their vicinity. n172 It was then that the British policy of creating a frontier zone between Afghanistan and colonial directly-administered areas came into force. n173 This so-called "close border" policy, also known as "masterly inactivity," provided that no further westward expansion of direct colonial rule was possible or warranted, and therefore British sovereignty should not be extended to areas and tribes that could not be subdued and governed effectively. n174 First implemented in Baluchistan and later further north, n175 the close border policy created a peculiar frontier zone--a narrow stretch of territory inhabited by Pashtun tribes maintaining their modes of self-governance, dotted with colonial military outposts, absent direct colonial administration, but discouraged from maintaining their traditional political relations with Afghanistan. Foothills at the edge of directly-administered "settled" areas were fortified to keep out the tribes, who, in exchange for monetary subsidies, were to keep access to military outposts open, and, in contravention to their tribal code, were to deny sanctuary to fugitives from the settled areas. n176 The system did not work well. The Pashtun tribes of the frontier zone remained restive, resulting in twenty-three British military operations between 1857 and 1881 to subdue them. n177 A new British policy, initiated by the Disraeli government to build a new strategic line of defense against Russian pressure in Central Asia, led in 1876 to the abandonment of the "close border" policy in favor of the so-called "forward policy." n178 The new policy called for aggressive [\*34] expansion into and control over the frontier regions. Strong points in the tribal belt were to be captured, fortified, garrisoned, and connected with protected roads. This "forward policy," in its extreme, envisaged pushing the boundary as far west as the Hindu Kush mountain range in the middle of Afghanistan, with the Kabul-Ghazni-Kandahar arc forming the first line of defense for colonial India. n179 As the new policy unfolded, British meddling in Afghan and Persian affairs increased. n180 Decisions of a British Commission demarcating the disputed border between Afghanistan and Persia and permanent stationing of British garrisons nearby, heightened Afghan concerns about hostile encirclement. n181 The Afghans made overtures towards the Russians to counter-balance the growing British influence. n182 The result was the Second Afghan War, when, in November 1878, the British launched a three-pronged attack on Afghan territory. n183 The Amir abdicated in favor of his son. n184 The son then ceded control over the Khyber Pass and agreed to become a vassal of the British, who were to control the external relations of his country. n185 After some pacification campaigns around the country, the British troops withdrew from Afghanistan in 1880. n186 One result of the Second Afghan War was the institution of a joint Russo-British commission to determine the border between Russia and Afghanistan, with the latter to serve as a buffer between the two imperial empires. n187 [\*35] Confronted with increasing demands for more concessions by the colonial government of India, in 1892, the Afghan Amir sought to visit Britain to negotiate directly with the British government. n188 The algebra of differentiated sovereignties came into play--British authorities refused his request, forcing him to negotiate with British colonial authorities in India. n189 The Amir yielded to British pressure to delineate Afghanistan's eastern boundary. n190 The British proceeded to "dictate a boundary settlement," n191 signed by the Amir and Henry Mortimer Durand, foreign secretary of British India, on 12 November 1893. n192 This agreement adjusted the "the eastern and southern frontier of His Highness's [the Amir's] dominions, from Wakhan to the Persian border." n193 The result was the Durand Line, which pushed colonial India's border with Afghanistan from the eastern foot of the frontier hills to their crest. n194 Curzon's dream of "scientific frontiers" demarcated under "European pressure and by the intervention of European agents," appeared to be coming true. n195 The Durand Line proved more difficult to delineate on the ground than to draw on paper. n196 Initially surveyed in 1894-5, most of the demarcation was completed by 1896, though the section around the Khyber Pass was only demarcated after the Third Afghan War in 1921. n197 While some [\*36] inaccessible sections remained unmarked, the line created a strategic frontier that "did not correspond to any ethnic or historical boundary." n198 Slicing through tribes, villages, and clans, it "cut the Pukhtoon people in two." n199 The Pashtun tribes resisted attempts at demarcation, including, in some cases, burning down camps of the Boundary Commission. The British response was to station substantial permanent garrisons. n200 The Pashtuns remained restive, with religious leaders often playing leading roles in the insurgencies. n201 In tune with the colonial project of reordering colonized bodies and spaces, in 1901, British authorities severed the "settled areas" of the northwest region under British control from the Punjab to form an evocatively named North-West Frontier Province ("NWFP"), though with a status not on par with other provinces. n202 Control over the tribal belt between the "settled areas" of NWFP and the Durand Line remained with the central government. The belt, now designated Federally Administered Tribal Area ("FATA"), was to serve as a "buffer to a buffer." n203 The legal order of colonial India did not extend to this zone and the tribes on the grounds that "[r]igour is inseparable from the government of such a people. We cannot rein wild horses with silken braids." n204 Tribes were to conduct their internal affairs under their customary norms. However, to supervise matters that touched the security interests of the British, a unique set of rules and procedures, draconian even by colonial standards, were enforced under the Frontier Crimes Regulation. n205 This created yet another "anomalous legal zones" n206 like others that came into existence in many European colonies. In the case of FATA, Pashtun tribes, "though not [] fully-fledged British subject[s] in the legal sense of the [\*37] term, lived within the territorial boundaries of India." n207 To facilitate such territorial arrangements within British colonies, the Parliament had established a process for outlying districts intended "to remove those districts from beyond the pale of the law." n208 Tribes on both sides of the Durand Line continued to disregard it, and incessant tribal resistance prompted successive punitive expeditions. Even the semblance of order broke down with the Third Afghan War of 1919, when Afghanistan declared war, an effort joined by FATA tribes and Pashtun troops who deserted the colonial forces. n209 This short war resulted in Afghanistan regaining control over its foreign affairs. n210 However, the FATA tribes remained restive, and colonial efforts to quell incessant revolts included the first use of aerial bombardment in the history of India, laying waste to the country where local tribes had supported the invasion. n211 The tribes maintained their traditional connections with Afghanistan while negotiating the new FATA dispensation. When the Indian struggle for decolonization gained momentum in the early 20th century, Pashtuns of "settled areas" quickly gravitated towards the movement. n212 The struggle forced the British to take initial steps towards allowing natives to participate in political governance in 1920 under the Montagu-Chelmsford "reforms," which envisaged an "advance towards self-government in stages." n213 The NWFP and FATA, however, were left out of the scheme on the grounds that, as the chief colonial administrator of the region put it, the Pashtuns "w[ere] not ready for ... 'responsible government." n214 In response, Pashtuns gave their anticolonial movement an organized form aimed at braiding "factors of history, geography, culture, and language to transform the relatively back-ward, [\*38] divided, and disorganized Pukhtuns into a national community." n215 This movement, which came to be known as Surkhposh (Red-shirts), expressly adopted non-violence as a foundational principle of social and political action and became politically allied with the Indian National Congress, the spearhead of India's independence movement. n216 When India's anti-colonial struggle escalated into a civil-disobedience movement in the early 1930s, it had "only a marginal effect on the Punjab" thanks to the entrenched administrative, political, and social order in that "garrison province." n217 NWFP, on the other hand, proved receptive to the call, and in 1930 colonial authorities declared martial law in order to quell the civil-disobedience movement and to prevent armed tribes of FATA from making common cause with residents of the settled areas. n218 In 1935, the British enacted the Government of India Act in response to the ascending independence movement in India. n219 This Act provided for increased political participation through an enlarged franchise to elect provincial legislative assemblies with broadened powers. n220 When the first-ever elections took place in NWFP in 1937, the Indian National Congress, the secular nationalist party, won handily and formed the provincial government. n221 Because the 1935 Act was applicable only to provinces, FATA, the "buffer to a buffer," remained outside the ambit of constitutional reforms and the right to vote and representation. n222 The result was a spike in armed resistance in FATA, triggering more campaigns of "'pacification' by British and Indian troops." n223 [\*39] In 1947, "the tectonic plates of South Asian politics shifted abruptly." n224 The British partitioned colonial India into two independent states--India and Pakistan--surgically dividing "Hindi majority" areas from "Muslim majority" ones, substantiating once again the wonderful artificiality of states, n225 and triggering "one of the great human convulsions of history." n226 That Pashtuns, while overwhelmingly Muslim, had consistently voted for the secular Indian National Congress and helped it form the provincial government in NWFP, struck the colonial Viceroy's office, which presided over the religion-based partition, as "a bastard situation." n227 To bring NWFP in line with the designed partition, the colonial authorities bypassed the generally prescribed process of allowing elected representatives of provinces in their respective legislative assemblies to determine the future of the province. A referendum to choose between India and Pakistan was offered instead. n228 Most Pashtuns, including both the "Red Shirts" and the governing political party of the province, boycotted the referendum in protest against NWFP having been made an exception to the prescribed process, and because the substitute process of referendum did not offer a third option, namely, separate independent statehood. n229 This demand for a separate state for the Pashtuns, styled Pashtunistan, emerged as the partition of India became [\*40] inevitable. n230 In the end, NWFP was awarded to Pakistan following a controversial referendum. n231 For FATA tribes, yet another mode to determine their fate was devised. In special tribal jirgas (tribal assemblies) orchestrated by the colonial administrators, hand-picked leaders of the FATA tribes were asked to signify their allegiance to Pakistan and received the assurance that monetary allowances and autonomous status of the tribes would continue undisturbed. n232 Decolonization and the partition of India drew into sharp relief the contested status of the Durand Line, which now became a disputed matter between Afghanistan and Pakistan. n233 As soon as India was partitioned, Afghanistan renewed claims to the area between the Durand Line and the Indus. n234 In 1947, Afghanistan joined the demand for Pashtunistan, opposed Pakistan's admission to the United Nations, and later conditioned its recognition upon granting the right of self determination to the people of NWFP and FATA, who were caught in between. n235 "In 1949, an Afghan loya jirga [(grand tribal assembly) formally] declared the Durand Line invalid." n236 Thus, Pakistan started its postcolonial career as successor to a territorial dispute and with an ambivalent relationship with a section of the population located within its designated territorial bounds. B. Great Game II. The Cold War and the Frontline State The partition of India and inclusion of NWFP and FATA in Pakistan was, in no small measure, connected with the next phase of the Great Game--the Cold War. The British colonial authorities saw the partition of colonial India as offering the possibility to remain in the northwest [\*41] region "for an indefinite period ... [with] British control of the vulnerable North-Western . . . frontiers." n237 The northwest region was envisaged as "the most suitable area from which to conduct the defense" of oil supplies of the Middle East, and "the keystone of the strategic arc of the wide and vulnerable waters of the Indian Ocean." n238 As the importance of oil from the Persian Gulf increased, Western powers called for a "close accord between the States which surround this Muslim lake, an accord underwritten by the Great powers whose interests are engaged." n239 The Western world "went east in search of oil--and found Islam." n240 Pakistan, the only state in the modem world created in the name of Islam, was to now be turned into a frontline state of the Cold War, with the Durand Line to serve as the frontline. After cultivating close military ties with Britain and the U.S., Pakistan formally entered a Mutual Defense Agreement with the US and joined the Central Treaty Organization ("CENTO") in 1954 and the Southeast Asia Treaty Organization ("SEATO") a year later. n241 It is important to note that British military officers retained control of Pakistan's military, now seen as "the kingpin of U.S. interests," n242 for many years after decolonization. n243 Pakistan provided the U.S. with military bases in the NWFP. n244 All this helped Pakistan secure recognition by Britain n245 and [\*42] the U.S. n246 of the Durand Line as a legitimate international border. As Pakistan consolidated its role in the anti-Communist military alliances of the Cold War, Afghanistan drew closer to the Soviet Union, hardened its position about the Durand Line, and again raised the issues of self-determination for the Pashtuns in Pakistan and the formation of Pashtunistan. n247 In December, 1955, the Soviet Union declared support for the Afghan position regarding the Durand Line and Pashtunistan. n248 Pakistan's assumption of the role as a frontline state in the Cold War had a profound impact on the political order within the country. This included ascendency of the military as a political force, derailment of constitutional governance, and centralization of political power in defiance of the federal architecture of the state. This turn to praetorianism had a direct impact on the NWFP and FATA. In 1954, the same year that Pakistan formalized its partisan role in the Cold War, a "gang of four" n249 representing the military-bureaucracy combine overturned the constitutional order in Pakistan, a step validated by a docile judiciary under the doctrine of state necessity. n250 The new order then moved to erase the separate existence of NWFP in 1955, when the bureaucratic-military combine ruling Pakistan amalgamated all four provinces of the western wing of the country into the so-called "One Unit." n251 FATA, however, retained its status as a distinct federally administered zone. Afghanistan reacted sharply to the dissolution of NWFP and accelerated its demand for Pashtunistan, leading to a break in diplomatic relations. n252 Trade blockades and border skirmishes followed. Relations remained seriously strained [\*43] until 1963, when the King of Afghanistan removed his prime minister, Sardar Daud, a Pastun and an ardent advocate of Pashtunistan. n253 In the meantime, strengthened and emboldened by its Cold War alliances, Pakistan's military formally usurped political power by declaring martial law in 1958, a move validated by the courts through a misapplication of Kelsen's theory of revolutionary legality. n254 In 1969, a mass-protest movement forced the removal of Pakistan's military dictator. The new government dissolved the "One Unit" and restored NWFP as a separate province. n255 FATA, however, retained its distinct dispensation. A serious downturn in relations between Afghanistan and Pakistan came in 1973, when Afghanistan declared itself a republic, and Sardar Daud, now its new president, revived the issue of Pashtunistan. n256 Pakistan immediately responded by giving sanctuary to Afghan dissidents and began training and arming disaffected Afghans to destabilize the new Afghan regime. n257 From 1973-77, Pakistan trained an estimated 5,000 Afghan militants and channeled material support to groups inside Afghanistan. n258 This was the beginning of Pakistan's prolonged engagement in training and arming Afghan militants professing the establishment of an "Islamic order." n259 This also ushered in an era when the FATA, the "buffer to a buffer," became the staging ground for Pakistani military's involvement in Afghan militants' operation across the Durand Line with its intelligence agency Inter Services Intelligence ("ISI") taking the lead. n260 It is important to note that this engagement was choreographed by Pakistan's Prime Minister Z. A. Bhutto, a self-professed master of [\*44] geopolitics, who held that "geography continues to remain the most important single factor in the formation of a country's foreign policy . . . . Territorial disputes . . . are the most important of all disputes." n261 This was by no means the first instance of the use of FATA by Pakistan in its military strategies. As early as 1948, Pakistan had used sections of the FATA tribes in its campaigns in Kashmir. n262 The Soviet invasion of Afghanistan in 1979 dramatically accelerated the decline of Afghan-Pakistan relations. During the 1979-84 Afghan "jihad," FATA served as a "launching pad for the mujahidin" and as a "base for their covert operation[s]." n263 The U.S. and Saudi Arabia poured in $ 7.2 billion in covert aid for the jihad, channeled through the ISI, and given primarily to the most radical religious groupings, thus bypassing the moderate Afghan nationalists. n264 The Afghan jihad furnished a justification for the tacit support by Western powers for the consolidation of military dictatorship in Pakistan under General Zia ul-Haq, a development that initiated and entrenched the process of "Islamization" of Pakistan. n265 After the Geneva Accord of 1984 to end the Afghan conflict, and subsequent withdrawal of Soviet forces, Afghanistan plunged into a civil war, with Pakistan and other regional powers supporting different factions. n266 The relative disengagement of the U.S. during this period is now seen by the American policy makers as a "strategic mistake." n267 FATA continued to be used by the ISI and Afghan Islamist groups for their engagements in the Afghan civil war. By now, Pakistan's military had developed the so-called doctrine of "strategic depth" with regards to Afghanistan, because it regarded India to the east as the primary military [\*45] threat to Pakistan's interests. n268 In order to counter India, Pakistan, given its significantly smaller territorial size, sought a compliant Afghanistan on its western border. It was against this backdrop that Pakistan in effect created the Taliban in the early 1990s, a development that dramatically affected the Afghan civil war and, later on, the whole region. n269 Pakistan's military saw continued support for the Taliban as a strategic imperative. n270 Pakistan's desire to open trade routes to former Soviet Central Asian republics contributed to its patronage of the Taliban in Afghanistan. n271 Having helped the Taliban capture power in Afghanistan in 1996, Pakistan was among the handful of states that quickly recognized the new regime, and for some time even paid the salaries of the Taliban administration in Kabul. n272 Pakistan's search for "strategic depth," however, remained elusive. While Afghanistan is a multi-ethnic country, the Taliban were exclusively Pashtuns, who make up over 50% of the country's population. n273 Consequently, Pakistan's patronage notwithstanding, the radical Islamic regime of the Taliban refused to accept the Durand Line as a legitimate international border or to drop Afghan claims over FATA and areas of NWFP east of the Line. n274 [\*46] Taliban's brutal political and social order n275 did not derail global geopolitics of energy supplies, when all neighboring states and many others, including the U.S., started "romancing the Taliban" during a "battle for pipelines" in the late 1990s. n276 By the late twentieth century, global capital and its attendant state machinations had moved well beyond territorial colonialism to neo-imperial modes of exploitation and accumulation. n277 The spatial dimension to the cycle of accumulation, however, remained indispensable. n278 This is particularly true of the geopolitical imperatives of the global energy markets. n279 The break-up of the Soviet Union triggered an intense competition between global oil companies and their sponsoring states, including the U.S. and Pakistan, to extract and transport oil and gas from Central Asia via Afghanistan. n280 In immediate contention were two plans for alternative gas pipelines from Turkmenistan to run through Afghanistan: one would go to Pakistan, and the other would go to Iran and Turkey with a possible link to Europe. Alternatives to transport oil from Kazakhstan via the Caspian Sea further complicated the picture. n281 The events of September 11, 2001, dramatically transformed the geopolitical profile of the region. The very next day the U.S. demanded that Pakistan stop terrorist operatives in its border areas or "be prepared to be bombed back to the Stone Age." n282 Pakistan made its decision "swiftly . . . [\*47] [and] agreed to all . . . demands," n283 also making available airbases and transit facilities for supplies for U.S. forces in Afghanistan. n284 However, Pakistan's military continued its special relations with the Taliban across the Durand Line in Afghanistan. When the U.S. launched its attack on Afghanistan, the Taliban "escaped in droves into Pakistan, where they melted into their fellow tribesmen in the FATA." n285 After the now infamous "battle of Tora Bora," n286 Pakistani authorities "looked the other way as foreign fighters crossed over to the Pakistani side and many in the ISI arranged safe passage[s]." n287 In collaboration with ISI, the borderlands became a "safe haven for the Taliban and other insurgent and terrorist elements." n288 FATA, long a sanctuary for fugitives from state law, n289 now became a sanctuary and staging ground for Afghan militants resisting the U.S.-led war effort in Afghanistan. n290 As Pakistan's active support of U.S. war efforts increased, Afghan militants made common cause with religious militants among the Pashtun tribes of FATA. n291 Pakistan's military, designed for conventional warfare on its eastern border with India, was "ill-prepared to tackle this new kind of . . . conflict that slipped across its western border." n292 As a result, Pakistan vacillated between military operations against the militants and peace deals with them. n293 In the meantime, militants started to extend their area of influence beyond FATA, the "buffer to a buffer," into [\*48] NWFP and beyond. n294 In the midst of all this, Pakistan stood firm that the Durand Line be recognized and respected as an international border, while its military considered Afghanistan "within Pakistan's security perimeter." n295 On the other hand, Afghanistan continued to reject the Durand Line because "it has raised a wall between the two brothers." n296 This story of the Durand Line is a more than century-long saga of predatory colonialism, postcolonial insecurities, and incessant conflict. This is a tale of colonial cartography bequeathed to a postcolonial formation, bringing in its wake bitter fruits of oppression, violence, and war. This leads to the broader questions of the challenges colonial borders present to postcolonial states and the role of international law. IV. COLONIAL BORDERS AND POSTCOLONIAL INSECURITIES Every established order tends to produce . . . the naturalization of its own arbitrariness. n297 A. Inherited Borders and Postcolonial State-nations Forged on the anvil of modern European history and enshrined in modern international law, modern statehood and sovereignty are deemed the preserve of differentiated "nations" existing within exclusive and defined territories. While "the struggle to produce citizens out of recalcitrant people accounts for much of what passes for history in modern times," n298 the prototype of the "nation-state" combines a singular national [\*49] identity with state sovereignty, understood as the territorial organization of unshared political authority. "The territoriality of the nation-state" seeks to "impose supreme epistemic control in creating the citizen-subject out of the individual." n299 "Inventing boundaries" n300 and "imagining communities" n301 work together "to naturalize the fiction of citizenship." n302 Modem international law underscores this schema. It extends recognition only to the national form, with acceptance attached to the ability to hold territory in tune with "Western patterns of political organization." n303 As a result, the "nation-state" is the dominant model of organized sovereignty today. This spatially bounded construct, one that frames both the geography of actualizing self-determination and the order of the resulting political unit, put in circulation a "territorialist epistemology." n304 Postcolonial formations had to subscribe to this Eurocentric grammar of state-formation to secure eligibility in the inter-state legal order. n305 This statist frame precludes imaginative flowerings of self-determination in tune with the interests and aspirations of diverse communities both within and beyond received colonial boundaries. Across the global South, colonial demarcations of zones of control and influence left in their wake political units lacking correspondence between [\*50] their territorial frame and the cohesion of culture and political identity. n306 The colonial demarcations, with little regard for the history, culture, or geography of the region, often split cultural units or placed divergent cultural identities within a common boundary. n307 As a consequence, the crisis of the postcolonial state stems from its artificial boundaries and the specter of the colonial still haunt the postcolonial nation. n308 The "retrospective illusion" n309 of nationalism remains "suspended forever in the space between the ex-colony and not-yet-nation." n310 Decolonization movements and postcolonial states adopted and retained the construct [\*51] of a territorially bound "nation-state" even as they attempted to imagine the "nation" at variance from its European iterations. n311 Imprisoned in inherited colonial territorial cartographies, postcolonial formations inverted this grammar to produce state-nations. While conventional understanding assumes a preexisting nation that subsequently forms a state, post-colonial formations start with a territorial state that aims to constitute a homogenized nation. Building state-nations generates conflicts about minorities, ethnicities, ethno-nationalism, separatism, and sub-state nationalism. "[T]he nation dreads dissent" n312 and "the nation-state's limits implicate its geographic peripheries as central to its self-fashioning." n313 In the process, a co-constitutive role of "nation and ethnicity" develops as a "productive and dialectical dyad." n314 It is by the construction of ethnicity as a "problem" that the "nation" becomes the resolution and the state incarnates itself as the authoritative problem solver. In this way often "the very micropolitics of producing the nation are responsible for its unmaking or unraveling." n315 Incessant rhetoric of endangerment and discursive production of threats to the nation render "nation-building" a coercive enterprise and facilitate the overdevelopment of the coercive apparatuses of the state. n316 While inherited boundaries represent the postcolonial state-nation's "geo-body," n317 cultural and ethnic heterogeneity within induces "geopiety." n318 It is no surprise, then, that most postcolonial states have as their raison d'etre the production, maintenance, and reproduction of the discourses and apparatuses of national security. n319 The career of Pakistan as [\*52] a postcolonial state circumscribed within an inherited territorial frame substantiates this political grammar. Fig 3. Major Ethno-Linguistic Groups of Pakistan in relation to international boundaries of the region n320 Pakistan, hailed as "the triumph of ideology over geography," n321 is literally caught and exists between lines drawn by colonial powers--the Durand Line (1893) in the northwest, the Goldsmid Line (1872) to the west, the Radcliffe Line (1947) in the east, and the MacMahon Line (1904) to the north. n322 For good measure, in the northeast, a Line of Control, [\*53] "a sequence of ellipses" "[d]rawn and redrawn by battles and treaties . . . identifiable by traces of blood, bullets, watchtowers, and ghost settlements left from recurring wars," n323 provisionally divides Kashmir into areas held by India and Pakistan. n324 The "state-building" and "nation-building" saga that unfolded between these lines since 1947 has produced what is variously characterized as the "viceregal system," n325 the "overdeveloped state," n326 the "hyper-extended state," n327 and the "praetorian" state. n328 In efforts to constitute a state-nation, coercion always outweighed persuasion in claims of domination, in tune with a political grammar set in place by colonial rule. n329 The project of "conjuring Pakistan," n330 that would envelop ethnic, linguistic, and cultural differences within inherited borders, necessitated deployment of "security as hegemony." n331 Festering territorial disputes with neighboring states furnished the primary justification for the military to consume a disproportionate [\*54] share of resources and to play a leading ideological and political role. n332 Denial of representation, suppression of federalism, and destruction of alterity are the hallmarks of the state since its inception. As successor to the colonial "garrison state" in the Punjab, a Punjab-centered military-bureaucracy oligarchy retains a dominant position in the ruling bloc. n333 Denial of equal citizenship to the people of the provinces of Balochistan, East Bengal, NWFP, and Sind--even when they constituted the majority of the population--remains a defining feature of the state. Dissent and resistance were squelched by unbridled state violence, including repeated military actions--the most infamous being the one in 1971 that prompted the eastern wing of Pakistan to break off and establish a separate state of Bangladesh. n334 Phases of coups d'etat, martial laws, abrogation of constitutions, and declarations of emergency rule constitute the "constitutional" history of the country. A docile judiciary serially deployed doctrines of "state necessity," "revolutionary legality," "constitutional deviation," and de facto power to furnish legitimacy to repressive orders. n335 In building a postcolonial state-nation, the FATA, the colonial "buffer to a buffer," retained its special status--approximating spaces of exception as invoked by Giorgio Agamben. n336 Today, FATA is "a Massachusetts-sized [\*55] wedge between Afghanistan and NWFP of Pakistan," with a population of about 4 million, "virtually all of whom are Pashtuns." n337 Since 1901, this zone has been governed by a unique colonial-era administrative and judicial order--an indirect rule that combines modern technologies of power with instrumental use of customary norms and traditional power structures. n338 The colonial design aimed to govern through selected tribal notables who would be loyal to the British in exchange for fixed monetary allowances. No taxes would be levied on the tribes, who would be left alone to manage their internal affairs through the customary Pakhtunwali code in their tribal jirgas, which has been characterized as "probably the closest thing to Athenian democracy that has existed since the original." n339 However, any matter that implicated the security [\*56] interests of colonial authorities was to be handled by a parallel system--a hybrid construct that retains the name jirga, but empties it of any semblance to "Athenian democracy" to make room for a process and a set of sanctions designed for harsh control and violent discipline to facilitate external domination. n340 This system took the shape of the Frontier Crimes Regulation ("FCR"), originally formulated in 1858, and amended in 1872 and 1901, turning FATA into a constitutional and legal anomaly. n341 Decolonization did not bring any change. Since 1947, FATA is formally a part of Pakistan. n342 However FCR remains entrenched, and sets the FATA tribes apart from and unequal to other citizens of the country. n343 To enable this state and space of exception, Pakistan's constitution reposes all executive and legislative authority for FATA in the President of Pakistan, who is given the authority to exercise his powers regarding FATA "as he may deem necessary." n344 Parliamentary enactments do not apply to FATA, unless the President so directs. n345 FATA is placed outside the jurisdiction of the Supreme Court and High Courts that otherwise have extensive powers to guarantee fundamental rights. n346 The Supreme [\*57] Court has recognized these "special provisions" for the area "so that their inhabitants are governed by laws and customs with which they are familiar and which suit their genius." n347 The FATA itself stands divided into 7 administrative units styled "agencies." An evocatively titled "Political Agent" ("PA"), appointed in each agency by the federal government and backed by a para-military militia, is the locus of Pakistan's authority. Besides exercising extensive executive, judicial, and revenue powers, the PA is also each agency's development administrator. n348 He is assisted by maliks, paid intermediaries from among tribal elders, who are appointed and removed at his discretion. n349 Maintenance of order and suppression of crime are deemed the PA's primary responsibilities. n350 The PA is authorized to dispose of any civil or criminal matter at his discretion. n351 The PA may decide the matter himself, or refer it to a tribal jirga, consisting of tribal maliks chosen by the PA. The PA initiates cases, appoints the jirga, presides over trials, and the final decision is subject to his discretion. n352 The jirga is supposed to decide the matter under FCR, supplemented by customary tribal norms. n353 The PA retains the discretion to sentence the accused as determined by the jirga, refer the matter back to the jirga, or appoint a new jirga. n354 The determinations of the PA are not subject to review by any court of law. n355 The process is that of an inquiry rather than presentation [\*58] of evidence and cross examination. Assistance of counsel is prohibited. n356 Draconian sanctions under the FCR, executed at the discretion of the PA, include: detention and imprisonment to prevent crime or sedition; requiring "a person to execute a bond for good behavior or for keeping the peace;" expulsion from the agency of "dangerous fanatics" and those involved in blood feuds; removal or prevention of settlements close to the border; demolition of buildings used for "criminal purposes;" collective punishment of fines and blockade; and the "right to cause the death of a person" on suspicion of intent to use arms to evade arrest. n357 The federal agency charged with overseeing FATA considers FCR an "effective 'iron-hand'" whose withdrawal would create an "administrative vacuum." n358 In 1962, under a design of limited franchise, an electoral college of 35,000 tribal maliks, appointed by the PA, selected representatives to the national parliament. n359 In 1996, direct election of representatives was introduced, though "politics and political parties are curse words in official circles." n360 Because the law prohibits political parties from extending their activities in FATA, only "non-party/independent" representatives can be elected. This makes for a unique political anomaly: FATA residents elect representatives to a legislature whose legislation does not extend to FATA. FATA also suffers from abysmal levels of poverty, illiteracy, and lack of health care. n361 Analysts find FATA "a virtual prison for public-spirited and reform-minded individuals. Dissenting voices are quickly dubbed anti-state and silenced by imprisonment." n362 State functionaries, however, claim that the system in place for over a hundred years "suits the genius of the people and has stood the test of time." n363 It is more appropriate to characterize FATA as a zone where bodies and [\*59] spaces are placed on the other side of universality, a "moral and legal no man's land, where universality finds its spatial limits." n364 FATA, admittedly an extreme case, is symptomatic of the problem of reconciling territorial straitjackets with the principle of self-determination. n365 For the territorial state, self-determination has always been a concept "loaded with dynamite." n366 In postcolonial formations, its explosive potential increases. The primary problem is not how to determine identities and desires of a people eligible for self-determination; n367 the problem, rather, is how to reconcile realization of this right with existing territorial configurations. The unresolved questions surrounding the Durand Line, FATA, and Pashtun political identity persist because their resolution is sought within a territorial "nation-state." Nesiah terms the imprisonment of postcolonial polities within modern territorial constructs of statehood "failures of the imagination." n368 A major hurdle in breaking free of this imprisonment is international law itself. B. International Law and the Territorial Straitjacket For many a postcolonial "contrived state" n369 the crisis of identity and security "lies in its 'artificiality."' n370 International law enforces the territorially-bound grammar of the "nation-state" upon postcolonial formations plagued by cartographicc anxiety inscribed into [their] very genetic code," n371 through the doctrine of uti possidetis. Based on a maxim of Roman law, the doctrine of uti possidetis ita possidetis (as you possess, so you possess), treats the acquisition and possession of a state's territory as given, with no territorial adjustments allowable without the consent of the currently occupying parties. n372 Applied to international [\*60] borders, it favors actual possession irrespective of how it was achieved, assumes that valid title belongs to current possessor, and does not seek to differentiate between the de facto and de jure possession. n373 By recognizing legitimate title to de facto territorial holdings, it becomes an instrument to maintain the status quo and impedes imaginative resolutions of territorial conflicts. The doctrine of uti possidetis was formulated in connection with colonialism in Latin America in the early nineteenth century when Spanish colonies agreed to apply the principle both in their frontier disputes with each other and in those with Brazil. n374 During the decolonization era of the twentieth century, this norm was extended to the withdrawal of colonial powers from Asia and Africa. n375 The principle mandated that "new States . . . come to independence with the same borders that they had when they were administrative units within the territory or territories of one colonial power." n376 This froze colonial boundaries and presented a challenge to postcolonial formations to imagine and manage a "nation" and "national identity" in the heterogeneity contained within inherited boundaries. n377 In some instances, particularly in Africa, this attempt failed completely and ended in genocide and/or fracturing of the state. n378 [\*61] The ICJ n379 and international tribunals n380 were quick to put their imprimatur on the doctrine of uti possidetis and its application to postcolonial states. The ICJ has designated it "a general principle, which is logically connected with the phenomenon of [] obtaining [] independence, wherever it occurs." n381 The ICJ went on to state that "[i]ts obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power." n382 The bottom line is that through "application of the principle of uti possidetis," colonial "administrative boundaries" are "upgraded" and "transformed into international frontiers in the full sense of the term." n383 The ICJ acknowledged that by giving fixity and legitimacy to colonial boundaries, the principle uti possidetis "at first sight . . . conflicts outright with another one, the right of peoples to self-determination." n384 In [\*62] the face of this dilemma, the ICJ fell back on pragmatism to claim that "maintenance of the territorial status quo" is essential to "preserve what has been achieved by peoples who have struggled for their independence." n385 The Court sought support for this claim with a gesture toward the practice of post-colonial states: [t]he essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self-determination. n386 Here Nesiah rightly sees a "double bind" infecting the Court as it is committed to decolonization but "[t]erritorial integrity emerges here as a statist spatial representation intelligible to international law, and posited as indispensable to the self-determination of the postcolony." n387 As the saga of the Durand Line shows, colonial frontiers, boundaries, and borders fluctuated over time. This raises the question of the exact territorial bounds of postcolonial states. The ICJ injected an unequivocal temporal cut-off in this historically ambivalent temporal and spatial issue, by holding that: [U]ti possidetis--applies to the new State (as a State) not with retroactive effect, but immediately and from that moment onwards. It applies to the State as it is, i.e., to the photograph of the territorial situation then existing. The principle of uti posidetis freezes the territorial title; it stops the clock but does not put back the hands. n388 As fashioned by the ICJ: [\*63] the critical date as a legal concept posits that there is a certain moment at which the rights of the parties crystallize, so that acts after that date cannot alter the legal position. It is a moment which is more decisive than any other for the purpose of the formulation of the rights of the parties in question. n389 This freeze-framing of boundaries on the date of decolonization by one definitive gesture renders the issue of the history of these boundaries moot. The rationale appears to be that "freezing the carved-up territory in the format it exhibited at the moment of independence" n390 will deter territorial disputes among post-colonial states. Pervasive postcolonial territorial and self-determination conflicts, however, reveal that such a mandated spatial fixity and temporal clarity of boundaries does not keep these conflicts in check. n391 Uti posidetis combined with critical date as a legal concept trumps conflicting post-colonial assertion and exercise of effective authority as grounds for sovereign title under the doctrine of effectivites. n392 Post-colonial effectivities has significance only if colonial practice fails to furnish definitive demarcation and thus trigger application of uti posseditis. n393 The concern with order has been central to modern international law. n394 Decolonization, coming on the heels of two World Wars, raised the specter [\*64] of disorder. As a result, the norm of self-determination gave way to the caveat of order. n395 Order trumped self-determination, deemed a concept "loaded with dynamite," n396 and the transition from colonialism to postcoloniality proceeded with the basic requirement that external boundaries remain in place. Managers of postcolonial formations were equally quick to subscribe to the doctrine, and international bodies like the United Nations were quick to give their imprimatur. The same 1960 UN resolution that affirmed that "[a]ll peoples have the right of self-determination," also declared that "[a]ny attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." n397 As a way out of this contradiction, the United Nations contemplates the possibility of non-state modes of actualizing self-determination, by holding that "[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination." n398 This contradiction points to the Janus-faced nature of the right of self-determination in a system of states with fixed and inviolable territorial bounds. The right has a "justifying, stabilizing, conserving effect and it has a criticizing, subversive, revolutionizing one." n399 International law and the practice of states have been content with the justifying, stabilizing, and conserving effect. n400 This bias in favor of existing states is augmented by a doctrinal lacuna, with profound political implications, that remains at the heart of the uti possidetis doctrine as reformulated by modem international law and endorsed by the ICJ. In jus civil, rightful title via de facto possession could only be acquired by a prescriptive claim of usucapio established in good [\*65] faith. n401 Furthermore, in Roman law, uti possidetis is deemed an interim measure in contested vindication proceedings to determine title. n402 A critical restrictive qualifier, nec vi, nec clam, nec precario (without force, without secrecy, without permission), limits the scope of the doctrine. Possession would ripen into good title only if possession did not run afoul of the limitations. Modern international law conveniently elides this critical limitation, perhaps because given the colonial modes of acquisition of territory, colonial boundaries run afoul of it. n403 This gloss over the spatial history of colonialism, now bequeathed to post-colonial formations, by treating de facto control as rightful title is a foundational reworking of the original construct. n404

### AT: Neolib Inev

#### Their ev is about globalization, not neolib—that distinction’s key because trade can occur on many different terms and the fact that neolib as a US practice of privatizing gain while externalizing public cost is a fairly recent phenomenon—and the instrumental role of the US in exporting that means you should be highly skeptical of their myopic tone of their ev.

#### Their assumptions are wrong—economic subjectivity is malleable which proves at worst it’s a method question

Joanne Swaffield 12, Professor of Economics at The University of York, 2012, “Can ‘climate champions’ save the planet? A critical reflection on neoliberal social change,” Environmental Politics, Vol. 21, No. 2, p. 248-267

We believe that the difference between the way that climate champions conceive of other people's motivations and their own motivations is potentially important. In a recent paper, Walker et al. (2010) have argued that ‘imaginaries of the public' can influence policy- and decision-making in the renewable energy sector. Their research indicates that decisions (e.g. about technology, siting and public engagement) are influenced by the ways in which ‘actors in technical-industrial and policy networks’ construct and imagine the motivations and (re)actions of the public (Walker et al. 2010, p. 943). They suggest that it might even be possible for the ‘imagined public’ to be more significant than ‘real’ publics:

Indeed, depending on how the subjectivity and agency of the public is anticipated and **internalised into organisational strategies** and working practices of different actors within and across sectoral networks, this imagined public might be of **greater** long-term **significance** than the ‘real’ version of specific publics encountered in meeting rooms and community halls. (Walker et al. 2010, p. 943)

Our research suggests that something similar may be occurring with the climate champions in our study. Their ‘imagined public’ has a significant influence on how they think the problem of climate change might be tackled and the strategies that they employ as climate champions. Their approach is shaped by their expectations of the ‘neoliberal person’ (the economically rational, autonomous chooser who has the right to choose his ethical commitments) that they imagine their colleagues and other people in the wider society to be. Of course, Walker et al. (2010, p. 943) recognise that ‘[the] real and the imagined are clearly not disconnected here, but neither are they necessarily the same’. The champions’ imaginary neoliberal person is based, in part, on their experience of their ‘real’ colleagues and other people that they have encountered. However, it is also an imagined character – and perhaps, a caricature – produced and reproduced through neoliberal narratives, and their associated material-discursive practices, including (among many others) the (neoliberal) practices that the champions use to promote climate-friendly behaviour. If we treat other people as archetypal ‘neoliberal’ persons, we should not be too surprised if they react in the way that we have anticipated. In other words, the imagined ‘neoliberal’ person becomes ‘real’ partly as a consequence of our acting as if it existed.

However, if we ‘scratch beneath the surface’ of a ‘neoliberal’ person, as we did with our climate champions, we may find that their ‘inner life’ is much richer and more complex than the neoliberal conception of the person allows. Our research supports the claims of Barnett et al. (2008, p. 643) that the neoliberal conception of the person does not take seriously the fact that ‘people are argumentative subjects through and through’. In our interviews, the champions displayed a ‘capacity for ordinary moral reasoning’ in response to the moral ‘dilemmas and conundrums’ posed by climate change (Barnett et al. 2008, p. 649). In other words, they were able to recognise and reflect on the moral issues raised by climate change, identify alternative moral responses, and offer reasons to justify some responses or to reject other responses. Similar observations have been made by other researchers who have examined the discursive practices of people involved in climate-protection programmes informed by a neoliberal understanding of social change (Hobson 2002, Slocum 2004). If they are encouraged to reflect on climate change (or other moral issues), most people do not think like the archetypal ‘neoliberal’ person.

We believe that this suggests that it may be worth exploring an alternative ‘deliberative’ or ‘co-inquiry’ model for programmes aimed at mobilising action on climate change. The neoliberal model of social change, used by Global Action Plan and some other providers of training and resources for climate action programmes, reproduces neoliberal social relations. More ‘deliberative’ models, which would train and encourage champions to facilitate ‘ordinary moral reasoning’ about the ‘dilemmas and conundrums’ of climate change in the workplace and elsewhere, might challenge neoliberal social relations. If we imagine other people as moral agents, it is more likely that they will realise their potential to think and act as if they are moral agents. It may also be more likely that they will recognise the limitations of a neoliberal approach to tackling the problem of climate change. In our view, the development of climate champion schemes that encourage and train climate champions to become deliberative environmental citizens, rather than neoliberal environmental citizens, might promote more imaginative engagement with the challenge of climate change.10 A neoliberal environmental citizen does not question the limitations that a neoliberal understanding of social change imposes on how we can address the problem of climate change. A deliberative environmental citizen starts from the assumption that we can only understand and respond effectively to the problem of climate change through collective deliberation. If climate champions are encouraged to overcome their (neoliberal) reluctance to engage their colleagues in serious discussions about the moral (and the political, social, cultural, economic and technological) issues raised by climate change, they might find that their colleagues are moral agents too.

### solver bullets fail

#### There are no cred silver bullets- takes years to escape legacies

**Gray ’11** [Colin S, Professor of International Politics and Strategic Studies at the University of Reading, England, and Founder of the National Institute for Public Policy, “Hard Power And Soft Power: The Utility Of Military Force as An Instrument Of Policy In The 21st Century,” April, <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1059>]

It bears repeating because it passes unnoticed that culture, and indeed civilization itself, are dynamic, not static phenomena. They are what they are for good and sufficient local geographical and historical reasons, and cannot easily be adapted to fit changing political and strategic needs. For an obvious example, the dominant American strategic culture, though allowing exceptions, still retains its principal features, the exploitation of technology and mass.45 These features can be pathological when circumstances are not narrowly conducive to their exploitation. Much as it was feared only a very few years ago that, in reaction to the neglect of culture for decades previously, the cultural turn in strategic studies was too sharp, so today there is a danger that the critique of strategic culturalism is proceeding too far.46 The error lies in the search for, and inevitable finding of, “golden keys” and “silver bullets” to resolve current versions of enduring problems. Soft-power salesmen have a potent product-mix to sell, but they fail to appreciate the reality that American soft power is a product essentially unalterable over a short span of years. As a country with a cultural or civilizational brand that is unique and mainly rooted in deep historical, geographical, and ideational roots, America is not at liberty to emulate a major car manufacturer and advertise an extensive and varied model range of persuasive soft-power profiles. Of course, some elements of soft power can be emphasized purposefully in tailored word and deed. However, foreign perceptions of the United States are no more developed from a blank page than the American past can be retooled and fine-tuned for contemporary advantage. Frustrating though it may be, a country cannot easily escape legacies from its past.

#### Plan does *nothing* to boost global judiciaries

**McGinnis 6** (John O., Professor of Law – Northwestern University School of Law, “Foreign to Our Constitution”, Northwestern University Law Review, 100 Nw. U.L. Rev. 303, Lexis)

Some might argue that citing foreign law or international law has benefits in addition to the congruence among legal regimes it promotes. One kind of benefit would again be the good will that such citations garner abroad. But these benefits seem slight and would seem to be as substantial from decorative citations as the kind I am objecting to here - ones that may have weight in our decisionmaking. Another kind of benefit would be bolstering the authority of foreign courts. But this seems even more debatable. The United States is not popular everywhere, and thus citation by an instrumentality of the United States government may undermine rather than  [\*324]  bolster the authority of courts abroad and, at worst, give rise in fact to conspiracy theories. In any event, both these arguments suffer from a similar flaw as other foreign affairs based arguments - the Court by its own acknowledgement is not an expert in such calculations. This kind of analysis in fact provides a better rationale for the executive branch than the courts to cite foreign and international law in the interpretation of the Constitution because the executive is charged with integrating foreign policy considerations. [77](http://www.lexis.com/research/retrieve?_m=842a9b1806382bfe3443877c313a3017&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzz-zSkAb&_md5=c9fd39894581cb156115d848e55f2e8f" \l "n77" \t "_self)

#### Aff evidence is about a judicial training session – Iraq isn’t going to become a liberal democracy with better-educated judges – and the judges were upset over US hypocrisy on other issues like drones and rendition

#### Promoting rule of law through liberal legal reform causes coercion and backlash—turns case

Brian Z. Tamanaha is the William Gardiner Hammond Professor of Law at the Washington University School of Law, 08 [“The Dark Side of the relationship between the Rule of Law and Liberalism,” NYU Journal of Law and Liberty, Vol 3:516, 2008, http://www.law.nyu.edu/sites/default/files/ECM\_PRO\_060975.pdf]

There is also a dark side for the rule of law in this relationship. As I have argued elsewhere,126 the rule of law originated prior to liberalism and can exist **independent of liberalism**. Liberals tend to obscure this in their jealous identification of the rule of law with¶ liberalism. From a broader perspective, the singular achievement of¶ the rule of law is its insistence that governments must act in accordance¶ with the law—an essential restraint that is valuable in all societies¶ regardless of their social, cultural, economic, or political orientation.¶ In view of the awesome power and resources governments¶ can wield, holding the government to legal restraints is a¶ universal good. The risk in recent developments is that the rule of law is ripe to be tainted by its close identification with liberalism, particularly in developing countries. A number of these countries have suffered from the adverse consequences of **neoliberal reforms**;127 the disparity in wealth has increased to new heights in many countries, without any evident improvement for the poor majority; 128 and in many of these societies the populace had little say over whether to¶ accept or modify these reforms.¶ International development organizations now divert money **away from infrastructure** projects **in favor of rule of law projects**, like training judges and police, and drafting and implementing legal codes that protect property and foreign investment. In all these various activities, the “rule of law” is put forth as the “front man” for the liberal package. If this initiative goes badly in any number of possible ways owing to an innu-¶ merable complex of local and global factors, as seems likely to occur¶ in many places, if substantial pain is suffered without the promised¶ economic benefits to the general public, if courts are perceived to¶ defend the rich who enjoy increasing wealth while most in society¶ are left wanting, the rule of law may be held responsible or tar-¶ nished, viewed by the populace with suspicion or cynicism—making it all the harder to implant and build the rule of law**.**¶It would be a tragic paradox if the great liberal advocates¶ for the rule of law contributed to preventing it from taking hold and¶ spreading around the world.

### afghanistan d

#### No collapse – domestic security forces are resilient without external support

Jonathan Schroden et al 3-13-2014 Jonathan Schroden, Patricio Asfura-Heim, Catherine Norman, and Jerry Meyerle Jonathan Schroden is the director of the CNA Corporation’s Center for Stability and Development, Patricio Asfura-Heim is a senior analyst with CNA Corporation. Catherine Norman is a senior analyst with CNA Corporation. Jerry Meyerle is a senior political scientist in the Center for Strategic Studies at CNA; “Can the Afghan Security Forces Stand Up to the Taliban? Observations from the Field Say “Yes”” http://smallwarsjournal.com/jrnl/art/can-the-afghan-security-forces-stand-up-to-the-taliban

The ANSF vs. the Taliban So, can the ANSF stand up to the Taliban? Based on in-field observations and interviews, we conclude the answer is “yes.” While the ANSF did not reach all of their goals during the 2013 fighting season, they held their own and prevented insurgents from accomplishing their goals. The ANSF prevented insurgents from seizing and holding large swaths of terrain, district centers and other notable political targets; they limited insurgents' ability to influence major population centers (occasional high-profile attacks notwithstanding); and they generally kept the insurgents unpopular among the Afghan populace. This could be called a strategic stalemate, and by some definitions it is. But within this situation, the ANSF still made progress. Holding their own against the insurgency for an entire fighting season – with decreasing support from the United States and ISAF – implies a positive trajectory to the development of the ANSF even in the midst of strategic stasis. That they did so is an important step for the ANSF and for the country as a whole. Moreover, the longer the Taliban are forced to wait to launch another campaign, the less relevant they look to the Afghan population. Perhaps most important, the ANSF's performance last year inspired confidence within their own leadership, and among Afghans, in their ability to stand and hold against the insurgency.

#### Prefer this evidence

Jonathan Schroden et al 3-13-2014 Jonathan Schroden, Patricio Asfura-Heim, Catherine Norman, and Jerry Meyerle Jonathan Schroden is the director of the CNA Corporation’s Center for Stability and Development, Patricio Asfura-Heim is a senior analyst with CNA Corporation. Catherine Norman is a senior analyst with CNA Corporation. Jerry Meyerle is a senior political scientist in the Center for Strategic Studies at CNA; “Can the Afghan Security Forces Stand Up to the Taliban? Observations from the Field Say “Yes”” http://smallwarsjournal.com/jrnl/art/can-the-afghan-security-forces-stand-up-to-the-taliban

Predictions of doom for Afghanistan following an American withdrawal tend to ignore an important indicator of the country’s future: its ability to defend itself. Throughout 2013, the Afghan National Security Forces (ANSF) had the lead in providing security to Afghans, with the International Security Assistance Force (ISAF) in support. How did they perform and what might it mean in terms of their ability to secure the country post-2014? A team of analysts from CNA Corporation, a non-profit research and analysis organization located in Alexandria, VA, recently traveled to Afghanistan to conduct a congressionally mandated study to assess the ANSF and determine the future requirements for its size, structure, and capabilities. This study – based on empirical, independent first-hand observations of the ANSF and on hundreds of interviews of Afghan, ISAF, and U.S. officials at all levels, in all of Afghanistan’s regions – concluded that, despite numerous glaring shortfalls, the ANSF were generally successful in the 2013 fighting season and are performing better than most people realize.

Carafano, 10

(1/2, Sr. Fellow-Heritage Foundation, http://gazettextra.com/news/2010/jan/02/con-obama-must-win-fast-afghanistan-or-risk-new-wa/)

We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run.

### iraq d

#### Iraq instability doesn’t spill over

Kaye 10—Senior political scientist, RAND. CFR member and former prof at George Wash. PhD in pol sci from UC Berkeley—AND—Frederic Wehrey—Senior analyst at RAND. Former Georgetown prof. D.Phil. candidate in IR, Oxford. Master’s in near Eastern studies, Princeton—AND—Jeffrey Martini—Middle East research project associate at RAND. Master’s in Arab studies at Georgetown (Dalia Dassa, The Iraq Effect, Report Prepared for the Air Force, http://www.rand.org/pubs/monographs/2010/RAND\_MG892.pdf)

To be sure, whether Iraq “succeeds” (i.e., continues on its current trajectory of reduced violence and some degree of political reconciliation) or “fails” (i.e.,returns to widespread sectarian or ethnic violence and instability) will greatly affect the long-term position and prospects of the Iraqi state. But while regional actors are by no means insulated from such developments, regional trend lines are unlikely to shift significantly in response to internal Iraqi outcomes**.** For example, renewed violence in Iraq and massive repression and exclusion of the Sunni minority would no doubt anger Sunni Arab regimes and publics and would undermine Iran’s outreach efforts to the broader region. But Iran’s regional influence does not depend just on its leverage in Iraq, which, even under the best of circumstances, would still face resistance because of Iraqi nationalist sentiment. Even in the event of failure in Iraq, Iran is likely to continue its pursuit of other regional levers of influence that are of greater concern to its Arab neighbors, such as its ties to militant groups fighting Israel, as well as its pursuit of nuclear capabilities. Indeed, such levers would prove valuable to any type of Iranian leadership, but they are certainly valuable to hard-liners, who are attempting to consolidate power after the contested 2009 elections. Or, on the other hand, if the United States successfully withdraws from Iraq, leaving it with some level of stability, its improved regional credibility is not likely to deter regional states from continuing to pursue a hedging strategy with respect to Iran and to diversify extraregional security relationships by developing closer ties to such states as China and Russia.

Although the surge has been credited with restoring a measure of stability to Iraq, tensions had surfaced by mid-2009 regarding the integration of the Majalis al-Sahwa [Awakening Councils], intra Shi‘a power struggles, and the legitimacy of provincial governance. 18 Regional Arab states, particularly in the Gulf, remain fundamentally suspicious of the Maliki government, and promises to open embassies made in mid-2008 have not materialized.

This hesitation suggests deep ambivalence among Iraq’s neighbors about Iraq’s place in the regional order and, in particular, about the prospect of a return to sectarian internecine conflict. Should this happen, however, the trend lines identified in this monograph, particularly in the domestic societal realm, would not significantly change— in many respects, the worst effects of “failure” in Iraq have already been felt in the 2006–2007 time frame, and neighboring states have proven largely resilient. Saudi interlocutors in particular had noted that the kingdom had nearly written of Iraq to Iranian influence and sectarian chaos by late 2006 and were pursuing a policy of containing the state’s implosion up until mid-2008. 19

If internal stability deteriorates, the impetus to intervene would certainly be stronger in the absence of a significant U.S. troop presence, although conventional military intervention is probably remote, with the exception of Turkey. Jordan, Saudi Arabia, Syria, and other Gulf states are likely to pursue a mix of subversion, strategic communication, and the funding of tribal allies and political partners while eschewing conventional military intervention. Much will depend on the trajectory of Iraq’s weakening: he emergence of ungovernable areas outside the central government’s control, viable political opposition movements, smuggling networks, or tribal or sectarian-based militias would be compelling magnets for outside intervention, both through official channels and from actors outside the government’s control.

#### No ME war

Cook 7**—**CFR senior fellow for Mid East Studies. BA in international studies from Vassar College, an MA in international relations from the Johns Hopkins School of Advanced International Studies, and both an MA and PhD in political science from the University of Pennsylvania(Steven, Ray Takeyh, CFR fellow, and Suzanne Maloney, Brookings fellow, 6 /28, Why the Iraq war won't engulf the Mideast, http://www.iht.com/bin/print.php?id=6383265, AG)

Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, **the region has** also **developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.**

#### Byman from 2006 – obviously doesn’t assume post withdrawal climate

### no arms race/escalation

**They cant solve the reasons it would happen**

**Cha 01 –** Associate Prof. Gov. and School of Foreign Service – Georgetown U., Journal of Strategic Studies (Victor, “The second nuclear age: Proliferation pessimism versus sober optimism in South Asia and East Asia”, 24:4, InformaWorld)

This contribution makes two arguments with regard to the causes and consequences of the second nuclear age in Asia. Regarding causes of proliferation, I argue that these are overdetermined in Asia. As was the case in the first nuclear age, proliferation derives largely from the intersection of security-scarcity and resource constraints. However, in addition to these basic security drivers, there are a plethora of secondary drivers ranging from domestic forces, political currency (insurance and bargaining), prestige, and a healthy dose of skepticism regarding first world hypocrisy that explain the region's proliferation. The combination of these primary and secondary drivers not only ensures that proliferation is overdetermined in Asia, but also means that rollback of these capabilities, though desirable, is not likely.

**No Middle East arms race**

**Schramm 11** – Madison Schramm, program associate at the Council on Foreign Relations, Hey America, Iran still isn't threat No. 1, 10-12-11 http://www.csmonitor.com/Commentary/Opinion/2011/1012/Hey-America-Iran-still-isn-t-threat-No.-1

Israeli Prime Minister Benjamin Netanyahu has warned that Iran will instigate an arms race, but the arms race in the Middle East began in the 1960s when Israel armed. Since then, over half a dozen countries in the Middle East have sought nuclear capability, but Israel is the only country that has succeeded. A nuclear Iran could very well accelerate an arms race, but it could be contained. By leveraging US patronage to the region and continuing to supply Gulf states with conventional weapons, the US could dissuade other countries from joining the race.

### no great power escalation

#### No China war

Robert J. **Art**, Fall **2010** Christian A. Herter Professor of International Relations at Brandeis University and Director of MIT's Seminar XXI Program The United States and the rise of China: implications for the long haul Political Science Quarterly 125.3 (Fall 2010): p359(33)

The workings of these three factors should make us cautiously optimistic about keeping Sino-American relations on the peaceful rather than the warlike track. The peaceful track does not, by any means, imply the absence of political and economic conflicts in Sino-American relations, nor does it foreclose coercive diplomatic gambits by each against the other. What it does mean is that the conditions are in place for war to be a low-probability event, if policymakers are smart in both states (see below), and that an **all-out war is** nearly **impossible** to imagine. By the historical standards of recent dominant-rising state dyads, this is no mean feat. In sum, there will be some security dilemma dynamics at work in the U.S.-China relationship, both over Taiwan and over maritime supremacy in East Asia, should China decide eventually to contest America's maritime hegemony, and there will certainly be political and military conflicts, but nuclear weapons should work to mute their severity because the security of **each state's homeland will never be in doubt** as long as each maintains a second-strike capability vis-a-vis the other. If two states cannot conquer one another, then the character of their relation and their competition **changes dramatically**. These three benchmarks--China's ambitions will grow as its power grows; the United States cannot successfully wage economic warfare against a China that pursues a smart reassurance (peaceful rise) strategy; and Sino-American relations are not doomed to follow recent past rising-dominant power dyads--are the starting points from which to analyze America's interests in East Asia. I now turn to these interests.

#### No Russia war

**Graham 7** (senior advisor on Russia in the US National Security Council staff 2002-2007, Thomas, Russia in Global Affairs, July - September 2007, “The Dialectics of Strength and Weakness,” http://eng.globalaffairs.ru/numbers/20/1129.html)

An astute historian of Russia, Martin Malia, wrote several years ago that “Russia has at different times been demonized or divinized by Western opinion less because of her real role in Europe than because of the fears and frustrations, or hopes and aspirations, generated within European society by its own domestic problems.” Such is the case today. To be sure, mounting Western concerns about Russia are a consequence of Russian policies that appear to undermine Western interests, but they are also a reflection of declining confidence in our own abilities and the efficacy of our own policies. Ironically, this growing fear and distrust of Russia come at a time when Russia is arguably less threatening to the West, and the United States in particular, than it has been at any time since the end of the Second World War. Russia does not champion a totalitarian ideology intent on our destruction, its military poses no threat to sweep across Europe, its economic growth depends on constructive commercial relations with Europe, and its strategic arsenal – while still capable of annihilating the United States – is under more reliable control than it has been in the past fifteen years and the threat of a strategic strike **approaches zero probability**. Political gridlock in key Western countries, however, precludes the creativity, risk-taking, and subtlety needed to advance our interests on issues over which we are at odds with Russia while laying the basis for more constructive long-term relations with Russia.

## 1nr other (falklands etc)

### AT: Falklands

#### Escalation empirically denied

**Hartzell 2000** (Caroline A., 4/1/2000, Middle Atlantic Council of Latin American Studies Latin American Essays, “Latin America's civil wars: conflict resolution and institutional change.” http://www.accessmylibrary.com/coms2/summary\_0286-28765765\_ITM)

Latin America has been the site of **fourteen** civil **wars** during the post-World War II era, thirteen of which now have ended. Although not as civil war-prone as some other areas of the world, Latin America has endured some extremely violent and destabilizing intrastate conflicts. (2) The region's experiences with civil wars and their resolution thus may prove instructive for other parts of the world in which such conflicts continue to rage. By examining Latin America's civil wars in some depth not only might we better understand the circumstances under which such conflicts are ended but also the institutional outcomes to which they give rise. More specifically, this paper focuses on the following central questions regarding Latin America's civil wars: Has the resolution of these conflicts produced significant institutional change in the countries in which they were fought? What is the nature of the institutional change that has taken place in the wake of these civil wars? What are the factors that are responsible for shaping post-war institutional change?

### CMR

#### WE will conceded Kohn which says that all “Our government must champion civilian control in all circumstances, without hesitation. “ – which proves an alt cause is sufficient to take out the internal link to modeling and the case

Kohn, 2

(Military History Prof-UNC, "The erosion of civilian control of the military in the United States today, Naval War College Review, 6/22, http://usnwc.edu/getattachment/c280d26a-9d66-466a-809b-e0804cbc05f4/Erosion-of-Civilian-Control-of-the-Military-in-the.aspx)

Ponder whether you are prepared to accept, as a principle of civilian control, that it includes the right of civilians to be wrong, to make mistakes--indeed, to insist on making mistakes. (112) This may be very hard to accept, given that people's lives, or the security of the nation, hang in the balance. But remember that the military can be wrong, dead wrong, about military affairs--for after all, you are not politicians, and as Carl von Clausewitz wrote long ago, war is an extension of politics. (113) Were you prepared to work for and with, and to accept, a Gore administration had the Democratic candidate won the 2000 election? If there is doubt on your part, ponder the implications for civil-military relations and civilian control. It is likely that within the next dozen years, there will be another Democratic administration. If the trend toward increasing friction and hostility in civil-military relations during the last three--those of Johnson, Carter, and Clinton--continues into the future, the national security of the United States will not be well served. Last of all, consider that if civilian control is to function effectively, the uniformed military will have not only to forswear or abstain from certain behavior but actively encourage civilians to exercise their authority and perform their legal and constitutional duty to make policy and decisions. You cannot and will not solve those problems yourselves, nor is it your responsibility alone. Civilian behavior and historical circumstances are just as much the causes of the present problems in civil-military relations as any diminution of military professionalism. But you can help educate and develop civilian leaders in their roles and on the processes of policy making, just as your predecessors did, by working with them and helping them--without taking advantage of them, even when the opportunity arises. Proper professional behavior calls for a certain amount of abstinence. What is being asked of you is no more or less than is asked of other professionals who must subordinate their self-interest when serving t heir clients and customers: lawyers to act against their self-interest and advise clients not to press frivolous claims; doctors not to prescribe treatments that are unnecessary; accountants to audit their clients' financial statements fully and honestly; clergymen to refrain from exploiting the trust of parishioners or congregants. (114) It will be up to you to shape the relationship with your particular client, just as others do. At its heart, the relationship involves civilian control in fact as well as form. Civilian control ultimately must be considered in broad context. In the long history of human civilization, there have been military establishments that have focused on external defense--on protecting their societies--and those that have preyed upon their own populations. (115) The American military has never preyed on this society. Yet democracy, as a widespread form of governance, is rather a recent phenomenon, and our country has been fortunate to be perhaps **the leading example for the rest of the world.** For us, civilian control has been more a matter of making certain the civilians control military affairs than of keeping the military out of civilian politics. But if the United States is **to teach civilian control**--professional military behavior--to countries overseas, its officers must look hard **at their own system** and their own behavior at the same time. (116) Our government must champion civilian control in **all circumstances, without hesitation.** In April 2002 the United States acted with stupefying and self-defeating hypocrisy when the White House initially expressed pleasure at the apparent overthrow of President Hugo Chavez in Venezuela by that country's military, condoning an attempted coup while other nations in the hemisphere shunned the violation of democratic and constitutional process. (117) "No one pretends that democracy is perfect or all-wise," Winston Churchill shrewdly observed in 1947. "Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried." (118) Churchill certainly knew the tensions involved in civil-military relations as well as any democratic head of government in modern history. Both sides--civilian and military--need to be conscious of these problems and to work to ameliorate them.

#### No Spillover – your internal link isn’t sufficient

Hansen 9 – Victor Hansen, Associate Professor of Law, New England Law School, Summer 2009, “SYMPOSIUM: LAW, ETHICS, AND THE WAR ON TERROR: ARTICLE: UNDERSTANDING THE ROLE OF MILITARY LAWYERS IN THE WAR ON TERROR: A RESPONSE TO THE PERCEIVED CRISIS IN CIVIL-MILITARY RELATIONS,” South Texas Law Review, 50 S. Tex. L. Rev. 617, p. lexis

According to Sulmasy and Yoo, these conflicts between the military and the Bush Administration are the latest examples of a [\*624] crisis in civilian-military relations. n32 The authors suggest the principle of civilian control of the military must be measured and is potentially violated whenever the military is able to impose its preferred policy outcomes against the wishes of the civilian leaders. n33 They further assert that it is the attitude of at least some members of the military that civilian leaders are temporary office holders to be outlasted and outmaneuvered. n34 If the examples cited by the authors do in fact suggest efforts by members of the military to undermine civilian control over the military, then civilian-military relations may have indeed reached a crisis. Before such a conclusion can be reached, however, a more careful analysis is warranted. We cannot accept at face value the authors' broad assertions that any time a member of the military, whether on active duty or retired, disagrees with the views of a civilian member of the Department of Defense or other member of the executive branch, including the President, that such disagreement or difference of opinion equates to either a tension or a crisis in civil-military relations. Sulmasy and Yoo claim there is heightened tension or perhaps even a crisis in civil-military relations, yet they fail to define what is meant by the principle of civilian control over the military. Instead, the authors make general and rather vague statements suggesting any policy disagreements between members of the military and officials in the executive branch must equate to a challenge by the military against civilian control. n35 However, until we have a clear understanding of the principle of civilian control of the military, we cannot accurately determine whether a crisis in civil-military relations exists. It is to this question that we now turn.