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LAW AND MONEY IN THE REASSERTION OF U.S. HEGEMONY: LAWFARE AND THE "DOLLAR BOMB"

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ABSTRACT: This research is situated within international political economy. Its object examines the expansive dynamics of power through interdisciplinary geoeconomic-geopolitical analysis. Questions on the crisis/reassertion of U.S. hegemony were foundational to the field and remain central. More recently, the concept of the "dollar-bomb" was structured as a U.S. political-strategic tool created after the 9/11 attacks. Its legal expression is relevant, although law remains marginal in the debate. The proposal is to understand the legal instrumentalization of the dollar bomb. Methodologically, the legal-institutional response to 9/11 was analyzed. This event marks the temporal framework extending to 2013. The findings indicate that law functioned as an instrument (identified as lawfare) against a threat to national security, enabling the emergence of the dollar-bomb. It is concluded that this legal-monetary dynamic has provided/provides options for managing the current systemic restructuring, suggesting that claims of terminal U.S. decline should be made with greater caution.

KEYWORDS: law; dollar; power.

DIREITO E MOEDA NA RETOMADA DA HEGEMONIA NORTE-AMERICANA: O *LAWFARE* E A BOMBA-DÓLAR

RESUMO: Essa pesquisa se insere no campo da economia política internacional. Seu objeto estuda a dinâmica expansiva do poder com análises geoeconômicas-geopolíticas interdisciplinares. As perguntas sobre a crise/retomada da hegemonia norte-americana estiveram na origem do campo e seguem importantes. Recentemente, estruturou-se o conceito de "bomba-dólar" como uma ferramenta político-estratégica norte-americana criada após o atentado de 11/9/2001. A expressão jurídica dessa ferramenta é relevante, embora o direito seja marginal no debate. A proposta é entender a instrumentalização jurídica da bomba-dólar. Como método, analisou-se a resposta jurídica-institucional ao atentado de 11/9. Esse evento inicia o recorte temporal que vai até 2013. Como resultado, notou-se que o direito foi um instrumento (identificado como lawfare) contra uma ameaça à segurança nacional. Isso permitiu a emergência da bomba-dólar. Concluiu-se que essa dinâmica jurídico-monetária garantiu/garante várias opções para dispor da atual reestruturação sistêmica, indicando que afirmações sobre a crise terminal norte-americana devam ser feitas com maior cautela.

■ **PALAVRAS-CHAVE:** Direito; dólar; poder.

1. Introduction

The field of International Political Economy (IPE) emerged from the inadequacy of existing scientific tools to account for the transformations of the interstate system during the 1970s. Its central proposal was to bring together the fields of international economics and international politics in order to achieve a more comprehensive understanding of these dynamics. An initial consensus developed around the notion of an "American crisis" and the "necessity" of a superpower capable of ensuring systemic stability. This understanding became the foundation of the major schools of IPE: (a) the Marxist/neo-Marxist tradition (Giovanni Arrighi's and Immanuel Wallerstein's hegemonic cycles), (b) the liberal/neoliberal tradition (Joseph Nye's and Robert Keohane's complex interdependence), and (c) the realist/neorealist tradition (Robert Gilpin's and Charles Kindleberger's hegemonic stability theory) (Fiori, 2004, pp. 16-29). In opposition to this consensus, Maria da Conceição Tavares (1985, 1997) and José Luís Fiori (2004) interpreted the phenomenon differently.

Maria da Conceição Tavares (1997, pp. 55-56) argued that there was no "crisis" of hegemony, but rather a reorganization of the global capitalist system. According to her, the crises that threatened American hegemony were overcome through measures that ultimately reaffirmed it, divided into geoeconomic and geopolitical elements. The former were grounded in dollar diplomacy through financial globalization and the establishment of the dollar as the international reserve currency. The latter were based on the diplomacy of arms through the asymmetry of American military power. José Luís Fiori (2014, pp. 11-20), through the thesis of the "hyperpower paradox", argued that superpowers do not stabilize the system, rather, they are the very causes of systemic instability insofar as they continuously create and recreate political structures through conflict and war in order to continue accumulating and exercising power — a process that involves the mobilization of multiple resources. This interpretation became the basis for the structuring of the "global power research program" within IPE. The program concentrated on the theoretical and methodological study of "power"

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from a transdisciplinary perspective. Power is treated both as a phenomenon and as a conflict of tautological definitions, manifesting itself through a self-reinforcing relation of power exercise and through an intersocial struggle to concentrate within itself the possibilities of accumulation (Fiori, 2004, pp. 34-38; 2007, pp. 16-20; 2014, pp. 20-21; 2024, pp. 28-34, pp. 53-55).

Building upon this disciplinary opening within IPE, a recent dialogue has emerged between law (and metaethics more broadly) and the field itself (Fiori, 2018, 2021, 2024; Boscato, 2025). This dialogue has investigated the relational legal aporia present in the Southwest Asian conflict concerning the definition of the "just" and the "unjust". It was concluded that a universal and static consensus regarding the "just" within international law is logically impossible. This impossibility stems from the absence of a progressive accumulation of premises capable of leading toward a neutral, rational, and scientific arbitral decision in the service of pacifying social relations. Each political unit operates according to a particular judgment of justice in order to promote its own policy-strategy (both intuitive and rational) of social expansion. Thus, political units claim ownership of the "better right" within a multidimensional dynamic extending from the particular (national) to the universal (international). This guarantees a mutable permissive judgment over reactive, proactive, and creative actions undertaken in "self-defense" so as not to "fall" within the relation itself.

Based on these findings, the present article seeks to affirm law as a political-strategic instrument of American power in the structuring of the "dollar bomb". The first section analyzes the emergence of the dollar bomb as an instrument of monetary power created after the 9/11 attacks. The second section examines the American legal-institutional response to the challenge of terrorism immediately following 9/11. The third section associates this legal response with the emergence of lawfare, understood as an instrument of power from a realist perspective, while simultaneously analyzing Marxist and liberal perspectives. Finally, the article concludes that the dynamics of lawfare enabled the emergence of the dollar bomb insofar as they ensured control over the "criterion" of the just through the power asymmetry created by the dollar. This asymmetry persists in the current conjuncture and guarantees considerable political-strategic latitude.

2. The dollar bomb

Since the second half of the 20th century, the dollar has enabled the United States to project an unprecedented form of power within the interstate system. Its dual nature — both functional and structural — created a freedom of monetary expansion without balance-of-payments constraints for the issuing state. This freedom is inherently expansive and generates a hierarchical asymmetry insofar as all other actors must accumulate dollars in order to manage their own "survival constraint"[1] (Torres, 2018, pp. 317-319; 2019, pp. 22-34; 2020, pp. 15-26). Such asymmetry allows the dollar to function as an instrument of power in the service of war and conflict, constituting what may be termed the "dollar bomb".

Because the dollar accounts for approximately 90% of all foreign-exchange settlements, the American currency effectively becomes part of nearly every cross-border financial transaction in the global system (Bank for International Settlements, 2025). This instrument is characterized as a low-operational-cost military device with a high destructive capacity, enabling the isolation or blockage — across different temporal and material scales — of agents operating within the international financial system. The dollar bomb possesses the capacity to compel and/or induce behavior compatible with a given political "order", expressing itself as a "new manner through which the hegemonic power operates the security of the global order in 'times of peace'" (Torres, 2019, p. 35; 2021, p. 631). It emerged in the context of the War on Terror following the 9/11 attacks, a process that enabled a significant expansion of control over the international financial system. In the days immediately following the attacks, the United States progressively secured support for obtaining full access to banking information systems aimed at preventing future attacks. One example was the automatic access to the information network of SWIFT (Society for Worldwide Interbank Financial Telecommunications) (Zarate, 2013, pp. 53-65; Torres, 2019, pp. 12-14; 2021, pp. 632-633), overcoming previous resistance and placing the system at the service of war.

This innovation substantially increased the capacity of the United States to collect banking information on individuals and entities deemed "suspected" of involvement in terrorist activities. Such actors became exposed to a repulsive effect capable

1 Drawing on Hyman Minsky's theoretical framework, the management of cash flow in the reference currency is central to the settlement of economic agents' financial obligations, with the aim of avoiding penalties associated with default, such as fines, bankruptcy, credit constraints, among others.

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of undermining their reputation and credibility. If they depended upon access to the financial system in order to settle their financial obligations (their "survival constraint"), they faced the risk of bankruptcy or marginalization. This chain reaction derives solely from the publicization of suspicion, since the enormous velocity of capital flows means that even the mere "appearance" of a threat can provoke large-scale financial displacements. The financial system is multilateral by nature, and its institutions protect the system itself from exposure to actors classified as "dangerous", without the need for distinct coercive measures. Financial agents act according to their own interests insofar as they seek to avoid becoming accomplices of dangerous actors and, consequently, criminalized as such. Within an interconnected system, the impact of exclusion from the financial network is proportional to the level of dependence and integration of the targeted actor (Torres, 2019, pp. 3-6; 2021, pp. 641-645). There is little incentive to objectively discuss or question the definition of a "suspect". For banking institutions, the loss of a limited number of clients does not compare to the cascading repulsive effects that may spread throughout the financial system. One may therefore argue that these institutions fear association with actors deemed "suspect" by American political-strategic objectives. Such associations may alienate clients and other financial institutions alike. Reputational risk thus operates as an informal mechanism of pressure embedded within their own strategic calculations.

When applied to a country's payment system, the dollar bomb proved capable of disorganizing major markets, generating shortages of foreign currency reserves, high inflation, currency devaluation, and public debt crises. This, in turn, created the need for internal control mechanisms similar to those employed during wartime, as illustrated by the measures directed against North Korea and, later, the Islamic Republic of Iran (Torres, 2019, pp. 16-21; 2021, p. 668; 2022, pp. 74-76). The effectiveness of the dollar bomb does not derive from any technological advantage, but rather from a structural advantage resulting from the asymmetrical position of the dollar itself. This new instrument of "coercion" should not be confused with sanctions, although it operates according to a similar targeted logic. It does not necessarily require an active intervention, rather, it enables the exploitation of a preexisting position of structural advantage. A rupture with dollar hegemony is not a simple alternative. Such a process would require coordination among major powers aimed at reducing the advantages derived from the centrality of the American currency. However, this could itself produce systemic crisis and instability, potentially resulting in a relative loss of power for

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those same powers (Torres, 2021, pp. 634-639), which also remain engaged in power competition among themselves.

3. The legal response: law in the service of the dollar bomb

In order to understand the political-strategic role of law within this dynamic, it is essential to begin with Jack Goldsmith's account in his autobiographical work *The Terror Presidency: Law and Judgment Inside the Bush Administration* (2007). The author recounts his trajectory – and that of the entire American public legal apparatus — within the legal advisory structure of the Executive Branch, specifically the Office of Legal Counsel (OLC), following the 9/11 attacks. According to Goldsmith, the actions of the OLC were shaped by fear and by the pressure (siege and threat) generated by the probability of a second terrorist attack, which placed law at the disposal of then-President George W. Bush in order to guarantee "all the power he thought necessary to prevent another 9/11" (Goldsmith, 2007, pp. 13-14). Simultaneously, the administration faced the possibility of autonomous domestic and international legal proceedings against the American political leadership[2]. Accordingly, Goldsmith argued that access to information, responsibility, and the "limits" of Executive power possessed characteristics distinct from those of the Judiciary. Within the Executive Branch, law would operate predominantly in the service of "national security". Even though the OLC attempted to modernize itself during the Clinton Administration, the imperatives of "national security" always remained paramount (Goldsmith, 2007, pp. 29-30). To illustrate this relationship, the author cites Thomas Jefferson's classic response to jurist John Colvin:

> Obedience to the written law is doubtless one of the high duties of a good citizen, but it is not the highest. [...] The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with us; thus absurdly sacrificing the end to the means (Jefferson, apud Goldsmith, 2007, p. 60).

2 According to the author, Henry Kissinger sought assistance from Donald Rumsfeld in addressing the personal accusations against him. Donald Rumsfeld regarded lawfare as both an effective instrument of attack and a valuable form of "rhetorical defense," and was chiefly responsible for incorporating this "legal threat" into the 2005 United States defense strategy (Goldsmith, 2007, pp. 45-48).

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One example was the refusal to recognize members of al-Qaeda and the Taliban as "prisoners of war", thereby denying them the corresponding legal protections. This interpretation was structured through distinct readings of the Geneva Convention, both through the "failed state" theory and through the alleged "impossibility of distinction" resulting from the absence of uniforms (Goldsmith, 2007, pp. 77-81). This demonstrates a dynamic use of legal reasoning in the service of mutable challenges, in line with the tradition of thought expressed in the verse attributed to Empedocles (ca. 494 BCE): "It is in the face of what presents itself that ingenuity develops in men". Such an approach may be associated with a permanent "uncertainty" concerning the "just" and the complex causality underlying its dialectical dynamics. The conduct of the OLC did not depart from the broader maxim that "lawyers naturally look to legal sources for answers and construct whatever answer they can through available legal tools, pronouncing it as legal opinion" (Zelikow, apud Goldsmith, 2007, p. 97).

Following the 9/11 attacks, law was structured to respond to a systemic challenge imposed by an enemy, just as all other instruments of power were mobilized for that purpose. One week after the attacks, Congress approved the Authorization for Use of Military Force (AUMF, 2001) through Public Law No. 107-40/2001 (U.S., The White House, 2001). This Congressional Authorization is functionally equivalent to a formal declaration of war, insofar as the solemn act itself fell into disuse after the end of the Second World War. The AUMF became one of the central legal foundations of the War on Terror, possessing binding effects throughout the entire American legal order. Its constitutional character rested upon the defense of the very existence of the legal order itself. Through it, the President was authorized to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001", as well as against those who "harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons" (U.S. The White House, 2001). Several relevant legal instruments emerged within this context of declared war, including the USA PATRIOT Act (2001), the Homeland Security Act (2002), the Intelligence Reform and Terrorism Prevention Act (2004), the Protect America Act (2007), and the FISA Amendments Act (2008), among others. It may be argued that these instruments expanded mechanisms of surveillance and prosecution while simultaneously reducing the objectivity of the legal terms authorizing their application. These measures converged with numerous

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other tools mobilized for deeper systemic transformations, without predefined temporal or material limitations.

This dynamic also extended to the provisions of international law. The prevailing understanding held that the necessity of protecting citizens from an imminent attack could justify action even where the attack itself was not "evident", since the norm limiting the use of force possesses reduced normative weight when confronted with judgments grounded in "national security" (Glennon, 2002, p. 539). This significantly complexifies any universal understanding of the limits of *jus ad bellum* and *jus in bello*, principles codified in Article 51 of the Charter of the United Nations[3]. The possibility of defending sovereignty implies the defense of the Constitution itself, constituting a superior criterion that would never be subject to adjudication by the international legal order (Rabkin, 2009, pp. 3-4). Beyond promoting an unprecedented internal political unification grounded in the perception of a threat to the very existence of the national unit (Pecequilo, 2013, pp. 19-20), the attacks also facilitated the integration of legal, financial, and informational mechanisms, thereby placing global solidarity at the service of defeating an ubiquitous enemy.

Through the United Nations Security Council (UNSC), two principal resolutions were approved. The first was Resolution 1368/2001, which "declares terrorism a threat to international peace and security, recognizes the right to self-defense, and calls upon the international community to bring to justice the perpetrators, organizers, and sponsors of the attacks". The second was Resolution 1373/2001, which "recognizes the need for States to implement measures using all legal means to prevent and suppress the financing of terrorism", including: (a) criminalizing the provision or collection of funds intended, directly or indirectly, to finance terrorism; (b) freezing and prohibiting the transfer of assets intended for committing, attempting, participating in, or facilitating terrorist activities; (c) refraining from harboring or supporting, actively or passively, entities or persons involved in terrorist activities; and (d) preventing terrorism through strict border controls, cooperation, and information exchange (U.N., Security Council, 2001).

It may be argued that part of these recommendations was subsequently channeled into the political mobilization of "best practices" (*compliance*) aimed at reducing "risks" to the international financial system. Institutions such as the Financial Action

3 "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations".

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Task Force (FATF) and the Basel Recommendations played a fundamental role in this structuring process by establishing risk-assessment standards capable of individuating "dangerous actors" deemed threatening to the "proper" functioning of the financial system. These adjectival judgments are mutable in nature and remain linked to a specific project of power. This dynamic was facilitated both by the increased informational availability of the post-9/11 environment and by the systemic asymmetry of the dollar itself. Thus, by associating the use of law with this empirically visible political--strategic dynamic, it becomes possible to relate it to the emergence of lawfare itself. Such an association is possible due to their temporal and theoretical proximity, which will now be examined through Marxist, liberal, and realist perspectives.

4. Lawfare: the theory

4.1 The marxist perspective

The Marxist perspective on lawfare combines elements of the globalist, imperialist, dependency, and postcolonial schools of International Relations with Critical Legal Studies (CLS) and the Third World Approaches to International Law (TWAIL). This perspective begins with the South African anthropologist John Comaroff, who refers to an "English mode" of waging war through law in order to explain lawfare. According to him, this mode employed legal tools to conquer and control native populations through coercive means (Comaroff, 2001, pp. 305-306), manifested through domination, oppression, lethality, and violence, thereby placing the "Rule of Law" at risk (Comaroff; Comaroff, 2006, pp. 13-14). Such practices would possess historical continuity, expressing themselves predominantly through a social relation between the strong and the weak, both internally in class struggle and externally in North-South relations. The English colonial process would thus have functioned as a laboratory for this juridical disposition of relations of domination, later transplanted back into the metropolis itself (Comaroff, 2001, p. 311). Accordingly, drawing upon postmodern approaches, the authors understand that law — and therefore lawfare itself — originates in violence and coercion and is sustained exclusively through them (Comaroff; Comaroff, 2006, p. 42)[4].

4 An interpretation shared by Craig Jones (2016, pp. 223-225).

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Analyzing lawfare in South America, Carol Proner (2021) appears to align herself with John Comaroff's approach concerning the imperativeness of force and regular imposition. The author incorporates the dollar into her analysis, arguing that it constitutes one of the asymmetric elements of American lawfare, whose capacity for projection derives from the "imposition" of extraterritoriality through jurisdiction, thereby granting the dollar a capacity for systemic coercion (Proner, 2021, pp. 201-203). Along similar lines, Silvia María Romano (2020) explains lawfare as a process of "imposition" of laws and sectoral legal orders determined through extraterritorial jurisdiction (Romano, 2020, pp. 18-21). Drawing from dependency theory, Romano argues that the American cultural strategy associated with the "war for hearts and minds" constitutes the foundation of lawfare in the region, facilitated by American influence within the judiciary and linked to geoeconomic and geopolitical objectives (Romano, 2016, pp. 160-164; 2020, pp. 24-28; 2022, pp. 95-100).

Analyzing the Brazilian case, Celso Amorim and Carol Proner (2022, pp. 18-22) advance the debate by understanding lawfare as a broad set of legal practices serving economic purposes (the dispute over the pre-salt oil reserves) and geopolitical objectives (control over the American continent), although the cultural dimension was not the object of their analysis. Along a different line, political scientist Siri Gloppen argues that lawfare serves strategic litigation promoted by non-state actors, particularly in the defense of the rights of individuals and vulnerable social groups (Gloppen, 2018, pp. 2-3). She defines lawfare as the strategic use of the legal order by such individuals or groups in order to gain or preserve social positions through large-scale "judicial sociopolitical struggle" (Gloppen, 2018, pp. 6-15).

However, from a different perspective, it may be argued that: (a) regular and direct "coercion" and "violence" do not appear to be necessary or exclusive elements for understanding lawfare; (b) the "Rule of Law" itself appears to function as a dynamic and mutable methodological judgment embedded within struggles for power; and (c) the use of the dollar as a strategic tool does not appear to require regular "imperativeness" or "jurisdiction". Beyond the rewarding/promotional function of law itself (that is, non-sanctioning, non-impositional, and non-violent), it is evident that the legal reforms of the 1980s and 1990s aimed at adapting domestic legal structures to the international financial system were predominantly "voluntary"[5]. Legal effects do

5 There emerged a need to incorporate legal frameworks approved within supranational bodies due to the risk of being penalized through total or partial exclusion from the international monetary system. In Brazil, all

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not necessarily originate from or remain sustained by "violence", rather, they emerge from conflict in general, which may or may not be violent. Every act of violence involves conflict, but not every conflict involves violence. This point is perceptively noted by Siri Gloppen, one of the few scholars within this perspective to question the supposedly "necessary" illegitimate, violent, and coercive nature of lawfare, although she restricts its scope to "non-state" actors and to legal movements of "large scale".

Jean Comaroff and John Comaroff (2009, pp. 56-58) recognize the insurgent application and character of lawfare by individuals or vulnerable social groups. However, they argue that asymmetries of power prevent the weaker side from achieving regular success. This contrasts with Siri Gloppen's thesis concerning the permanent and at times successful struggle by such individuals and groups to improve their social positions (that is, positions of power). Empirically, this is visible in conflicts surrounding the guarantee of social rights in South Africa itself, such as the emergence of the fundamental right to antiretroviral therapy (ART). Regarding the alleged threat posed to the "Rule of Law", the Comaroffs do not offer a concrete definition of the phenomenon. Rather, they simultaneously treat it as a "colonial legal fetish", a "legal regime", a "discursive tool", a "normative instrument of the ought", among other formulations (Comaroff, 2006, p. 8, 34, 73, 119, 136).

This indeterminacy concerning the foundational content of the term does not appear distant from the very dynamic struggle for control over the criteria through which the "illegitimacy" of particular methods of combating corruption, terrorism, and narcotrafficking is defined. There appears to be an underlying assumption regarding the existence of a minimum consensual content of the "Rule of Law". However, social groups define it through a heterogeneity of contingent criteria serving the systemic dynamics of struggles for power, thereby preventing any static, immutable, and peaceful consensus. Finally, although this article agrees with the understanding of the dollar as a political element associated with lawfare, as expressed by Silvia Romano (2020) and Carol Proner (2021), it rejects the notion that its operation necessarily depends upon "imperativeness" and "jurisdictional extension".

political currents promoted voluntary reforms aimed at achieving such alignment: the conservative-military current through the financial system reforms of the 1960s and 1970s; the liberal-democratic current through the economic system reforms of the 1990s and 2000s; and the social-labor current through the penal system reforms of the 2000s and 2010s, which later provided the foundation for Operation Car Wash. Moreover, this process was not confined to any single branch of government, manifesting itself in the Legislative Branch (Law n. 10.701/2003, for example), the Judiciary (Extradition Case n. 855/2004, for example), and the Executive Branch (Decree n. 5.639/2005, for example).

4.2 The liberal perspective

The liberal perspective on lawfare combines elements of the liberal internationalist school of International Relations with universalist natural law theory and legal garantism. This approach begins with Susan Tiefenbrun (2010), who seeks to understand the external dimension of lawfare through the tradition of the "just war" in Saint Augustine. Tiefenbrun understands lawfare as an instrument that threatens the "Rule of Law", which itself would constitute the element conditioning all state wars to the principles of: (a) necessity-proportionality (acts compatible with the accomplishment of the mission); and (b) humanity-proportion (acts compatible with human rights and with the identification of belligerent forces) (Tiefenbrun, 2010, pp. 44-49). This understanding underlies the logically circular presupposition that the universal legal limits of *jus ad bellum* and *jus in bello* may be statically, permanently, and consensually individuated.

Analyzing the Brazilian case from an internal perspective, Cristiano Zanin, Valeska Martins, and Rafael Valim (2022, p. 17) understand lawfare as the manipulation of law for "illegitimate" economic and geopolitical purposes. They approach the realist school in their treatment of the phenomenon by adopting a strategic understanding of law based upon Carl von Clausewitz, who conceived it as a means for the "submission of an adversary" (Zanin; Martins; Valim, 2022, pp. 5-6). However, insofar as they also approach the Marxist school by presupposing that such strategy is based upon impositional and violent actions, they argue that the use of law in the service of economic and geopolitical objectives constitutes a negation of legal epistemology itself (Zanin; Martins; Valim, 2022, p. 8), thereby converging, in this conclusion, with the liberal perspective. For these authors, law possesses the function of "rationally" pursuing the universalization of peace and safeguarding the "Rule of Law".

Drawing upon Hans Kelsen, Luigi Ferrajoli, and David Kennedy, the authors understand law as a technique for the peaceful resolution of conflicts, such that its use in the service of conflict or war would be contradictory and illegitimate (Zanin; Martins; Valim, 2022, p. 8). They argue that internal social peace signifies the absence of an "enemy", preferring instead the notion of "antagonistic wills" (that is, disputes whose resolution would belong to law) — although such "antagonism" may itself be understood merely as a "phase" within the broader conflict/war against an "enemy". Citing Eugenio Zaffaroni, the authors contend that the notion of the "enemy" imports war

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into the "Rule of Law" (Zanin; Martins; Valim, 2022, pp. 8-9), although they likewise fail to provide a concrete definition of the concept, whose manifestation as a normative effect appears itself to be conflictual in nature.

Similarly, Brian Tamanaha (2004) criticizes what he perceives as the practice of American advocacy at the beginning of the twenty-first century – a practice also visible in lawfare – namely, the understanding of law as an "instrument". According to him, this understanding resembles the social-naturalist Darwinian approach in which sociality is grounded in the victory of the strongest within a "war of all against all" (Tamanaha, 2004, pp. 224-225). Tamanaha argues that the establishment of limits upon law through "natural law" emerged from a non-instrumental legal approach, presuming universal foundations grounded in Saint Augustine's civilizational ethics (Tamanaha, 2006, p. 216). Although Tamanaha became prominent for identifying the instrumental use of law as a threat to the "Rule of Law", it is nevertheless possible to observe that, beginning in 2008, he himself introduced an exception to this position. He progressively defended the virtue of using law instrumentally, if it was employed to prevent law from being used instrumentally (Tamanaha, 2008, 2009), thereby demonstrating a classic logical circularity.

However, from a different perspective, it may be argued that: (a) the "Rule of Law" appears to function as a particular judgment embedded within the conflictual dynamics of struggles for power; (b) the criteria for determining the illegitimacy or legitimacy of legal tools do not appear to possess a universal, consensual, and static nature; and (c) social conflict among individuals and social groups concerning the structuring and restructuring of such dispositions is permanent. Regarding the insistence upon understanding legal disputes as "antagonism" rather than "enemy relations", as proposed by Cristiano Zanin, Valeska Martins, and Rafael Valim (2022), it may be argued that, independently of terminological preferences in individuating the phenomenon, even a simple examination of the internal political disputes surrounding Operation Car Wash (*Lava Jato*) reveals a multidimensional struggle for power. Each social group mobilized law in the service of "victory" within the conflict deduced from the conjuncture. The strategic legal reflection of the groups involved could not be reduced to an abstract conception of the "Rule of Law", since each group was itself the bearer of its own definition. Such definitions materialized within the struggle for power itself, in a complex and dynamic manner, rather than within a "pure" state projected by a single victorious group.

Therefore, an analysis restricted to the abstract defense of the "Rule of Law" appears methodologically to avoid confronting the question that every "Rule of Law" is itself determined within conflict, wherein the "just" and the "unjust" acquire concrete value only through the dynamics of struggle. Thus, it may be argued that all normative conclusions regarding the protection of the "Rule of Law" are equally contained within the "war of all against all". This results from the impossibility of conceptual stability possessing universal, cumulative, and permanent effects. Although these authors recognize geopolitical and geoeconomic effects within their conceptual exposition, they do not derive the theoretical implications of such recognition. Their analysis appears to presuppose either the absence or the finitude of "social conflict" (whether violent or non-violent), in contrast to the Marxist perspective, which presupposes permanent conflict within its reflection.

4.3 The realist perspective

The realist perspective on lawfare appears to provide the most comprehensive explanation of the phenomenon and of the role of law and the jurist within political-strategic reflection. It was also the perspective that originally gave rise to the concept itself in the United States. At the end of the 1990s, Peter Spiro (2000, p. 9) mapped a group of jurists engaged in reflections aimed at overcoming the international legal "barriers" to the accumulation and exercise of American power, whom he termed the "new sovereigntists". These jurists understood the international legal regime as: (a) subjective (in normative content); (b) illegitimate (for disregarding state hierarchy); (c) inexplicable (in its legislative process); (d) unenforceable (due to the absence of central authority); and (e) optional (through selective and non-permanent incorporation whenever conflicts arose with constitutional duties) (Spiro, 2000, pp. 10-11).

This group included John Yoo, Jack Goldsmith, Curtis Bradley, Jeremy Rabkin, Scooter Libby, Robert Zoellick, Stephen Hadley, David Rivkin, Charles Dunlap, Lee Casey, among others. From within this milieu emerged multiple strategies concerning the use of law as a tool in the service of American political-strategic objectives, especially following the 9/11 attacks. These reflections were broad in scope, encompassing geoeconomic, geopolitical, and geocultural elements. In general, they argued that: (a) the Treasury should assume a more active role in dismantling financial infrastructures associated with terrorism; (b) international law constrained American military

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action; and (c) the promotion of freedom and human dignity constituted, in itself, a war against oppression and totalitarianism (Spiro, 2000, p. 9). George W. Bush's statement regarding the balance of the national strategy for combating terrorism confirms the broad spectrum of the perceived threat:

> Our strategy also recognizes that the War on Terror is a different kind of war. From the beginning, it has been both a battle of arms and a battle of ideas. Not only do we fight our terrorist enemies on the battlefield, we promote freedom and human dignity as alternatives to the terrorists' perverse vision of oppression and totalitarian rule. The paradigm for combating terrorism now involves the application of all elements of our national power and influence. Not only do we employ military power, we use diplomatic, financial, intelligence, and law enforcement activities to protect the Homeland and extend our defenses, disrupt terrorist operations, and deprive our enemies of what they need to operate and survive (U.S. White House, 2006, section I).

According to David Rivkin and Lee Casey (2000, pp. 35-45), the notion that international law constituted a "threat" to American interests was always accompanied by the notion that this same law could be structured as an offensive weapon. For these authors, nation-states do not merely "accept" an international legal regime; rather, they constantly "reform" it in order to render it compatible with their national interests and political philosophy, with effectiveness dependent upon their capacity to project power. Such juridical disposition would constitute the task of the jurist, whose tactical role had already become visible during the Kosovo War (1998-1999). In that conflict, the negative combination of a lack of consensus concerning strategy, objectives, and operational limits within NATO itself generated difficulties in pre-establishing legal boundaries and the risks of personal accountability for those involved (Betts, 2001, pp. 126-132).

The American Air Force officer and jurist Charles Dunlap was the first to develop the concept of lawfare within the academic environment, from which the reflections of the remaining theoretical perspectives would subsequently derive. Along the same lines as the broader group, Dunlap argued that the combination of international law and mass media had become a tool of anti-American militancy. This reduced the legitimacy of military actions through legal manipulations purportedly grounded in the defense of human rights. Such a mode of operating law would invert American military asymmetry in favor of its enemies, which he termed *lawfare* (Dunlap, 2001, pp. 3-5).

For Dunlap, it was evident that the concept of the "Rule of Law" was being instrumentalized by enemies in the service of war, particularly because he understood the promotion of "Rule of Law complexes" to have been – and to remain – an asset of the United States itself since the Gulf War (1990-1991) (Dunlap, 2001, p. 2; 2008, p. 147; 2009, p. 3; 2015, p. 828). In his view, law could not function exclusively as a weapon of enemies, but should also operate as a resource of national defense and security (Dunlap, 2009, pp. 35-38), manifesting itself as a tool in the service of the "noble virtue of the Rule of Law"" depending upon "who", "how", and "why" it is used (Dunlap, 2001, p. 3). Although lawfare would not reduce the frequency of wars, it would nonetheless be preferable to "bloody" kinetic wars and should therefore be incorporated into strategic military planning (Dunlap, 2015, p. 15). Accordingly, lawfare is defined as the strategy or method of using/misusing law in service of a military operational objective as an alternative to the use of force, constituting a "continuation of war by other means", thereby inverting Clausewitzian logic (Dunlap, 2001, p. 4; 2008, p. 146; 2009, p. 35; 2010, pp. 122-123; 2015, p. 834).

Since the early 1990s, American defense and security documents progressively advanced the structuring of the notion of international terrorism as a threat, alongside other diffuse threats such as narcotrafficking and corruption. These "new" threats became reference points in the restructuring processes of the armed forces of a significant number of states within the interstate system (Padula, 2018, pp. 43-52). Based upon the 1992 Defense Planning Guidance (the Wolfowitz Doctrine), this process consolidated itself through the creation of the Project for the New American Century (PNAC), one of the principal instruments of political-strategic reflection underlying the Bush Doctrine. Frequent contributions came from those responsible for structuring the War on Terror strategy, including Donald Rumsfeld, Dick Cheney, Paul Wolfowitz, Robert Kagan, among others. One of the principal initiatives was the drafting of *Rebuilding America's Defenses* in 1997. In general, these actors advocated greater stability within the international system by seeking to overcome systemic political "constraints" of a legal nature (Scott, 2008, p. 192), which may have contributed to greater resilience in the aftermath of September 11, 2001.

Following the 2001 attacks, terrorism came to be perceived as the greatest threat in recent American history, which was immediately linked to the potential of lawfare. The attacks consolidated the hierarchically superior juridical-principiological basis that would serve to resolve controversial questions: "national security", grounded in

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American political-strategic interests[6]. Lawfare accumulated victories against "international terrorism", itself defined according to a dynamic and particular criterion. Charles Dunlap (2008, p. 147) cites as examples the American capacity to deny satellite imagery distribution to insurgents in Afghanistan in 2001 and to block Iraq's purchase of aircraft that same year. This was made possible through export prohibitions contractually imposed upon business groups. The clear perception of a collective enemy/challenge enabled an effective institutional response.

The juridical notion of "threat" was institutionally confirmed by the 2005 National Defense Strategy (NDS): "our strength as a nation will continue to be challenged by those who employ a strategy of the weak, focusing on international fora, judicial processes, and terrorism" (U.S., The White House, 2005)[7]. The fight against terrorism became an increasingly expansive objective, generating a counterreaction against anti-American legal militancy. This reaction emerged from within the United States itself, thereby immediately legitimizing the relativization of any supposed universal epistemological limit of legal science:

> I believe that the events of 9/11 will profoundly affect the role of law in military interventions. The psychological impact of brutal attacks on American soil [...] radically diminishes public desire for hyper-legalistic processes. Recognizing the dimensions of the new threat, Americans supported legislation granting authorities much broader powers at the expense of what had previously been accepted individual rights. Given Americans' willingness to sacrifice their own legal guarantees, it is unlikely that they will be overly concerned with the guarantees of foreign belligerents [...]. [Regarding international law], contrary to its devotees, many Americans are frustrated with a tool whose function of ensuring security [...] has proven inadequate (Dunlap, 2001, p. 18).

6 According to John Yoo (2006, pp. 12-13), law was operated as the "rules of the game," but not as the "politics of the game," which presupposed a dynamic, systemic, and mutable approach to the legal sphere in the service of United States national security.

7 Warfare conducted through the use of lawfare has been described by various terms: fourth-generation warfare, asymmetric warfare, hybrid warfare, multidimensional warfare, unconventional warfare, irregular warfare, among others. The most appropriate term appears to be "unconventional warfare", which has served as the reference concept within the United States National Military Strategy since 2004 (U.S. The White House, 2004, p. 10) and became part of the broader American strategy for the promotion of the "Rule of Law," incorporated into military doctrine from 2011 onward (U.S. The White House, 2011).

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The jurist Orde Kittrie was responsible for broadening the understanding of lawfare into a tool serving broader and more "permanent" political objectives. He explains the dynamic connection between American national security objectives and international security objectives. For Kittrie, the juridical structuring of security objectives in both domestic and international environments demonstrate fluid and mutable criteria operating in service of a particular understanding. Defending an instrumental vision, he understands law as a tool in service of an end, arguing that the jurist's role is no longer limited to "revealing" the law, but rather that of a "social engineer" who understands law as a permanent instrument of social reform, both internally and externally (Kittrie, 2016, pp. 33-35):

> If the United States is going to wage instrumental legal warfare against a specific adversary, it is necessary to implement a multifaceted campaign – targeting the adversary itself, its material supporters, and its financial service providers, using criminal and civil legal tools and, where appropriate, coordinating with kinetic weapons application. The campaign must be coordinated both interagency and with private attorneys who may possess evidence or claims capable of supplementing and complementing the government's campaign against the adversary (Kittrie, 2016, p. 31).

In his work *Lawfare: Law as a Weapon of War* (2016), drawing upon Charles Dunlap (2010, p. 124), Kittrie explores "financial warfare" as one among several political-strategic objectives supported by law. Dunlap had already envisioned the possibility that lawfare could assume the nature of *financial warfare* when linked to the financial system, thereby enabling the dismantling of the financial bases of international terrorism, not merely as a "public/state" and "defensive" instrument, but also as a "private" and "offensive" one (Dunlap, 2015, p. 824; 2017, p. 10). To accomplish this, Kittrie (2023, p. 393) argues that an offensive effort is necessary to construct a national lawfare strategy extending beyond the federal government to include state governments and private/civil actors (Kittrie, 2016, p. 29). In order to qualify as lawfare, an action would need to produce effects similar to those of kinetic military action and aim at weakening or destroying the enemy (Kittrie, 2016, p. 8).

Although Kittrie argues that George W. Bush and Barack Obama followed a generally correct course, he contends that no coherent national strategy for the proper use of lawfare yet exists. According to him, there remains insufficient integration among

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the Treasury and the Departments of Defense, Justice, and State, which prevents more effective actions against established powers such as China and Russia, thereby producing an underutilization of law itself (Kittrie, 2016, pp. 17-24, 31). Thus, the principal objective of reflection on lawfare would be to improve it as an "advanced tool" of American national security (Kittrie, 2010, p. 393; 2023, pp. 394-395).

According to Kittrie, the most sophisticated and successful American lawfare attack targeted the Islamic Republic of Iran, one of whose results was the signing of the Joint Comprehensive Plan of Action (JCPOA). The consequences of this attack induced Iran to alter its posture, both through the election of Hassan Rouhani and through the end of its isolation with the initiation of negotiations in 2013 (Kittrie, 2023, pp. 448-451)[8]. In this case, lawfare operated as a political-strategic instrument for structuring the financial system in service of the objectives of the National Security Strategy (NSS), as expressed in the 2010 strategy document (U.S., The White House, 2010, p. 24). The attack proved victorious without requiring significant concessions, such as guarantees concerning the end of sanctions or the revocation of Iran's status as a "state sponsor of terrorism" (Kittrie, 2023, pp. 431-432).

Kittrie offers two domestic examples that illustrate the operation of this dynamic. The first concerns the use of national legislation, public advocacy, and the domestic market to induce conduct aligned with strategic objectives: (a) American legislation forced companies to choose between supplying gasoline to Iran or facing sanctions and exclusion from the American market, producing an almost 90% reduction in Iran's external gasoline supply; (b) the U.S. Congress sent a request in 2008 to the Export--Import Bank regarding the review of a 900 million dollar loan to the Indian company Reliance, responsible for approximately 10% of Iran's gasoline consumption. On the very first day after the request appeared in the Indian press, the company's shares fell by approximately one billion dollars, inducing immediate compliance and interruption of supply; and (c) Barack Obama's policy discouraging financial support for Iran and other "terrorist states" resulted in a substantial reduction in banking support for these countries, including a monetary devaluation exceeding 50% in Iran, thereby forcing concessions regarding its nuclear program (Kittrie, 2016, pp. 14-17).

The second example concerns the use of state legislation and state-level administrative actions to pressure actors linked to Iran in order to force concessions in the

8 This is reflected in the temporal scope adopted by the present study (2001-2013).

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nuclear program: (a) twenty-four states reduced or prohibited public contracts with companies investing in Iran's energy sector; (b) the Governor of Minnesota threatened to block subsidies and public tax benefits for Essar, a company with major investments in the state that had invested five billion dollars in an Iranian refinery, leading to the immediate termination of the contract and increasing Iran's dependence on crude oil exports; and (c) the New York Attorney General initiated proceedings against Standard Chartered Bank for providing services to Iran, resulting in the abandonment of high-risk Iranian securities and the implementation of multiple internal compliance mechanisms (Kittrie, 2016, pp. 14-17).

In general, the available and mobilized legal instruments provided the President with a wide range of adaptable strategic tools. Examples include the International Emergency Economic Powers Act (IEEPA), the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), the National Defense Authorization Act of 2011, and the Iran Threat Reduction and Syria Human Rights Act. The IEEPA granted broad powers to regulate legal transactions deemed to involve an "emergency", on the basis of which Executive Orders n. 13324/2001 (authorizing the Treasury to regulate assets threatening American national security) and n. 13382/2005 (authorizing the Treasury to regulate assets associated with the development of weapons of mass destruction) were issued, affecting more than 360 companies. Section 104 of CISADA restricted or prohibited the maintenance of accounts by international financial institutions in American territory whenever such institutions: (a) maintained relations with entities referred to in the Executive Orders; (b) were associated with Iranian activities involving terrorism sponsorship or the development of weapons of mass destruction; or (c) maintained direct or indirect ties to the Iranian armed forces (Islamic Revolutionary Guard Corps). These measures derived from Section 301 of the USA PATRIOT Act, which classified the entire Iranian financial system as a threat to global financial stability. Section 1245 of the National Defense Authorization Act of 2011 prevented the opening of and restricted the use of accounts connected to the Central Bank of Iran within the financial system, including those used for oil payments, thereby reducing Iranian export capacity. Sections 302 and 504 of the Iran Threat Reduction and Syria Human Rights Act imposed broad prohibitions upon participation in activities associated with the Iranian armed forces, under penalty of: (a) prohibition from participating in procurement contracts with the American government; (b) prohibition of foreign-exchange operations involving the dollar; (c) restrictions upon

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financial contracts with American institutions; and (d) prohibitions upon commercial compensation involving Iranian export revenues held in domestic banks (Kittrie, 2023, pp. 453-463).

Within the international sphere, several components of United Nations Security Council (UNSC) resolutions were also mobilized. These components became operational through the particular (non-arbitrable) judgment that Iran had failed to comply with recommendations of the International Atomic Energy Agency (IAEA). On the basis of alleged violations of the Treaty on the Non-Proliferation of Nuclear Weapons, Resolutions n. 1737/2006, 1747/2007, 1803/2008, and 1929/2010 recommended that all states adopt measures preventing the supply, sale, or transfer – direct or indirect – of articles, materials, equipment, goods, or technologies capable of contributing to Iranian enrichment, reprocessing, or nuclear weapons delivery systems. They also prohibited technical assistance, training, financial aid, investment, brokerage, or other services, as well as the transfer of financial resources or services related to such activities, involving an extensive list of legal and natural persons associated with them. One week after the signing of the JCPOA, Resolution n. 2231/2015 suspended part of the earlier resolutions (Kittrie, 2023, pp. 464-465).

All these juridical elements possess dynamic, systemic, and mutable foundations. Within a relatively short period, Iran successively acquired the status of "state sponsor of terrorism", "nuclear proliferator and developer of weapons of mass destruction", "destabilizing cyber actor"[9], among others. One may therefore argue that a form of global compliance architecture was created in service of American security. The most recent American National Security Strategy (2025) identifies as a "priority" the "preservation and extension of the dominance of the American financial sector" (NSS, 2025, p. 14). In a recent Treasury report discussing the future challenges of this architecture in service of national security, the principal challenge identified is the construction of a clear political objective serving a broader strategy, thereby reducing collateral effects and increasing operational efficiency with allies, directing such measures toward conflict/war "against whatever American policy elects as a bad actor"

9 More recently, it has been linked to the cyber environment within the framework of asymmetric warfare, in the service of safeguarding national security (Zarate, 2015, pp. 5-6). The mechanism may operate in a similar manner through information sharing. On the basis of the same legal foundation established by Section 314(b) of the USA PATRIOT Act, it becomes possible not only to assign the status of "primary cybersecurity concern" for the imposition of restrictive measures (Zarate, 2015, pp. 21-22), but also to remove "dangerous" actors from the network.

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(U.S. Treasury, 2021). In the War on Terror, the American Treasury successfully placed these legal and monetary instruments at the disposal of the Presidency and national security, as expressed in then-Secretary Henry Paulson's statement (2007). There is an evident political-strategic continuity between the "new sovereigntists" and more recent Treasury officials, most of whom are jurists. Barack Obama retained several appointees originally selected by George W. Bush after the 9/11 attacks, including Stuart Levey and Adam Szubin, to whom were added three additional jurists among the principal architects of these mechanisms: David Cohen, Daniel Glaser, and Juan Zarate.

Finally, although partially aligned with the realist perspective, it may nevertheless be argued that: (a) lawfare does not appear to constitute a "pure" and "static" instrument of power, but rather one among several possible juridical instruments operated in a "relational" and "dynamic" manner in service of social groups, not necessarily linked to operational military objectives, but rather to dynamic struggles for power; (b) lawfare does not appear to have been created in a fully "rational" and "planned" manner, but rather to have emerged contingently through complex interactions among individuals and social groups engaged in struggles for power, specifically linked to American power, though capable of manifesting differently in other groups; and (c) lawfare involved not only "geoeconomic" and "geopolitical" elements and disputes among "states", but also the universalizable legitimacy of anti-terrorist action through an expansive ethical-cultural criterion belonging to a broader "civilization". Following the 9/11 attacks, "terrorism" not only retained abstract foundations, but acquired greater urgency and scope, no longer materializing in static, immutable, and particular individuals or groups, but instead operating in a dynamic, mutable, and systemic manner.

5. Conclusion

The first section examined the emergence of the dollar bomb as an instrument of monetary power created in the aftermath of the 9/11 attacks, enabling the partial or total exclusion of individuals and social groups (social movements, corporations, states, among others) from the international financial system. The dollar bomb constitutes a low-operational-cost yet highly destructive instrument of monetary power, operated through the structural asymmetry of the dollar's position and deployed in the service of U.S. political-strategic objectives. The second section assessed the U.S. legal-institutional response to the challenge of terrorism immediately following the 9/11 attacks.

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Within the U.S. Office of Government Legal Counsel, the judgment of "risk" to (national and international) security manifested itself in a fluid and mutable manner, closely tied to the American project of power and placing law at its disposal. This dynamic was facilitated by the expansion of informational availability in the post-9/11 context and by the systemic asymmetry of the dollar. The third section associated this legal response with the very emergence of U.S. lawfare in its realist perspective, while jointly analyzing the Marxist and liberal approaches. Contrary to the Marxist perspective, it was argued that lawfare does not necessarily require regular violence or coercion, but may instead operate through inductive, structural, and cultural mechanisms. In contrast to the liberal perspective, it was argued that there is no concrete definition of the "Rule of Law", since it constitutes a dynamic, mutable, and conflictual concept embedded within disputes over power.

Finally, while partially aligning with the realist perspective, this article argued that lawfare possesses mutable, dynamic, and systemic foundations and may operate toward non-military objectives, such as the promotion of the "Rule of Law" as a universalizable ethical-cultural criterion. Its use is not restricted to a pure, rational, and static instrumentalization of power, but rather constitutes a dialectical, complex, and relational instrument serving struggles over power. Accordingly, it may be argued that this legal-monetary dynamic, which emerged in response to a collective challenge/threat to national security, enabled the emergence of a potentially global compliance structure operating in the service of U.S. political-strategic objectives. On the one hand, the systemic asymmetry of the dollar favors the partial triumph of dynamic and mutable criteria of the "just" and the "unjust". On the other hand, these criteria acquire a greater capacity to prevail dynamically precisely because of that asymmetry. This provides considerable political-strategic latitude for operating within the current restructuring of the interstate system, thereby relativizing conclusions regarding the supposedly necessary linear causality of the decline of U.S. hegemony or American power.

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