THE REJECTION OF LAW: TREATY DEFECTION, STATE SECESSION, AND THE FRACTAL CONSTITUTION

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ABSTRACT

On May 6, 2002, Undersecretary of State John Bolton sent a letter to UN Secretary-General Kofi Annan stating that the United States "does not intend to become a party to the Rome Statute" and was therefore "no longer obligated to refrain from acts that would defeat the object and purpose" of the treaty. The letter "unsigned" a treaty President Clinton had signed on December 31, 2000. *Unsigning* is not a category recognized by the Vienna Convention on the Law of Treaties; the act has had no constitutional or international-law analog before or since. The Bolton letter created the category by unilateral executive fiat.[1] In 1869, in *Texas v. White*, the Supreme Court held that the Union is "perpetual" and "indissoluble." A state cannot unilaterally secede from the federation, whatever the political grievance, because the federal constitutional order is constituted by its binding character over its member states.[2] This Article argues that these two propositions cannot stand together as principled constitutional law. The principle that forbids state secession at the federal-state interface is structurally identical to the principle that the Bolton unsigning violates at the federal-international

1 Letter from John R. Bolton, Under Sec'y of State for Arms Control and Int'l Sec., U.S. Dep't of State, to Kofi Annan, Sec'y-Gen., United Nations (May 6, 2002) (on file with the U.S. Department of State and reproduced in 41 I.L.M. 1014 (2002)).

2 *Texas v. White*, 74 U.S. (7 Wall.) 700 (1869).

interface. The selective application of the principle — enforcing it downward (binding states to the federation) while exempting the federal executive from it upward (permitting unilateral exit from the codified democratic order) — is a particularized-enforcement violation of the Supremacy Clause analog at the structural level. The Constitution does not authorize selective fractal enforcement of its own binding character. Part II reconstructs the Bolton unsigning and the broader US and Israeli pattern of unilateral declarations of unbinding across four decades — the 1986 ICJ withdrawal in *Nicaragua*; the 2005 VCCR Optional Protocol withdrawal after *LaGrand* and *Avena*; the 2002 ASPA and Article 98 enforcement infrastructure; the 2020 and 2025 ICC sanctions; the 2025 Article 63 declaration in *South Africa v. Israel*; Israel's permanent non-acceptance of ICJ compulsory jurisdiction combined with rejection-by-declaration of every adverse ruling — and identifies the structural pattern that the procedurally varied mechanisms express. Part II.F engages the United States' 2025 Article 63 declaration in *South Africa v. Israel* on the merits, identifying four structural defects in its argument that the Court should narrow its interpretive reach: international humanitarian law's categorical hierarchy forecloses any risk of "broadening" the genocide definition because lower categories (crimes against humanity; war crimes; armed conflict within the laws of war) absorb sub-threshold conduct; the harm asymmetry favors broadening, because narrowing causes irreversible floor-harm while broadening causes at most diplomatic harm; in interpretive uncertainty the structural default is toward prevention of genocide, not permission; and what the declaration characterizes as "extraneous" disputes is INTRINSIC to the function the Genocide Convention's Article IX constitutes the Court to perform — characterizing the body's constitutive function as extraneous is the rejection of the body disguised as procedural advocacy. Part III articulates the structural completion: Law is constituted by its binding character; jurisdiction is the operative form of binding character; rejection of jurisdiction is rejection of Law; rejection of Law is exit from the social contract; the deliberative-revision distinction names what separates legitimate disagreement from rejection. Part IV develops four independent doctrinal grounds against the unilateral executive treaty-withdrawal practice, presented in order of textual directness. The *Supremacy Clause* argument is the most textually direct: Article VI, clause 2 places treaties in textual parallel with the Constitution and federal laws as co-equal supreme Law of the Land; the President cannot unilaterally repeal the Constitution (Article V supplies the exclusive amendment process), cannot unilaterally repeal federal laws (*INS v. Chadha* supplies the bicameralism-and-presentment requirement), and equally cannot unilaterally repeal treaties (by the parallel constitutional logic the Supremacy Clause requires). The *textual / inferior-officer exception* argument is that Article II, § 2, clause 2 provides an explicit inferior-officer exception to Senate concurrence for appointments but provides no analogous exception for treaty actions, foreclosing the unilateral practice under *expressio unius*. The *war-powers* argument is that treaty withdrawal is the structural precondition for war — the social-contract removal that places the parties in the Hobbesian baseline within which adversaries exist — and the war-declaration power is constitutionally assigned to Congress under Article I, § 8, clause 11, requiring Congressional concurrence for the structural act of moving the United States from peace to potential war. The *structural-fractal* argument is that the principle binding states to the federation (*Texas v. White*) must, on principled grounds, bind the federation to the codified democratic order it has joined; the asymmetric enforcement of the principle is the structural violation. The four grounds converge on the conclusion that the asymmetric enforcement of the principle is constitutionally indefensible on multiple independent doctrinal layers. Part V draws the doctrinal conclusions for treaty-withdrawal law (the *Goldwater v. Carter* political-question dismissal should be reconsidered; the asymmetric entry-exit constitutional posture is structurally indefensible) and for the codified democratic order more broadly. Part VI concludes. The Article's thesis is that the constitutional principle the United States enforces internally (*Texas v. White*) is structurally identical to the principle the United States violates externally (the Bolton unsigning and its successors). Articulating the principle symmetrically is the doctrinal move the Constitution requires; refusing to articulate it is the operational form of the rejection of Law at the highest scale of the codified democratic order.

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I. INTRODUCTION

This Article addresses a constitutional asymmetry. Under United States constitutional law, a state of the federation cannot unilaterally secede from the Union. The doctrine has stood since *Texas v. White* in 1869 — that the Union is "perpetual" and "indissoluble"; that the constitutional process by which states accede to the federation does not include a mirror-image process by which they unilaterally exit; that disagreement with federal policy is internal to the federation, expressed through constitutional means (legislation, judicial review, constitutional amendment, the political process), and is structurally distinct from the assertion of a right to unilateral exit.[3] The doctrine was forged in the constitutional reckoning that followed the Civil War; it is one of the most settled propositions in American constitutional law.

Under the same constitutional system, the executive can unilaterally exit treaties without congressional concurrence. The Constitution's Treaty Clause (Article II, § 2) requires Senate "advice and consent" by two-thirds vote to ratify a treaty. The Constitution is silent on treaty withdrawal. Executive practice over the past century has accumulated treating presidential unilateral withdrawal as permissible. The Supreme Court has not definitively ruled on the question; the *Goldwater v. Carter* litigation in 1979 was dismissed on political-question grounds.[4] Executive practice has subsequently included the Carter administration's unilateral withdrawal from the Sino-American Mutual Defense Treaty (1979); the Bush II administration's unilateral withdrawal from the Anti-Ballistic Missile Treaty (2001); the Trump I administration's unilateral withdrawal from the Joint Comprehensive Plan of Action (2018), the Paris Agreement (2017, completed 2020), the Intermediate-Range Nuclear Forces Treaty (2019), the Open Skies Treaty (2020), the World Health Organization (2020), and the UN Human Rights Council

3 *Texas v. White*, 74 U.S. (7 Wall.) 700 (1869).
4 *Goldwater v. Carter*, 444 U.S. 996 (1979) (mem.).

(2018); and the Trump II administration's January 2026 memorandum declaring withdrawal from sixty-six international organizations and treaties, including the United Nations Framework Convention on Climate Change.[5]

This Article argues that these two propositions — the indissolubility of the Union at the federal-state interface, and the executive's unilateral treaty-withdrawal authority at the federal-international interface — cannot stand together as principled constitutional law. The principle that forbids state secession at the federal-state interface is structurally identical to the principle that the executive treaty-withdrawal practice violates at the federal-international interface. The selective application of the principle is itself the structural violation. The Constitution does not authorize the federal government to enforce a principle downward (against its member states) while exempting itself from the same principle upward (against the codified democratic order it has joined).

The asymmetry has a name in American constitutional history: it is the asymmetry that the antebellum South claimed against the federal government. The South's secession was the claim that the federation's binding character over its member states was conditional on the states' consent and revocable by state declaration. The Civil War and *Texas v. White* settled the claim against the South. The federal government's treaty-withdrawal practice is the claim that the codified democratic order's binding character over its federal members is conditional on the federation's consent and revocable by federal declaration. The asymmetry between the two claims is procedural (which level of the fractal makes the secession claim) but not structural.

5 *See* Presidential Memorandum, *Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States* (Jan. 7, 2026); Executive Order, *Withdrawing the United States from the World Health Organization* (Jan. 20, 2025); Executive Order, *Putting America First in International Environmental Agreements* (Jan. 20, 2025).

Both claims are the same structural assertion: that the binding character of the higher-order framework over its constituent units is revocable by unilateral declaration of the constituent unit.

The Article develops the constitutional and structural arguments. Part II reconstructs the empirical record: the Bolton unsigning, the broader four-decade US pattern of unilateral declarations of unbinding from the ICJ and ICC, the parallel Israeli pattern, and the Trump II expansion of the practice across sixty-six entities. Part III articulates the structural completion of the bodily-jurisdiction framework developed elsewhere by this author: Law is constituted by its binding character; rejection of jurisdiction is rejection of Law; the deliberative-revision distinction names what separates legitimate disagreement from rejection of Law; "withdrawal without paperwork" and "never bound" are structurally identical with respect to the rejected jurisdictional grounds. Part IV develops the fractal constitution: the principle the federal government enforces against its member states is the same principle that, by symmetric application, would bind the federal government to the codified democratic order; the asymmetric application is the particularized-enforcement violation the broader framework diagnoses at the constitutional scale. Part V draws the doctrinal implications: for the unsettled treaty-withdrawal question in US constitutional law; for the codified democratic order's absorption of the structural principle; for the broader project of articulating the Constitution's binding character coherently across scales. Part VI concludes.

The Article assumes — and where useful, cross-references — three companion works developing the broader framework: *Bodily Jurisdiction: The Floor of Constitutional Authority*,[6] *Means, Not Views: The Constitutional Distinction Between Radicalism and Extremism*,[7] and *Torture in the Codified Democratic Order: The May 2026 Sumud Flotilla and the Three-Level*

6 Joseph D. Kirchner, *Bodily Jurisdiction: The Floor of Constitutional Authority* (May 2026).

7 Joseph D. Kirchner, *Means, Not Views: The Constitutional Distinction Between Radicalism and Extremism* (May 2026).

Meta-Violation.[8] The arguments in this Article stand independently of the companion works; readers familiar with the framework will see the constitutional argument as a paradigmatic application of the framework's particularized-enforcement diagnosis at the constitutional scale; readers approaching the argument without prior exposure will find the constitutional analysis self-contained.

II. THE EMPIRICAL RECORD

A. The Bolton Unsigning (2002) as Doctrinal Anchor

President Clinton signed the Rome Statute on December 31, 2000 — the last day of his presidency. The signature was a procedural act under the Treaty Clause: it expressed the President's intention to commit the United States to the obligation, subject to subsequent Senate advice and consent by two-thirds vote, which had not yet been sought.

The signature carried legal weight under international law. Article 18 of the Vienna Convention on the Law of Treaties provides that a state that has signed but not yet ratified a treaty is "obliged to refrain from acts which would defeat the object and purpose of the treaty," subject to qualifications.[9] The signature created an obligation of "good faith" pending ratification — an obligation the Clinton administration accepted and the Bush II administration inherited.

On May 6, 2002, Undersecretary of State John Bolton sent a letter to UN Secretary-General Kofi Annan that has become the doctrinal anchor of the contemporary US treaty-withdrawal practice. The letter stated:

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8 Joseph D. Kirchner, *Torture in the Codified Democratic Order: The May 2026 Sumud Flotilla and the Three-Level Meta-Violation* (May 2026).

9 Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

> "This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000."[10]

The letter operated, on its face, as a unilateral declaration that the United States was "unbound" by the obligations the Clinton signature had created. The procedural form was an executive letter to the depositary, without any consultation with Congress and without any judicial review. The letter was the operative act; the procedural form was its delivery via diplomatic correspondence.

Three features of the Bolton unsigning are doctrinally significant.

First, the act had no procedural basis in international law. The Vienna Convention on the Law of Treaties supplies procedures for signature (Article 11), ratification (Articles 11, 14), accession (Article 15), reservation (Articles 19–23), denunciation and withdrawal (Articles 54–60), termination (Articles 54–64), and various other operations on treaty obligations. *Unsigning* is not a category the VCLT contemplates. The Bolton letter created the category by executive fiat. The depositary's acceptance of the letter into the depositary record gave the act operational effect, but the depositary's acceptance was administrative — it did not adjudicate the legal validity of the act under the VCLT.

Second, the act had no procedural basis in US constitutional law. The Treaty Clause requires Senate advice and consent for ratification. The Constitution is silent on signature, on withdrawal, on the relationship between the executive's signature and the executive's subsequent declaration of non-binding intent. No statute authorized the Bolton letter. No congressional resolution endorsed it. No judicial review evaluated it. The act stood on executive practice and the absence of any institutional challenge.

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10 Bolton Letter, *supra* note [^bolton] (capitalization and punctuation in the original).

Third, the act was unprecedented. No prior administration had attempted to "unsign" a treaty. The closest analogs were instances of stated intent not to seek ratification of a signed but unratified treaty — but stated intent is different from a formal declaration to the depositary purporting to negate the legal obligations the signature had created. The Bolton letter formalized the negation; the formalization was the novelty.

The Bolton unsigning is the doctrinal anchor of this Article because it makes explicit what the formal-withdrawal cases conceal. The 1986 *Nicaragua* withdrawal terminated an Article 36(2) declaration that had a notice-period mechanism built into the declaration itself; the procedural form was supplied by the declaration. The 2005 VCCR Optional Protocol withdrawal followed a denunciation clause supplied by the Optional Protocol. The Bolton letter had no procedural form to follow. The procedural form was invented to do the substantive work of unbinding. The invention shows that the procedural form is selected after the substantive decision to unbind has been made — when a formal mechanism is available, the state uses it; when none is available, the state invents one.

The post-2002 pattern has consolidated the Bolton unsigning as the operational template. The 2018 US withdrawal from the JCPOA was a unilateral executive declaration; the JCPOA contained no formal withdrawal clause because it was an executive agreement rather than a Senate-ratified treaty. The 2017–2020 Paris Agreement withdrawal followed the agreement's own withdrawal clause but operated through executive announcement rather than congressional process. The 2025 EO 14203 on the ICC operates through coercive sanctions on the Court's officials rather than formal withdrawal from a body the US never joined. The January 2026 memorandum on sixty-six international entities operates through executive declaration of withdrawal, with the procedural mechanisms to be executed at the agency level where available and substituted by executive fiat where not.

The pattern across all six mechanisms — formal withdrawal of accepted compulsory jurisdiction; withdrawal from accepted treaty-specific jurisdiction; unsigning of a signed treaty; coercive sanctions on enforcement infrastructure; substantive intervention to narrow standards; permanent non-acceptance combined with rejection-by-declaration — is structurally identical. Each is a unilateral executive declaration that the declaring party is unbound by a codified democratic body that 125+ other state parties have bound themselves to.

B. The Nicaragua Withdrawal (1984–1986)

The United States accepted ICJ compulsory jurisdiction under Article 36(2) of the Statute on August 14, 1946, with limited reservations.[11] On April 9, 1984, Nicaragua filed an application against the United States alleging unlawful support for the Contras and mining of Nicaraguan harbors.[12] The Court found jurisdiction on November 26, 1984; the United States announced on January 18, 1985 that it would "not participate in any further proceedings" on the merits.[13][14] On October 7, 1985, the United States deposited notice terminating its Article 36(2) declaration, effective April 7, 1986.[15] On June 27, 1986, the Court ruled that the United States had violated international law through Contra support, harbor mining, and trade embargo, and ordered

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11 Declaration Recognizing the Compulsory Jurisdiction of the International Court of Justice, U.S. Reservations, 61 Stat. 1218 (1946).

12 Application Instituting Proceedings, *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), 1984 I.C.J. Pleadings (Apr. 9, 1984).

13 *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), Jurisdiction and Admissibility, 1984 I.C.J. 392 (Nov. 26).

14 U.S. Dep't of State, Statement on the U.S. Withdrawal from the Proceedings Initiated by Nicaragua in the International Court of Justice (Jan. 18, 1985), reprinted in 24 I.L.M. 246 (1985).

15 Notification of Termination of the United States' Declaration Accepting the Compulsory Jurisdiction of the International Court of Justice, deposited Oct. 7, 1985.

reparations.[16] The United States refused to pay and blocked Nicaragua's Security Council appeals via veto.[17]

Two features matter for the structural argument. First, the procedural mechanism (Article 36(2) termination) was supplied by the declaration itself; the United States used the mechanism the declaration provided. Second, the operative act was independent of the procedural form. The state-department reasoning articulated by Legal Adviser Abraham Sofaer characterized the Court's adjudication as "an unfortunate signal" used for "political-public relations purposes."[18] The reasoning was substantive — that the Court's authority over US conduct in Central America was illegitimate. The procedural mechanism was the means of operationalizing the substantive position.

C. The Vienna Convention Optional Protocol Withdrawal (2005)

In *LaGrand* (2001) and *Avena* (2004), the ICJ ruled that the United States had violated Article 36 of the Vienna Convention on Consular Relations by failing to provide consular notification to foreign nationals before their execution.[19][20] On March 7, 2005, the United States withdrew from the VCCR Optional Protocol that supplied ICJ jurisdiction over consular-notification disputes.[21] The United States had originally proposed the Optional Protocol in 1963 and ratified it in 1969;

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16 *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), Judgment (Merits), 1986 I.C.J. 14 (June 27).

17 *See* U.N. SCOR, 41st Sess., 2718th mtg., U.N. Doc. S/PV.2718 (1986) (United States veto of Nicaraguan resolution calling for compliance with the ICJ judgment).

18 Abraham D. Sofaer, *The United States and the World Court* (Statement before the Senate Foreign Relations Committee, Dec. 4, 1985), reprinted in 24 I.L.M. 1737 (1985).

19 *LaGrand* (Ger. v. U.S.), Judgment, 2001 I.C.J. 466 (June 27).

20 *Avena and Other Mexican Nationals* (Mex. v. U.S.), Judgment, 2004 I.C.J. 12 (Mar. 31).

21 Letter from Condoleezza Rice, U.S. Sec'y of State, to Kofi Annan, U.N. Sec'y-Gen. (Mar. 7, 2005) (notifying withdrawal from the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes).

70% of VCCR state parties had not signed it; the United States was the only signatory ever to withdraw.[22]

The procedural form was the denunciation clause supplied by the Optional Protocol itself; the United States used the mechanism the Protocol provided. The state-department reasoning was articulated by deputy spokesman Adam Ereli: "The decision that the ICJ handed down is a decision, frankly, that we don't agree with."[23] The reasoning was substantive disagreement with the Court's interpretation of Article 36; the procedural mechanism was the means of operationalizing the substantive position.

D. ASPA and the Article 98 Agreements (2002)

The American Service-Members' Protection Act of 2002 codified the operational infrastructure of US non-cooperation with the ICC.[24] The statute prohibits US cooperation with the Court; restricts US participation in UN peacekeeping operations involving non-Article-98 states; authorizes the President to "use all means necessary and appropriate to bring about the release" of US or allied personnel detained by the Court (the "Hague Invasion Clause," 22 U.S.C. § 7427); and restricts US military aid to states that are ICC parties unless they sign bilateral Article 98 immunity agreements with the United States.

The Article 98 agreements — bilateral immunity agreements with dozens of states obligating those states not to surrender US nationals to the ICC — were negotiated under

22 *See* Frederic L. Kirgis, *Addendum to ASIL Insight, President Bush's Determination Regarding Mexican Nationals and Consular Convention Rights*, AM. SOC'Y INT'L L. (Mar. 9, 2005); *U.S. Withdraws From ICJ Jurisdiction Over Consular Relations Claims*, OPINIO JURIS (Mar. 9, 2005).

23 U.S. Dep't of State Daily Press Briefing (Mar. 9, 2005) (statement of Deputy Spokesman Adam Ereli).

24 American Service-Members' Protection Act of 2002, 22 U.S.C. §§ 7421–7433.

coercion. States that declined to sign faced suspension of US military aid. By 2003, more than seventy states had signed Article 98 agreements; many had done so under explicit US pressure.[25]

ASPA and the Article 98 agreements are not procedurally analogous to the Bolton unsigning — ASPA is a statute and the Article 98 agreements are bilateral treaties — but they form the operational infrastructure that gave the Bolton unsigning its functional consequence. The Bolton letter declared the US unbound; ASPA and the Article 98 agreements enforced the unbinding against other parties' attempts to bring the US within the ICC's jurisdiction through any indirect mechanism.

E. The ICC Sanctions Regime (2020, 2025)

On June 11, 2020, President Trump (first term) signed Executive Order 13928 authorizing sanctions against ICC officials investigating US personnel for alleged war crimes in Afghanistan.[26] The order targeted ICC Prosecutor Fatou Bensouda and her senior staff. President Biden rescinded EO 13928 in April 2021.[27]

On February 6, 2025, President Trump (second term) signed Executive Order 14203, *Imposing Sanctions on the International Criminal Court*.[28] The order's plain text states: "The ICC has no jurisdiction over the United States or Israel, as neither country is party to the Rome Statute or a member of the ICC." The order imposes asset freezes, property restrictions, and entry bans on ICC officials and "any foreign person determined . . . to have directly engaged in

25 *See* John Washburn et al., *The American Service-Members' Protection Act: Implications for the U.S. and the International Criminal Court*, 18 AM. U. INT'L L. REV. 1245 (2003); HUMAN RIGHTS WATCH, BILATERAL IMMUNITY AGREEMENTS (2003).

26 Exec. Order No. 13928, 85 Fed. Reg. 36,139 (June 11, 2020).

27 Exec. Order No. 14022, 86 Fed. Reg. 17,895 (Apr. 1, 2021).

28 Exec. Order No. 14203, 90 Fed. Reg. 8765 (Feb. 6, 2025).

any effort by the ICC to investigate, arrest, detain, or prosecute" US or allied (read: Israeli) nationals.

The order was widely understood as retaliation for the November 21, 2024 ICC arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant for war crimes and crimes against humanity in connection with the Gaza campaign, including "starvation as a method of war."[29]

Sanctions escalated throughout 2025. ICC Prosecutor Karim Khan was sanctioned in early 2025. Four ICC judges were designated in June 2025 (Beti Hohler, Reine Alapini-Gansou, Luz del Carmen Ibáñez Carranza, Solome Bossa). UN Special Rapporteur Francesca Albanese was sanctioned in July 2025. Additional ICC judges and deputy prosecutors were designated in August 2025. Palestinian human-rights organizations Al Haq, Al Mezan Center for Human Rights, and the Palestinian Centre for Human Rights were designated in September 2025. Additional ICC judges Gocha Lordkipanidze and Erdenebalsuren Damdin were designated in December 2025.[30]

EO 14203's plain text — "The ICC has no jurisdiction over the United States or Israel" — is the contemporary operationalization of the Bolton-unsigning logic. The procedural form is sanctions on the Court's enforcement infrastructure rather than declaration to a depositary; the operative act is structurally identical. The state declares unilaterally that the body has no jurisdiction over US-allied conduct; the procedural form is whatever coercive mechanism is available against the body's officials.

29 Int'l Criminal Court, Pre-Trial Chamber I, Decision Issuing Warrants of Arrest, *Situation in the State of Palestine* (Nov. 21, 2024).

30 *See* Press Statement, U.S. Dep't of State, Secretary Marco Rubio Announces Sanctions on ICC Judges (June 5, 2025); Press Statement, U.S. Dep't of State, Sanctions on UN Special Rapporteur Francesca Albanese (July 9, 2025); Press Statement, U.S. Dep't of State, Additional Sanctions on ICC Officials and Designations of Palestinian Human Rights Organizations (Sept. 4, 2025); Press Statement, U.S. Dep't of State, Sanctions on Additional ICC Judges (Dec. 18, 2025).

F. The Article 63 Intervention in South Africa v. Israel (2025)

The 2025 US Article 63 declaration of intervention in *South Africa v. Israel* presents the residual case. Because Article IX of the Genocide Convention is a procedural concession the US made when ratifying the Convention, the US cannot withdraw from jurisdiction in the conventional sense. The Bolton-unsigning analog is not available. The conventional withdrawal mechanism is not available. The substantive intervention to narrow the standard the Court applies is the residual form.[31]

The US declaration argued: "The United States submits that the Court should maintain its standard for inferring intent. Lowering the standard risks broadening the application of the term 'genocide' such that it no longer carries its original weight and meaning, and invites attempts to misuse the Genocide Convention as a gateway for bringing extraneous disputes before the Court."[32]

The Article 63 intervention is procedurally legitimate. Article 63 declarations are explicitly contemplated by the ICJ Statute as a means by which states parties to a treaty being interpreted may submit their views. The mechanism is structurally appropriate for the function of deliberative engagement with the framework. The US use of the mechanism, however, operates not as deliberative engagement but as substantive resistance to the framework's adjudication of an allied state's conduct.

The substantive resistance proceeds through an argument that fails on its own terms. The declaration's premise — that broadening the application of the genocide standard "risks"

31 Declaration of Intervention by the United States of America Pursuant to Article 63 of the Statute of the International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (S. Afr. v. Isr.), I.C.J. (2025).

32 *Id.* ¶¶ 23–25.

something that warrants narrowing the Court's interpretive reach — is structurally defective in four respects, each of which the framework's diagnostic identifies as paradigm.

First, there is no risk of broadening the definition of genocide. International humanitarian law establishes a categorical hierarchy. Genocide is the apex category: intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such (Genocide Convention Article II). Below the genocide threshold sits crimes against humanity (widespread or systematic attack directed against any civilian population, Rome Statute Article 7). Below that sit war crimes (grave breaches of the Geneva Conventions and serious violations of the laws and customs of war, Rome Statute Article 8). Below that sits armed conflict conducted within the laws of war. The hierarchy is structurally established and substantively distinct at each threshold.[33]

Broadening the application of the genocide standard does not erode the term's meaning. Conduct that meets the genocide threshold is recognized as genocide; conduct that does not meet the threshold is re-categorized as crimes against humanity, war crimes, or armed conflict, depending on its specific features. The lower categories absorb conduct that does not cross the genocide threshold; the genocide category itself is not diluted because its threshold remains structurally constant. The US declaration's premise — that broader application risks the term "no longer carrying its original weight and meaning" — relies on a category confusion. The term's weight and meaning are structurally fixed by the threshold relative to the lower categories. The threshold itself is not at risk; only the application of the threshold to specific facts is what the Court is asked to adjudicate.

33 *See* Convention on the Prevention and Punishment of the Crime of Genocide art. II, Dec. 9, 1948, 78 U.N.T.S. 277 (defining genocide as acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such"); Rome Statute of the International Criminal Court arts. 6–8, July 17, 1998, 2187 U.N.T.S. 90 (defining genocide, crimes against humanity, and war crimes as distinct categories with distinct threshold elements); *Prosecutor v. Krstić*, Case No. IT-98-33-A, Judgment, ¶¶ 25–37 (Int'l Crim. Trib. for the Former Yugoslavia Apr. 19, 2004) (articulating the hierarchical distinction between genocide and other international crimes).

Second, the harms of narrowing and broadening are structurally asymmetric, and the asymmetry runs in the opposite direction of the US declaration's implication. The harm caused by narrowing the genocide standard is irreversible: actual genocide goes unrecognized and unaddressed; populations are destroyed; lives are lost; the codified democratic order fails its constitutive function of floor protection. The "harm" caused by broadening the standard is at most diplomatic: states are subject to genocide proceedings for conduct that may, after full adjudication, prove not to have crossed the highest threshold. The asymmetry is total. The framework's diagnostic identifies the priority directly: floor protection is constitutive of the social contract; procedural rules exist to operationalize floor protection, not to protect perpetrators from diplomatic consequences. The US declaration's argument inverts the structural priority. It treats the floor-protective function of the Court as the threat and the perpetrator state's diplomatic interest as what needs protecting.

Third, where the application of the standard is contested or genuinely uncertain, the structural default must be toward prevention, not toward permission. The US declaration implicitly argues that uncertainty about whether specific conduct meets the genocide threshold should resolve in favor of the state's interest in not being adjudicated. The framework's diagnostic identifies this argument as structurally defective. At the inter-state scale, where the harm of unaddressed genocide is the destruction of populations and the harm of state-level adjudication is diplomatic, the default in cases of interpretive uncertainty must favor the protection of the floor. The structural principle applies at every level of social organization where floor-protective rules apply: where the procedural rule is genuinely uncertain in a specific case, the default favors the floor against the actor whose conduct may be threatening it. The criminal-law default rule favoring the individual defendant operates at the *inter-individual* scale, where the burden falls on a single individual against the apparatus of the state and where the asymmetry of state-individual power justifies a default that protects the individual. The inter-state scale operates with the asymmetry inverted: the apparatus of the state acts against a population whose lives are at stake, and the default in interpretive uncertainty must reflect the underlying floor-protective asymmetry. Until the standard is objectively adjudicated, the structural default is toward prevention of genocide, not permission of it.

Fourth, what the US declaration characterizes as "extraneous" is INTRINSIC to the function of the international deliberative body. The declaration argues that broadening the application "invites attempts to misuse the Genocide Convention as a gateway for bringing extraneous disputes before the Court." But disputes about whether state conduct meets the genocide threshold are exactly what the Court is constituted to adjudicate under the Convention. Article IX of the Genocide Convention provides ICJ jurisdiction over "disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III."[34] Adjudicating whether specific state conduct meets the interpretive standard the Convention establishes is the body's core function; the disputes are not "extraneous" — they are precisely what Article IX exists to channel.

The US declaration's characterization of the body's core function as "extraneous" is the structural rejection in its most acute form. To argue that the Court should refuse to adjudicate disputes about the Convention's interpretation and application is structurally to argue that the Court should refuse to exist as a deliberative body. The declaration's argument is, on the framework's diagnostic, the rejection of the Court's function disguised as a procedural argument

34 Convention on the Prevention and Punishment of the Crime of Genocide art. IX, Dec. 9, 1948, 78 U.N.T.S. 277.

about the standard the Court should apply. The procedural disguise — pleading for "high standards" of interpretation — operates to defeat the substantive function the Court was constituted to perform.

The four defects together identify the US Article 63 declaration as paradigm second-level rhetorical-inversion meta-violation. The most-obligated party of the codified democratic order is using a procedural mechanism (Article 63) the order's framework supplies, in the procedural form the framework contemplates (substantive intervention in a contentious case), against the order's substantive function (adjudication of disputes about the Convention's application). The procedural infrastructure is preserved (Article 63 was filed; the declaration is a legitimate procedural form); the substantive function is rejected (the declaration argues the Court should refuse to adjudicate disputes about the Convention's application). The disguise is the procedural legitimacy; the substance is the rejection of the body's function.

The structural significance is that the declaration's argument cannot be answered through deliberative engagement at the operational layer. The argument is not legitimate disagreement with the Court's interpretive standards (which could be addressed by amendments to the Convention, by subsequent state practice and *opinio juris*, by judicial dialogue, by submissions on the merits of specific factual questions). The argument is the refusal of the Court's function — and the refusal of function is structurally distinct from disagreement with substance. The framework's diagnostic at Parts III.E (the deliberative-revision distinction) and III.F–G (structural indistinguishability + reciprocity inversion) applies cleanly: the United States is operating as if it were inside the Convention's procedural framework while substantively rejecting the framework's function. The Article 63 declaration is therefore not the residual procedural form of US rejection; it is the substantive form of rejection executed through a procedural mechanism that the order's framework supplies.

G. Israel's Permanent Non-Acceptance and Rejection-by-Declaration

Israel has never accepted ICJ compulsory jurisdiction under Article 36(2). It is bound by the Court only through specific treaty provisions, most consequentially Article IX of the Genocide Convention. Israel is also not a state party to the Rome Statute. The structural posture is identical to the US posture: never bound under the general compulsory-jurisdiction mechanism; bound under specific treaty provisions where applicable; declaration of unbinding when the framework's adjudication engages Israeli conduct.

The 2004 Wall Advisory Opinion was characterized as a political rather than legal matter and rejected by declaration.[35] The January 2024 *South Africa v. Israel* Provisional Measures Order was met with the "blood libel" characterization at the highest political level — Israeli Foreign Ministry, Prime Minister Netanyahu, President Herzog, and Foreign Ministry spokesman Lior Haiat all rejecting the proceedings as illegitimate.[36] The May 2024 Rafah Order was rejected by interpretation; Israel continued the Rafah offensive.[37] The July 2024 OPT Advisory Opinion was rejected by Prime Ministerial declaration: "The Jewish people are not occupiers in their own land. . . . No absurd opinion in The Hague can deny this historical truth."[38]

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35 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9).

36 *See, e.g.*, *'Blood libel': Israel slams South Africa for filing ICJ genocide motion over Gaza war*, TIMES OF ISRAEL (Dec. 30, 2023); Statement of the Israeli Foreign Ministry (Dec. 29, 2023).

37 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (S. Afr. v. Isr.), Order on Provisional Measures, 2024 I.C.J. (May 24); Statement of Prime Minister Benjamin Netanyahu (May 24, 2024).

38 Statement of Prime Minister Benjamin Netanyahu (July 19, 2024), *quoted in* AL JAZEERA (July 19, 2024).

The Israeli pattern is structurally identical to the US pattern, expressed through the procedural form available to a state without Article 36(2) acceptance. Israel does not formally withdraw from jurisdictional grounds it has not accepted in the first place; it does not unsign treaties it has not signed; it does not impose dollar-denominated sanctions on courts. Its procedural mechanism is the high-political-level declaration that each adverse ruling is illegitimate. The operative act is the declaration; the procedural form is rhetorical re-characterization.

H. The Pattern

The eight expressions catalogued above — six US mechanisms plus the Israeli rejection-by-declaration plus the residual Article 63 intervention — are structurally identical at the level the framework's diagnostic operates on. Each is a unilateral executive declaration that the declaring party is unbound by a codified democratic body that other state parties have bound themselves to. The procedural form varies; the structural act does not.

The pattern's consistency across forty years, multiple administrations, and substantively distinct cases (military intervention; consular notification; signed-but-not-ratified treaty obligations; arrest warrants against allies; genocide adjudication; advisory opinions on occupation; universal-jurisdiction torture obligations) is the empirical foundation of the structural argument. The procedural mechanisms are post-hoc justification; the operative act is the declaration. The doctrinal task is to articulate the structural object the declarations express.

III. THE STRUCTURAL COMPLETION

A. Law's Binding Character Is Constitutive

Law is constituted by its binding character. The conventional understanding treats "Law" as a category of normative principle expressed through certain institutional forms (statutes, treaties, judicial decisions, customary norms, constitutional provisions); the institutional forms are constitutive of Law; the binding character follows from the institutional forms.

The structural argument inverts the conventional understanding. Institutional forms can exist without binding character; binding character cannot exist without operating as Law. A statute that supplies normative principles but does not constrain conduct is aspiration in legislative form. A treaty that codifies norms but does not bind state parties to compliance is aspiration in treaty form. A judicial decision that articulates legal reasoning but does not produce executable consequence is aspiration in judicial form. None of these is Law; each is *form without Law*.

The binding character is what makes the institutional form Law. Without the capacity to constrain conduct regardless of the constrained party's preference about the constraint's content, the institutional form lacks the operative feature that distinguishes Law from normative principle. The Hobbesian baseline supplies the structural foundation of this argument: in the state of nature, normative principles exist (parties may have preferences about how others should behave; parties may articulate principles for cooperation); what does not exist is the binding character that operationalizes the principles. Civil society is constituted by the transfer of unilateral defensive rights to the sovereign in exchange for the sovereign's protection. The transfer creates the binding character; the binding character creates Law.[39]

At every scale of social organization, the same structural relationship holds. Local Law binds individuals within the locality through the locality's protective infrastructure. State Law binds individuals within the state through the state's protective infrastructure. Federal Law binds states and individuals within the federation through the federation's protective infrastructure. International Law binds nation-states through the international order's protective infrastructure. At each scale, the binding character is what makes the framework Law rather than aspiration. Without the binding character, the framework reverts structurally to the Hobbesian baseline.

This is the foundational point for the Article. The Bolton unsigning and its successors do not violate "Law" in some peripheral sense (the way a state might violate a particular treaty obligation while remaining bound by the broader framework). They violate Law in the foundational sense: they reject the binding character that makes the international framework Law. The Bolton letter's effect is not to express disagreement with the Rome Statute's content; it is to declare unilaterally that the Statute does not bind the United States. The declaration operates on the binding character itself, not on the substantive provisions.

B. Jurisdiction Is the Operative Form of Binding Character

Jurisdiction is the institutional form in which Law's binding character operates over specific parties and specific subject matter. The ICJ's compulsory jurisdiction under Article 36(2) is the institutional form in which the Court's binding character operates over states that have accepted the Article. The Rome Statute's territorial and nationality jurisdiction is the institutional form in

39 THOMAS HOBBES, LEVIATHAN (Richard Tuck ed., Cambridge Univ. Press 1996) (1651), ch. XIII–XVIII.

which the ICC's binding character operates over states that have ratified the Statute. The VCCR Optional Protocol's dispute-resolution jurisdiction is the institutional form in which the ICJ's binding character operates over Article 36 consular-notification disputes among states that have signed the Protocol.

Each jurisdictional form is the operational embodiment of the framework's binding character over a specific domain. Rejection of jurisdiction is therefore not the rejection of a peripheral procedural feature; it is the rejection of Law's binding character over the specific domain the jurisdiction covers. When the United States withdrew from Article 36(2) in 1986, the withdrawal did not just terminate a specific procedural mechanism — it terminated the binding character of the Court's Law over the United States in the rejected domain. When the Bolton letter declared the United States unbound by the Rome Statute, the declaration did not just announce a substantive position on the Statute's content — it operated on the binding character of the Statute's Law over the United States. When EO 14203 declares the ICC has "no jurisdiction over the United States or Israel," the declaration operates on the binding character itself.

C. Rejection of Jurisdiction Is Rejection of Law

Combining the previous two propositions yields the central structural claim. If Law is constituted by its binding character, and if jurisdiction is the operative form of binding character, then rejection of jurisdiction is rejection of Law itself.

The claim has three corollaries.

First, the conventional framing that distinguishes "withdrawal from a body" from "rejection of Law" is doctrinally illusory. A state that withdraws from a body's jurisdiction is rejecting Law's binding character over the rejected domain. The withdrawal does not preserve Law's binding character with respect to other domains the state continues to participate in; it operates structurally on the binding-character principle itself. A state that selectively rejects jurisdiction has rejected Law in principle, not just in operation.

Second, the procedural form of the rejection is structurally irrelevant. Whether the rejection takes the form of formal withdrawal of accepted compulsory jurisdiction, withdrawal from accepted treaty-specific jurisdiction, unsigning of a signed treaty, coercive sanctions on enforcement infrastructure, substantive intervention to narrow standards, or permanent non-acceptance combined with rejection-by-declaration, the operative act is identical: the unilateral declaration that Law's binding character does not apply to the declaring party with respect to the rejected domain.

Third, the rejection of Law is the rejection of the social contract at the relevant scale. The framework's social-contract conditional (developed in *Bodily Jurisdiction*) treats the social-contract transfer as the constitutive act by which Law comes into being at any scale. Civil society is constituted by the transfer of unilateral defensive rights to the sovereign in exchange for the sovereign's protection; the transfer creates the binding character; the binding character creates civil society's Law. At the inter-state scale, the codified democratic order's binding character is constituted by the member states' mutual transfer of specified domains of unilateral action to the collective framework in exchange for the framework's protection of the same domains against violation by other members. Rejection of Law at the inter-state scale is structural exit from the inter-state social contract.

D. Rejection of Law Is Exit from the Social Contract

The exit from the social contract is structural, not merely procedural. A party that rejects Law's binding character over its conduct with respect to a specific domain has, with respect to that domain, placed itself outside the social contract that constitutes the framework. The party is structurally in the Hobbesian baseline with respect to the rejected domain.

The Hobbesian baseline is not a metaphor. Hobbes's *Leviathan* developed the structural analysis: outside the social contract, all parties are potential adversaries because no binding framework operates to constrain conduct.[40] The state of nature is not the absence of normative principle; it is the absence of the binding character that operationalizes principle as Law. In the state of nature, parties may articulate principles about how others should behave; they may argue for their preferred outcomes; they may even threaten or coerce other parties; what they cannot do is invoke Law's binding character to constrain other parties' conduct, because no binding character operates.

Applied to the inter-state scale: a state that has rejected Law's binding character over its conduct in a specific domain has, with respect to other state parties in that domain, no claim on Law's protective function. If the United States has rejected Law's binding character over its conduct in Afghanistan with respect to ICC jurisdiction, the United States has structurally placed itself in the Hobbesian baseline with respect to the ICC's adjudication of US conduct in Afghanistan. The United States may continue to operate institutional forms (the State Department, diplomatic missions, formal participation in UN bodies); it does not operate within Law's binding character over the rejected domain. With respect to the rejected domain, the

40 *Id.*

United States is structurally in the same position as a state that has never recognized the framework.

This is the structural-indistinguishability claim. A state that has never recognized the framework operates in the Hobbesian baseline with respect to the framework; a state that has recognized the framework but rejected Law's binding character over its conduct in a specific domain operates in the Hobbesian baseline with respect to that domain. The procedural histories are different; the structural status with respect to the rejected domain is identical.

E. The Deliberative-Revision Distinction

The structural argument requires one critical sharpening to avoid an obvious objection. Surely, the objection runs, states must have *some* mechanism to express disagreement with international Law? If a state disagrees with the Court's interpretation of the Genocide Convention's intent standard, or with the substantive content of the Rome Statute, or with the territorial scope of consular-notification obligations, the state cannot be required to accept the Court's adjudication as a matter of conscience — to do so would be to require states to abandon principled disagreement with the framework's content.

The objection misses the structural feature of democratic Law. Democratic Law specifically supplies mechanisms for the revision of its content through deliberation. Disagreement with the framework's substantive content is internal to Law: parties argue for alternative interpretations through written submissions and oral hearings; parties propose treaty amendments through the framework's amendment procedures; parties develop subsequent state practice and *opinio juris* that contributes to customary-international-law evolution; parties engage other state parties in diplomatic dialogue toward common interpretive ground; parties accept the framework's adjudication of disagreements while continuing to argue for revisions in subsequent cases. These deliberative mechanisms are what democratic Law supplies as the form of legitimate disagreement within Law.

A state that engages the mechanisms remains a participant in the framework even when arguing against its specific outcomes. India's argument under UAPA against the Court's interpretation of Section 153A-analog cases is legitimate disagreement; India remains a state party engaged with the framework. The United States' argument under the Article 63 declaration that the Court should maintain a high standard for inferring genocide intent is, in form, legitimate disagreement; it engages the framework's deliberative mechanism. Where the United States exits the deliberative mechanism, the form changes; the exit is the rejection.

The deliberative-revision distinction sharpens the diagnostic. The Bolton letter is not legitimate disagreement with the Rome Statute. The United States could have argued, through deliberative engagement, for amendments to the Statute's substantive provisions; could have developed *opinio juris* through consistent state practice; could have engaged the ICC's complementarity principle by exercising universal jurisdiction over US-conduct allegations through domestic prosecutorial mechanisms. The Bolton letter is the refusal of the deliberative form. EO 14203 is not legitimate disagreement with the ICC's standards. The United States could have intervened in proceedings under the appropriate procedural mechanisms; could have proposed amendments; could have engaged in diplomatic dialogue with state parties; could have developed the procedural mechanisms the Rome Statute itself supplies for state-party engagement with the Court. EO 14203 is the refusal of the deliberative form. The "blood libel" characterization of *South Africa v. Israel* is not legitimate disagreement with the Court's analysis. Israel could have engaged the substantive merits in detailed written submissions; could have argued for alternative interpretations of the Genocide Convention's intent standard; could have engaged the Court's procedural mechanisms while contesting the substantive outcome. The "blood libel" characterization is the refusal of the deliberative form.

The structural diagnostic engages the refusal of the deliberative form, not the substantive disagreement that the deliberative form would express. A party that refuses the deliberative form has not exercised democratic disagreement; it has rejected the form within which democratic disagreement operates. The four-decade US/Israeli pattern is, on this analysis, the rejection of democracy at the inter-state scale.

F. Structural Indistinguishability of "Never Bound" and "Unbound by Declaration"

The structural argument's punch is the indistinguishability claim. With respect to the rejected jurisdictional grounds, a state that has rejected Law's binding character through unilateral declaration is in the same structural position as a state that has never recognized the framework.

Consider two paradigm cases.

State A. Never accepted ICJ compulsory jurisdiction. Not a state party to the Rome Statute, the Genocide Convention, the major human-rights treaties. Has not engaged with the codified democratic order. Receives no benefits from the order. Consistent in its position. Examples: certain Gulf monarchies on certain specific frameworks; certain isolated states; North Korea on most frameworks; the People's Republic of China on certain specific instruments.

State B. Accepted ICJ jurisdiction at one point but withdrew under adverse ruling (US 1986). Ratified some treaties but unsigned others by executive declaration (US 2002 Rome Statute). Sanctions international courts for adjudicating its allies' conduct (US 2020, 2025). Intervenes substantively in proceedings to narrow the standard the body applies (US 2025 Article

63 declaration). Declares unilaterally that the body has "no jurisdiction" (US EO 14203). Continues to demand UN Security Council seat, veto, recognition as a constitutional democracy bound by international law, treaty network benefits, alliance protections.

The conventional analysis treats these as fundamentally different cases. State A is "outside" the framework; state B is "inside" the framework but selectively defecting. The conventional analysis privileges procedural form: State A has not signed the relevant procedural acts; State B has signed and then withdrawn. The conventional analysis treats the procedural form as constitutive of the legal status.

The structural argument identifies the conventional analysis as doctrinally illusory. *Both* states are outside the social contract with respect to the rejected jurisdictional grounds — outside the binding character of Law as it operates over the contested domain. The procedural form is different; the structural status is identical. The conventional analysis's privileging of procedural form is what allows State B to claim the rhetorical infrastructure of bound membership while operating structurally outside Law's binding character. The structural argument's identification of the conventional analysis as illusory is what removes the rhetorical cover.

G. The Reciprocity Inversion

The structural-indistinguishability claim has a sharpening corollary: State B's conduct is structurally *worse* than State A's conduct. State A's position is consistent — it has not accepted the framework's binding character; it claims no privileges of membership; it operates in the Hobbesian baseline with respect to the framework and is transparent about it. State B's position is structurally incoherent — it claims the privileges of membership when convenient; it claims unbinding from membership when inconvenient; it demands all the benefits of bound membership while operating outside the binding character that membership entails.

The incoherence is itself the violation. The codified democratic order operates through reciprocity: members mutually bind themselves to the framework in exchange for the framework's protection. The mutual undertaking is what creates the order. A party that demands the protection while refusing the mutual undertaking has violated the order's constitutive principle. The violation is not merely a particular act of non-compliance; it is a structural disposition incompatible with the order's existence.

The reciprocity inversion is therefore the second-level rhetorical-inversion meta-violation in its most acute form. The party with full civil capacity (State B claims this) operates outside the framework's binding character (State B operates this) while characterizing parties operating consistently with the framework as illegitimate ("blood libel"; "pro-terror"; "absurd opinions in The Hague"; "extraneous disputes brought before the Court"). The framework's diagnostic engages the disposition, not the underlying conduct in any particular case.

H. The Three Structural States of Law

The structural argument developed in Parts III.A through III.G operates at a level of generality that needs sharpening to clarify how Law's binding character is operationalized. Law operates in three structural states, each with different implications for how rejection of Law manifests as an operational rather than merely structural act.

State 1 — The Hobbesian baseline. No social-contract transfer has occurred at the relevant scale. No binding framework operates over the parties. Each party retains unilateral defensive rights and operates in unmediated relations with all other parties. Law does not operate.

State 2 — Uninstituted (or partially instituted) rule of Law. The social-contract transfer has occurred at the principled level. A codified framework with binding principles exists; deliberation has produced the framework's substantive content; member integrity to the codified principles holds the framework together. No institutional enforcement infrastructure operates coercively over the members. Law operates *through member integrity* rather than through coercive enforcement. This is the operational state of the international order at the global scale. It is also the operational state of transitional polities and constitutional foundings during the period between the deliberative articulation of the framework and the construction of its enforcement infrastructure.

State 3 — Instituted rule of Law. Institutional enforcement infrastructure (police, courts, executive coercion, military if required) operates coercively over the members. Law operates not merely through member integrity but through the framework's capacity to constrain conduct against the will of the constrained party. This is the operational state of mature civil societies. In the contemporary United States, the federal-state interface is the paradigm instituted-rule-of-Law condition.

The three states are not arranged in a hierarchy of legitimacy. They are structurally distinct operational modes. State 3 is not the *completion* of State 2; it is the *extension* of State 2 with coercive enforcement that backs up the voluntary integrity. State 3 is democratic only insofar as State 2 underlies it — only insofar as the members operating under institutional enforcement maintain voluntary integrity to the principles the enforcement is enforcing. Authoritarian rule is institutional enforcement *without* underlying member integrity; democratic

Law is institutional enforcement *backed by* member integrity. The two are structurally distinct even when they share institutional form.

The uninstituted character of State 2 is not a defect to be remedied by transition to State 3; it is constitutive of democracy itself. Democracy is constituted by deliberation; deliberation requires that members operate the framework through their voluntary integrity to the principles, because no higher coercive authority operates over the members to compel adherence. The international order is permanently in State 2 not because it has failed to develop into State 3 but because the structural conditions for State 3 — a higher coercive authority operating over sovereign states — would *replace* democratic Law with authoritarian rule rather than complete it. The order's democratic character depends on its preservation in State 2.

This sharpens the rejection-of-Law diagnostic developed in Parts III.A through III.G. The rejection of Law has different operational consequences in different states. In State 3, the rejection of Law by a member is constrained by enforcement infrastructure; the framework continues to operate because the institutional mechanism constrains the rejecting party against its will; the violation is absorbed by the institutional apparatus. In State 2, no enforcement infrastructure exists to constrain the rejecting party; the framework operates only through member integrity; the rejection is the destruction of the framework's operational foundation. The structural-indistinguishability claim (Part III.F) and the reciprocity-inversion claim (Part III.G) therefore operate at greater severity in State 2 than in State 3 — and the international order's permanent operation in State 2 is what makes the four-decade US/Israeli pattern operationally destructive rather than merely structurally rejective.

IV. THE FRACTAL CONSTITUTION

Part IV develops four independent doctrinal grounds against the unilateral executive treaty-withdrawal practice, presented in order of textual directness: the Supremacy Clause (IV.A, the most textually direct), the Inferior-Officer Exception (IV.B), the war-powers structure (IV.C), and the structural-fractal *Texas v. White* principle (IV.D–G). Each ground operates independently; each is sufficient on its own to render the unilateral practice constitutionally indefensible. Parts IV.H–J then characterize the violation as particularized-enforcement (IV.H), reconsider the *Goldwater v. Carter* political-question dismissal in light of these grounds (IV.I), and sharpen the analysis through the instituted/uninstituted distinction (IV.J).

The four grounds developed in this Part operate within the doctrinal framework articulated in the companion paper, *The Madisonian Separation of Powers Objective Compliance Test*, which establishes that the constitutional distribution of powers admits no delegation and that the Supremacy Clause's "in Pursuance thereof" provision operates as a validity test for federal action.[41] Under that framework, executive unilateral treaty withdrawal is a paradigm USURPATION — the executive exercising power assigned to a different Position of Assigned Power (the Senate, under Art. II, § 2, cl. 2). The four doctrinal grounds developed below are not four separate analytical projects; they are four textual axes on which the same USURPATION fails the Madisonian Compliance Test simultaneously.

41 Joseph D. Kirchner, *The Madisonian Separation of Powers Objective Compliance Test: Recovering Constitutional Structure Through Textual Analysis* (May 2026) (developing the six-step compliance test, the Power Separation Vulnerability (USURPATION/ABDICATION) taxonomy, the process-challenge vs. violation-claim distinction, the Supremacy Clause "in Pursuance thereof" validity test, and the recovery of equitable standing for enumerated constitutional violations).

A. The Supremacy Clause and the Co-Equal Supreme Law Argument

The most textually direct constitutional ground against the unilateral executive treaty-withdrawal practice is the Supremacy Clause itself. Article VI, clause 2 of the Constitution provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[42]

The Supremacy Clause performs two distinct constitutional functions, both of which bear on the treaty-withdrawal question.

1. Treaties as Co-Equal Supreme Law

The first function is the elevation of treaties to the status of supreme Law of the Land alongside the Constitution and federal laws. The Supremacy Clause's text places three sources of supreme law in parallel:

1. *The Constitution* itself;
2. *The Laws of the United States* made in pursuance of the Constitution (federal statutes);
3. *All Treaties* made, or which shall be made, under the Authority of the United States.

The three sources are co-equal in status. They are equally binding on judges in every state; they are equally part of the supreme Law of the Land; they are equally constitutional commitments of the United States. The textual structure of the Supremacy Clause makes no distinction in their respective statuses; the operative phrase "shall be the supreme Law of the Land" applies to all three sources together. The Framers placed treaties in textual parallel with

42 U.S. CONST. art. VI, cl. 2.

the Constitution itself, signaling that ratified treaties operate as constitutional commitments rather than as ordinary executive agreements.

2. The President Cannot Unilaterally Repeal Supreme Law

The second function follows from the first. If treaties are co-equal supreme law with the Constitution and federal laws, then the constitutional process for unmaking them must be equally protected as the process for unmaking the Constitution or federal laws.

The Constitution cannot be unilaterally amended or repealed by the President. Article V supplies the exclusive constitutional process for amendment — proposal by two-thirds of both houses of Congress or by an Article V convention, followed by ratification by three-fourths of the states.[43] The President has no formal role in the amendment process; the Constitution explicitly excludes any presidential power to modify or repeal the supreme law that constitutes the federal government.

Federal laws cannot be unilaterally repealed by the President. Article I, § 7 supplies the bicameralism-and-presentment process for law-making, and the Supreme Court in *INS v. Chadha* held that the same process is required for any action that has "the purpose and effect of altering the legal rights, duties, and relations of persons . . . outside the legislative branch."[44] Federal laws can therefore be unmade only through the same constitutional process by which they were made: bicameral passage and presentment to the President. The President's role in law-making is signing or vetoing legislation Congress has passed; the President has no power to unilaterally repeal a federal law by executive declaration. The constitutional commitment is unmistakable:

43 U.S. CONST. art. V.

44 *INS v. Chadha*, 462 U.S. 919, 952 (1983) (holding that legislative action that has "the purpose and effect of altering the legal rights, duties, and relations of persons . . . outside the legislative branch" must comply with the bicameralism-and-presentment process of Article I, § 7).

the President cannot, by executive fiat, undo the supreme law that Congress and the President together have made.

By symmetric application, treaties cannot be unilaterally repealed by the President. Article II § 2 cl. 2 supplies the supermajority Senate-concurrence process for treaty-making; by parallel constitutional logic, the same process must apply for treaty repeal. The President has no constitutional power to unilaterally undo a treaty any more than the President has power to unilaterally repeal a federal law or unilaterally amend the Constitution. Each of these acts would operate on supreme law of the land; each requires deliberative-branch engagement; none can be performed by executive declaration.

The asymmetric reading — that the President can unilaterally repeal treaties even though the President cannot unilaterally repeal Constitution or federal laws — has no textual or structural support. The Supremacy Clause places treaties in textual parallel with the Constitution and federal laws; the asymmetric reading would require treaties to occupy a *lesser* constitutional status than the Supremacy Clause's text grants them. The constitutional text does not authorize the demotion; the demotion has been performed by accumulated executive practice without textual or doctrinal grounding.

3. The Argument's Independent Doctrinal Force

The Supremacy Clause argument is the most textually direct of four independent doctrinal grounds against the unilateral executive treaty-withdrawal practice. The argument is independent of:

• *The textual / inferior-officer exception argument* (Part IV.B), which operates on Article II, § 2, clause 2 and produces a separate doctrinal conclusion through the *expressio unius* canon.

• *The war-powers argument* (Part IV.C), which operates on the social-contract analysis of treaty withdrawal and the connection to the war-declaration power.

• *The structural-fractal argument* (Parts IV.D through IV.G), which operates on the *Texas v. White* principle and the federalism-fractal analogy.

Each of the four grounds operates independently; each is sufficient on its own to render the unilateral practice constitutionally indefensible; together they make the practice doctrinally untenable on multiple distinct constitutional axes.

4. The Argument's Historical Confirmation

The Supremacy Clause argument is consistent with — and substantially anticipated by — the historical record developed in Part IV.C.4. Thomas Jefferson's *Manual of Parliamentary Practice* (1801) articulated precisely this argument: "Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded." Jefferson's reasoning operates explicitly on the Supremacy Clause: because treaties are supreme law equally with federal laws, the same legislative process required to unmake federal laws is required to unmake treaties. Jefferson articulated the co-equal supreme law argument in 1801; the Article's contemporary articulation is the recovery of this founding-era doctrine.

The Senate Foreign Relations Committee's 1856 report characterizing the 1798 abrogation as a "rightful exercise of the war power" is also consistent with the Supremacy Clause argument. The abrogation was a war-power exercise because treaties as supreme law could only be unmade through Congressional action, and the war-power was the specific Congressional authority engaged in the 1798 case. The two characterizations — Supremacy Clause and war power — operate together: treaties are unmakable only by Congress, and the specific Congressional power engaged depends on the circumstances of the unmaking.

Bas v. Tingy (1800) confirms the Supremacy Clause reading. The Court's treatment of the 1798 abrogation as part of a "public war" declaration presupposed the Supremacy Clause analysis: treaty abrogation was a Congressional act because treaties are supreme law and unmaking supreme law requires Congressional action.

5. The Argument's Contemporary Application

The contemporary unilateral executive treaty-withdrawal practice operates as if treaties occupied a *lesser* constitutional status than federal laws or the Constitution. The Bolton unsigning operated as if the Rome Statute's signature obligations could be undone by executive letter alone, even though such treatment of an analogous federal law would be obviously unconstitutional. EO 14203's declaration that the ICC has "no jurisdiction over the United States or Israel" operates as if the executive could declare an international obligation null, even though no analogous declaration could nullify a federal law. The 2026 sixty-six-organization memorandum operates as if international commitments occupied a constitutional position below executive authority, even though Article VI, clause 2 elevates them to supreme law.

Each instance of unilateral executive treaty action is, in effect, a claim that the executive has a power over supreme law that the Constitution explicitly denies in other contexts. The asymmetric treatment of treaties — supreme law in form but executive-disposable in operation — is not the constitutional structure that Article VI, clause 2 establishes. The Supremacy Clause's textual elevation of treaties to supreme Law of the Land is incompatible with the contemporary practice of executive disposability.

The Supremacy Clause argument is therefore the most textually direct doctrinal ground. It does not require the structural-fractal analogy (though it is consistent with it); it does not require the *expressio unius* canon (though it reinforces the textual argument); it does not require the social-contract analysis (though it grounds the war-powers argument historically). It rests on a single constitutional provision — Article VI, clause 2 — and on a single structural principle: that supreme law cannot be unilaterally repealed by the executive. The contemporary unilateral practice is incompatible with the Supremacy Clause on its face.

6. Convergence with the Madisonian Compliance Test

The Supremacy Clause argument tracks the validity test that the Madisonian Compliance Test framework identifies in Article VI, clause 2's "in Pursuance thereof" qualification.[45] Under that framework, federal action qualifies as supreme Law of the Land only if "made in Pursuance" of the Constitution; action that violates the constitutional distribution of powers fails the validity test regardless of its formal characteristics. Executive unilateral treaty withdrawal — purporting to extinguish supreme Law of the Land through executive declaration — cannot be "in Pursuance" of a Constitution that places the treaty power in the Senate's advice-and-consent jurisdiction. The Compliance Test's Step Three (syllogism construction) fails: no valid syllogism connects Art. II, § 2, cl. 2's bicameral structure to unilateral executive withdrawal. The Compliance Test's Step Four (textual consistency) fails: if the executive could unilaterally undo what the Senate ratified, the same interpretive method would permit the executive to unilaterally undo federal statutes (forbidden) or constitutional amendments (forbidden a fortiori). The

45 Joseph D. Kirchner, *The Madisonian Separation of Powers Objective Compliance Test: Recovering Constitutional Structure Through Textual Analysis* (May 2026) (developing the six-step compliance test, the Power Separation Vulnerability (USURPATION/ABDICATION) taxonomy, the process-challenge vs. violation-claim distinction, the Supremacy Clause "in Pursuance thereof" validity test, and the recovery of equitable standing for enumerated constitutional violations).

Supremacy Clause argument is not merely consistent with the Madisonian framework; it is the framework's direct application to the treaty-withdrawal question.

B. The Inferior-Officer Exception and the Textual Foreclosure

The Supremacy Clause argument developed in Part IV.A demonstrates that treaties are co-equal supreme Law of the Land and cannot be unilaterally repealed by the executive. A second textual argument operates on a distinct constitutional provision — Article II, § 2, clause 2 — and produces the same conclusion through a different doctrinal path.

The asymmetric treaty-withdrawal practice has been justified by appeal to constitutional silence: the Treaty Clause provides for entry through Senate concurrence but says nothing about exit, and executive practice has filled the textual void. The justification fails on closer reading of the constitutional text. The text is not silent; it is explicit in a way that forecloses the unilateral practice.

Article II, § 2, clause 2 contains two parallel grants of foreign-affairs power. The Treaty Clause provides that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." The Appointments Clause provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law."[46]

The two powers share the same default rule — Senate advice and consent required. But they diverge in their treatment of exceptions. The Appointments Clause contains an explicit textual escape valve: "but the Congress may by Law vest the Appointment of such inferior

46 U.S. CONST. art. II, § 2, cl. 2.

Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."[47] The escape valve permits Congress, by statute, to devolve inferior-officer appointments to the President alone (or to the Courts, or to Heads of Departments), bypassing the Senate-concurrence requirement for that limited category.

The Treaty Clause contains no analogous escape valve. There is no provision in the constitutional text by which Congress can devolve treaty-making — or, by implication, any treaty action — to the President alone. The Senate-concurrence requirement is constitutionally fixed for treaty actions, with no statutory or executive carve-out available.

The textual asymmetry is constitutionally meaningful under the standard *expressio unius est exclusio alterius* canon of construction. The Framers demonstrated, in the Appointments Clause, that they knew how to create an exception to Senate concurrence when they intended one. The Appointments Clause's explicit exception for inferior officers and the Treaty Clause's silence on any analogous exception is the textual signal that the Senate-concurrence requirement for treaty actions admits no exceptions — not for any category of treaty, not for any category of treaty action, and not by any statutory devolution Congress might attempt. The treaty-making power, by constitutional text, is fixed to the bicameral Senate-concurrence structure.

This textual structure forecloses the unilateral-executive treaty-withdrawal practice on its face. The practice has been defended on the premise that constitutional silence permits executive practice to develop in the absence of explicit constitutional rule. The textual analysis demonstrates that the Constitution is not silent on the question; it is explicit, through the structure of Article II, § 2, clause 2 itself, that the Senate-concurrence requirement governs treaty actions without exception. The asymmetric practice — bicameral concurrence required for entry, unilateral executive action for exit — operates outside the constitutional text's authorization.

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47 U.S. CONST. art. II, § 2, cl. 2 (final clause).

Three doctrinal consequences follow.

First, the Goldwater v. Carter *political-question dismissal is foreclosed at the textual level.* The political-question doctrine treats constitutional questions as committed to the political branches when the constitutional text supplies no judicially manageable standards. The textual analysis demonstrates that the Constitution does supply judicially manageable standards: the Treaty Clause's default rule is Senate concurrence; the absence of an inferior-officer-style escape valve is the textual signal that the default applies to all treaty actions. The judicially manageable standard is the symmetric application of the Senate-concurrence requirement to all treaty actions — entry, modification, withdrawal, unsigning, and any analog. There is no political-question vacuum; the text supplies the rule.

Second, the unitary executive theory cannot rescue the asymmetric practice. The unitary executive theory operates within the executive branch — the President's authority over executive officials. The Constitution's text supports a unitary-executive reading in the inferior-officer appointment context, where Congress may devolve appointment authority to the President alone. The Constitution's text does not support a unitary-executive reading in the treaty context, because no analogous devolution is permitted. The Bolton unsigning, EO 14203, the JCPOA withdrawal, and the broader unilateral treaty-withdrawal practice cannot be defended by appeal to unitary-executive theory, because the textual ground for unitary-executive treaty action is constitutionally absent.

Third, the Bolton unsigning is exposed as constitutionally indefensible on textual grounds. Bolton's letter operated on the legal effect of Clinton's signature — a treaty action — without any Senate concurrence. Under the textual analysis, the act has no constitutional authorization. The Constitution provides no mechanism by which the executive alone can perform any treaty action; the Bolton letter accordingly operated outside the constitutional structure that governs treaty-making at every stage. The act's operational persistence for twenty-four years has been a function of political acceptance and judicial non-engagement, not constitutional validity.

The textual analysis adds a second independent doctrinal ground operating alongside the Supremacy Clause argument of Part IV.A. The Supremacy Clause argument shows that treaties are supreme law that cannot be unilaterally repealed by the executive. The textual analysis here shows that the Constitution's own text — through Article II, § 2, clause 2's structure — explicitly imposes the same conclusion: the bicameral Senate-concurrence requirement governs all treaty actions, with no inferior-officer-style escape valve. Both textual arguments operate on different constitutional provisions but produce the same doctrinal conclusion: the unilateral-executive treaty-withdrawal practice is foreclosed by the constitutional text.

C. Treaty Withdrawal as the Structural Precondition for War

The Supremacy Clause and inferior-officer exception arguments developed in Parts IV.A and IV.B identify two independent textual grounds against the unilateral executive treaty-withdrawal practice. A third independent ground emerges from the war-powers structure of Article I.

The state of peace between sovereigns is constituted by the social-contract relations among them. Treaties are the codified embodiment of those relations at the inter-state scale — the operational form of the social contract among states. When a state withdraws from a treaty, it does not merely terminate specific obligations; it removes the social-contract framework within which the parties were operating cooperatively. The framework's structural diagnosis (developed in Parts III.D and III.H of this Article and at length in the companion *Bodily Jurisdiction* brief):

outside the social contract, the parties are in the Hobbesian baseline; in the Hobbesian baseline, adversaries exist.

War is the operative expression of adversarial relations between sovereigns. The state of war is what occurs when sovereigns operate in unmediated Hobbesian relation to each other and exercise their natural defensive rights against each other. The state of peace is what occurs when sovereigns operate within social-contract relations that bind their conduct. The structural function of treaty withdrawal is therefore to *transition the parties from social-contract relations to Hobbesian relations* with respect to the rejected framework. The transition is the structural precondition for war. War, when it occurs, is the operational expression of the structural transition the withdrawal has already accomplished.

The temporal lag between treaty withdrawal and armed conflict does not change the structural status. Compare the analogous case of formal war declarations: when Congress declares war, the legal status of the parties changes immediately even if no shots are fired for months. The declaration is what changes the status; the operational consequences follow. The December 8, 1941 declaration of war against Japan was constitutionally operative on the date of its enactment; the operational deployment of US force took months to develop. The temporal lag did not change the constitutional fact that the declaration had moved the parties from peace to war.[48] Treaty withdrawal operates analogously. The withdrawal changes the structural status of the parties; the operational consequences may take years to manifest. The constitutional act has been performed at the moment of withdrawal.

The Constitution gives the war-declaration power exclusively to Congress. Article I, § 8, clause 11 provides: "[The Congress shall have Power] . . . To declare War, grant Letters of

48 Declaration of War with Japan, Pub. L. No. 77-328, 55 Stat. 795 (Dec. 8, 1941).

Marque and Reprisal, and make Rules concerning Captures on Land and Water."[49] The Framers were explicit, in the Constitutional Convention and the Federalist Papers, that the executive should not have unilateral war-making authority. James Madison, drafting at the Convention, observed that the Executive "should be able to repel and not to commence war."[50] Alexander Hamilton in *The Federalist No. 69* contrasted the constitutional President with the British king: "The President is to be commander-in-chief of the army and navy of the United States. . . . It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy; while that of the British king extends to the *declaring* of war."[51] The structural commitment is unmistakable: the act of moving the United States from peace to war is a Congressional act, not an executive act.

1. The Commander-in-Chief Clause as Conditional Grant

The Commander-in-Chief Clause itself reinforces this constitutional structure. Article II, § 2, clause 1 provides: "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."[52] The clause is conditional on its face. The conditioning phrase — "when called into the actual Service of the United States" — governs the entire grant of Commander-in-Chief authority. The conventional doctrinal reading that the conditioning phrase modifies only the militia element has accumulated through twentieth-century practice but is grammatically and structurally implausible: the phrase sits at the end of the enumeration and naturally governs the whole; and the conventional reading produces an internal inconsistency in which the President's

49 U.S. CONST. art. I, § 8, cl. 11.

50 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 318 (Max Farrand ed., 1911) (notes of James Madison, Aug. 17, 1787).

51 THE FEDERALIST NO. 69, at 417–18 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (emphasis in original).

52 U.S. CONST. art. II, § 2, cl. 1.

command of standing federal forces is treated as unconditional while command of state militia is conditional, despite both being subject to the same enumeration in a single clause. The textually faithful reading places the constitutional contingency at the threshold of the Commander-in-Chief authority: the President exercises the authority *when* the military has been called into actual service — and the call must originate outside the executive branch.

The structural location of the "call" power is in Article I. The Calling Forth Clause (Art. I, § 8, cl. 15) provides that Congress has the power "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."[53] The Declare War Clause and the Marque and Reprisal Clause (Art. I, § 8, cl. 11, *supra*) provide analogous calling functions: declaring war activates the military for formal war; granting Letters of Marque and Reprisal authorizes armed action short of formal war. The Army-Raising Clause (Art. I, § 8, cl. 12) provides Congress with the power to raise and support armies. The Navy Clause (cl. 13) addresses the navy. Each of these Article I powers performs a "calling into service" function: declaring war, authorizing reprisal, calling forth the militia, raising the standing forces. The Commander-in-Chief Clause's conditioning phrase operates on the operational output of these Article I powers.

Under this reading, the executive has *no* independent military authority. The Commander-in-Chief role is the operational direction of force; the constitutional authorization of force comes from Congress at every relevant step. The structural commitment is unmistakable in the constitutional architecture: military force is a deliberative-branch function activated by Congressional decision; the executive's role is operational execution of what Congress has authorized.

53 U.S. CONST. art. I, § 8, cl. 15.

The structural relationship between the Commander-in-Chief Clause (Art. II, § 2, cl. 1) and the Treaty Clause (Art. II, § 2, cl. 2) is itself meaningful. The Framers placed the two powers in immediate textual sequence because they understood the relationship between them. The President bears the operational consequences of war as Commander-in-Chief (once the military has been called into actual service); accordingly, the President is given the treaty power because the treaty power is the constitutional mechanism by which the conditions for that calling can be *prevented*. The negotiation function was delegated to the executive for operational reasons — a Senate of 100 (or, at the founding, of 26) cannot practically negotiate with foreign leaders. But the binding function was retained by the Senate because what makes a treaty obligate the United States as a whole is the deliberative-branch's concurrence, not the operational negotiation. The structural sequence: command → treaty-power-to-prevent-war → Senate concurrence to bind. Each step has its constitutional rationale; none locates unilateral authority at the executive.

2. The "Call to Service" Framework

The "Call to Service" framework supersedes the contemporary doctrinal distinction between declared war and lesser military action. The doctrinal move that has authorized contemporary unilateral executive military action — treating limited strikes, drone operations, special operations, and undeclared armed conflicts as outside the war-powers structure because they fall short of "formal war" — is constitutionally illusory under the Call to Service framework. *Every* exercise of US military force against a foreign sovereign requires some form of Congressional calling: a formal declaration of war; a statutory authorization (an AUMF); a Letters of Marque and Reprisal grant; an Insurrection Act invocation; or analogous Congressional act. The constitutional category of "executive military action absent Congressional calling" is null. Where the executive has acted outside this framework — the Korean intervention (1950); the Vietnam buildup before the Gulf of Tonkin Resolution; the Soleimani strike (January 2020); various contemporary kinetic actions justified under stretched AUMF readings — the action operates outside the Constitution's authorization structure, regardless of whether the action produces formal war.

The Call to Service framework strengthens the war-powers argument against unilateral treaty withdrawal. Treaty withdrawal performs the *structural-precondition* act that creates the conditions under which Congressional calling may be required. The executive performs Step 1 (removing the social-contract framework) unilaterally; Step 2 (Congressional calling for the resulting adversarial action) is then engaged or bypassed depending on the operational consequences. If the constitutional commitment is that the executive cannot exercise Commander-in-Chief authority without Step 2, the executive equally cannot perform Step 1 unilaterally — because Step 1 is the structural precondition for Step 2, and the constitutional structure addresses the entire sequence rather than just the operational endpoint.

The sequence — treaty in force → treaty withdrawal → Congressional calling activated → executive command — locates the executive's unilateral authority at no step. The executive does not unilaterally bind the United States to a treaty (Senate concurrence required by Art. II, § 2, cl. 2). The executive does not unilaterally withdraw from a treaty (by the Supremacy Clause argument at Part IV.A, the inferior-officer-exception argument at Part IV.B, and the war-powers analysis here). The executive does not unilaterally call the military into service (Congressional power per Art. I, § 8). The executive does not unilaterally declare war (Congressional power per Art. I, § 8, cl. 11). The executive does not unilaterally grant Letters of Marque and Reprisal (Congressional power per the same clause). The executive's authority is operational direction of forces that Congress has called into service for purposes Congress has authorized. At every constitutional step, the executive's authority is operational rather than initiating; the initiating function is reserved to Congress.

3. The Triple Convergence and the Historical Calibration

The combination of the war-powers structure and the social-contract analysis of treaty withdrawal produces a third independent doctrinal ground. If treaty withdrawal is the structural precondition for war, and war requires Congressional declaration, then by symmetric application of the constitutional structure, treaty withdrawal requires at least Congressional concurrence. The unilateral executive treaty-withdrawal practice usurps the war-powers structure by enabling the structural precondition for war without Congressional authorization. The executive cannot lawfully fire the first shot in a war that Congress has not declared; the executive equally should not be able to perform the structural act that converts the parties from peace to potential war without Congressional concurrence.

The historical record requires calibration to distinguish two distinct patterns of post-withdrawal conduct. The pre-WWII pattern — Japan's withdrawal from the League of Nations (1933) preceding the Second Sino-Japanese War (1937) and the broader Pacific militarism culminating in Pearl Harbor (1941);[54] Germany's withdrawal from the League (1933) preceding the Rhineland remilitarization (1936), the Anschluss (1938), the invasion of Poland (1939), and WWII;[55] Italy's withdrawal from the League (1937) preceding the invasion of Albania (1939) and entry into WWII — demonstrates that treaty withdrawal can precede unilateral aggression by the withdrawing state, executed without consent of any deliberative authority.

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54 Japan formally withdrew from the League of Nations on March 27, 1933, following the Lytton Commission's report on the Mukden Incident. *See* THOMAS BURKMAN, JAPAN AND THE LEAGUE OF NATIONS: EMPIRE AND WORLD ORDER, 1914–1938 (Univ. of Haw. Press 2008).

55 Germany withdrew from the League of Nations on October 14, 1933, following the failure of the Geneva Disarmament Conference. *See* GERHARD WEINBERG, GERMANY, HITLER, AND WORLD WAR II 70–73 (Cambridge Univ. Press 1995).

The Cold War-era US pattern is different. US Cold War-era military actions following or accompanying treaty restructuring (Korea, Vietnam, Gulf War, Afghanistan, Iraq) were generally accompanied by Congressional authorization: the Gulf of Tonkin Resolution (1964); the Authorization for Use of Military Force Against Iraq Resolution (1991); the post-9/11 AUMF (2001); the Iraq AUMF (2002).[56] The Cold War-era pattern therefore *supports* rather than undermines the constitutional commitment to Congressional calling: even during the Cold War, the executive sought at least nominal Congressional authorization for major adversarial action, demonstrating that the constitutional architecture was operative even where the executive engaged in unilateral political-economic pressure short of formal declaration of war. The Cold War pattern is consistent with the Call to Service framework: military force against sovereigns flowed from Congressional calling (declaration or AUMF), regardless of whether formal war was declared.

The contemporary pattern is closer to the pre-WWII pattern than to the Cold War-era pattern. The Soleimani strike (January 2020) was conducted without Iran-specific Congressional authorization; the AUMF readings invoked to justify it stretched the 2001 (al-Qaeda) and 2002 (Iraq) statutes beyond their original scope. The 2026 sixty-six-organization memorandum unilaterally withdraws from frameworks Congress had previously bound the US to, without Congressional concurrence. The ICC sanctions regime (EO 14203, 2025) targets the enforcement infrastructure of an international body without statutory authorization beyond IEEPA's general delegation. The contemporary pattern restores the pre-WWII pattern in which the withdrawing state acts unilaterally — not because the Cold War commitment to Congressional authorization

56 *See* Joint Resolution to Promote the Maintenance of International Peace and Security in Southeast Asia ("Gulf of Tonkin Resolution"), Pub. L. No. 88-408, 78 Stat. 384 (1964); Authorization for Use of Military Force Against Iraq Resolution, Pub. L. No. 102-1, 105 Stat. 3 (1991); Authorization for Use of Military Force ("2001 AUMF"), Pub. L. No. 107-40, 115 Stat. 224 (2001); Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002).

has been doctrinally rejected but because the executive practice has accumulated outside that commitment without judicial or political resolution.

The historical pattern's structural lesson is: *treaty withdrawal removes the social-contract framework that constrains the parties' conduct toward each other; the absence of the framework permits — and historically tends to produce — the conduct the framework was constructed to prevent.* Whether the resulting conduct then receives Congressional authorization (the Cold War-era pattern) or proceeds unilaterally (the pre-WWII and contemporary patterns) is a separate question from whether the withdrawal itself was constitutionally authorized. The constitutional question concerns the withdrawal; the operational question concerns the subsequent conduct. The unilateral executive treaty-withdrawal practice answers the constitutional question by executive fiat regardless of how the operational question is later answered.

Treaty withdrawal is therefore *effectively a declaration of war even if an attack does not immediately occur thereafter*. The withdrawal performs the constitutional act that moves the parties from peace to potential war; the temporal lag between withdrawal and attack is operational rather than constitutional. The constitutional question is not about the temporal sequence of operational consequences but about what the constitutional act *does* to the relationship between the parties. The act of withdrawal does to the inter-state social-contract relationship what a declaration of war does to the inter-state peace status: it transitions the parties from cooperative to potentially adversarial relations.

Three doctrinal consequences follow from this analysis.

First, the constitutional ground against unilateral executive treaty-withdrawal multiplies. The Supremacy Clause argument (Part IV.A) shows that treaties are co-equal supreme Law of the Land with the Constitution and federal laws, and that the executive has no constitutional power to unilaterally repeal supreme law. The textual argument (Part IV.B) shows that the Constitution's text explicitly forecloses unilateral-executive treaty action by providing no analog to the inferior-officer exception. The war-powers argument (this Part IV.C) shows that treaty withdrawal performs the constitutional act that the war-powers clause assigns to Congress. The structural-fractal argument developed in Parts IV.D through IV.G below shows that the principle binding states to the federation must bind the federation to the codified democratic order. Four independent constitutional grounds converge on the same conclusion: the unilateral executive treaty-withdrawal practice is constitutionally indefensible.

Second, the constitutional accountability dimension sharpens. The framework's substrate-layer claim (rejection of Law places the rejecting party in the Hobbesian baseline where adversaries exist) is matched by the Constitution's operational-layer rule (putting the United States into adversarial relation requires Congressional declaration). Both layers converge on the same accountability principle: putting the United States into adversarial relation with another sovereign is a serious constitutional act that requires Congressional engagement. The unilateral executive treaty-withdrawal practice circumvents both layers simultaneously.

Third, the Trump II withdrawal pattern is constitutionally exposed. The 2026 sixty-six-organization memorandum performs the structural act of moving the United States into Hobbesian relation with the parties to dozens of multilateral frameworks simultaneously. By the war-powers analysis, the memorandum is a unilateral executive act that creates the constitutional preconditions for adversarial relations with the frameworks' other state parties — without any Congressional declaration. The operational consequences will accumulate over the coming years; the constitutional act has already been performed. Each unilateral withdrawal in the broader four-decade pattern — the 1986 Nicaragua withdrawal; the 2005 VCCR Optional Protocol withdrawal; the 2002 Bolton unsigning; the 2018 JCPOA withdrawal; the 2017–2020 Paris Agreement withdrawal; the 2019 INF withdrawal; the 2020 WHO withdrawal; the 2018 and 2025 UNHRC withdrawals; the 2026 UNFCCC withdrawal — is a constitutional act of the same kind: the executive performing the structural-precondition-for-war act that the Constitution reserves to Congressional declaration.

4. The 1798 Precedent and the Nineteenth-Century Pattern

The constitutional argument developed in Parts IV.A through IV.C.3 is restorative rather than innovative. The unilateral executive treaty-withdrawal practice that the Article identifies as constitutionally indefensible is a twentieth-century deviation from the founding-era and nineteenth-century pattern of Congressional involvement in treaty termination.

The foundational historical precedent is the Act of July 7, 1798, "An Act To Declare the Treaties Heretofore Concluded with France, No Longer Obligatory on the United States."[57] The statute, enacted by both houses of Congress and signed by President Adams, formally abrogated the Treaty of Alliance (1778), the Treaty of Amity and Commerce (1778), and the Consular Convention (1788) with France, in response to the XYZ Affair and the escalating Quasi-War. The act is the first major US treaty termination in constitutional history; it was performed by Congressional statute, not by executive declaration.

The Supreme Court treated the 1798 abrogation as part of the war power. In *Bas v. Tingy*, 4 U.S. (4 Dall.) 37 (1800), the Court characterized the abrogation as one of a bundle of acts declaring "public war" upon the French Republic.[58] Justice Bushrod Washington wrote that Congress had performed acts of "imperfect war" or "limited public war" through the 1798

57 An Act To Declare the Treaties Heretofore Concluded with France, No Longer Obligatory on the United States, ch. 67, 1 Stat. 578 (July 7, 1798).

58 *Bas v. Tingy*, 4 U.S. (4 Dall.) 37 (1800).

statutes — the abrogation, the authorization of limited hostilities, and the related measures. The doctrinal point is critical for the war-powers analysis developed in this Part: the Court understood treaty abrogation as a war-power exercise, structurally linking the two in precisely the manner this Article articulates.

Thomas Jefferson, in his *Manual of Parliamentary Practice* (1801), articulated the constitutional theory underlying the 1798 act: "Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded."[59] Jefferson, drafting as Vice President and writing within months of taking office as President, reflects founding-era constitutional understanding that treaty abrogation is a Congressional power because treaties are supreme law and unmaking supreme law requires legislative action. Jefferson's reasoning is the Supremacy Clause argument developed in Part IV.A above, articulated in founding-era voice.

The nineteenth century continued the pattern of Congressional involvement, though through varied mechanisms. The 1846 Oregon Convention termination operated by joint resolution: Congress authorized President Polk to give notice of termination of the 1827 Anglo-American Convention concerning joint occupation of the Oregon Territory.[60] The 1855 Danish Friendship Treaty termination operated through Senate authorization: the Senate authorized President Pierce to terminate the Friendship, Commerce, and Navigation Treaty with Denmark, and the President relied on the Senate's action in giving the one-year notice the treaty required.[61] The Senate Foreign Relations Committee in 1856 characterized the 1798 act as "a rightful

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59 THOMAS JEFFERSON, A MANUAL OF PARLIAMENTARY PRACTICE: FOR THE USE OF THE SENATE OF THE UNITED STATES § LII (1801).

60 Joint Resolution Concerning the Oregon Territory, ch. 3, 9 Stat. 109 (Apr. 27, 1846).

61 Convention of Friendship, Commerce, and Navigation, U.S.-Den., Apr. 26, 1826, 8 Stat. 340 (terminated by Senate resolution and Presidential notice, 1855).

exercise of the war power."[62] The Constitution Annotated summarizes the period: "During the nineteenth century, government practice treated the power to terminate treaties as shared between the Legislative and Executive Branches."[63]

The pattern continued into the twentieth century in modified form. The 1970 termination of the Bryan-Chamorro Treaty with Nicaragua (1914) operated through a bilateral termination convention that the Senate ratified by advice and consent (Treaty Doc. 91-22, ratified 66-5 on February 17, 1971).[64] This is a different modality from joint resolution — termination through a Senate-ratified bilateral instrument — but it still involves Senate concurrence in the termination, consistent with the broader pattern of Congressional engagement.

The contemporary unilateral executive practice consolidated through the late twentieth century, primarily through accumulation of executive action without judicial resolution. Carter's 1979 termination of the Sino-American Mutual Defense Treaty with Taiwan was the inflection point: Carter acted unilaterally; Senator Goldwater sued; *Goldwater v. Carter* dismissed on political-question grounds without resolving the constitutional issue. The unilateral practice has accumulated since: Bush II's withdrawal from the ABM Treaty (2001); the Bolton unsigning of the Rome Statute (2002); Trump I's withdrawals from the JCPOA (2018), Paris Agreement (2017), INF Treaty (2019), Open Skies Treaty (2020), WHO (2020), and UNHRC (2018); and Trump II's 2026 sixty-six-organization memorandum.

The historical pattern's significance for the Article's argument is threefold.

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62 S. REP. NO. 34-97, at 6–7 (1856) (Senate Foreign Relations Committee report characterizing the 1798 abrogation as "a rightful exercise of the war power").

63 *Breach and Termination of Treaties*, CONST. ANNOTATED, U.S. CONST. art. II, § 2, cl. 2, https://constitution.congress.gov/browse/essay/artII-S2-C2-1-10/ALDE_00012961/.

64 Convention with Nicaragua Terminating the Bryan-Chamorro Treaty of 1914, U.S.-Nicar., July 14, 1970, 22 U.S.T. 1071 (entered into force Aug. 13, 1971; Senate advice and consent given Feb. 17, 1971, Treaty Doc. 91-22).

First, the symmetric-application thesis is restorative. The argument that treaty withdrawal should require Congressional concurrence is not a constitutional innovation; it restores the founding-era and nineteenth-century practice. The unilateral executive practice is the twentieth-century deviation that requires justification, not the Congressional-concurrence requirement that requires explanation.

Second, Bas v. Tingy *supplies Supreme Court doctrinal support for the war-powers argument.* The Court's 1800 treatment of the 1798 treaty abrogation as part of a "public war" declaration is direct judicial precedent for the structural connection between treaty termination and war power that this Part develops. The Senate Foreign Relations Committee's 1856 characterization confirms the doctrinal reading. The war-powers argument is therefore not a novel structural claim; it is the contemporary articulation of a doctrinal connection the Court itself drew within the first decade of the Constitution's operation.

Third, the Goldwater *dismissal becomes harder to defend.* The historical record demonstrates that judicially manageable standards exist: the 1798 model; the nineteenth-century pattern of Congressional involvement; the *Bas v. Tingy* war-powers framing; the Constitution Annotated's recognition of shared treaty-termination authority. The Court's 1979 retreat from the constitutional question was not because the Constitution supplied no standards; it was because the executive had already accumulated practice the Court declined to disturb. The structural argument developed in this Part, paired with the historical record, identifies *Goldwater* as a doctrinal failure of will rather than a doctrinal failure of standards.

The constitutional argument the Article develops is therefore not a constitutional reform proposal but a constitutional restoration argument. The Framers' generation, when faced with the first major treaty termination, performed it through Congressional act. The nineteenth-century practice continued the pattern of Congressional involvement. The twentieth-century shift to unilateral executive practice is the deviation. The Article's argument identifies the deviation, explains why it is constitutionally indefensible on four independent doctrinal grounds (Supremacy Clause, textual, war-powers, and structural-fractal), and supplies the textual, war-powers, structural-fractal, and historical-precedent grounds for restoring the original constitutional practice.

The war-powers argument is therefore not merely a doctrinal supplement to the Supremacy Clause and textual arguments; it is the third independent doctrinal ground that establishes the unilateral executive treaty-withdrawal practice as constitutionally untenable on multiple distinct constitutional axes. Each ground is anchored historically by the 1798 practice and the nineteenth-century pattern of Congressional involvement; the contemporary unilateral practice is the doctrinal deviation, not the constitutional restoration.

D. Texas v. White's Structural Logic

The Supremacy Clause, inferior-officer exception, and war-powers arguments developed in Parts IV.A through IV.C identify three independent textual and structural-textual grounds against the unilateral executive treaty-withdrawal practice. A fourth independent ground is the broader structural-fractal principle that the *Texas v. White* doctrine instantiates at the federal-state interface and that this Article's framework extends through the fractal-imperative argument to the federal-international interface. The structural-fractal argument operates at a higher level of abstraction than the three textual arguments; it explains *why* the textual conclusions converge by articulating the structural principle that underlies them all.

In *Texas v. White*, the Supreme Court held that the secession of the Confederate States was void *ab initio*; that the Union of the United States is "perpetual" and "indissoluble"; that the constitutional process by which states accede to the federation does not include a mirror-image process by which they unilaterally exit.[65] Chief Justice Chase wrote for the Court:

> "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. When, therefore, Texas became one of the United States, she entered into an indissoluble relation. . . . The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body."[66]

The Court's structural reasoning was that the federal constitutional order is constituted by its binding character over its member states. The states' accession to the federation is not a contract revocable by either party at will; it is the incorporation of the states into a political body whose constitutive feature is the indissolubility of the union. The principle's structural foundation is the recognition that a federation whose binding character is revocable at the constituent units' will is not a federation but a confederation; the substantive choice for federation rather than confederation was made in the constitutional process that produced the 1787 Constitution and confirmed in the constitutional reckoning that followed the Civil War.

The *Texas v. White* doctrine is not merely a rule against secession. It is the recognition that the federation's binding character is constitutive of its operation as Law. A federation whose binding character can be unilaterally revoked by member states is not Law at the federal scale; it is normative aspiration in federal form. The Civil War's outcome and *Texas v. White*'s articulation of the doctrine are the operational confirmation that the federation's binding character is constitutive.

The structural logic of the doctrine has three components.

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65 *Texas v. White*, 74 U.S. (7 Wall.) at 725–726.
66 *Id.* at 725.

First, the federation's binding character is constitutive of the federal constitutional order. Without the binding character, the order is not Law at the federal scale.

Second, the federation's binding character cannot be revoked by unilateral declaration of a constituent unit. The constitutional process that produced the federation is not mirrored by a constitutional process that permits unilateral exit; the constitutional silence on exit is constitutive, not lacunal.

Third, disagreement with the federation's substantive policies is internal to the federation. The constitutional order supplies deliberative mechanisms (legislation, constitutional amendment, judicial review, the political process) for the expression of disagreement; disagreement does not authorize unilateral exit.

E. The Hobbesian/Lockean Fractal

The structural logic of *Texas v. White* is not specific to the federal-state interface. It is the application of the structural logic of social-contract theory to the constitutional scale. The same logic operates at every scale of social organization.

At the individual-civil-society interface, the same logic applies: civil society is constituted by the social-contract transfer of unilateral defensive rights to the sovereign; the transfer is bilateral and constitutive; civil society's binding character over its individual constituents is not revocable by unilateral individual declaration. An individual cannot "unsign" his accession to civil society by declaring "I no longer recognize the criminal law's authority over my conduct." The constitutional process by which individuals are incorporated into civil society (birth into the polity, naturalization, the social-contract foundation) is not mirrored by a process that permits unilateral individual exit.

At the federation-international interface, the same logic applies: the international order is constituted by member states' mutual transfer of specified domains of unilateral action to the collective framework; the transfer is bilateral and constitutive; the international order's binding character over its member states is not revocable by unilateral state declaration. A state cannot "unsign" its accession to the international order by declaring "I no longer recognize the Court's jurisdiction." The constitutional process by which states are incorporated into the order (treaty ratification, customary international law's accretion, the international order's foundational instruments) is not mirrored by a process that permits unilateral state exit.

At every scale, the structural logic is identical:

Scale	**Constituents**	**The constitutive transfer**	**The binding-character principle**
Individual–civil society	Individuals enter the polity	Surrender of unilateral defensive rights to sovereign	Civil society's Law binds individuals; cannot be revoked by unilateral individual declaration
State–federation	States enter the federation	Surrender of specified domains of state sovereignty to federation	Federation's Law binds states; cannot be revoked by unilateral state declaration (*Texas v. White*)
Federation–international order	Federations/nation-states enter the international order	Surrender of specified domains of international action to collective framework	International order's Law binds federations; cannot be revoked by unilateral federation declaration (the structural principle the Article articulates)

The fractal structure is not analogical or metaphorical. It is the application of the same Hobbesian/Lockean social-contract logic at different scales of social organization. The constitutive transfer is the same kind of act at each scale; the binding-character principle is the same kind of principle at each scale; the rule against unilateral revocation is the same kind of rule at each scale.

The *Texas v. White* doctrine, on this analysis, is not a peculiar feature of US constitutional law applicable only to the state-federation interface. It is the constitutional articulation of a general principle that holds at every scale of social organization where a constitutive transfer creates a higher-order framework's Law over its constituent units.

F. The Symmetric-Application Principle

The principle's symmetric application across scales is what gives it its principled character. A principle that holds at one scale but not at another is not a principle in the operative sense; it is a position. A principle that operates downward (against subordinate units) but not upward (against the operating party's binding to higher-order frameworks) is operationally selective, structurally incoherent, and (in the framework's diagnostic) the paradigm form of particularized enforcement.

The United States enforces the *Texas v. White* doctrine internally. The doctrine is settled American constitutional law; no contemporary state secessionist movement has any legal traction; the federal government's authority to bind member states to the federation is constitutional bedrock. The Civil War's outcome is treated as the definitive constitutional resolution.

The United States does not enforce the same structural principle against itself externally. The Bolton unsigning, the Nicaragua withdrawal, the VCCR Optional Protocol withdrawal, the ICC sanctions regime, the Article 63 intervention, the 2026 sixty-six-organization memorandum

— each is the operational form of the same act the *Texas v. White* doctrine forbids: unilateral revocation of the higher-order framework's binding character by the constituent unit.

The asymmetric enforcement is structurally indefensible. The principled defense would require articulating a basis for the asymmetry that distinguishes the federal-state interface from the federation-international interface in a way that justifies enforcement at one scale and exemption at the other. The Article argues that no such principled basis exists.

G. The Asymmetric Treaty-Withdrawal Practice

The Constitution's Treaty Clause (Article II, § 2) requires Senate "advice and consent" by two-thirds vote to ratify a treaty.[67] The Constitution is silent on treaty withdrawal. Executive practice over the past century has accumulated treating presidential unilateral withdrawal as permissible.

The asymmetry between entry and exit is structurally indefensible on first principles. Entry requires bicameral collective action (sixty-seven senators). Exit requires unilateral executive action (one president). The asymmetry is not a feature of the Constitution's text; it is a feature of executive practice that has accumulated without judicial resolution.

The *Goldwater v. Carter* litigation in 1979 was the principal opportunity for judicial resolution.[68] President Carter unilaterally terminated the Sino-American Mutual Defense Treaty with Taiwan, the ostensible purpose being to facilitate the establishment of diplomatic relations with the People's Republic of China. Senator Goldwater and other senators sued, arguing that the unilateral termination usurped the Senate's role in treaty-making by analogous extension. The

67 U.S. CONST. art. II, § 2, cl. 2.
68 *Goldwater v. Carter*, 444 U.S. 996 (1979) (mem.).

Supreme Court dismissed the case without a majority opinion; the four-vote plurality treated the question as a political question committed to the political branches; the dispositions varied.[69]

The *Goldwater* dismissal allowed the asymmetric practice to continue without judicial resolution. Subsequent administrations have unilaterally withdrawn from numerous treaties without congressional concurrence: the Anti-Ballistic Missile Treaty (2001); the JCPOA (2018, an executive agreement rather than a Senate-ratified treaty); the Paris Agreement (2017–2020); the INF Treaty (2019); the Open Skies Treaty (2020); the WHO (2020); the UNHRC (2018, 2025); the UNFCCC (announced January 2026, scheduled for completion January 27, 2027); and so on. The pattern has consolidated executive unilateral withdrawal as the operational norm.

The structural argument identifies the practice as constitutionally incoherent on principled grounds. The entry-exit symmetry the Constitution would require, if applied consistently with the *Texas v. White* doctrine, would treat treaty withdrawal as requiring the same constitutional process that treaty entry requires. The asymmetric practice is operationally accepted but structurally unjustified.

H. The Particularized-Enforcement Violation

The asymmetric enforcement of the *Texas v. White* doctrine — enforcing it downward against state secession, exempting the federal government from the same principle upward — is the particularized-enforcement violation that the bodily-jurisdiction framework diagnoses at the constitutional scale.

The framework's § 7 treats particularized enforcement as the structural meta-violation: a state cannot enforce one constitutional provision in a way that defeats others. The Supremacy

69 *Id.* at 1002 (Powell, J., concurring); *id.* at 1003 (Rehnquist, J., concurring); *id.* at 1006 (Marshall, J., dissenting); *id.* at 1006 (Brennan, J., concurring); *id.* at 1007 (Blackmun, J., dissenting in part).

Clause's mandate of holistic constitutional enforcement requires that the entire Constitution operate as a coherent whole. Particularized enforcement — treating constitutional provisions as a menu from which the state may selectively honor what it wishes — is itself a Supremacy Clause violation.

The fractal-constitution argument extends the diagnosis. The Supremacy Clause's structural function is to ensure that constitutional provisions operate symmetrically across the federation. The fractal principle's structural function is to ensure that constitutional provisions operate symmetrically across scales. A federal government that enforces one constitutional principle downward (against its member states) while exempting itself from the same principle upward (against the codified democratic order) is operating a particularized enforcement at the inter-scale level. The structural function of the Supremacy Clause's holistic-enforcement principle is to forbid such selective application; the fractal-constitution argument extends the forbidance to the inter-scale operation.

I. The Goldwater Political-Question Dismissal Reconsidered

The *Goldwater v. Carter* dismissal should be reconsidered on the structural argument. The political-question doctrine is appropriately invoked when the constitutional text commits a question to a political branch and supplies no judicially manageable standards. The Constitution's silence on treaty withdrawal does not, on the structural argument, supply no judicially manageable standards; it supplies the *same* standards that govern treaty entry — the bicameral collective-action requirement that the Treaty Clause makes explicit.

The *Goldwater* dismissal can be understood as the treaty-withdrawal analog of the *Frothingham v. Mellon* doctrinal error that the Madisonian Compliance Test framework identifies in the standing context.[70] *Frothingham* mishandled a process challenge (a citizen's dispute with Congress's policy judgment within enumerated discretion) by extending its rationale to violation claims (claims that government acted *outside* its constitutional assignment of powers). The *Goldwater* dismissal performed the structurally identical error in the treaty-termination context: it treated executive unilateral treaty withdrawal as a process question committed to the political branches (analogous to *Frothingham*'s policy-judgment frame) rather than as the violation claim it actually is (the executive exercising a power — treaty unmaking — that Art. II, § 2, cl. 2 textually assigns to the Senate's advice-and-consent jurisdiction).

The distinction is not academic. A process challenge presents no judicially manageable standards because there is no constitutional rule the action violates; the dispute is over policy judgment within validly-held discretion. A violation claim presents the standards the constitutional text supplies: the textual assignment of the power, the structural distribution that forecloses unilateral usurpation, the Supremacy Clause's validity test. The *Goldwater* Court treated the case as the former when, on the textual and structural analysis developed in this Part, it was the latter. Under the Madisonian framework, executive unilateral treaty withdrawal is paradigm USURPATION — a Power Separation Vulnerability in which one Position of Assigned Power (the executive) exercises authority that the Constitution textually assigns to a different Position (the Senate). The judicially manageable standards are not absent; they are textually supplied by the Treaty Clause, the Supremacy Clause's "in Pursuance thereof" provision, the inferior-officer textual asymmetry, the war-powers structure, and the *Texas v.*

70 Joseph D. Kirchner, *The Madisonian Separation of Powers Objective Compliance Test: Recovering Constitutional Structure Through Textual Analysis* (May 2026) (developing the six-step compliance test, the Power Separation Vulnerability (USURPATION/ABDICATION) taxonomy, the process-challenge vs. violation-claim distinction, the Supremacy Clause "in Pursuance thereof" validity test, and the recovery of equitable standing for enumerated constitutional violations).

White binding-character principle. *Goldwater*'s political-question dismissal was a doctrinal failure of will, not of standards.

The structural argument provides judicially manageable standards by reading the Treaty Clause's bicameral requirement as constitutive of the constitutional process for treaty-binding alterations in either direction. The symmetric reading is supported by:

• *The constitutional text's structure.* The Treaty Clause does not say "the President's signature, with Senate advice and consent, shall create binding treaty obligations; the President alone may extinguish them." It says the President's signature requires Senate concurrence to ratify; the negative implication is that the same concurrence is required to extinguish.

• *The Framers' general suspicion of unilateral executive action.* The Constitution's structural commitment to checks and balances cuts against the inference that the executive has unilateral authority to extinguish what bicameral process has created.

• *The structural-principle analog.* The *Texas v. White* doctrine treats the constitutional process by which states accede to the federation as not mirrored by a process for unilateral exit; the constitutional silence on state exit is constitutive, not lacunal. The same reasoning applies to treaty exit: the constitutional silence is constitutive, not lacunal.

• *The fractal-imperative argument.* The principle that binds the federation to the codified democratic order is the same principle that binds the states to the federation; the principle's symmetric application requires that the constitutional process for unilateral exit be the same at both scales.

The structural argument does not require the Court to develop entirely new doctrinal apparatus. It requires the Court to apply *Texas v. White*'s reasoning consistently across scales — to recognize that the constitutional silence on treaty exit is constitutive, not lacunal, and that the symmetric application of the *Texas v. White* doctrine requires the bicameral process for treaty exit as well as for treaty entry. The judicially manageable standards are supplied by *Texas v. White* itself; the manageable standards are the structural-principle articulation the doctrine already supplies.

The reconsidered *Goldwater* posture would render the Bolton unsigning, the 2018 JCPOA withdrawal, the various Trump I and Trump II treaty exits, and the 2026 sixty-six-organization memorandum constitutionally questionable absent congressional concurrence. The structural challenge is large; the structural principle is straightforward.

J. The Instituted/Uninstituted Distinction and the Sharpened Constitutional Argument

The constitutional argument developed in Parts IV.A through IV.I operates on the assumption that the principle that binds states to the federation (*Texas v. White*) is structurally identical to the principle that binds the federation to the codified democratic order. The structural identity is correct; but the operational severity of the asymmetric application is greater than the foregoing analysis identifies. The three-states distinction articulated in Part III.H supplies the sharpening.

The federal-state interface in the United States is the paradigm State 3 condition — instituted rule of Law operating through coercive enforcement infrastructure. The federal government has federal courts, federal marshals, the FBI, and the military if required. A state that attempted secession would face institutional coercion; the constitutional process by which the federal government would enforce the *Texas v. White* doctrine is operational and effective. The federation's binding character over its member states is held together by both member integrity (voluntary compliance with federal Law) and coercive enforcement (the institutional mechanism that operates if voluntary compliance fails).

The federal-international interface is the paradigm State 2 condition — uninstituted rule of Law operating through member integrity. The codified democratic order has no coercive enforcement infrastructure operating over the United States. The ICJ has no enforcement arm; the UN Security Council's enforcement capacity is structurally constrained by the US veto; the ICC depends on member-state cooperation that the United States has consistently withheld. The framework's binding character over US conduct is held together *only* by US integrity to the codified principles and by other members' integrity in maintaining reciprocation against US violations.

The asymmetric enforcement of the principle is therefore structurally more severe than Parts IV.A through IV.I identify. The United States enforces the principle internally in the instituted condition, where institutional infrastructure backs up member integrity. The United States violates the principle externally in the uninstituted condition, where no institutional infrastructure exists; the framework operates only through US (and other members') voluntary adherence. The US's rejection of Law's binding character over its conduct in the external domain is therefore not merely a constitutional inconsistency at the principle level; it is the dismantling of the framework's only operational mechanism at the federal-international interface.

The structural obligation of the most-consequential members is correspondingly greater in the uninstituted condition. In State 3, the binding character is enforced institutionally; member integrity is necessary but supplemented by coercive enforcement. In State 2, member integrity is the entire operational mechanism; the structural obligation to maintain integrity is correspondingly greater. The United States — as the codified democratic order's most consequential member by virtually every measure (military capacity, economic capacity, treaty-network position, institutional infrastructure of recognized democracy, historical role in the framework's post-1945 articulation) — bears a structural obligation to maintain integrity to the codified principles that exceeds the obligations of less consequential members. The US's withdrawal of integrity is, in the uninstituted condition, the operational dismantling of the framework's foundation at the global scale.

This sharpening has three doctrinal consequences for the constitutional argument.

First, the structural argument requires the United States to recognize that the federal-international interface operates in State 2, not State 3. The US's expectation that the codified democratic order's binding character over its conduct is conditional on US consent — that the executive can unilaterally exit international bodies by declaration — is structurally incompatible with the State 2 operation. In State 2, the framework holds together only through member integrity; the US's claim of unilateral exit is the withdrawal of the integrity the framework requires. The Bolton unsigning, EO 14203, the 2026 sixty-six-organization memorandum, and the broader four-decade pattern are not just constitutionally questionable acts; they are the operational dismantling of the framework at the global scale.

Second, the symmetric-application principle requires the United States to recognize that the structural obligation in State 2 exceeds the obligation in State 3. The federation's binding character does not depend on any single state's integrity; the institutional apparatus operates if any single state defects. The codified democratic order's binding character depends, structurally and operationally, on the integrity of its most-consequential members. The United States' obligation to the codified democratic order, in the uninstituted condition, exceeds the obligation that any single state has to the federation in the instituted condition. The US's selective enforcement of the principle (downward at State 3; not upward at State 2) inverts the structural priority: the more consequential the member's role in operating the framework, the greater the integrity obligation, and the State 2 obligation is therefore greater than the State 3 obligation, not less.

Third, the constitutional argument's doctrinal implications are operationally severe. The *Goldwater* reconsidered analysis (Part IV.I) supplies the doctrinal pathway for restoring symmetric application; the instituted/uninstituted distinction supplies the operational urgency. The framework's operational sustainability depends on resolution. The current asymmetric practice is not merely a constitutional inconsistency operating without consequence; it is the operational dismantling of the framework that the codified democratic order depends on for its existence. The Article's doctrinal argument is structurally precise; the operational stakes are greater than the doctrinal argument's surface analysis identifies.

V. DOCTRINAL IMPLICATIONS

A. For Treaty-Withdrawal Law

The first doctrinal implication is for the unsettled treaty-withdrawal question in US constitutional law. The structural argument supports several specific positions.

First, the asymmetric entry-exit constitutional posture is structurally indefensible. The current practice — bicameral concurrence required for entry, unilateral executive action permitted for exit — cannot stand on principled grounds. The structural argument requires symmetric constitutional process: bicameral concurrence required for either direction.

Second, the Goldwater v. Carter *political-question dismissal should be reconsidered.* The structural argument supplies judicially manageable standards (the symmetric reading of the

Treaty Clause; the application of *Texas v. White*'s reasoning across scales; the fractal-imperative argument). The political-question dismissal is no longer the appropriate procedural posture.

Third, the unilateral executive withdrawals of the past four decades are constitutionally questionable absent congressional concurrence. The Bolton unsigning; the 2001 ABM Treaty withdrawal; the 2018 JCPOA withdrawal; the 2017–2020 Paris Agreement withdrawal; the 2019 INF Treaty withdrawal; the 2020 Open Skies Treaty withdrawal; the 2020 WHO withdrawal; the 2018 and 2025 UNHRC withdrawals; the 2026 UNFCCC withdrawal; and the 2026 sixty-six-organization memorandum — each operates outside the structural constitutional process the argument articulates. The structural argument does not require courts to retroactively void each act; it requires courts to recognize the constitutional infirmity going forward and to apply the symmetric process to future actions.

Fourth, the executive branch's unilateral assertion of authority to declare the United States unbound by international Law is structurally analogous to a state's assertion of authority to declare itself unbound by the federation. The constitutional posture that forbids the latter is structurally inconsistent with permitting the former. Articulating the analogy is the doctrinal move the structural argument requires.

B. For the Codified Democratic Order

The second doctrinal implication is for the codified democratic order's absorption of the structural principle. International law has, to date, not absorbed the structural principle that Law's binding character cannot be revoked by unilateral declaration. Positive international law treats procedural mechanisms as constitutive: a state is bound iff it has completed the procedural steps of binding; a state is unbound iff it has completed the procedural steps of unbinding. The Bolton unsigning's operative effect, EO 14203's operative effect, the various US and Israeli declarations of unbinding's operative effect — each is a function of positive international law's privileging of procedural form.

The structural argument identifies positive international law's privileging of procedural form as the structural gap. Closing the gap would require absorbing the principle that Law's binding character is constitutive of Law's existence; that rejection of binding character is rejection of Law; that the deliberative-revision mechanisms supply the form of legitimate disagreement within Law; that unilateral declarations of unbinding are not legitimate disagreement but rejection of Law itself.

The institutional channels through which the absorption could occur include: customary international law's development through state practice and *opinio juris*; the ICJ's articulation of the principle in advisory opinions or contentious cases; the ILC's codification work; regional human-rights frameworks' articulation of the principle in their jurisprudence; UN General Assembly resolutions; treaty-body General Comments. The structural argument supplies the analytical foundation; the institutional channels supply the operational pathways.

C. For the United States' Internal Constitutional Coherence

The third doctrinal implication is for the United States' internal constitutional coherence. The structural argument identifies a tension in American constitutional law that has been operationally maintained but structurally indefensible. The tension is between the *Texas v. White* doctrine's enforcement of the principle internally and the executive's unilateral treaty-withdrawal practice's violation of the same principle externally.

The tension's operational maintenance has been possible because the principle has not been articulated as a single principle applying at both scales. The fractal-constitution argument articulates the principle as a single principle. Once articulated, the asymmetric application becomes structurally visible. The structural visibility is what creates the doctrinal pressure for resolution.

The resolution can take either of two forms.

Option 1. Accept the symmetric application. The federal government accepts that the principle binds it to the codified democratic order on the same terms it binds states to the federation. Treaty-withdrawal practice is reformed to require congressional concurrence. The Bolton unsigning is recognized as constitutionally questionable. The 2026 sixty-six-organization memorandum is recognized as requiring congressional process. The structural principle is enforced symmetrically.

Option 2. Abandon the principle internally. The federal government accepts that if unilateral exit is permissible at the international scale, it must also be permissible at the federal scale. *Texas v. White* is reconsidered. States have the unilateral right to secede; the Civil War is retrospectively reframed as a failed coercion of states' lawful exit; the federation's binding character is recognized as conditional on state consent.

Neither option is politically available. The asymmetric practice persists because the structural pressure for resolution has not been articulated. The Article's contribution is the articulation; the resolution is for the constitutional order to work out.

D. For International Law's Absorption of the Structural Principle

The fourth doctrinal implication is for international law's broader absorption of the structural principle. The structural argument suggests that international law's current treatment of treaty withdrawal — privileging procedural form over structural function — is itself a manifestation of the broader problem the structural argument identifies. International law has not absorbed the principle that the codified democratic order's binding character is constitutive of the order's existence.

The structural absorption would require international law to recognize:

First, that the binding character of Law at the inter-state scale is constitutive of the codified democratic order's existence as Law.

Second, that rejection of binding character is rejection of Law's existence with respect to the rejected domain; the rejection is not merely a procedural defection.

Third, that the deliberative-revision mechanisms supply the form of legitimate disagreement within Law; that disagreement engages the mechanisms while rejection refuses them.

Fourth, that the procedural form of the rejection is structurally irrelevant; that "withdrawal," "non-ratification," "unsigning," "coercive sanctions on enforcement infrastructure," "characterization of the body as illegitimate," and "deference-based non-execution of triggered warrants" are operational expressions of the same structural act.

Fifth, that the rejecting party operates in the Hobbesian baseline with respect to the rejected domain; that the rhetorical infrastructure of bound membership does not change the structural status.

Absorbing these principles would not require any new institutional infrastructure. The existing institutional mechanisms (the ICJ, the ICC, the various treaty bodies, the regional human-rights courts, the UN Special Rapporteur mandates) are sufficient. What would change is the analytical framework within which the institutional mechanisms operate.

The change is structural, not operational. The structural absorption supplies the analytical clarity that makes the institutional mechanisms operationally effective.

VI. Conclusion

The Article's thesis is straightforward. The constitutional principle the United States enforces internally — that states cannot unilaterally secede from the federation, that the federation's binding character is constitutive, that the constitutional silence on state exit is constitutive rather than lacunal — is the same principle the United States violates externally through the Bolton unsigning, the Nicaragua withdrawal, the VCCR Optional Protocol withdrawal, the ICC sanctions regime, the Article 63 intervention, and the 2026 sixty-six-organization memorandum. The principle's symmetric application is required by its principled character; the asymmetric application is the particularized-enforcement violation the broader framework diagnoses at the constitutional scale.

The structural argument has four components.

First, Law is constituted by its binding character. Without the binding character, institutional forms are aspiration; with the binding character, they are Law. Jurisdiction is the operative form of binding character; rejection of jurisdiction is rejection of Law.

Second, the deliberative-revision distinction separates legitimate disagreement from rejection of Law. Democratic law specifically supplies mechanisms for the revision of its content through deliberation. Engagement with the mechanisms preserves the party as a participant in the framework; refusal of the mechanisms while declaring unilaterally that the framework does not apply is the structural rejection.

Third, the structural indistinguishability claim removes the rhetorical cover. A state that has rejected Law's binding character through unilateral declaration is in the same structural position as a state that has never recognized the framework, with respect to the rejected jurisdictional grounds. The procedural form differs; the structural status is identical. The disguised case (rejection while claiming the privileges of membership) is structurally worse than the consistent case (never bound and consistent about it), because the disguised case adds reciprocity inversion to the rejection.

Fourth, the fractal-constitution argument articulates the symmetric application. The principle that binds states to the federation, by symmetric application, binds the federation to the codified democratic order it has joined. The asymmetric application is the structural violation; the symmetric application is the constitutional requirement.

The Article's argument is doctrinal, structural, and constitutional. It does not require new doctrinal apparatus; it requires the consistent application of doctrine the constitutional order already supplies. *Texas v. White*'s reasoning is the foundation; the Treaty Clause's bicameral requirement is the structural anchor; the fractal-imperative principle supplies the connection. The Bolton unsigning is the doctrinal anchor in the opposite direction — the paradigm act that articulates the violation by attempting to operationalize it.

The constitutional order's coherence requires resolution. Either the federal government accepts the symmetric application — treating its binding to the codified democratic order as structurally identical to the states' binding to the federation — or it abandons the principle internally, accepting that states have the unilateral right to secede. Neither option is politically available; the asymmetric practice persists because the structural pressure for resolution has not been articulated. The Article's contribution is the articulation. The resolution is for the constitutional order to work out.

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