On Dec. 29, 2012, the largest circulation newspaper in Greece ran a one-word headline for its story on this development: "Guilty."

A Compromise Judgment
Papaconstantinou himself, the object of that one-word judgment, was on vacation with his family in the Netherlands at the time. The idea that he had tampered with a list of tax cheats to protect family members made for such a tempting story that this wasn’t far away enough. Papaconstantinou heard about the missing names on Dutch radio news.

There was yet another twist in this tale, one that must be included even in the shortest of précis. A forensic investigation of the USB stick with the shortened list showed that it was not the same USB stick as the one that Papaconstantinou had handed over. Not only is the original CD-ROM unaccounted for, but so is the USB stick to which Papaconstantinou said he had copied the contents of the original CD-ROM. So the forensics leaves open the possibility that someone else tampered with the list subsequent to Papaconstantinou’s last access to it. He contends that there were many with both the opportunity and the motive to engage in such tampering and to frame him for it. “During my time as finance minister, I had upset the corrupt practices of many in the SDOE, as well as of many business and political people—many would like to see me pay for this.”

In March 2015, after a sensational trial, a court found Papaconstantinou not guilty of the felony charge of breach of faith, apparently because conviction on that charge under Greek law requires proof of damage to the state, and the tax authorities who were called as witnesses were unable to make out a credible case that Papaconstantinou’s relatives whose names had been deleted from the list ever actually evaded any taxes. Thus, there was no evidence of damage to the state, and no felony under Greek law.

Nonetheless, by an 8-to-5 vote, the judges found Papaconstantinou guilty of misdemeanor tampering. They gave him a one-year suspended sentence. He walked out of the courtroom a free man. He believes that dispassionate consideration of the facts, including the chain of custody difficulty mentioned above, would have cleared him on the misdemeanor charge as well, but he is understanding of the judges’ position in the midst of a “public mood for lynching,” and he regards the outcome as an “acquittal in all but name.”

Policy Issues
There is much more to this book than its discussion of the Lagarde list and the resulting trial. Most of it discusses the Greek sovereign debt crisis that unfolded during Papaconstantinou’s tenure as finance minister (and that is very much with Greece, and the Eurozone, still—the book’s title, Game Over, is meant ironically).

The often-tense relationships between the southern countries in Europe (Portugal, Spain, and Italy, along with Greece) and the northern countries, particularly Germany, became especially contentious in 2010, when Greece badly needed a bailout loan. When the northerners demanded of Papaconstantinou and his colleagues proof of a new budgetary austerity that would make continuing bailouts unnecessary, the domestic politics demanded that the government push back. Greece’s New Democracy Party claimed that it could balance the budget without austerity and in general without inflicting any pain on anyone.

Papaconstantinou’s depiction of the difficulties of navigating through such fiscal and political conditions is fine, and this book makes a valuable addition to the expanding literature on the Greek crisis.

Concluding Observation
Hervé Falciani also has a French-language memoir out, called Seisme sur la Planète Finance: Au Coeur du Scandale HSBC (2015). The title translates to “Earthquake on Planet Finance: At the Heart of the HSBC Scandal.” When it becomes available in English, this book may offer some of us in the Anglosphere another valuable perspective on the events behind Papaconstantinou’s trial.

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as acting assistant attorney general of the Office of Legal Counsel in the Justice Department during the Obama administration. With Martin Lederman, he coauthored two lengthy articles (totaling 286 pages) published in the Harvard Law Review in 2008 as "The Commander in Chief at the Lowest Ebb." Those articles rejected contemporary assertions that the conduct of military campaigns is beyond legislative control and pushed back against the claim that the President is entitled to unfettered discretion in the conduct of war.

The first 100 pages of Waging War take the reader from the Revolutionary War against Great Britain through the presidency of James Madison. With regard to the debates at the 1787 Constitutional Convention in Philadelphia, Barron says that the "fear of monarchy was persuasive," but that delegates "seemed content to leave the full extent of the executive's power to go it alone largely undefined." Yet the Framers clearly repudiated the notion of a single executive taking the nation to war. Defensive actions, yes; offensive actions, no. Barron says that the draft constitution "offered little clue as to just what kind of wartime leader the delegates to the Constitutional Convention had in mind," and "the records of their deliberations were not much more help." Still, he acknowledges that the convention debates "do show that the delegates feared an executive with too much power over war." The delegates "leaned hard in Congress's favor when it came to making the crucial decision between war and peace."

In terms of the experiences of Presidents from George Washington forward, Barron cites key precedents but often omits important actions that imposed limits on presidential initiatives. For example, he discusses Washington's Neutrality Proclamation of 1793, which warned Americans not to take sides in the war between England and France. Missing from his discussion, however, is Washington's warning in the proclamation that he would prosecute offenders. Remarkably, jurors sent a blunt message to Washington that criminal law in the United States is made by Congress, not by the President. They would acquit anyone put on trial. Washington got the message. He stopped the prosecutions and came to Congress for authority, which it provided the next year in the Neutrality Act. The check here to presidential initiatives came not from Congress or the courts but from jurors who understood the Constitution better than Washington and his legal advisers.

The chapter on Thomas Jefferson's eight years as President covers important precedents that help define executive power. In discussing the decision to prosecute Aaron Burr, Barron does not refer to Jefferson's message to Congress on Jan. 22, 1807, describing a conspiracy in the western territory. Jefferson acknowledged that the letters he received often contained "such a mixture of rumors, conjectures, and suspicions" that neither "safety nor justice will permit the exposing of names, except that of the principal actor, whose guilt is placed beyond question." Yet without submitting any evidence or letting the matter go to trial, Jefferson publicly identified Burr as guilty of treason, at that time punishable by death by hanging. Barron provides considerable information about Burr and his relationship with Gen. James Wilkinson, but he does not discuss the trial at Richmond, Va., where the jury found Burr not guilty.

With regard to another early presidential initiative, Barron states: "Most famously, Jefferson abandoned the theory of strict construction of the Constitution in 1803 when he was offered the chance to purchase the territory of Louisiana and beyond." No doubt Jefferson took many liberties and found the deal "too good to pass up," but it would be misleading to suggest that Jefferson thought he could complete the purchase through some kind of unchecked presidential prerogative. Barron does not explain that Jefferson understood he needed additional appropriations from Congress as well as Senate agreement to the treaty. He received both. Jefferson knew he was at considerable risk and could prevail only by receiving explicit legislative support.

As to military actions, Barron states that Jefferson "began to see advantages in the executive possessing an uncheckable prerogative in war," but was "also hesitant to embrace the exercise of unchecked executive war powers." To Barron, Jefferson's "deft handling of the use of force against the Barbary States no doubt gave him confidence to act on his own in handling future threats to the nation's security." But Waging War omits some important limitations. After a squadron of U.S. ships engaged with Barbary forces in the Mediterranean, Jefferson reported to Congress on those actions and acknowledged that he was "unauthorized by the Constitution, without the sanctions of Congress, to go beyond the line of defense." Congress had to decide whether to authorize "measures of offense." Lawmakers passed 10 statutes authorizing Jefferson and Madison to use military force against the Barbary pirates. Barron offers conflicting interpretations of Jefferson's view of his commander in chief powers, saying that he "wanted to avoid overstepping Congress's war powers," but that he came "the closest of any chief executive to asserting a wartime power to trump Congress." In fact, with regard to the Barbary wars, Jefferson asked for statutory authority and received it.

Barron explains the military initiatives that President Abraham Lincoln took after the Civil War began with Congress out of session: taking money from the Treasury without an appropriation, calling up the militia, suspending the writ of habeas corpus, and others. As Barron notes, Lincoln knew that "in some cases, he had gone beyond his lawful authority." When Congress returned to session, Lincoln told lawmakers that the powers he exercised during their absence were not beyond "the constitutional competency of Congress." In plain language, Lincoln acknowledged that he had exercised not only his Article II powers but also the Article I powers of Congress. Lincoln never claimed, as did Presidents after World War II, that he had access to inherent, plenary, exclusive, emergency, or prerogative powers. To his credit, Lincoln said he exercised powers he did not possess and needed Congress to pass legislation authorizing what he had done, which Congress proceeded to do. As Barron notes: "Lincoln was never fully comfortable with relying on necessity alone to justify his action, knowing—and fearing—its potentially boundless quality."

Of the Presidents following Lincoln, Woodrow Wilson was the first to elevate the President to a position superior to the other branches. In Constitutional Government in the United States (1908), he proclaimed about the President: "Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him." Reaching even higher with rhetoric: "If he lead[s] the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it." Still higher: "The President is at liberty, both in law and conscience, to be as big a man as he can." Wilson claimed that the President was particularly dominant in external affairs: "One of
the greatest of the President’s powers I have not yet spoken of at all: his control, which is very absolute, of the foreign relations of the nation.” The book’s title was quite strange, very absolute, of the foreign relations of the greatest of the President’s powers I have no understanding of constitutional principles or even constitutional text.

Barron says that Wilson “was no lover of war” but “did believe in the untapped potential of the assertive exercise of executive power.” As Barron points out, Wilson was convinced that “in the modern world, America could no longer afford for the legislative branch to be the locus of policy-making power.” To Barron, Wilson believed that war “provided about the only means by which presidents managed to loose themselves from the grip of Congress’s control.” That sounds like Wilson did love war, at least as a way to expand independent presidential power.

The chapter on Wilson ends with the Senate voting against the Versailles Treaty. As Barron explains, despite failing health, Wilson “barnstormed the country” in an effort to make the case for the League of Nations. Barron does not discuss the confrontation between Wilson and Sen. Henry Cabot Lodge (R-Mass.), who favored U.S. participation in the league but proposed a number of “reservations” to protect American interests and constitutional principles. The second of 14 reservations concerned the congressional prerogative to take the nation to war. Any decision by members of the league to employ U.S. military forces under any article of the treaty would require that “Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide.”

Wilson opposed the Lodge reservations, claiming they “cut out the heart of this Covenant” of the League of Nations and represented “nullification” of the treaty. His principal advisers disagreed with this characterization and urged him to accept the reservations. Personal spite caused Wilson to dig in his heels. As a newspaper reported at the time, “The President has strangled his own child.” Wilson had no principled objection to Lodge’s position on the war power. On March 8, 1920, Wilson wrote to Sen. Gilbert Monell Hitchcock (D-Neb.) explaining why there was no need for the congressional stipulation dealing with Article 10 of the Covenant, under which the League of Nations could take military action. Whatever obligations the U.S. government undertook “would of course have to be fulfilled by its usual and established constitutional methods of action,” and there could be no objection to explaining that Congress “can alone declare war or determine the causes or occasions for war.” Yet Wilson told Hitchcock that acceptance of the Lodge reservations “would certainly be a work of supererogation,” by which Wilson meant it was superfluous and unnecessary. Wilson should have accepted the reservations.

The chapter on Wilson ends on page 227. From there to the last page of text are only 200 additional pages, forcing Barron to move from extensive detail and discussion in the first half of the book to more compressed treatment of the period from 1921 to 2016. The years from 1921 to 1939 are not covered at all, which means that Barron does not discuss the Supreme Court’s 1936 decision in Curtiss-Wright that added extensive (and erroneous) dicta about the President having plenary and exclusive authority over external affairs. That decision would be cited repeatedly by the executive branch, federal courts, and scholars for decades to come to magnify presidential authority until partially corrected by the Court in Zivotofsky v. Kerry (2015).

With regard to the Korean War, which began in 1950, Barron correctly states that “Truman even went so far as to start, for the first time in the country’s history, a full-blown foreign war. He did so on the basis of nothing more than his own say-so and the blessing of the United Nations.” Presidents Clinton and Obama followed that precedent with their military initiatives against Haiti, Bosnia, and Libya, bypassing Congress and seeking resolutions of support from the UN Security Council. Barron notes that in the late fall of 1950, “after months of setbacks in Korea,” matters grew more difficult because of “the entry of the Chinese Communist army into the conflict.” Barron does not explain that the Chinese entered because President Truman and Gen. Douglas MacArthur decided to send U.S. and allied forces northward toward the border with Manchuria. According to Barron, Truman “confronted a true emergency, given the prospect of a Chinese invasion.” There was no such emergency. Moving troops north provoked the Chinese to intervene.

Barron devotes only a few pages to President John F. Kennedy. One sentence refers to “the Bay of Pigs,” but the book contains no analysis of the marked failure of that covert action and how it led to the Cuban Missile Crisis the following year. Chapter 15 analyzes the war in Southeast Asia, which Congress supported by passing the Gulf of Tonkin Resolution in August 1964, supposedly in response to two attacks by North Vietnam on U.S. vessels. Barron doesn’t mention it, but the second attack—widely questioned when first reported—never occurred. It consisted of some signals from the first attack that were delayed. When released, they were incorrectly interpreted to be a second attack. The United States went to war on the basis of something that did not happen. For the heavy costs to the United States and Southeast Asia, the Vietnam War discredited both Presidents Lyndon Johnson and Richard Nixon.

Chapter 18 covers four presidents (Jimmy Carter, Ronald Reagan, George H. W. Bush, and Bill Clinton) and is only 16 pages long, giving Barron inadequate space to analyze military commitments over those 24 years. The Iran-Contra Affair is dealt with in less than two pages. Although the index contains many references to the War Powers Resolution, Waging War has no analysis of how its 60-90 day limit applies to Obama’s military action against Libya in 2011 and against the Islamic State from 2014 forward. Chapter 20, devoted to the war against Iraq in 2003, provides no coverage of the six claims that Iraq possessed weapons of mass destruction, with all six claims found to be empty. In the 12-page epilogue, only four pages are available to evaluate military actions by President Obama, including (1) commitment of additional troops to Afghanistan; (2) intervention in Libya that led to regime change and a country broken economically, legally, and politically; (3) involvement in Iraq and Syria; and (4) the multiyear commitment against the Islamic State.