TRUMP, TREASON, AND THE NUREMBERG TRIBUNAL

As most readers of this commentary probably are aware, the dark forces desperate to remove Donald Trump from the Office of President are attempting at this writing to frame a case in "the mainstream media" for his impeachment on the basis *inter alia* that, in seeking to improve relations between the United States and Russia, Mr. Trump is committing "Treason". Now, the Constitution does provide that "[t]he President * * * shall be removed from Office on Impeachment for, and Conviction of, Treason".[1] And it does further provide that "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort".[2] Beyond dispute, however, is that Mr. Trump has done nothing which amounts to "levying War against the[United States]". So his supposed "Treason" must entail "adhering to their Enemies, giving them Aid and Comfort", with Russia cast in the rôle of an "Enem[y]" *in the constitutional sense of that term*.

Unfortunately for the proponents of this theory of impeachment, Russia cannot be so characterized. No doubt, some (or even many) of Russia's foreign policies may happen to conflict to some, even to a large, degree with foreign policies of the United States. So what? Russia is not a vassal of or otherwise subservient to the United States—and as an independent sovereign state is entitled to promote her own interests in her own way, as long as her actions are consistent with relevant treaties and other constraints of international law. And if her exercise of that independence and sovereignty automatically rendered Russia an "Enem[y]" *in the constitutional sense*, then many (if not most) other countries throughout the world, which do not always see eye-to-eye with the United States on various international issues of consequence, would necessarily be "Enemies", too.

The contention that Russia is an "Enem[y]" of the United States simply because of her stubborn refusal to subordinate herself to the dictates of the United States in international affairs runs afoul of the most fundamental of all laws of the United States, the Declaration of Independence. The Declaration asserted for the original Thirteen Colonies the right "to assume among the powers of the earth *the separate and equal station* to which the Laws of Nature and of Nature's God entitle[d] them", and that *as Free and Independent States*, they ha[d] full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things *which independent States may of right do*".[3] The Constitution rests for its

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[1] U.S. Const. art. II, § 4.

[2] U.S. Const. art. III, § 3, cl. 1.

[3] Emphasis supplied.

legitimacy and efficacy upon the Declaration. So, under "the Laws of Nature and of Nature's God", the United States must accord to Russia the selfsame "separate and equal station" and "full Power * * * to do all * * * Acts and Things which independent States may of right do"—which obviously includes the right to differ from the United States on matters of international relations within the rather capacious bounds of international law.

Russia has not declared herself to be an "Enem[y]" of the United States. Quite the contrary. Although the victim of continual defamation, harassment by way of various economic "sanctions", the deployment of advanced weaponry and military exercises all too near her borders, and other provocations and affronts, she seems to be doing everything reasonably possible, consistent with her national independence, security, and honor, to belie and avoid such a false characterization. America's "mainstream media" have no power to denounce Russia as an "Enem[y]" in a manner binding on the President. Neither do the "military-industrial" and "national-security" complexes, or certain former Generals and other veteran operatives of those complexes whom Mr. Trump has imprudently included within his Administration. To be sure, Congress as a whole wields the power "[t]o declare War" against Russia (were the conditions for a *just* war at hand).[4] But it has not done so (and, those conditions now being absent, cannot constitutionally do so). And the well publicized ravings of certain deranged individual Representatives and Senators carry no legal weight, except possibly to bring into play the authority and responsibility of "[e]ach House [of Congress]" to "punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member".[5] So, as the officer to whom the Constitution assigns the primary direction over foreign policy, it is for *the President* in the first instance to determine whether to treat Russia as a potential (let alone an actual) "Enem[y]" *or not* (short, of course, of "declar[ing] War", which remains the prerogative solely of Congress). To denounce as "Treason" the President's exercise of that authority is nonsensical.

Even were the United States now engaged in an actual "declare[d] War" with Russia as their undoubted "Enem[y]", negotiations for an armistice, a truce, a settlement, and so on would be within the President's ken. In some circumstances, such an accord might need to be confirmed by the Senate in a formal "Treat[y]".[6] But, in principle, the mere conduct of negotiations for such a purpose could not possibly constitute "Treason", unless the Constitution required that every actual

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[4] U.S. Const. art. I, § 8, cl. 11. The power "[t]o declare War" is limited to the power "[t]o declare [a *just*] War", because according to the Declaration of Independence "Governments are instituted among Men, deriving their just powers from the consent of the governed". So no people—Americans included—can claim any authority to delegate "[*un*]just powers" to their government.

[5] U.S. Const. art. I, § 5, cl. 2.

[6] U.S. Const. art. II, § 2, cl. 2.

"war" ("declare[d]" as the Constitution specifies, or waged on some *extra*-constitutional basis) be fought to the "Enem[y's]" unconditional surrender, which the sorry lessons of Korea and Vietnam demonstrated not to be the case in practice. Obviously, therefore, in the absence of a "declare[d] War" the President's pursuit of negotiations in order to *avoid or lessen* potentially dangerous conflicts with Russia on the basis of some mutually agreeable accords cannot possibly constitute "Treason".

The real *sub*-text of the story here is not that President Trump's apparent—and, world peace being a desideratum, eminently sensible—intent to bring about a *rapprochement* with Russia, if translated into meaningful action, could result in "giving * * * Aid and Comfort" to an "Enem[y]" of the United States, but that it would put paid to the Deep State's plot to tar Russia as an irreconcilable "Enem[y]" in order to rationalize a head-to-head conflict of a *military*, as well as a diplomatic and economic, nature between the two countries—no matter what reasonable steps Russia might take to obviate such an outcome. The constant propaganda and agitation on the part of the Deep State's mouthpieces demonizing Russia, her domestic and international interests, her leaders, and so on have not been put forward without some sinsiter purpose animating them. No, indeed. In line with the old adage that "to kill a dog one must first call it mad", the goal has been to brainwash Americans through "the mainstream media's" incessant harping on Russia's alleged demerits (the old but effective technique of "lather, rinse, and repeat"), so that they will accept aggression against Russia on the part of the United States and various puppet allies as somehow justified—"somehow" being the necessary qualification, because an actual justification for *any* sort of military confrontation, let alone outright aggression, cannot be specified.

One must keep in mind, too, that the Deep State's mockingbirds were conducting this campaign of vilification against Russia *even before Mr. Trump announced his candidacy for the Office of President*; so its genesis cannot be attributed to anything *he* has said or done as a political figure. Once candidate Trump proposed a relaxation of tensions between the United States and Russia as part of his avowed foreign policy, however, the Deep State needed to discredit him personally—*not* by the honest means of openly debating whether the United States and Russia are irreconcilably at odds with respect to certain absolutely vital matters of international relations, but instead by floating the canard that Russia was somehow secretly *and illegally* interfering with the 2016 Presidential election on Mr. Trump's behalf. (Again, "somehow" is the necessary qualification, because no evidence of any such interference, permissible in a high-school debate let alone admissible in a court of law, was provided then, or has been brought to light since.) As fantastic as this "old grey mare" surely appeared (and still appears) to every even marginally sophisticated observer, it offered two advantages when foisted off on credulous Americans: first, it advanced the Deep State's *anti*-Russian campaign in general; and second, it undermined Mr. Trump's candidacy in a manner fully supportive of that campaign.

Unfortunately for the Deep State, Mr. Trump was elected and inaugurated as President, still at least mouthing his intent to ameliorate relations between Russia and the United States. So the tall tale of his supposed "collusion" with Russia had to be retold, expanded, and emphasized to the maximum degree possible, in an effort: (i) to make him cave in, by acquiescing in the Deep State's characterization of Russia as an inveterate "Enem[y]" of the United States; or (ii) to make him give up and go away, by resigning his office due to the irresistible pressure of never-ending scandals, disloyalty and discombobulation within his Administration, the inability to get anything accomplished, and a massive loss of public support; or (iii) to put him down as a species of political "mad dog", through formal impeachment, conviction, and removal from office, with subsequent prosecution in the kangaroo courts.[7] To be sure, many and varied, in persons, motives, and methods, have been the participants in these efforts. But the operation has been so well calculated, coördinated, and carried out over such a short period of time, and with such an invariably sharp focus, that its orchestration can be ascribed only to the Deep State and its minions in private station.

Although President Trump finds himself in the eye of this hurricane of invective over invented charges ranging from political and personal venality to outright "Treason", the Deep State's ultimate goal has never been just to destroy him, whether as an individual or as President. Rather, its purpose has always been and remains to demolish Russia as a world power capable of standing up to the Forces of Darkness which now grip the government of the United States in their talons. By winning the Presidential election in part on the basis of his promise to ameliorate relations between Russia and the United States, Mr. Trump rather cavalierly placed himself in the line of fire. *Anyone* who had assumed that position would have become a target.

Nonetheless, to categorize the Deep State's campaign against Mr. Trump as aimed simply at removing a stumbling-block to familiar run-of-the-mill aggression against Russia is to minimize its danger. The Deep State's apparent assumption that once President Trump allows some "hard liner" in his Administration to direct a militarily confrontational foreign policy against Russia, or that once he resigns or is removed from office to be replaced by such an individual, Russia will simply roll over and play dead is lunatic. To a moral certainty, Russia will match any serious military threat to her national sovereignty and independence with an appropriately severe counter-threat—and any actual large-scale military engagement between the United States and Russia will likely escalate into a *nuclear* war (perhaps dragging in China and other nuclear powers as well). Thus, President Trump finds himself confronted by a situation beyond anyone's experience in human history: namely, a plot

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[7] *See* U.S. Const. art. II, § 4 and art. I, § 3, cl. 7.

fermenting within the government of the United States intended to foment international aggression *with the annihilation of a large portion of the entire world's population as its probable consequence.*

The seriousness of this matter notwithstanding, the Deep State seems to believe that it can promote aggression against Russia with legal immunity as well as moral impunity—even to the point of destroying a President who dares to stand in its way. Although some historical evidence supports this belief,[8] on the purely legal point it amounts to delusional thinking of the very worst sort.

The Charter of the International Military Tribunal created in 1945 and convened at Nuremberg, Germany, provided (in pertinent part) that:

> *Article 6.* The Tribunal * * * shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.
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> The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
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> *(a)* CRIMES AGAINST PEACE: namely, planning, preparation, or waging of war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing[.]
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> Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.
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> *Article 7.* The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.
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> *Article 8.* The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if

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[8] *See, e.g., JFK and the Unspeakable. Why He Died and Why It Matters* (Maryknoll, New York: Orbis Books, 2008; reprinted, New York, New York: Touchstone, 2010).

the Tribunal determine that justice so requires.[9]

In its Judgment of 1 October 1946, the Tribunal observed that

> [t]he charges in the indictment that the defendants planned and waged aggressive wars are charges of the utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world.
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> *To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole*.[10]

Going into specifics, the Tribunal recalled that

> the first war of aggression charged in the indictment is the war against Poland begun on the 1st September 1939.
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> * * * The war against Poland did not come suddenly out of an otherwise clear sky; * * * this war of aggression * * * was premeditated and carefully prepared, and was not undertaken until the moment was thought opportune for it to be carried through as a definite part of the preordained scheme and plan.
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> For the aggressive designs of the Nazi Government were not accidents arising out of the immediate political situation in Europe and the world; they were a deliberate and essential part of Nazi foreign policy.[11]

Whatever one may think of what some have criticized as the *ex post facto* nature of the Nuremberg trials and judgments, the United States is estopped to deny their specific legality at that time, or the general applicability in the present of the principles they enforced. Moreover, as once part of the Union of Soviet Socialist Republics which was a Signatory to the Agreement establishing the International Military Tribunal,[12] contemporary Russia can insist upon the continued authority of

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[9] Chapter II, Part II, Jurisdiction and General Principles, *in* Office of United States Chief of Counsel for Prosecution of Axis Criminality, *Nazi Conspiracy and Aggression* (Washington, D.C.: United States Government Printing Office, 1946), Volume I, at 5-6.

[10] Part III, The Common Plan of Conspiracy and Aggressive War, *in* Office of United States Chief of Counsel for Prosecution of Axis Criminality, Opinion and Judgment, *Nazi Conspiracy and Aggression* (Washington, D.C.: United States Government Printing Office, 1947), at 16 (emphasis supplied).

[11] *Id.*

[12] *See* Chapter I, Agreement, *in* Office of United States Chief of Counsel for Prosecution of Axis Criminality, *Nazi Conspiracy and Aggression* (Washington, D.C.: United States Government Printing Office, 1946),Volume I, at 1-3.

the principles the Tribunal employed.

"Employed" as opposed to "established" is the correct verb, because the Tribunal itself rebutted the charge that its proceedings were to any degree *ex post facto* in character:

> The Charter is not an arbitrary exercise of power on the part of the victorious nations, but * * * is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law.[13]

In any event, in 1946 the United Nations—of which both the United States and Russia were members (the latter as a component of the Union of Soviet Socialist Republics)—"[*a*]*ffirm*[*ed*] the principles of international law recognized by the *Charter of the Nurnberg Tribunal* and the judgment of the Tribunal".[14] And in 1947 it defined "aggression" as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations", and provided that "[n]o consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression".[15]

Today, application of the seminal principles of the Nuremberg Tribunal to the present inquiry is straightforward. There can be little doubt that a "war of aggression" against Russia is being "premeditated and carefully planned", with the intent that it be waged as "a deliberate and essential part of [the United States'] foreign policy". Operatives within the Deep State along with their adherents and partisans both inside and outside of the General Government (and even within some of the States) are engaged, openly as well as clandestinely, in "planning, preparation, * * * or participation in a common plan or conspiracy for the accomplishment of [that end]".

That many of these people, "whether as individuals or as members of organizations", purport to be "acting in the interests of the [United States]" is beside the point. For "[t]he official position of [such individuals] * * * as * * * responsible officials in Government Departments[ ] sh[ould] not be considered as freeing them from responsibility or mitigating punishment." Rather, *all* "[l]eaders, organizers,

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[13] Judgment, Part IV, Violations of International Treaties, Section (E) The Law of the Charter, *in* Office of United States Chief of Counsel for Prosecution of Axis Criminality, Opinion and Judgment, *Nazi Conspiracy and Aggression* (Washington, D.C.: United States Government Printing Office, 1947), at 48. This section goes on to support in detail the statement quoted above. *Id.* at 48-54.

[14] United Nations General Assembly, Resolution Adopted by the General Assembly, 95(I). Affirmation of the Principles of International Law recognized by the Charter of Nurnberg Tribunal (11 December 1946).

[15] United Nations General Assembly, Resolution Adopted by the General Assembly, 3314(XXIX). Definition of Aggression, Annex, arts. 1 and 5.

instigators, and accomplices in the formulation or execution of a common plan or conspiracy to commit [aggression] * * * are responsible for all acts performed by any persons in execution of such plan." And even "the group or organization of which the individual [i]s a member" may be declared to be "a criminal organization". Moreover, it requires little imagination to realize that the "instigators" and "accomplices" include (among other malefactors) the Deep State's individual mouthpieces and megaphones in "the mainstream media", its academic theorists and apologists in various subversive "think tanks", and the corporate and other private entities and monied godfathers which and who employ, retain, or subsidize such people—along with the corporations in the "defense"-industries which stand to reap ever-increasing profits from providing the machinery for ever-expanding warfare.

Therefore, having embarked upon the course of fomenting aggression against Russia, the Deep State and its allies and stooges have exposed themselves to perhaps the zenith of criminal liability. For if initiation of any "war of aggression" waged with mere *conventional* weapons "is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole", to what heretofore unprecedented depth of criminal depravity must initiation of aggression which results in *nuclear* war sink?!

Admittedly, although the recently revised Rome Statute of the International Criminal Court defines "crime of aggression" as "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations",[16] as of this writing the United States have refused to ratify that provision.[17] This, however, is not consequential, because the Supreme Court of the United States held the principal precept of the Nuremberg Charter applied against the Germans—that aggression had long theretofore been recognized as unlawful—to be part of American constitutional jurisprudence almost a century before the Nuremberg Tribunal came into existence:

> [T]he genius and character of our institutions are peaceful, and the power to declare war[18] was not conferred upon Congress for the purposes of aggression * * * , but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens.

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[16] Article 8 *bis*, Crime of Aggression, ¶ 1, 17 July 1998, 2187 U.N.T.S. 90 (entered into force on 1 June 2002), *as revised by* RC/Res. 6 of 11 June 2010.

[17] *See* <https://treaties.un.org/pages/ViewDetails.aspx?src=Treaty&mtdsg_no=XVIII-10-b&chapter=18&clang=_en>. Russia, too, has withheld her ratification.

[18] U.S. Const. art. I, § 8, cl. 11.

> A war, therefore, declared by Congress, can never be presumed to be waged for the purpose of conquest * * * .[19]

This holding is undoubtedly sound, because the Constitution cannot to any degree require, permit, tolerate, or excuse the commission of aggression. For the Preamble to the Constitution sets out as one of its purposes—and therefore as one of the constraints it imposes on *every* power the Constitution grants—"to * * * provide for the common *defence*",[20] *not* to engage in aggression or associated criminality.[21] Self-evidently, aggression is the very negation of "defence", because an aggressor-nation cannot claim the privilege of self-defense when its victims retaliate against it in their own defense. Furthermore, the Constitution specifically delegates to Congress the "Power To lay and collect Taxes, Duties, Imposts and Excises to * * * provide for the common *Defence*",[22] *not* to subsidize warmongering. In addition, although the Constitution delegates to Congress the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the * * * Powers [of Congress], and all other Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof",[23] *no* "Law[ ]" can "be necessary and proper for carrying into Execution" any act of aggression, because no "Department or Officer" of "the Government of the United States" may expend any "Money" except what "shall be drawn from the Treasury * * * in Consequence of Appropriations made by Law",[24] and the Constitution explicitly disables Congress from collecting and expending public funds for such a purpose. Therefore, it is impossible to lend even a scintilla of credence to the claim that the United States may engage in aggression.

Thus, besides being a crime under international law when committed by *any* nation, "the supreme international crime" of aggression violates the Constitution of the United States in particular. So, although at this juncture American malefactors apparently cannot be prosecuted in an international tribunal for committing or conspiring to engage in aggression, they *can* be punished under the laws of the United States, on the following basis:

- Everyone in public office and most people in private station

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[19] Fleming v. Page, 50 U.S. (9 Howard) 603, 614 (1850).

[20] Emphasis supplied.

[21] "[A]*ffirmative words in the Constitution * * * must be construed negatively as to all other cases*". *Ex parte* Vallandigham, 68 U.S. (1 Wallace) 243, 252 (1864) (emphasis in the original) (footnote omitted). *Accord,* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 174 (1803); *and* Cohens v. Virginia, 19 U.S. (6 Wheaton) 264, 394-395 (1821).

[22] U.S. Const. art. I, § 8, cl. 1 (emphasis supplied).

[23] U.S. Const. art. I, § 8, cl. 18.

[24] U.S. Const. art. I, § 9, cl. 7.

have long been on notice that aggression and related misbehavior are unconstitutional.[25]

• "The Senators and Representatives [in Congress], and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support th[e] Constitution".[26] Every such "Oath or Affirmation" creates a duty owed by each public official to every citizen or other person to whom the Constitution applies, and a corresponding right in every such citizen or person to require *the enforcement* of that "Oath or Affirmation" (otherwise the official would hardly be "bound" by it).[27]

• Inasmuch as his "Oath of Affirmation" continues in full force and effect throughout each public official's term of office, none of them can engage in any acts of or related to aggression under color of his office without committing, first, the general offense of perjury or false swearing, and second, whatever particular offenses may be specified in "th[e] Constitution, and the Laws of the United States which shall be made in Pursuance thereof" with regard to those particular acts.[28]

• Aggression necessarily entails war; and war necessarily entails deaths

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[25] "Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know it and observe it. If their knowledge is not comprehensive, [public] officials know or should know when they pass the limits of their authority, so far at any rate that their action exceeds honest error of judgment and amounts to abuse of their office and its function. When they enter such a domain * * * , they should do so at their peril * * * . For their sworn oath and their first duty are to uphold the Constitution * * * ." Screws v. United States, 325 U.S. 91, 129-130 (1945) (Rutledge, J., concurring).

[26] U.S. Const. art. VI, cl. 3. The "Oath or Affirmation" of the President of the United States is more specific: namely, "'that [he] will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.'" U.S. Const. art. II, § 1, cl. 7. This includes, of course, the President's personal duty to "take Care that the Laws be faithfully executed", the Constitution—"the supreme Law of the Land"—first and foremost among them. U.S. Const. art. II, § 3 and art. VI, cl. 2.

[27] "The danger * * * [i]s abuse by whatever agency the [government] might invest with its power capable of inflicting the deprivation. In all its flux, time makes some things axiomatic. One has been that [public] officials who violate their oaths of office and flout the fundamental law are answerable to it when their conduct brings upon them the penalty it authorizes and Congress has provided." Screws v. United States, 325 U.S. 91, 116-117 (1945) (Rutledge, J., concurring).

[28] *See* U.S. Const. art. VI, cl. 2. As to the President and other Executive officials, the immediate constitutional sanction for commission of acts of aggression would be "Impeachment for, and Conviction of, * * * high Crimes and Misdemeanors". U.S. Const. art. II, § 4. This, of course, could be followed by prosecution under some statute. U.S. Const. art. I, § 3, cl. 7. As to Members of Congress, the equivalent constitutional sanction would be for "[e]ach House * * * , with the Concurrence of two thirds, [to] expel a Member". U.S. Const. art. I, § 5, cl. 2. They, too, could also be prosecuted. *See* U.S. Const. art. I, § 6, cl. 1, *discussed post,* at 18-20. For judges, the constitutional penalty could be removal from office by means of the general remedy of impeachment, or (better yet) on the specific ground of lack of "good Behaviour". U.S. Const. art. II, § 4 and art. III, § 1. In their case, too, prosecution could follow. U.S. Const. art. I, § 3, cl. 7.

of and injuries to human beings, and destruction of property, on a massive scale.

• Although actual warfare against Russia has yet to occur, the Deep State and its minions have engaged, and until stopped will continue to engage, in numerous acts in furtherance of "a common plan or conspiracy", each element of which has been "premeditated and carefully prepared, and * * * not undertaken until the moment was thought opportune for it to be carried through as a definite part of the preordained scheme and plan" disguised as "a deliberate and essential part of [American] foreign policy".

• As a matter of fact so patent as to be subject to judicial notice, the fruition of this "common plan or conspiracy" will deprive large numbers of Americans of their lives, liberties, and property. This toll will be imposed not simply on hundreds of thousands of members of the Armed Forces ordered to participate in military operations overseas, but also on potentially tens of millions of civilians who would become domestic casualties in the event that the Deep State's aggression culminated in nuclear warfare.

• As a matter of law, the fruition of this "common plan or conspiracy" will deprive its American victims of rights, privileges, and immunities secured to them by the Constitution and laws of the United States—in particular by the constitutional limitation which constrains the exercise of every power delegated to the General Government, that "[n]o person shall * * * be deprived of life, liberty, or property, without due process of law";[29] as well the constitutional constraint on the States that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law".[30] *So, "a common plan or conspiracy" to commit aggression disguised as "a deliberate and essential part of* [*American*] *foreign policy" violates the most basic constitutional rights of every American—and, arguably, every other "person" victimized by aggression, whether or not an American—who are not parties to the conspiracy. If one focuses on these "person*[*s*']* rights to life, it is a conspiracy to commit international mass murder.*

• These constitutional limitations can be enforced through numerous statutes, including:

If two or more persons conspire to injure, oppress, threaten, or

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[29] U.S. Const. amend. V.

[30] U.S. Const. amend. XIV, §1.

intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States * * *

[t]hey shall be fined * * * or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section * * * , they shall be fined * * * or imprisoned * * * for any term of years or for life, or both, or may be sentenced to death.[31]

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States * * * shall be fined * * * or imprisoned not more than one year, or both; * * * and if death results from the acts committed in violation of this section * * * shall be fined * * * , or imprisoned for any term of years or for life, or both, or may be sentenced to death.[32]

• These statutes prohibit *inter alia* actual deprivations of life, liberty, and property, as well as conspiracies aimed at, or with the inevitable consequence of causing, any such deprivation.[33] Particularly as to the right to life, no public official, or any private party colluding with a public official, can have any reasonable doubt of this.[34]

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[31] 18 U.S.C. § 241. *See also as to penalties* 18 U.S.C. § 34.

[32] 18 U.S.C. § 242. *See also as to penalties* 18 U.S.C. § 34. Section 242 can also be made to reach conspiracies, through application of 18 U.S.C. § 371, which provides that, "[i]f two or more persons conspire * * * to commit any offense against the United States, * * * and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined * * * or imprisoned not more than five years, or both".

[33] *See* United States v. Price, 383 U.S. 787, 789, 793, 800(1966); United States v. Guest, 383 U.S. 745, 753 (1966).

[34] "Separately, and often together in application, §§ [241 and 242] have been woven into our fundamental and statutory law. They have place among out more permanent legal achievements. They have safeguarded many rights and privileges * * * and the necessary import of the decisions [of the courts] is that the right to be free from deprivation of life itself, without due process of law, that is, through abuse of [governmental] power by [public] officials, is as fully protected as other rights so secured." Screws v. United States, 325 U.S. 91, 126-127 (1945) (Rutledge, J., concurring). "[T]he right not to be deprived of life without due process of law is distinctly and lucidly protected by the [Constitution]. There is nothing vague or indefinite in these references to this most basic of all human rights. Knowledge of a comprehensive law library is unnecessary for officers of the law to know that the right to murder individuals in the course of their duties is unrecognized in this nation. No appreciable amount of intelligence or conjecture on the part of the lowliest [public] official is needed for him to realize that fact; nor should it surprise him to find out that the Constitution protects persons from his reckless disregard of human life and that statutes punish him therefor. To subject a [public] official to punishment * * * for such acts is not to penalize him without fair and definite warning. Rather it is to uphold elementary standards of decency and to make American principles of law and our constitutional guarantees mean something more than pious rhetoric."

• For these statutes to apply, no actual deprivations of any rights, privileges, or immunities secured by the Constitution and laws need have occurred. A conspiracy aimed at any such deprivation, together with the commission of some overt act in furtherance thereof, suffices.[35] As well it should: "For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws, is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered."[36]

• Although, as to deprivations of certain rights, private parties can be charged even without the involvement of rogue public officials in their wrongdoing,[37] they are certainly liable as to deprivations of *any and all* rights under these laws when they collude with such officials.[38] And in this case rightly so: For various puppet masters and their mouthpieces in private station are doubtlessly as much instigators, initiators, promoters, and planners of, and otherwise accessories to, the policy of aggression against Russia as are their co-conspirators among rogue officials and employees in the Deep State. So, inasmuch as public officials "participate[ ] in every phase of the * * * venture", and "[i]t [i]s a joint activity, from start to finish", "[t]hose [private parties] who t[ake] advantage of the foul purpose must suffer the consequences of that participation",[39] even to the extent of being punished as principals.[40] The breadth of this rule offers a distinct advantage over prosecution of these people in some international tribunal, because these laws of the United States do not require proof that the puppet masters are actually able to direct or control the actions of the Deep State (or any other part of the United States' government or Armed Forces) as to the"common plan or

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Id. at 136-137 (Rutledge, J., concurring).

[35] Although 18 U.S.C. § 242 reaches only "willfull[ ]" misbehavior, its prohibition is satisfied by "an act knowingly done with the purpose of doing that which the statute prohibits". "One who does act with such specific intent is aware that what he does is precisely that which the statute forbids. * * * [H]e either knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal right." Screws v. United States, 325 U.S. 91, 102, 104 (1945) (opinion of Douglas, J., announcing the judgement of the Court).

[36] United States v. Rabinowich, 238 U.S. 78, 88 (1915).

[37] *See* United States v. Guest, 383 U.S. 745, 757-760 (opinion of the Court), 775-784 (opinion of Brennan, J.) (1966).

[38] United States v. Price, 383 U.S. 787, 794, 795, 798 (1966).

[39] *Id.* at 795.

[40] 18 U.S.C. § 2.

conspiracy". Their mere complicity in it is enough.[41] And, finally,

> • There having been numerous *notorious* overt acts in furtherance of the "common plan or conspiracy" to date (as well as others surely known to or capable of discovery by the Trump Administration, but not yet publicized), the President could enforce these statutes *right now—and is duty bound to do so*.[42]

So much for the basic legalities of the situation.

On the practical political side, the question is whether, exposed to such liability *while confronted by Mr. Trump in particular*, the Deep State *can* successfully deal with him as it might like to deal with just any ordinary professional politician who has happened to become the President. Judged by its recent pattern of misbehavior, the Deep State's apparent appreciation of the present situation is that, being woefully inexperienced in the intricacies of criminal politics, President Trump now finds himself, if not utterly impotent, then seriously debilitated to the point of prostration—inextricably isolated within his own Administration; unable to count on receiving sound advice from even his closest confidantes; subjected to hostility, obstruction, and betrayal by much of the bureaucracy in the Executive Branch, by the establishment wing of the Republican Party (as well as the Democrats) in Congress, by lawless "judicial supremacist" judges in the kangaroo courts, and even by rogue public officials in some of the States; and pilloried by hysterical vituperation pouring forth from "the mainstream media", subversive think-tanks, harebrained "celebrities", and ill-educated instructors and students on college campuses. Under these circumstances, the Deep State anticipates that, exposed to such relentless political and psychological pressure within and outside of the government, Mr. Trump will either abandon pursuit of a *rapprochement* with Russia, or resign in frustration and fear from the Office of President, or be removed by a jury-rigged impeachment and conviction (or perhaps some *extra*-legal means).

Such expectations float on all-too-shallow reasoning, however. Intoxicated by their own hubris, the Deep State and its partisans have certainly not taken into account that:

> *First*, the Nuremberg Principle is an extremely potent political and legal purgative for elimination of rogue elements from the General

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[41] For an analysis of the arguable insufficiency of the Rome Statute in this regard, *see* MacKennan Graziano and Lan Mei, "The Crime of Aggression Under the Rome Statute and Implications for Corporate Accountability", *Harvard International Law Journal* (11 April 2017), *to be found at* <http://www.harvardilj.org/2017/04/the-crime-of-aggression-under-the-rome-statute-and-implications-for-corporate-accountability>.

[42] *See* U.S. Const. art. II, § 3 and, *e.g.,* 18 U.S.C. §§ 3 and 4.

Government, the States, and the Deep State's partisans in subversive segments of the private sector. For no high-level public or private figure in the United States will openly deny that "a war of aggression * * * is the supreme international crime". Neither will any such figure refuse to admit that "[t]he official position[s] of [members of the Deep State] * * * as * * * responsible officials in Government Departments, sh[ould] not be considered as freeing them from responsibility or mitigating punishment".

Second, once identified as "[l]eaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan * * * to commit [aggression]", those individuals will forfeit all sympathy from every *rational* member of the populace.

Third, no *thinking* American will credit the contention that for any President to prevent, by whatever arguably legal means he can employ, the Deep State and its partisans from inveigling the United States into commission of "the supreme international crime" amounts to any sort of "high Crime[ ]" or "Misdemeanor[ ]" worthy of impeachment. Instead, inasmuch as the alternative may likely be nuclear war, every such American will support whatever policy consistent with this country's national independence and sovereignty Mr. Trump, as a "Peace President", deems it necessary and proper to carry out.

Fourth, Mr. Trump is not just *any* President, precisely because he is *not* a professional politician. Although his sundry quirks of personality render him something of a "joker" in some Americans' estimations, he must also be recognized as the quintessential political "wild card", whose unique position in the government potentially invests him with the power of the ultimate "trump" (if that pun may be allowed). To be sure, no card he plays can absolutely guarantee him success. But if he attempts to play it safe with the worthless hand the Deep State and its partisans intend to deal him from the bottom of the deck, the conspirators will destroy him, personally as well as politically. So, on the basis of the old adage that a prudent man always weighs a risk against a certainty, he has nothing to lose, and everything to gain, by assuming the rôle of as "wild" a "wild card" as the deck contains.

Fifth, if President Trump lays down the ultimate "trump" of the Nuremberg Principle, he can sweep up all of the chips on the table. Mr. Trump himself may be one chip at risk in the pot, but so too are all of the "[l]eaders, organizers, instigators, and accomplices participating in the formulation or execution of [the Deep State's] common plan or conspiracy" to launch a war of aggression against Russia. If he courageously and shrewdly plays that card—which only the President of the United States can play—he

can wipe out the Deep State in its entirety.

Sixth, the balance of risks *versus* rewards from President Trump's turn of that card is in America's favor. If he wins, the house of cards which the Deep State has taken more than half a century to set up will come crashing down, in irretrievable ruin. If the Deep State wins, it may remove Mr. Trump from the Office of President, and even destroy him personally. Institutionally, however, the Deep State will remain essentially where it is now—but with the Deplorables (and most other decent citizens) not only more aware of the dangers it poses than ever before, but also more intent upon bending their every effort to root it out once and for all, whatever the effort may cost. Mr. Trump will become a national martyr, his name a rallying-cry for an irresistible national resistance-movement.[43] In winning the battle, the Deep State will lose the war.

But—to apply the Nuremberg Principle successfully under the present highly adverse circumstances, President Trump will need a *great* deal of help from outside the Swamp in which the Deep State swims. Obviously, to "drain the Swamp" (as he has promised to do) he cannot turn for help to the Swamp Creatures themselves. And, in the exercise of rudimentary prudence, he cannot trust anyone located anywhere near the Swamp. Instead, *he must call upon his only absolutely reliable allies, the Deplorables*. Fortunately, the law already provides the means:

> Whenever the President considers that unlawful obstructions, combinations, or assemblages * * * against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into * * * [the] service [of the United States] such of the militia of any State * * * as he considers necessary to enforce those laws * * * .[44]
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> The President, by using the militia * * * , shall take such measures as

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[43] This, even more than President Kennedy might have become such a martyr, because even the Deep State's involvement in his overthrow was not as obvious a *coup d'état* as are the attacks being launched against President Trump.

[44] 10 U.S.C. § 252. Although this statute refers to the impracticability of enforcing the laws of the United States "in any *State*", many of the most powerful agencies of the General Government infested with operatives and adherents of the Deep State, and by their machinations doing its bidding, maintain their headquarters in one State or another (as opposed to the District of Columbia)—such as the CIA (Virginia), the NSA (Maryland and Utah), and the Pentagon (Virginia). And although other infected agencies—such as the FBI—have their headquarters in the District, they maintain branch offices in various States. Moreover, it should be obvious that (for example) "unlawful obstructions, combinations, or assemblages * * * against the authority of the United States" *operating outside of some State (in, for instance, the District of Columbia)* could "make it impracticable to enforce the laws of the United States in [that] State by the ordinary course of judicial proceedings".

> he considers necessary to suppress, in a State, any * * * unlawful combination, or conspiracy, if it—
>
> > (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
> >
> > (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
>
> In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.[45]

The history of these statutes, and the use specifically of "the unorganized militia" under their authority as the way to mobilize the Deplorables (and other loyal Americans) behind the President, need not be rehearsed here.[46] It is enough to point out that the Militia would need to be "call[ed] forth to execute the Laws of the Union"[47] by investigating the matter and arresting the perpetrators, because President Trump could not trust other law-enforcement agencies of the General Government to do so.

What deserves special emphasis is that, if he turned to the Deplorables in this manner, *no one could stop him*—

No official within his Administration in particular or the Executive Branch in general could stop him, because the first statute (quoted above) provides that "[w]henever *the President* considers that unlawful obstructions * * * make it impractical to enforce the laws * * * *he* may call into Federal service such of the militia * * * as *he* considers necessary"; and the second statute provides that "[*t*]*he President* * * * shall take such measures as *he* considers necessary". The statutes invest no authority in anyone else.

No court of either the United States or any State could stop him, because the

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[45] 10 U.S.C. § 253. This statute, too, empowers the Present "to suppress, in a *State*, any * * * unlawful combination, or conspiracy". But that would not seriously limit his ability to deal with the most important agencies infested with the Deep State's operatives and adherents. *See ante,* note 44.

[46] *See* the present author's detailed commentaries *9/11 and the Militia* and *The Boyars*, *to be found at* <www.edwinvieira.com>.

[47] U.S. Const. art. I, § 8, cl. 15.

premiss of the first statute is that "unlawful obstructions * * * make it impractical to enforce the laws * * * *in the ordinary course of judicial proceedings*"; and the premiss of the second statute is that "the constituted authorities of th[e] State"—which must include her Judiciary—"*are unable, fail, or refuse* to" act. The courts being presumed by statutory hypothesis in both cases to be impotent or worse, and the existence of that state of affairs to be determined by the President alone, rogue judges obviously could assert no jurisdiction over the matter. (Of course, President Trump would need to muster the courage to challenge the *anti-*constitutional doctrine of "judicial supremacy" if such jurists should attempt, as doubtlessly they would, to interfere with his employment of the Militia.[48]) And,

No State could stop him, because the purpose of the first statute is "to enforce *the laws of the United States* in a[ ] State", which no State may hinder;[49] and the second statute, besides dealing with "the execution of *the laws * * * of the United States*", treats a State in which "the constituted authorities * * * are unable, fail, or refuse to" act as being herself in violation of the Constitution.[50]

But what of *Congress*? Conceivably, a cabal of rogue Members of Congress willing to prostitute their offices in order to promote the malign interests of the Deep State might try to disarm the President by purporting to pass a "Bill" repealing or otherwise emasculating the statutes that "provide for calling forth the Militia to execute the Laws of the Union". Although the President could veto such a "Bill", that same cabal might contrive to override his veto.[51] (That such a cabal already exists, or could be cobbled together when needed, is hardly a fantastic notion. For no one can doubt that not just a few Members of Congress are the Deep State's accomplices, its ideological fellow travelers or "useful idiots", the beneficiaries of its bribery, or the victims of its blackmail.) Of course, the wrath of the Deplorables and other decent citizens might then pour forth at the next Congressional elections, removing enough of the rogues from office to ensure that the statutes would soon be reënacted in their original, or even more puissant, forms. Relief from that quarter, though, might prove too tardy to be effective.

In such a situation, the questions before President Trump would be: (i) whether the "Bill" which purported to repeal or restrict the operation of those statutes were itself unconstitutional, because under the circumstances its purpose, or at least its inevitable effect, would be to aid and abet the Deep State in the latter's "formulation or execution of a common plan or conspiracy to commit" "the supreme

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[48] *See, e.g.,* Edwin Vieira, Jr., *How To Dethrone the Imperial Judiciary* (San Antonio, Texas: Vision Forum Ministries, 2004).

[49] *See* U.S. Const. art. VI, cl. 2.

[50] Under U.S. Const. amend. XIV, §§ 1 and 5. Thus, the Tenth Amendment would not apply.

[51] *See* U.S. Const. art. I, § 7, cl. 2.

international crime"; (ii) whether every rogue Member of Congress who voted for that "Bill" thus made himself an accomplice in that "common plan or conspiracy"; and therefore (iii) whether, as a consequence of their pernicious votes, the President could apply to those miscreants the very statutes they had attempted to repeal or restrict in reach or operation.[52]

The Constitution does provide that "[t]he Senators and Representatives [in Congress] * * * shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."[53] Because of its effect in turning a mere "Bill" into "a Law",[54] however, an actual *vote* in favor of some "Bill" goes beyond any mere "*Speech or Debate* in either House" concerning it. And inasmuch as "the supreme international crime" recognized and enforced by the United States at Nuremberg must constitute some species of "Felony" under the laws of the United States,[55] and probably the laws of the States as well,[56] an actual vote in Congress in aid of commission of "the supreme international crime" must also constitute a "Felony" as to the commission of which no offending Member of Congress "shall * * * be privileged from Arrest" *under any circumstances whatsoever*. After all, the Constitution empowers Congress "[t]o define and punish * * * Offences against the Law of Nations",[57] *not* to enact purported legislation intended to shield the perpetrators of such "Offences" from exposure, apprehension, and punishment.[58]

Of course, the President need not tarry until such an unconstitutional "Bill" were actually proposed to warn Members of Congress of their potential criminal liability, and of his uncompromising intent to enforce it. Perhaps sufficient to thwart any such "Bill" from coming anywhere near introduction, let alone passage, would be for him simply to announce his constitutional opposition in an address to the nation. Perhaps not. In any event, he would be wise to prepare for the worst. Presumably, "the worst" would be an attempt by rogue Members of Congress to impeach him on the grounds that such an admonition to Congress, let alone its enforcement,

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[52] *See* 18 U.S.C. § 3.

[53] U.S. Const. art. I, § 6, cl. 1.

[54] *See* U.S. Const. art. I, § 7, cl. 2.

[55] *See ante,* at 9-14.

[56] *See* 18 U.S.C. § 233.

[57] U.S. Const. art. I, § 8, cl. 10.

[58] "[A]*ffirmative words in the Constitution * * * must be construed negatively as to all other cases*". *Ex parte* Vallandigham, 68 U.S. (1 Wallace) 243, 252 (1864) (emphasis in the original) (footnote omitted). *Accord,* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 174 (1803); *and* Cohens v. Virginia, 19 U.S. (6 Wheaton) 264, 394-395 (1821).

constituted a "high Crime[ ]" or "Misdemeanor[ ]"[59]—with President Trump defying impeachment as unconstitutional, because part of "a common plan or conspiracy to commit" "the supreme international crime". Admittedly, that would engender the gravest constitutional crisis this country has ever faced. Nevertheless, it would be far preferable to the *existential* crisis—for both America and a large part of the civilized world—which a nuclear war with Russia would entail.

In fine, an old adage has it that "no one ever learns anything from history except that no one ever learns anything from history". The Nuremberg Principle, though, encapsulates an historical lesson which patriotic Americans can disregard only at their peril. In Germany during the 1930s decent members of the government, the military establishment, and the general public were unable to combine politically and legally against *der Führer* Adolf Hitler before he put into operation the Nazis' "common plan or conspiracy to commit" the acts of aggression which resulted in World War II, Europe's destruction, and their own country's utter downfall. *Die Deutsche Widerstandsbewegung* was always "too little, too late".[60] In the contemporary United States, the question is whether President Trump can combine with enough decent members of the government and the general public in an "American resistance movement" to enforce the Nuremberg Principle against the Deep State, before the latter succeeds in fomenting World War III and the assisted suicide of Western civilization.

As with the Nazis' scheme to launch a "war against Poland", the key tactic in "the [Deep State's] formulation [and] execution of a common plan or conspiracy to commit [aggression against Russia]" is to pass off its complot as "a deliberate and essential part of [American] foreign policy". The important distinction is that, prior to its attack on Poland, the Nazi régime was the *legitimate* government of Germany.[61] Here, the *legitimate* government of the United States stands in the way of the Deep State's goal. Therefore, essential in the Deep State's "common plan or conspiracy"

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[59] *See* U.S. Const. art. II, § 4.

[60] *See, e.g.,* Hans Bernd Gisevius, *To the Bitter End: An Insider's Account of the Plot to Kill Hitler, 1933-1944* (New York, New York: Da Capo Press, 1998 [unabridged republication of the 1947 edition]); *The Von Hassel Diaries, 1938-1944. The Story of the Forces Against Hitler Inside Germany as Recorded by Ambassador Ulrich von Hassel, a Leader of the Movement* (London, England: Hamish Hamilton, 1948); John W. Wheeler-Bennett, *The Nemesis of Power: The German Army in Politics, 1918-1945* (London, England: Macmillan & Company, Ltd., 1964); Fabian von Schlabrendorff, *The Secret War Against Hitler* (Boulder, Colorado: Westview Press, Inc., 1994); Eberhard Zeller, *The Flame of Freedom: The German Struggle Against Hitler* (Boulder, Colorado: Westview Press, Inc., 1994); Peter Hoffmann, *The History of the German Resistance, 1933-1945* (Montreal, Canada: McGill-Queen's University Press, Third Edition, 1996); Robert B. Kane, *Disobedience and Conspiracy in the German Army, 1918-1945* (Jefferson, North Carolina: McFarland & Company, Inc., 2002).

[61] Indeed, the members of the German *Wehrmacht* in particular bound themselves by an oath of personal allegiance to Adolf Hitler *selbst*, which inhibited many high-ranking officers from challenging his authority. *See, e.g.,* Peter Hoffmann, *The History of the German Resistance, 1933-1945* (Montreal, Canada: McGill-Queen's University Press, Third Edition, 1996), at 27-28, 76.

is to impose itself as the *illegitimate*, albeit effective, *ersatz* "government" of the United States. So far, the Deep State's on-going *coup d'état* has been bloodless, but certainly neither surreptitious nor silent (being waged openly in "the mainstream media"). Thus, the situation confronting American patriots is legally less problematical than the task that confounded the German *Widerstand*. And it is inconceivable that the President and the Deplorables together would prove to be "too little" to fend off the Deep State. Whether they will act "too late", though, remains to be seen.