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#### T RESTRICTIONS

#### A. Restrictions are prohibitions on action --- excludes conditions

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### B. Voting Issue---limits---small hoops allow affs to have process advantages that don’t change the balance of authority---Precision—restrictions must be a distinct term for debate to occur

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(Senior Lecturer in Law, University of London, Queen Mary. He has held fellowships from the Fulbright Foundation and the French and German governments. He teaches Legal Theory, Constitutional Law, Human Rights and Public International Law. JD Harvard) 2003 “The Logic of Liberal Rights A study in the formal analysis of legal discourse” http://mey.homelinux.org/companions/Eric%20Heinze/The%20Logic%20of%20Liberal%20Rights\_%20A%20Study%20in%20%20%28839%29/The%20Logic%20of%20Liberal%20Rights\_%20A%20Study%20in%20%20-%20Eric%20Heinze.pdf

Variety of ‘restrictions’

The term ‘restriction’, defined so broadly, embraces any number of familiar concepts: ‘deprivation’, ‘denial’, ‘encroachment’, ‘incursion’, ‘infringement’, ‘interference’, ‘limitation’, ‘regulation’. Those terms commonly comport differences in meaning or nuance, and are not all interchangeable in standard legal usage. For example, a ‘deprivation’ may be distinguished from a ‘limitation’ or ‘regulation’ in order to denote a full denial of a right (e.g. where private property is wholly appropriated by the state 16 Agents without compensation) as opposed to a partial constraint (e.g. where discrete restrictions are imposed on the use of property which nonetheless remains profitably usable). Similarly, distinctions between acts and omissions can leave the blanket term ‘restriction’ sounding inapposite when applied to an omission: if a state is accused of not doing enough to give effect to a right, we would not colloquially refer to such inaction as a ‘restriction’. Moreover, in a case of extreme abuse, such as extrajudicial killing or torture, it might sound banal to speak merely of a ‘restriction’ on the corresponding right. However, the term ‘restriction’ will be used to include all of those circumstances, in so far as they all comport a purpose or effect of extinguishing or diminishing the right-seeker’s enjoyment of an asserted right. (The only significant distinction which will be drawn will be between that concept of ‘restriction’ and the concept of ‘breach’ or ‘violation’. The terms ‘breach’ or ‘violation’ will be used to denote a judicial determination about the legality of the restriction.6) Such an axiom may seem unwelcome, in so far as it obliterates subtleties which one would have thought to be useful in law. It must be stressed that we are seeking to eliminate that variety of terms not for all purposes, but only for the very narrow purposes of a formal model, for which any distinctions among them are irrelevant.

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#### OBAMA DA

#### **Patent reform will pass- its top of the docket and PC is key**

Hattern, 3-5 – The Hill Correspondent

[Julian, "Congress gets out club for patent ‘trolls’," The Hill, 3-5-14, thehill.com/blogs/hillicon-valley/technology/199954-lawmakers-look-to-push-patent-troll-bill, 13-14]

Proponents of a bill to prevent patent “trolls” from harassing businesses are increasingly optimistic their legislation will become law this year. Lawmakers and a wide swath of different industries have aligned behind the push for a crackdown on the so-called trolls, which sue companies for patent license violations. Supporters of the reform effort claim the lawsuits are often frivolous, but nonetheless force businesses into settlements to avoid lengthy and costly court cases. Plaintiffs in the suits argue they are merely trying to protect their intellectual property and preserve inventors’ ability to innovate. With campaign politics gumming up the works on Capitol Hill, the patent crackdown could be one of the few bills to make it to President Obama’s desk before November, supporters say. “I think that members on both sides of the aisle recognize that this is a big problem affecting people being employed in their district, investments in their district,” said Beth Provenzano, a senior director for government relations at the National Retail Federation. “I think that this does stand a good chance, even in the election year.” The Senate Judiciary Committee, the focus of the patent reform fight, will look to take action on legislation this month, Chairman Patrick Leahy (D-Vt.) said on Tuesday. Sen. Mike Lee (R-Utah) on Wednesday said he hoped the full chamber would vote on the bill in the coming months. In addition to the retailers trade group, associations for restaurants, financial institutions and major tech companies such as Google have pushed for the chamber to approve legislation. The troublesome lawsuits can cost millions, they say, and need to be stopped immediately. Patent-rights holders skeptical of reform claim that bill goes too far and warn it could make it difficult for inventors and universities to profit from their creations. In December, the House overwhelmingly passed the Innovation Act, which would reform much of the patent lawsuit process. Lee and Leahy are pushing a companion bill, the Patent Transparency and Improvements Act, in the Senate. Obama backed the House bill and called for action in his State of the Union address. Supporters hope the president’s backing will help push legislation across the finish line in the Senate. “It meant a lot in the Senate to have the president weigh in like that,” Lee said at an event Tuesday in Washington. “To have it brought up by the president in some very public settings has been **very helpful** to help focus the public attention on the fact that this is hurting a lot of people.” Obama’s support also created momentum in the House, and convinced Democratic lawmakers who might not have been focused on the issue to hop on board, according to Rep. Jared Polis (D-Colo.).

#### Aff derails the agenda

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

Key to innovation and American economic security

Goodlatte, 3-12 -- House Judiciary Committee chair, Rep

[Robert (R-VA), "Bipartisan Road Map for Protecting and Encouraging American Innovation," Roll Call 3-12-14, www.rollcall.com/news/bipartisan\_road\_map\_for\_protecting\_and\_encouraging\_american\_innovation-231413-1.html?pg=2, accessed 3-12-14]

Throughout our nation’s history, great ideas have powered our economic prosperity and security, from the Industrial Revolution to the Internet age. Safeguarding those great ideas were so important to our Founding Fathers that they included patent protection in the U.S. Constitution. Article I, Section 8, Clause 8 of the Constitution charges Congress with overseeing a patent system to “promote the progress of science and useful arts.” As chairman of the House Judiciary Committee, which has oversight of our patent system, I take the charge to uphold our Constitution seriously. In recent years, we have seen an exponential increase in the use of weak or poorly granted patents by “patent trolls” to file numerous patent infringement lawsuits against American businesses with the hopes of securing a quick payday. This abuse of the patent system is not what our Founding Fathers provided for in our Constitution. At its core, abusive patent litigation is a drag on our economy and stifles innovation. Everyone from independent inventors to startups to mid- and large-sized businesses face this constant threat. The tens of billions of dollars spent on settlements and litigation expenses associated with abusive patent suits represent truly wasted capital — wasted capital that could have been used to create new jobs, fund research and development, and create new innovations and technologies. Bad actors who abuse the patent system devalue American intellectual property and are a direct threat to American innovation. Abusive patent litigation is also a drain on consumers. We will never know what lifesaving invention or next-generation smartphone could have been created because a business went bankrupt after prolonged frivolous litigation or paying off a patent troll. When a firm spends more on patent litigation than on research, money is being diverted from real innovation. The patent system was designed to reward inventors and incentivize innovation, bringing new products and technologies to consumers. Last year, I introduced the Innovation Act (HR 3309), legislation designed to eliminate the abuses of our patent system, discourage frivolous patent litigation and keep U.S. patent laws up to date. In December, the House of Representatives, with overwhelming bipartisan support and the support of the White House, passed the Innovation Act. This important bill will help fuel the engine of American innovation and creativity, creating new jobs and growing our economy. Effective patent reform legislation requires the careful balance that was achieved in the Innovation Act. Senate Judiciary Chairman Patrick J. Leahy, D-Vt., ranking member Charles E. Grassley, R-Iowa., and committee members John Cornyn, R-Texas, Orrin G. Hatch, R-Utah, and Mike Lee, R-Utah, among others, are leading efforts in the Senate to combat abusive practices within our patent system that inhibit innovation. I am optimistic that as the Senate moves toward consideration of legislation they will act just as the House did and pass comprehensive patent litigation reform that includes all of the necessary reforms made in the Innovation Act, including heightened pleading standards and fee shifting. In 2011, Republicans and Democrats came together to pass the America Invents Act (PL 112-29), which brought the most comprehensive change to our nation’s patent laws since the 1836 Patent Act. We are continuing to work again in a collaborative, bipartisan way to end abusive patent litigation to help the American economy and American people. I am optimistic that these important reforms will be enacted to stop the abuse of our patent system and restore the central role patents play in our economy. Half measures and inaction are not viable options. The time is now, and the Innovation Act has helped set a clear bipartisan road map toward eliminating the abuses of our patent system, discouraging frivolous patent litigation and keeping U.S. patent laws up to date.

Ensures conflict suppression- no alt causes

Hubbard ’10 (Hegemonic Stability Theory: An Empirical Analysis By: Jesse Hubbard Jesse Hubbard Program Assistant at Open Society Foundations Washington, District Of Columbia International Affairs Previous National Democratic Institute (NDI), National Defense University, Office of Congressman Jim Himes Education PPE at University of Oxford, 2010

**Regression analysis of this data shows** that Pearson’s r-value is -.836. **In the case of American hegemony, economic strength is a better predictor of violent conflict than even overall national power**, which had an r-value of -.819. The data is also well within the realm of statistical significance, with a p-value of .0014. While the data for British hegemony was not as striking, the same overall pattern holds true in both cases. During both periods of hegemony, hegemonic strength was negatively related with violent conflict, and yet use of force by the hegemon was positively correlated with violent conflict in both cases. Finally, in both cases, economic power was more closely associated with conflict levels than military power. Statistical analysis created a more complicated picture of the hegemon’s role in fostering stability than initially anticipated. VI. Conclusions and Implications for Theory and Policy To elucidate some answers regarding the complexities my analysis unearthed, I turned first to the existing theoretical literature on hegemonic stability theory. The existing literature provides some potential frameworks for understanding these results. Since economic strength proved to be of such crucial importance, reexamining the literature that focuses on hegemonic stability theory’s economic implications was the logical first step. As explained above, the literature on hegemonic stability theory can be broadly divided into two camps – that which focuses on the international economic system, and that which focuses on armed conflict and instability. This research falls squarely into the second camp, but insights from the first camp are still of relevance. Even Kindleberger’s early work on this question is of relevance. Kindleberger posited that the economic **instability** between the First and Second World Wars **could be attributed to the lack of an economic hegemon** (Kindleberger 1973). But economic instability obviously has spillover effects into the international political arena. Keynes, writing after WWI, warned in his seminal tract The Economic Consequences of the Peace that Germany’s economic humiliation could have a radicalizing effect on the nation’s political culture (Keynes 1919). Given later events, his warning seems prescient. In the years since the Second World War, however, the European continent has not relapsed into armed conflict. What was different after the second global conflagration? Crucially, the United States was in a far more powerful position than Britain was after WWI. As the tables above show, Britain’s economic strength after the First World War was about 13% of the total in strength in the international system. In contrast, the United States possessed about 53% of relative economic power in the international system in the years immediately following WWII. The U.S. helped rebuild Europe’s economic strength with billions of dollars in investment through the Marshall Plan, assistance that was never available to the defeated powers after the First World War (Kindleberger 1973). Theinterwar years were also marked by a series of debilitating trade wars that likely worsened the Great Depression (Ibid.). In contrast, when Britain was more powerful, it was able to facilitate greater free trade, and after World War II, **the United States played a leading role in creating institutions like the GATT that had an essential role in facilitating global trade** (Organski 1958). The possibility that economic stability is an important factor in the overall security environment should not be discounted, especially given the results of my statistical analysis. Another theory that could provide insight into the patterns observed in this research is that of preponderance of power. Gilpin theorized that **when a state has the preponderance of power in the international system, rivals are more likely to resolve their disagreements without resorting to armed conflict** (Gilpin 1983). The logic behind this claim is simple – it makes more sense to challenge a weaker hegemon than a stronger one. This simple yet powerful theory can help explain the puzzlingly strong positive correlation between military conflicts engaged in by the hegemon and conflict overall. It is not necessarily that military involvement by the hegemon instigates further conflict in the international system. Rather, this military involvement could be a function of the hegemon’s weaker position, which is the true cause of the higher levels of conflict in the international system. Additionally, it is important to note that **military power is,** in the long run, **dependent on economic strength**. Thus, it is possible that **as hegemons lose relative economic power, other nations are tempted to challenge them even if their short-term military capabilities are still strong**. This would help explain some of the variation found between the economic and military data. The results of this analysis are of clear importance beyond the realm of theory. As the debate rages over the role of the United States in the world, hegemonic stability theory has some useful insights to bring to the table. What this research makes clear is that a strong hegemon can exert a positive influence on stability in the international system. However, this should not give policymakers a justification to engage in conflict or escalate military budgets purely for the sake of international stability. If anything, **this research points to the central importance of economic influence in fostering international stability**. To misconstrue these findings to justify anything else would be a grave error indeed. Hegemons may play a stabilizing role in the international system, but this role is complicated. **It is economic strength, not military dominance that is the true test of hegemony**. **A weak state with a strong military is a paper tiger** – it may appear fearsome, but it is vulnerable to even a short blast of wind.

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#### KRITIK

#### The aff locks in American exceptionalism which drives us toward extinction

Williams 7 (Daniel, associate professor of law at Northeastern University School of Law. He received a J.D. from Harvard, NORTHEASTERN UNIVERSITY SCHOOL OF LAW. “After the Gold Rush-Part I: Hamdi, 9/11, and the Dark Side of the Enlightenment,” NORTHEASTERN PUBLIC LAW AND THEORY FACULTY WORKING PAPERS SERIES NO. 16-2007. http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=970279)

This fearsome sort of legality is largely shielded from our view (that is, from the view of Americans---the ones wielding this legality) with the veil of democracy, knitted together with the thread of process jurisprudence. Within process jurisprudence, there is no inquiry into the fundamental question: allocation of power between the branches to accomplish . . . what? It is very easy to skip that question, and thus easy to slide into or accept circular argumentation.31 With the focus on the distribution of power, arguments about what to do in this so-called war on terror start off with assumptions about the nature of the problem (crudely expressed as violent Jihadists who hate our freedoms) and then appeal to those assumptions to justify certain actions that have come to constitute this “war.” The grip of this circularity, ironically enough, gains its strength from the ideology of legality, the very thing that the Court seeks to protect in this narrative drama, because that ideology fences out considerations of history, sociology, politics, and much else that makes up the human experience. What Judith Shklar observed over forty years ago captures the point here: the “legalism” mindset--which thoroughly infuses the process jurisprudence that characterizes the Hamdi analysis--produces the “urge to draw a clear line between law and nonlaw” which, in turn, leads to “the construction of ever more refined and rigid systems of formal definitions” and thus “serve[s] to isolate law completely from the social context within which it exists.” 32 The pretense behind the process jurisprudence--and here pretense is purpose--is the resilient belief that law can be, and ought to be, impervious to ideological considerations. And so, the avoidance of the “accomplish . . . what?” question is far from accidental; it is the quintessential act of legality itself.33 More than that, this “deliberate isolation of the legal system . . . is itself a refined political ideology, the expression of a preference” that masquerades as a form of judicial neutrality we find suitable in a democracy.34 If the Executive’s asserted prerogative to prosecute a war in a way that will assure victory is confronted with the prior question about what exactly we want to accomplish in that war--if, that is, we confront the question posed by Slavoj Zizek, noted at the outset of this article—then the idea of national security trumping “law” takes on an entirely different analytical hue. Professor Owen Fiss is probably right when he says that the Justices in Hamdi “searched for ways to honor the Constitution without compromising national interests.”35 But that is a distinctly unsatisfying observation if what we are concerned about is the identification of what exactly those “national interests” are.36 We may not feel unsatisfied because, in the context of Hamdi, it undoubtedly seems pointless to ask what we are trying to accomplish, since the answer strikes us as obvious. We are in a deadly struggle to stamp out the terrorist threat posed by Al Qaeda, and more generally, terrorism arising from a certain violent and nihilistic strain of Islamic fundamentalism. Our foreign policy is expressly fueled by the outlook that preemptive attacks is not merely an option, but is the option to be used. In the words of the Bush Administration’s 2002 National Security Strategy document, “In the world we have entered, the only path to safety is the path of action. And this nation will act.”37 O’Connor and the rest of the Court members implicitly understand our foreign policy and the goal to be pursued in these terms, which explains why the Hamdi opinion nowhere raises a question about what it is the so-called “war on terror” seeks to accomplish. After all, the stories we want to tell dictate the stories that we do tell. We want to tell ourselves stories about our own essential goodness and benevolence, our own fidelity to the rule of law; and that desire dictates the juridical story that ultimately gets told. Once one posits that our foreign policy is purely and always defensive, as well as benevolent in motivation,38 then whatever the juridical story—even one where the nation’s highest Court announces that the Executive has no blank check to prosecute a war on terror—the underlying reality inscribed upon the world’s inhabitants, the consequences real people must absorb somehow, is one where “the United States has established that its only limit on the world stage will be its military power.”39 As O’Connor sees it, the real problem here is that, given that the allocation-of-power issue is tied to the goal of eliminating the terrorist threat, we have to reckon with the probability that this allocation is not just an emergency provision, but one that will be cemented into our society, since the current emergency is likely to be, in all practicality, a permanent emergency. But to say we are in a struggle to stamp out a terrorist threat posed by Islamic fundamentalism, and to say that “the only path to safety is the path of action,” conceals--renders invisible, a postmodernist would likely put it--an even more fundamental, and more radical, question: the allocation of power that the Court is called upon to establish is in the service of eliminating a terrorist threat to accomplish . . . what? The standard answer is, our security, which most Americans would take to mean, to avert an attack on our homeland, and thus, as it was with Lincoln, to preserve the Union. And so, we accept as obvious that our dilemma is finding the right security-liberty balance. The problem with that standard answer is two-fold. First, it glosses over the fact that we face no true existential threat, no enemy that genuinely threatens to seize control over our state apparatus and foist upon us a form of government to which we would not consent. That fact alone distinguishes our current war on terrorism from Lincoln’s quest to preserve the Union against secession.40 Second, this we-must-protect-the-Homeland answer is far too convenient as a conversation stopper. When the Bush Administration=’ National Security Strategy document avers that “the only path to safety is the path of action,” we ought to ask what global arrangements are contemplated through that “path of action.” When that document announces that “this nation will act,” it surely cannot suffice to say that the goal is merely eliminating a threat to attain security. All empires and empire-seeking nations engage in aggression under the rubric of self-defense and the deployment of noble-aims rhetoric. These justifications carry no genuine meaning but are devices of the powerful and the privileged, with the acquiescence and often encouragement by a frightened populace, to quell unsettling questions from dissenters within the society.41 Stop and think for a moment, how is it that the nation with the most formidable military might--the beneficiary of the hugest imbalance in military power ever in world history--is also the nation that professes to be the most imperiled by threats throughout the world, often threatened by impoverished peasant societies (Vietnam, Nicaragua, El Salvador, Chile, Granada, etc.)?42 An empire must always cast itself as vulnerable to attack and as constantly being under attack in order to justify its own military aggression. This is most acutely true when the empire is a democracy that must garner the consent of the populace, which explains why so much of governmental rhetoric concerning global affairs is alarmist in tone. The point is that quandaries over constitutional interpretation--ought we be prudential, or are other techniques more closely tied to the text the only legitimate mode of constitutional adjudication--may very well mask what may be the most urgent issue of all, which concerns what exactly this nation’s true identity is at this moment in world history, what it is that we are pursuing. Whereas Sanford Levinson has courageously argued that “too many people >venerate= the Constitution and use it as a kind of moral compass,”43 which leads to a certain blindness, I raise for consideration an idea that Hamdi suppresses, through its narrative techniques, which is that too many people “venerate” this nation without any genuine consideration of the particular way we have, since World War II, manifested ourselves as a nation. I join Levinson’s suspicion that our Constitution is venerated as an idea, as an abstraction, without much thought given to its particulars. It is important to be open to the possibility that the same is true with regard to our nation--the possibility that we venerate the idea of America (undoubtedly worth venerating), but remain (willfully?) ignorant of the particulars of our actual responsibility for the health of the planet and its inhabitants.44 To openly consider such issues is not anti-American--an utterly absurd locution--for to suggest that it is amounts to a denial that U.S. actions (as opposed to rhetoric that leeches off of the promise and ideal of “America”) can be measured by some yardstick of propriety that applies to all nations.45 The very idea of a “yardstick of propriety” requires a prior acceptance of two ideas: one, that we are part of something larger, that we are properly accountable to others and to that larger circumstance; and two, that it is not a betrayal or traitorous for a people within a nation to look within itself.46 Issacharoff and Pildes, the most prominent process theorists, observe that process jurisprudence may be inadequate to address the risk that we “might succumb to wartime hysteria.”47 I would broaden that observation so as to be open to the possibility that the risk goes beyond just wartime hysteria, that our desire for security and military victory, rooted in our repudiation of a genuine universal yardstick of propriety that we willingly apply to ourselves (often called American exceptionalism48)--which means that security and military victory are not ipso facto the same thing--could easily slide us into sanctioning a form of sovereignty that is dangerously outmoded and far out of proportion to what circumstances warrant. Process jurisprudence supposedly has the merit of putting the balance of security and liberty into the hands of the democratic institutions of our government. But what it cannot bring into the field of vision--and what is absolutely banished from view in Hamdi--is the possibility that the democratic institutions themselves, and perhaps even the democratic culture generally, the public sphere of that culture, have been corrupted so severely as to reduce process jurisprudence to a shell game.49 More specifically, the formal processes of governmentality responding to crisis is judicially monitored, but the mythos of our national identity, particularly the idea that every international crisis boils down to the unquestioned fact that the United States at least endeavors to act solely in self defense and to promote some benevolent goal that the entire world ought to stand behind, is manufactured and thus some hegemonic pursuit in this global “war on terror” remains not just juridically ignored, but muted and marginalized in much of our public discussions about it.50 Under process jurisprudence, it is the wording of a piece of legislation, not the decoding of the slogan national security, that ultimately matters. And under process jurisprudence, fundamental decisions have already been made--fundamental decisions concerning the nature of our global ambitions and the way we will pursue them--before the judiciary can confront the so-called security-liberty balance, which means that the analytical deck has been stacked by the time the justiciable question---that is, what we regard as the justiciable question---is posed. Stacking the analytical deck in this way reduces the Court members to the role of technicians in the service of whatever pursuit the sovereign happens to choose.51 This is why it is worth asking what many might regard as a naive, if not tendentious, question: is it true that in the case of Hamdi and other post-9/11 cases, the judiciary’s quandary over allocation of power is actually in the service of genuine security, meaning physical safety of the populace? Does the seemingly obvious answer that we seek only to protect the safety of our communities against naked violence blind us to a deeper ailment within our culture? Is it possible that the allocation of power, at bottom, is rooted in a dark side of our Enlightenment heritage, an impulse within Legality that threatens us in a way similar to the Thanatos drive Freud identified as creating civilization’s discontent?52 Perhaps Hamdi itself, as a cultural document, signals yet another capitulation to the impulse to embrace a form of means-ends rationality that supports the Enlightenment drive to control and subdue.53 Perhaps what Hamdi shows is that 9/11 has not really triggered a need to recalibrate the security-liberty balance, but has actually unleashed that which has already filtered into and corrupted our culture—Enlightenment’s dark side, as the Frankfurt School understood it54’’and is thus one among many cultural documents that ought to tell us we are not averting a new dark age, but are already in it, or at least, to borrow a phrase from Wendell Berry, that we are “leapfrogging into the dark.” 55 It is impossible, without the benefit of historical distance, to answer these questions with what amounts to comforting certitude. But they are worth confronting, since the fate of so many people depends on it, given our unrivaled ability and frightening willingness to use military force. Our culture’s inability to ask such questions in any meaningful way, as opposed to marginalizing those who plead for them to be confronted, is somewhat reminiscent of how early Enlightenment culture treated scientific endeavors. “Science,” during the rise of Enlightenment culture, rebuffed the why question, banished it as a remnant of medieval darkness, because the why-ness of a certain scientific pursuit suggested that certain domains of knowledge were bad, off-limits, taboo. The whole cultural mindset of the Enlightenment was to jettison precisely such a suggestion. That cultural mindset produced a faith all its own, that all scientific pursuits, and by extension all human quests for knowledge, will in the end promote human flourishing. It has taken the devastation of our planet to reveal the folly of that faith, a blind-spot in the Western mind. It may turn out, as a sort of silver lining on a dark cloud, that the terrorism arising from Islamic jihadists may do something similar

#### Use the status quo to delegitimize violence than make it useable through the aff – their epistemology is flawed and representations are key

Dalby 11 Simon Dalby, Carleton University "PEACE AND GEOPOLITICS: IMAGINING PEACEFUL GEOGRAPHIES" Nov 2011 http-server.carleton.ca/~sdalby/papers/PEACEFUL\_GEOGRAPHIES.pdf

Thinking intelligently about peace within the discipline of geography requires us to juxtapose our aspirations to a peaceful world, one beyond war and at least the most egregious injustices of structural violence, with careful analysis of how the world is being changed so that useful advocacy is possible. Contrary to arguments that construct a real world of politics separate from peace activism, one commonly formulated in terms of an autonomous realm of the international, the arguments from both critical international relations thinking as well as the early critical geopolitics discussions were precisely that the reasonings of politics are part of politics, and that thinking carefully about the ontological framings invoked in political discourse matter as part of the political world that constitutes the possible options for political actors. The task for scholars in present times, as so often in the past has to be to keep aspiration, analysis and advocacy in creative tension; wishful thinking has to be avoided at each stage, but if intellectual activity is to be useful in making a more peaceful world then naivety is no help. Analysis can channel aspiration into useful advocacy precisely by acting as an antidote to either emotional impulse or thoughtless heroic gestures. It is crucial to the task of the academic and as such linking academic activity directly into practical action is simply part of our trade. Teaching matters greatly here, and careful advocacy of peaceful possibilities is key to teaching critical geopolitics. The scholarly research both on territory and war as well as discussions of environmental degradation and its security implications both show clearly that how these issues are handled matters greatly. Confrontation is not inevitable; political initiatives toward cooperation rather than real politik lead to constructive solutions. Continuing to challenge determinist arguments that argue otherwise remains a key task for geographers (Kearns 2009). Delegitimization of violence is a key part of all this. Ending death penalties, reducing physical abuse, torture, Amnesty International campaigns and international solidarity in the face of suffering as well as extending the norms of politics and the appropriate cultural modes acceptable for ruling. It is precisely the failure of the US to live up to supposedly higher civilizational standards in Abu Graib, Guantanamo and now in the targeting of drone weapons that undermines its legitimacy in many places (Gregory 2010,Hannah 2006). Coupled with the great lengths to which the United States has gone to render its actions legitimate, and to avoid potential problems with the international criminal court, matters of legality offer considerable options for activist geographers to contribute to changing societal norms away from militarism. The links to critical legal geographies need further attention too; jurisdiction matters (Gregory 2006)! The overall conclusion from this paper is that geographers should never forget that politics is prior to all the other discussions and understanding peace in the context of particular forms of politics is not unrelated to the forms of rule and authority invoked in particular situations. Contextualisations continue to matter greatly; there are complex geographies to all this. The world is changing rapidly but shaping that change is a matter of practical initiatives, and peacemaking. This simple point should never be forgotten neither should the opposite point that war may happen despite good intentions. No doubt in the next few years there will be further reflections on the processes that lead to the outbreak of the First World War, The Guns of August in Barbara Tuchman’s (1962)famous terms, or what Niall Ferguson (2006) discusses in terms of metaphors of a train wreck. Building institutions that can negotiate and cooperate in the face of destabilizing crises events matters greatly, notwithstanding the popular animosity towards governments built up by a generation of neo-liberal ideology and right wing populist movements generously funded by those with an interest in turning states into the tools of capital. In the face of endless neo-Malthusian fears of scarcities and disruptions to come, the possibilities of a more peaceful world remain achievable in many places. Challenging fearful cartographies, refusing the designation of difference and distance as necessarily dangerous has long been part of the geographers’ potential contribution, as Nick Megoran reminds us all frequently with his repeated invocation of Peter Kropotkin’s (1885)statement concerning what geography ought to be. Thinking long and hard about the diffusion of military technologies and the possible ways geographers might usefully contribute to the discussions of arms control, not least the key point about the implicit geopolitics in the supposedly technical arrangements of weapons limitation verifications matters too (Dalby 2011b). Arms control needs very much more attention. Ultimately geopolitics is crucial in that if the dominant mappings of politics continue to specify the world in terms of territorial domains of rule in rivalry with one another, and with military force as the ultimate arbiter, then the possibilities of its use remain on the agenda. Realists will argue that this is inevitable. But if the pacification of international national, or perhaps that should be inter-imperial, relations that the United Nations system has begun, is extended then the possibilities of a pacific geopolitics open up. Now the challenge is to see new modes of rule that deal with the most important mappings of an interconnected globe where ecological matters require mappings of interconnection rather than borders of autonomous entities (Dalby 2009b).Who decides the future of the planet matters greatly, but politics remains at least so far a matter of who decides long before it is a matter of what gets decided over. That too is a matter for peaceful geographers to tackle; the fate of the earth is at stake, and as a discipline with aspirations to study it as humanity’s home, our attention is certainly warranted. In the circumstances of rapid global change and the potential disruptions that are coming, we now have additional compelling reasons to work towards making Santayana’s dismal assertion concerning the inevitability of war a thing of the past.

### OFF

#### EXECUTIVE ORDER

#### The executive branch of the United States should issue and enforce an executive order to substantially restrict the introduction of United States Armed Forces into hostilities between the Republic of China and the People’s Republic of China. The President should give a public address announcing this policy.

#### It’s binding law that solves the aff.

Graham Dodds, Ph.D., Concordia professor of political science, 2013, Take Up Your Pen: Unilateral Presidential Directives in American Politics, p. 10

If executive orders, proclamations, memoranda, and other unilateral presidential directives merely expressed the president's view, then they would be important but not necessarily determinative. However, these directives are not mere statements of presidential preferences; rather, they establish binding policies and have the force of law, ultimately backed by the full coercive power of the state. In Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1871), the Supreme Court considered the legal status of a proclamation and decided that such directives are public acts to which courts must “give effect.” In other words, in the eyes of the judiciary, unilateral presidential directives are just as binding as laws. In 1960, Senator Robert Byrd (D-WV) advised his colleagues, “Keep in mind that an executive order is not statutory law.” 46 Politically, that may be true, as unilateral presidential directives represent the will only of the chief executive and lack the direct endorsement of congressional majorities. But constitutionally and legally, a unilateral presidential directive is as authoritative and compulsory as a regular law, at least until such time as it is done away with by Congress, courts, or by a future unilateral presidential directive.

#### Executive speeches crystallize the CP’s legal position—locks-in durability and credible signal

Rebecca Ingber, Associate Research Scholar, Columbia Law School; 2011-2012 Council on Foreign Relations International Affairs Fellow and Hertog National Security Law Fellow, Columbia Law School, Summer 2013, Article: Interpretation Catalysts and Executive Branch Legal Decisionmaking, 38 Yale J. Int'l L. 359

The prior two sections discussed interpretation catalysts that are primarily driven by external factors. But internally-triggered events can also operate as compelling interpretation catalysts. Decisions to take a particular action or implement a policy can fall under this category, as can determinations to make a speech to express publicly the Administration's views on a given matter. Speechmaking is a particularly interesting interpretation catalyst as it can be provoked by a combination of internal and external factors. And as a somewhat more pliable tool than those that are more formally responsible to external [\*398] bodies like courts or treaty-reporting bodies, it can be employed strategically by officials within the government seeking to shape the decisionmaking process. n186 The decision to give a speech on a matter of international law and national security is rarely a decision made casually or unilaterally by the particular speechmaker herself, and the impetus to do so can be driven by a range of internal and external factors. There may exist external pressure, such as calls upon the executive - by media, Congress, or others - to explain its position in a given area. For example, there have been widespread calls in recent years for greater clarity from the Obama Administration regarding its legal position on targeting killing, which have resulted in a number of speeches by government officials explaining the policy and legal framework in ever greater detail. n187 Pressure to make public a set of legal views may also come from within the Administration, from actors who wish to explain the government's position in an effort to mollify criticism about either the substantive decisions or the lack of transparency about the decisionmaking process. n188 Speechmaking may simply reveal to the public the pre-existing legal rationale for executive policies or programs; it can also be an action-forcing mechanism driving the executive to crystallize and finally bind itself to a position on a matter. n189 As with other interpretation catalysts, speechmaking can shape the parameters of a particular decisional moment - its timing and the context in which the decision is made - and it can create greater leverage for the speechmaker and related officials at the decisionmaking table. There are numerous other means officials employ to create leverage, including strategic leaking and resignation threats, both of which are unilateral means to influence decisionmaking. Speechmaking is distinct in that it actually creates a different decisionmaking forum - the process of drafting and coordinating a position and language for the speech itself in a very specific context - and thus influences [\*399] substance by transforming the process, shaping the contextual pressures, and ensuring specific coordination. 1. Who Has the Pen? Unlike litigation and treaty-reporting, which are ongoing processes that may cross administrations and can be channeled to some degree by the career bureaucracy, speechmaking is inherently top-down, involving high-level, politically-appointed officials. Career officials may be involved but just as often it may be the political assistants surrounding the speechmaker who assist substantively in the process. Which official volunteers or is asked to take on a speech is critical because speechmaking - whether intended for this purpose or not - gives that official, and those working for her, the pen on the public representation of an issue, and it can thus be an opportunity for an official to gain inclusion in a matter to which she might otherwise not have access. n190 Speechmaking may grant to an official otherwise out of the loop not only a seat at the decisionmaking table, but also a place of significant influence. n191 Once a key administration official is slated to give a speech, her views cannot be disregarded. She cannot be left out of the speechwriting room. The words will be hers to say or to refuse to say, and this provides some degree of leverage over the position and over what will be made public. Going forward, these statements are generally taken to be the considered views of the U.S. government, and cannot easily be reversed. n192 Indeed, they are likely to be referred to in other contexts where U.S. officials are required to explain the government's position. n193 Of course, it is unlikely that speechmaking could be used to draw into the conversation an official who has no relevance to a particular area, but it may be effective in pulling up a critical chair to the table for an individual with both expertise and a structural connection to the matter at hand. The elevated seat at the table does not come cheaply for the speechmaker. The speechmaking-as-strategy process operates as a two-way street. By presenting the U.S. views on a topic in a public forum, the speechmaking official is sanctioning those views and signing on quite publicly to the U.S. position, in a way that will be difficult, if not impossible, to walk away from at a later date. n194 It is this legitimizing effect that the speechmaker often brings to the table in exchange for greater influence in the cultivation of the views that [\*400] will be presented. n195 This phenomenon may be most palpable in areas where an official may have greater legitimacy with a particular population that the Administration hopes to sway in large part because she is seen - rightly or wrongly - as potentially holding views in tension with the Administration's policies in that area. In such cases, the official both may desire greater leverage internally in order to influence decisionmaking, and may have an important legitimizing power in sanctioning the resulting views. Thus, both the speechmaking official and others in the Administration have something to gain in finding a compromise that permits the official to give a public speech on the matter. By way of example, State Department Legal Advisers - and even Secretaries of State n196 - have often been deployed to explain the U.S. government's legal position on matters affecting international law and national security, to both international and domestic audiences. Harold Koh's 2010 speech at the American Society of International Law, in which he discussed the Obama Administration's views toward targeting and detention in the conflict with al Qaeda, n197 received enormous public attention in part because of his stature as a leading human rights advocate. Thus, Koh's willingness to support the Administration's legal position was a boon to the Administration in facing criticism from the human rights community, and Koh presumably may have gained greater influence than he might otherwise have had in crafting the public statement of the Administration's position on wartime targeting and detention. Previously, under the Bush Administration, Legal Adviser John Bellinger gave a number of speeches explaining the U.S. government's understanding of its legal obligations under international law in the conflict with al Qaeda. n198 He publicly presented, explained, and defended the executive's positions - and in so doing worked toward trying to legitimize them - despite the fact that, as it is now widely known, he had had many disagreements with other Bush officials over many of the prevailing policies throughout the early years of the [\*401] Administration. n199 Considering the willingness of those other officials to cut the State Department out of the decisionmaking loop, as revealed years later by Legal Adviser Taft and others, n200 the ability to act as speechmaker and public face of the Administration's views of its authority likely elevated L's role in addressing these matters to some degree. At a bare minimum it ensured the State Department had a seat at the position-drafting table, which it might otherwise not have had.

### OFF

#### NULLIFICATION

#### The fifty states should invoke their nullification power in order to substantially increase United States federal government restrictions on the president’s authority to introduce United States Armed Forces into hostilities between the Republic of China and the People’s Republic of China

The counterplans assertion of state nullification power is an effective check on federal authority and is key to revitalizing decentralized federalism

Haworth-Ph.D., Ciceronian Society Foundation-13

(Editor-in-Chief Nomocracy)

http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/

Real Federalism Includes Taking Interposition and Nullification Seriously

Crucially missing in this debate is recognition of the importance of States checking federal authority so as to protect their constitutional autonomy and generally maintain themselves as vibrant political entities rather than mere federal lackeys (i.e., self-interested seekers of the Federal Government’s largesse). Both authors miss these points. Greve’s call for “national scale” makes this obvious, but he even explicitly denounces nullification in a separate essay on that topic. Moreover, Reinsch’s refusal to advocate interposition and nullification is also telling. In the sections that follow, I will elucidate the following: (1) why Calhoun’s doctrine of nullification is a constitutional means of preserving the States’ local liberty; (2) how the lack of nullification and interposition has damaged the States viability as independent political entities that do not need federal largesse; and (3) some final thoughts about the importance of interposition and nullification as well as the need to dismiss ad hominem arguments against these doctrines.[1] I. Calhoun’s Doctrine of Nullification as a Constitutional Means of Preserving the States’ Local Liberty: Professor Adam Tate has argued that John C. Calhoun’s advocacy of nullification was crucially focused on maintaining the American union in a manner that preserved the liberty of the States. Liberty here is a State’s political autonomy to self-govern its internal affairs within the framework of reserved powers that it retains via the 1789 Constitution. Calhoun desired union, but he opposed its pursuit via unconstitutional conceptions of federal supremacy that inevitably tended toward the Federal Government usurping powers reserved by the States. He implied his vision for both union and local liberty (and his opposition to federal dominance within the union) in his famous toast at the Jefferson Day Dinner in 1830: “The Union, next to our liberty, most dear.” Nullification, then, is not aimed at disunion; rather, it seeks to maintain a union of States that protects the liberty (i.e., the constitutional political autonomy) of each State via allowing a State to defend itself against federal encroachments. With respect to Calhoun’s constitutional theory, it is important to realize that he viewed the people of each State as a sovereign entity (even after they had ratified the 1789 Constitution) and, hence, capable of (at a minimum) revoking the delegation of powers granted to the Federal Government.[2] Sovereignty includes having supreme, ultimate, and unified power and authority over the internal affairs of people within established territorial boundaries. This is the first and primary issue with respect to federalism, for it elucidates where ultimate authority resides when a dispute arises between a State and the Federal Government. If the people of each State retain sovereignty within its borders, despite delegating powers to the Federal Government via ratifying the Constitution (i.e., a State’s sovereignty is something separate from the sovereign powers it delegates), then a State People can decide to revoke its delegation of powers (to the Federal Government) via secession. With respect to nullification, which is a specific and strong mode of interposition, Calhoun believed that the same State sovereignty issues applied, but nullification is aimed at maintaining union in a manner that appropriately recognizes a State to be the unit-of-sovereignty that has justifiable unilateral authority to determine whether a federal law is unconstitutional (unless and until a State’s nullification is overruled through the Article V amendment process). Calhoun believed that each State People had this ultimate legal authority through their role as original parties to the Constitutional Compact.[3] It was the State People who gave the Constitution life via their ratification; as many of the Framers’ maintained, the Philadelphia Convention merely proposed a new system of union, but it was the States who had the authority to make it fundamental law. Moreover, with respect to the Constitution and its amendments as a constitutional compact, since the State Peoples were original contracting parties (or equivalent in sovereign status to the State Peoples who were the historical contracting parties) and since no higher authority existed to determine whether the Constitution was being appropriately followed by the Federal Government (i.e., whether the Federal Government stays within the scope of its delegated powers), final judgment about whether or not a federal law was constitutional was left to each State People and not a department within the Federal Government (e.g. the federal judiciary) whose very life and authority is a creature-level product granted by creator-level State Peoples.[4] It is also important to note that Calhoun did not view nullification as an act that would make a law unconstitutional throughout the union; rather, the judgment by each State People would only apply within the boundaries of its own State. Furthermore, the judgment of each State People could be reversed via the other States passing a constitutional amendment that was contrary to the decision of the State People in question. If this occurred, a nullifying State People would have to either (1) abide by the new amendment; or (2) secede from the union.[5] Readers can further consider Calhoun’s theory in my article on his Confederation thesis in the 2010 Political Science Reviewer. With respect to the constitutional appropriateness of the compact theory and its concomitant principles of interposition, nullification, and secession, it is appropriate to elaborate on how these were part of the original constitutional tradition, rather than something merely concocted by Calhoun in response to the tariff crisis. First, there is important evidence suggesting that interposition was employed by the States in response to perceived unconstitutional enactments by the Confederation Congress (e.g., its acceptance of the Treaty of Paris of 1783).[6] Second, interposition and secession (and de facto nullification) were understood and endorsed during the ratification debate about the proposed Constitution. [7] Federalists, such as Madison and Hamilton for example, were noted voices for interposition as a means of checking hypothetical federal usurpations. Secession was considered and endorsed as being constitutional by many during the ratification period, and a State’s right to secession ultimately became a de facto part of the Constitution via Congress’s acceptance of the ratifications of New York, Virginia, and Rhode Island, that were all qualified with secession statements. As I have argued elsewhere, such qualifications to the original compact legally inserted recognition of secession as a State reserved power into the Constitution’s terms. Although Calhoun’s elaborate development of nullification doctrine was not explicitly recognized during the Founding, an almost de facto version of it was intended by Virginia’s ratifying convention.[8] Moreover, as Reinsch shows in his above-mentioned first essay, Madison “pen[ed a letter] to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers.” Moreover, a third relevant consideration is the fact that Madison and Jefferson invoked (respectively) interposition and nullification during the Alien and Sedition Act crisis in 1798. Madison drafted the Virginia Resolution, and Jefferson anonymously authored the Kentucky Resolution. The Virginia Resolution was issued by the State’s General Assembly, and it included the following language: That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them. Near the end of the document, the Virginia Resolution “declares” the federal laws in question (i.e., the Alien and Sedition Acts) “unconstitutional”: the General Assembly doth solemenly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people. This has been considered an example of interposition (i.e., a State protesting and/or combating a federal law it deems to be unconstitutional without affecting its applicability and enforcement within the State), but Jefferson’s Kentucky Resolution goes even further by suggesting that the States can nullify a federal law: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter soever offered, to violate that compact: AND FINALLY, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of federal compact; this commonwealth does now enter against them, its SOLEMN PROTEST. Without considering the implications of the Kentucky Resolution’s “nullification” language (i.e., whether it was also a mere act of interposition that took the added step of recognizing the legitimacy of nullification), it is sufficient for our purposes to merely note that Jefferson and Madison employed State interposition and (in Jefferson’s case) the notion of nullification that had been part of a standing constitutional tradition, which dated back to at least 1783 when new States interposed, to some degree, to protest Congress exceeding its authority in authorizing the Treaty of Paris. This tradition was also alive and well during the 1787–89 ratification debate.[9] Fourth, interposition was invoked by New England politicians during the War of 1812 in protest to the federal embargo and, then, its call for conscription. In response to the latter, Daniel Webster, the future nationalist opponent of all things states’ rights, argued: It will be the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist; and their highest obligations bind them to the preservation of their own rights and the liberties of the people.[10] As Forrest McDonald elucidates, the Hartford Convention took a more moderate course than what was originally expected when it “adopted a resolution endorsing interposition and proposed a number of constitutional amendments to meet New England’s persistent complaints.”[11] Fifth and finally, de facto nullification and interposition was practiced and called for in Northern States during the antebellum period to mitigate undesirable effects of federal fugitive slave laws. Wisconsin, for example, practiced nullification via its State judiciary by repeatedly thwarting the incarceration of Sherman Booth for violating the Fugitive Slave Act via him “aiding in the rescue of a runaway slave from a federal marshall” After his arrest, “Booth requested a writ of habeas corpus from a judge of the Wisconsin supreme court, who granted the writ on the ground that the federal act was unconstitutional.” Although the United States Supreme Court ordered reincarceration, the State supreme court released Booth again. This chain repeated itself from 1855 until the beginning of Civil War.[12] Here it is also worth noting how future anti-states’ rights, pro-union Republicans found their states rights’ mojo when arguing against attempts to expand the federal judiciary’s jurisdiction in various cases related to federal officers who enforced the Fugitive Slave Act. Benjamin Wade, for example, said: “I am no advocate for Nullification, but in the nature of things, according to the true interpretation of our institutions, a State, in the last resort, crowded to the wall by the General Government seeking by the strong arm of its power to take away the rights of the State, is to judge of whether she shall stand on her reserved rights.”[13] This broad swath of constitutional history suggests that Calhoun was systematically developing upon a well-established, constitutionally-grounded tradition of interposition and nullification. Arguably, he developed the most constitutionally-grounded mode of these doctrines in his Discourse on the Constitution and Government of the United States via demonstrating exactly how nullification should be understood according the text of the Constitution as a whole. Moreover, his argument that the people of a State (i.e., the authorities that ratified the Constitution and, hence, gave the Federal Government its delegated powers) should form nullification conventions that represented the State People in its sovereign capacity (i.e., the same institutional arrangement that State Peoples employed to ratify the Constitution) was more constitutionally persuasive than previous articulations of, and attempts at, interposition and nullification. Additionally, one should also note that there is no way to avoid either the Federal Government or a State People being the judge of its own cause in boundary disputes about the scope and limits of federal delegated powers and a State’s reserved powers. The conventionally accepted solution for federalism disputes (i.e., providing one or more departments in the Federal Government—e.g., the Supreme Court or Congress—with the authority to resolve such disputes) will (and has) result(ed) in the Federal Government winning most of these contests. Whereas, viewing each State as the ultimate authority in federalism disputes would likely shift this bias in favor of the States. Although bias, then, is inevitable, State nullification (rather than, for example, federal judicial supremacy) is still appropriate because it is grounded in a more sound understanding of the nature of the Constitution as a compact among States possessing the same sovereign status as those original States who were party to the Constitution’s formation. Accepting the authority of a State, as a final unilateral arbiter for judging the constitutionality of federal laws within their own boundaries, is a far more intellectually intuitive solution than assigning this function to the federal judiciary, which is a mere creature-level institution whose powers are wholly derivative from what has been delegated to it by the States and whose historical performance has entailed prejudicially defending the questionable expansion of the Federal Government’s very limited delegated powers. II. The Lack of Nullification and Interposition Has Damaged the States Viability as Political Entities That Do Not Need Federal Largesse: The general problem that both Greve and Reinsch identify, the travesty system of “cartel federalism” (i.e., States compete with one another to obtain federal revenue to fund programs and conduct operations that they could not afford independently), probably would not have arisen if Calhoun’s confederation thesis, which allowed for nullification (and, hence, interposition), had been further incorporated and maintained within the constitutional system. Reincsh (in concession to Greve) complains, for example, about the States not challenging FDR’s New Deal and their willingness to act as irresponsible political actors in search of federal funding. But there are straightforward explanations for why such undesirable characteristics have arisen. First, States were empowered more by the New Deal Court’s willingness to defer to their regulations via the Court’s presumption of the constitutionality of State regulations. As Randy Barnett shows, such deference to the State laws began with West Coast Hotel v. Parish (1937).[14] This was a remarkable turn from the pre-New Deal Court’s willingness to strike down the States’ attempts to regulate business and industry within their own borders. Although the pre-New Deal Court’s record on federalism is mixed, for it both defended the States’ reserved power as well as allowed federal usurpation, the Court of the late nineteenth century (from the late 1880s forward) and early twentieth century functioned with a pro-nationalist industry bent.[15] When State reserved powers were supportive of industry and commerce, the Court protected them from federal regulation; United States v. E.C. Knight and Hammer v. Dagenhart are good examples. When States regulated and, hence, impeded industry and commerce, the Court was less hospital to their constitutionally retained powers; examples of this are legion—e.g., Santa Clara County v. Southern Pacific Railroad Company, Wabash, St. Louis & Pacific Railroad Co. v. Illinois, Smyth v. Ames, and Lochner v. New York. Second, in a desperate move to challenge plutocracy that dominated the political system during the late nineteenth and early twentieth centuries, the imprudent doctrines of Populism and, then, Progressivism finally gained the upper hand in national politics. This prompted events such as the passage of the Sixteenth and Seventeenth Amendments, which ultimately weakened the States’ political autonomy by removing their diplomatic checks on federal legislation and ultimately creating a low ceiling on the degree that the States could raise revenue by taxing their citizens. Such constitutional changes contributed significantly to the States becoming federal clients who seek to manipulate the disbursement of federal revenue. Without Senators who were beholden to State legislatures, they were now unhinged to directly appeal to the uninformed majorities in their States, which easily co-opted to support nationalist pet-policies rather than serious issues that affected their States’ autonomy. With the creation of the income tax, the Federal Government seriously limited the States’ ability to raise revenue; hence, they ultimately became dependent upon federal grant-in-aid, block grants, etc. As income taxes eventually have increased to significant levels, States were (and are) limited in how much they could (and can) collect in taxes from their citizens because, beyond a certain total tax-level threshold, people will seriously consider relocating to other States with lower taxes. It is important to ascertain the causal connection between these and the lack of interposition and nullification that had been effectively purged from the federal system via the Federal Government’s triumph in the Civil War, which derailed the efficacy and acceptability of the historically correct compact theory of union. If nullification had still been viable after the Civil War, States could have (and many would have) defended themselves from Congressional and Court imposed dominance of nationalist business interests. In such an alternative historical reality, States could have better maintained their hold on regulating businesses that were operating within their borders, as well as protecting internal labor interests. This, in turn, would have allowed farmers, workers, and other such groups to lobby for appropriate State laws and policies, rather than making them feel compelled to compete for reform at the federal level in a manner that ultimately resulted in the rise of Populism and, later, Progressivism. Furthermore, it is important to see how Madison’s Federalist #10 extended-republic-solution-to-majority-factions was not able to preclude various majority-faction crises, some of which resulted in weakening the States. As Adam Tate has observed, Madison’s Federalist 10 solution has often failed to protect the liberty of minority entities (e.g., one or more States with contrary interests to a larger group of States), and Calhoun saw this. Madison thought that the difficulties entailed in forming national majorities, given the “multiplicity and diversity of interests,” would largely preclude the formation and empowerment of majority factions. The history of the United States, however, has demonstrated that this is often not the case; instead, Madison’s Federalist 10, extended-republic scheme has not protected minorities from national majorities imposing unconstitutional federal policies that illegally transgressed upon such minority interests. Moreover, some of these cases, especially during and after the Civil War, resulted in the States becoming weaker entities. During the Antebellum period, Madison’s Federalist 10 solution did not preclude the formation of majority factions that unconstitutionally harmed minorities—i.e., a lone State or a minority section of States, but these tended not to significantly impair the overall strength of States as independent political entities. Interestingly, these instances coincided with a period in which nullification was still viable. Clyde Wilson argues that the imposition of the protective tariff was unconstitutional. The protective tariff sacrificed the Southern Atlantic States (i.e., a minority in the federal union) to the majority interests of the Northeastern and Western States; albeit, South Carolina’s nullification showdown with President Andrew Jackson significantly contributed to resolving this problem in a manner that ultimately reduced the tariff to acceptable levels. The Civil War and Postbellum periods, however, severely damaged the viability of nullification, and this coincided with cases where States became weaker political entities as a result of majority-faction crises. When the Northern States developed an anti-slavery majority faction (i.e., the Republican Party) against the Southern States and were able to begin dominating the Federal Government, the Southern States sensed that their liberty within the union would become increasingly compromised; thus, many elected to protect their liberty by seceding. Such Southern-State resistance through secession had severe consequences for this sectional minority in terms of its States’ viability as independent political entities. In fact, the Southern States were reduced to economically impoverished (and, for a time, politically powerless and dependent) entities once the final conflict, due to their resistance, had passed. Another notable instance of a Postbellum majority-faction crisis that weakened the States occurred when the liberal progressive majority became dominant and both imposed crippling (and unconstitutional) regulations on businesses and significantly encroached upon constitutional State-powers via the New Deal. Here, again, nullification was not an option for dissenting States, and here again States ultimately became weaker, less independent entities as a result. This weakening of the States, however, was not just limited to a sectional minority like it had been for the South after the Civil War; it plagued all of the States. In these Postbellum cases, federal supremacy was used to enforce federal laws that were a boon to the majority faction coalition and a bane to the minorities who suffered under such legislation.[16] Moreover, such examples entailed questionable expansions of federal powers beyond their delegated limits for the sake of advancing the interests of the majority de jour. Finally, these examples illustrate the history of States becoming vulnerable to national majorities during a time in which they ultimately lost their vibrant autonomous status and, hence, had to begin acting as federal clients. Aside from the constitutional argument for nullification, acceptance of Calhoun’s theory—especially his notion of concurrent majorities—would have greatly aided the ability of minorities to protect themselves against the factional policy of the various ruling coalitions. South Carolina’s nullification of the protective tariff had already prompted Congress to enact legislation in order to reduce the tariff from levels that had threatened Southern economic interests. Nullification could have continued this function within the federal union if its acceptability had persisted into the late nineteenth and, then, twentieth centuries. Think, for example, how it might have been used to protect the States where the Grange movement had gained prominence. Think about how States could have challenged questionable Court doctrines like the personal status of corporations. On the other hand, imagine how the prudent States could have used nullification to challenge FDR’s New Deal regulations upon industries operating within their borders. Reinsch’s failure to see the effectiveness of interposition and nullification is somewhat remarkable given his awareness (seen in Part I of his above mentioned federalism essay) of Madison’s position that the “people, not as composing one entire nation, but as composing distinct and independent states to which they respective belong” was the ultimate ratifying authority and that the State governments of these State Peoples could reclaim “said [delegated] powers” within the constitutional system. Reinsch recognizes Madison’s position on these issues within the following passages: But listen to Madison in Federalist 39 on the states and the foundation of the new government: “the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratification of the several states, derived from the supreme authority in each state . . . the authority of the people themselves. The act, therefore, establishing the constitution, will not be a national, but a federal act.” Now join Madison’s argument here in Federalist 39 with a letter he pens to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers. Madison said something remarkably similar in Federalist 44 that should one or more branches of the national government use power beyond constitutional bounds, the state legislatures will mark the violation. The states will “sound the alarm to the people,” Madison says. As the presentation of Calhoun’s theory above suggests, the sovereign nature of each State Peoples is the ultimate basis of the constitutionality of secession, interposition, and nullification. But it was not just Calhoun who understood the importance of interposition and nullification doctrines: (1) the States had interposed against the Confederation Congress; (2) interposition, nullification, and secession had been considered a solution to Federal usurpation during the Founding period; (3) Jefferson and Madison were employing, respectively, nullification and interposition in response to the Alien and Sedition Acts; (4) interposition was invoked by New England politicians during the War of 1812; and (5) nullification and interposition were employed and invoked in reaction to the federal Fugitive Slave Act. Reinsch is fairly close to the compact theory, but Greve is a devout defender of nationalist-oriented capitalism that is a hallmark of neoconservatives and nationalist libertarians, etc. Those cohorts will not recognize the constitutional principles of States’ rights until all hope is lost about controlling the center in order to implement their ideologies. Well-funded representatives of these groups currently operate in the cat-bird’s seat—i.e., District of Columbia based think-tanks—where their ideologies can be advanced through access to and influence upon centralized power; thus, any decrease in central control would be a bane upon their current opportunity to shape public policy for the federal union as a whole. In addition to the essays and books cited within the above mentioned exchange with Reinsch, Greve has co-authored a book with Richard Epstein about federal preemption of the States’ regulation of commerce. Greve has also advocated the Court vigorously defending a “‘commercial Constitution’” aimed at advancing industry and commerce, and he has lambasted nomocratic justices like Scalia and Thomas for allowing their originalism to get in the way of this telocratic vision. While I tend to agree with Greve about the imprudent regulation of business, I cannot condone his willingness to practice ideological constitutionalism that sacrifices the Constitution’s Rule of Law. III. Conclusion: Final Thoughts About the Importance of Interposition Nullification, and the Need to Avoid Bad Arguments Against These Doctrines The above point about well positioned nationalist groups seeking to control federal public policy calls for further reflection about the two main reasons why interposition and nullification are often disparaged by elites and “respectable” citizens: (1) these doctrines are a significant threat to unconstitutional centralization that has taken root during the past 150+ years (especially during the twentieth century); (2) nullification and interposition are frequently associated with their past advocates who have had problematic racial positions (e.g., John C. Calhoun’s strong endorsement of slavery and, then, mid-twentieth century Southern State opposition to federal intervention against their segregation policies). These two reasons often operate as a vicious tag-team: elites who are interested in maintaining centralized control to advance their ideologies will scare “respectable” citizens into rejecting interposition and nullification by emphasizing instances where these doctrines have been associated with racism (and by ignoring the instances where the doctrines were employed to combat slavery, unfair economic policy, and unconstitutional war policy). Given the force of such opposition, the future of interposition and nullification is (in the short-term) in for some rough sledding. Nevertheless, honest, non-racist advocates of these doctrines can effectively begin to counter such bad propaganda by revealing its obvious absurdity–i.e., holding a good constitutional position hostage due to its past associations. Interposition and nullification in and of themselves are not racist. They were used by Northern States during the Antebellum period to avoid enforcement of undesirable federal fugitive slave laws. They were used by the New England States in 1814 to avoid unconstitutional federal policies during the War of 1812. They were used by Jefferson and Madison to protest unconstitutional violations of the First Amendment in the Alien and Sedition Acts. Thus, there is simply no moral problem with taking these doctrines seriously in our own day. Furthermore, it is also quite silly to discount John C. Calhoun’s brilliant constitutional development of interposition and nullification doctrines because he also held problematic views concerning slavery. Doing so would entail committing the ad hominem logical fallacy of undermining an argument by attacking the person who makes the argument, rather than focusing on the merits of the argument independently. Calhoun’s legal analysis regarding the Constitution merits independent evaluation even if, for the sake of argument, his critics are correct that his problematic views on slavery motivated the development of his constitutional analysis. Even if scientists working to operationalize nuclear fission during the Second World War were motivated by a need to create a nuclear bomb that would annihilate an entire city population, this does not mean that the facts about atomic physics, which they discover, should be discounted as inherently evil. The scientific facts and truths discovered stand on their own merits, regardless of the motivations that prompted their development. Since the rationale and conclusions of the latter case can be and are widely accepted, logic demands the same treatment for the former case—i.e., recognizing the independent merit of Calhoun’s constitutional analysis. In our America where vast portions of federal policy is technically illegal because it involves the Federal Government exceeding its constitutionally delegated powers, State interposition and nullification may be the only way to arrest such federal usurpation. Without these States’ rights doctrines, Americans and their States will be virtually powerless as establishment elites continue to invent new creative case law and false constitutional theories that justify the amassing of even more power at the federal level. Without such doctrines of resistance, the current electoral status quo will persist; citizens will continue having to choose between two political parties that are both aimed at maintaining a Congress and President who often support (and definitely do not seriously seek to roll-back) central-level aggrandizement. These considerations (and conclusions from the above analysis) are why real federalism demands taking interposition and nullification seriously. The most plausible path for returning to true constitutional federalism, or even just preserving our current status quo, is through the States defending their reserved powers and the constitutional rights of their citizens by voiding unconstitutional federal laws within their borders. If such a practice became widespread and accepted, the Federal Government would quickly scale back its reach for new powers, if not even begin to return its current power-holdings back to those parties with rightful legal claims to them.

#### American federalism is modeled globally.

Krotoszynski 2010

Ronald J., Director of Faculty Research, and Professor of Law, University of Alabama School of Law The Shot (Not) Heard 'Round the World: Reconsidering the Perplexing U.S. Preoccupation with the Separation of Executive and Legislative Powers, Boston College Law Review 51:1 http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3103&context=bclr&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D20%26q%3Damerican%2Bmodel%2Bjudicial%2Breview%2Bexecutive%2Binternational%26hl%3Den%26as\_sdt%3D0%2C18%26as\_ylo%3D2009#search=%22american%20model%20judicial%20review%20executive%20international%22

The United States has been both an importer and an exporter of constitutional structure since at least the Federal Convention in 1787, at which the Framers considered a variety of foreign constitutional models, including both contemporary and ancient, when fashioning the Constitution.' Although Great Britain's unwritten constitution pro- vided the most obvious template, it was by no means the only available model.2 By 1787, most states had extensive experience with constitu- tional design.3 The adoption of the Declaration of Independence in 1776 led to a spate of new constitution-making at the state level, as the newly independent former colonies felt it necessary to establish new constitutions for their independent republics.4 The Articles of Confed- eration, drafted in 1776-1777, ratified in 1781, and now largely forgot- ten, also served as the first blueprint for federal governance.5 Thus, as Professor Paul (Harrington correctly states, "[w]hile the idea of a written constitution enforced by national courts was an American novelty, it was less novel than many may suppose."6 Of course, the Framers did not completely abandon the British model of constitutional structure.7 Congress, a bicameral institution, is loosely modeled on the British Parliament, which was—and still is— comprised of two chambers, the House of Commons and the House of Lords.8 Although the manner of selection and underlying purposes differ, the adoption of a bicameral legislature plainly reflects an hom- age to the British model.9 Similarly, specific provisions of the U.S. Con- stitution reflect longstanding British constitutional practices such as the Speech and Debate Clause10 and the Jury Trial Clause." To be sure, the Framers departed from the British model and did so in significant ways.12 The Framers' major structural innovations in- clude a written constitution (as opposed to the unwritten, or only par- tially written, British Constitution), a judiciary vested with the power to review legislative and executive acts for consistency with the Constitu- tion, federalism featuring shared sovereignty between the states and the national government, and the separation of powers between the legisla- tive, executive, and judicial branches of government.13 To this list one could add, by way of amendments quickly adopted by the first Congress and ratified by the states shortly thereafter, a written Bill of Rights.14 Most of these innovations in constitutional design have become commonplace; when other nations turn to the task of drafting a new constitution, the resulting product more often than not includes one or more of these elements.15 The Spanish Constitution, for example, adopted a federalist principle in order to overcome persistent difficul- ties with the status of Catalunya and the Basque Region.16 The South African (Constitution vests the judiciary with a power of judicial review and a duty to enforce entrenched human rights against the more de- mocratically accountable branches of government.17 Moreover, even common law jurisdictions that long maintained the principle of par- liamentary supremacy have moved closer to the U.S. model of en- trenched, judicially enforceable human rights.18 Canada, for example, adopted its (Charter of Rights and Freedoms in 1982, and vested the Canadian judiciary with a qualified power of judicial review.19 Even in the United Kingdom itself, adoption of the Human Rights Act of 1998 reflects a decision to adopt a junior varsity version of the U.S. model of entrenched, judicially enforceable human rights.20 Thus, the U.S. Constitution has provided a persuasive model for other nations engaged in the task of writing a constitution. Judicial re- view and entrenched human rights are, if not a universal aspect of con- stitutions adopted after World War II, quite nearly so.21 As Robert Badinter, former President of the French Conseil Constituuonnel, and Associate Justice of the U.S. Supreme (Court Stephen Breyer have apdy observed, "[t]oday almost all Western democracies have come to be- lieve that independent judiciaries can help to protect fundamental human rights through judicial interpretation and application of written documents containing guarantees of individual freedom."22 Thus, the U.S. constitutional model has proven to be a very successful legal export in many important respects.23 In two significant respects, however, the U.S. template has not garnered many takers: separation of legisla- tive and executive powers, and strict judicial definition and enforce- ment of the boundaries between legislative and executive power.24

#### Prevents global violence and wars-best studies

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**Cross-national studies covering over** 100 countries **have shown that federalism** minimizes **violent conflicts whereas** unitary structures **are more apt to exacerbate** ethnic conflicts. Frank S. Cohen (1997) analyzed ethnic conflicts and inter-governmental organizations over nine 5-year ––periods (1945-1948 and 1985-1989) among 223 ethnic groups in 100 countries. He found that federalism generates increases in the incidence of protests (low-level ethnic conflicts) but stifles the development of rebellions (high-level conflicts). Increased access to institutional power provided by federalism leads to more low-level conflicts because local groups mobilize at the regional level to make demands on the regional governments. The perceptions that conflicts occur in federal structure is not entirely incorrect. But the conflicts are low-level and manageable ones. Often, these are desirable conflicts because they are expressions of disadvantaged groups and people for equality and justice, and part of a process that consolidates democracy. In addition, they also let off steam so that the protests do not turn into rebellions. As the demands at the regional levels are addressed, frustrations do not build up. It checks abrupt and severe outburst. **That is why high levels of conflicts are found less in federal countries**. On the other hand, Cohen found high levels of conflicts in unitary structures and centralized politics. According to Cohen (1997:624): Federalism moderates politics by expanding the opportunity for victory. The increase in opportunities for political gain comes from the fragmentation/dispersion of policy-making power… the compartmentalizing character of federalism also assures cultural distinctiveness by offering dissatisfied ethnic minorities proximity to public affairs. Such close contact provides a feeling of both control and security that an ethnic group gains regarding its own affairs. In general, such institutional proximity expands the opportunities for political participation, socialization, and consequently, democratic consolidation. Saidmeman, Lanoue, Campenini, and Stanton’s (2002: 118) findings also support Cohen’s analysis that federalism influences peace and violent dissent differently. They used Minority at Risk Phase III dataset and investigated 1264 ethnic groups. According to Saideman et al. (2002:118-120): Federalism **reduces the level of ethnic violence.** In a federal structure, groups at the local level can influence many of the issues that matter dearly to them- education, law enforcement, and the like. Moreover, federal arrangements reduce the chances that any group will realize its greatest nightmare: having its culture, political and educational institutions destroyed by a hostile national majority. **These broad empirical studies support** the earlier **claims** of Lijphart, Gurr, and Horowitz **that power sharing and autonomy** granting institutions **can foster peaceful accommodation and prevent violent conflicts among different groups in culturally plural societies**. Lijphart (1977:88), in his award winning book Democracy in Plural Societies, argues that "Clear boundaries between the segments of a plural society have the advantage of limiting mutual contacts and consequently of limiting the chances of ever-present potential antagonisms to erupt into actual hostility". This is not to argue for isolated or closed polities, which is almost impossible in a progressively globalizing world. The case is that when quite distinct and self-differentiating cultures come into contact, antagonism between them may increase. Compared to federal structure, unitary structure may bring distinct cultural groups into intense contact more rapidly because more group members may stay within their regions of traditional settlements under federal arrangements whereas unitary structure may foster population movement. Federalism reduces conflicts because it provides autonomy to groups. Disputants within federal structures or any mechanisms that provide autonomy are better able to work out agreements on more specific issues that surface repeatedly in the programs of communal movement (Gurr 1993:298-299). Autonomy agreements have helped dampen rebellions by Basques in Spain, the Moros in the Philippines, the Miskitos in Nicaragua, the people of Bangladesh’s Chittagong Hill Tracts and the affairs of Ethiopia, among others (Gurr 1993:3190) The Indian experiences are also illustrative. Ghosh (1998) argues that India state manged many its violent ethnic conflicts by creating new states (Such as Andhra Pradesh, Gujurat, Punjab, Harayana, Arunachal Pradesh, Goa, Himachal Pradesh, Meghalaya, Mizoram and Nagaland) and autonomous councils (Such as Darjeeling Gorkha Hill Council, Bodoland Autonomous Council, and Jharkhand Area autonomous Council, Leh Autonomous Hill Development Council). The basic idea, according to Ghosh (1998:61), was to devolve powers to make the ethnic/linguistic groups feel that their identity was being respected by the state. By providing autonomy, federalism also undermines militant appeals. Because effective autonomy provides resources and institutions through which groups can make significant progress toward their objectives, many ethnic activities and supporters of ethnic movements are engaged through such arrangements. Thus it builds long-term support for peaceful solutions and undermines appeals to militant action (Gurr 1993:303). Policies of regional devolution in France, Spain and Italy, on the other hand, demonstrate that establishing self-managing autonomous regions can be politically and economically less burdensome for central states than keeping resistant peoples in line by force: autonomy arrangements have transformed destructive conflicts in these societies into positive interregional competition". Federalism for Nepal Federalism is essential in plural countries like Nepal because it provides cultural autonomy to different cultural groups within a country. By allowing ethnic groups to govern themselves in cultural and developmental matters, it lessens their conflicts with the central state. Many of the conflicts of the identity movements are in cultural issues like religion, language, education and so on. Once regional governments are established, either the contesting parties from their own governments at the regional level, and decides in those matters, and/or influence the outcome because their proportional presence at the regional level is more than in the national level. Thus, many ethnic and linguistic groups can effectively put more pressure to the regional governments. Under unitary system, numerous regionally concentrated groups have not been able to put pressure on the central government because their population and voice are small at the central context. Even if they are not, their nature will become different. Some of the conflicts will be regionally focussed. Hence, many of the conflicts will **decrease in intensity** and strength at the central level. The bureaucracy will also increasingly reflect the regional composition because the regional governments would hire local people in the administration. Bureaucrats with knowledge of local languages and specific local problems will be able to provide relatively more efficient administration. This will also reduce conflicts. Inclusion of more ethnic members into regional politics and administration will ensure more public politics directed toward regional needs, instead of irrelevant policies directed by the center. This will contribute to reducing conflicts arising out of mal-distribution of resources. If minorities want some form of autonomy to protect and promote their culture, develop their people and regions, and self-determine their future, they are likely to struggle for it unless some autonomy is provided. The struggle might take different form in different periods due to varying circumstances. Even if unfavorable circumstances may lead to non-actions during some periods, favorable conditions for mobilizations in other periods may lead to more activities, perhaps in violent ways. The growth of ethnic movements in Nepal after 1990 is an example. Thus, to address the conflicts arising out of issues of identity and cultural rights that are inherent human aspirations, autonomy is essential. Granting of federalism would in all likelihood bring an end to ethnic insurgencies like the Khambuwan Mukti Morcha because it meets their major demand. It will also prevent the possibilities of other ethnic insurgencies with demand for federalism. Territorial federalism can work for the benefit of large ethnic groups concentrated regionally but may not be able to address problems of the numerous low populated ethnic groups or groups that are not concentrated because they may not form majorities anywhere. For these groups, non-territorial federalism, as in Belgium, Austria etc. may address their needs. In non-territorial federalism, members of ethnic groups have rights to decide about their culture, education, language and so on by electing councils who have jurisdiction over cultural, social and developmental realms. The problems of the dalit and small ethnic groups can be addressed through non-territorial federalism. Federalism and its critics in Nepal The dominant group in Nepal often argues against federalism by raising the fear of secession. I have argued elsewhere that this fear is misplaced. In demanding only a few of the rights that mainly deal with cultural and social issues, the minority groups acknowledge that advantages of staying within the existing nation-state. On the other hand, devolution helps to avert separatism because granting of devolution meets substantial demand of the minorities. However, power has to be devolved in ways that make the state and minorities perceive benefit form it. Large numbers of ethnic groups with small population further minimize the secessionist possibilities in Nepal, if any. The lack of resources and difficult topography of settlement in may cases make the creation and sustenance of smaller independent nations difficult, more so when the groups are in a state of under development. On the other hand, experience elsewhere demonstrates that **absence of autonomy may lead to secessionist movements.** Federalism was considered "slippery" in the 60s in Sri Lanka when the Tamils demanded autonomy. Today, autonomy does not satisfy the demands of the movement that arouse out of its denial (Stepan 1999). Hence **federalism**, in fact, **may contribute in keeping a country together by satisfying communities have power over themselves, there is less need to secede**; hence, a federal structure can keep different communities united within a nation-state framework. **Where cultural autonomy has not been provided, many countries have seceded or are undergoing civil war or violent ethnic conflicts**. Many in Nepal ignorantly argue that a small country like Nepal does not need a federal structure. However, federal countries like Belgium, Switzerland, Israel, Papua New Guinea, Holland and Austria have less population than Nepal. This belies the widespread fallacy that ‘small’ country like Nepal does not require federalism. The difficult geographic terrain and the problems of transportation and communication, on the other hand, make Nepal effectively larger than its area and population indicates. The perception that Nepal is a small country is due to its sandwiched position between the world’s two most populous countries. In terms of real and effective population, geography and cultural diversity, Nepal is not a small country. In fact, it is the 40th populous country among 227 countries in the world as of 2002 (US Census Bureau 2002). Federalism in not only in the interests if the marginalized groups, however. It is also in the interests of the dominant community because it lessens the underlying reasons for conflicts. Conflicts are more costly to the privilege sections of the society; hence as a toll for lessening the conflicts, federalism can serve the interests of the dominant community as well. Excerpts from the book "Nepal Tomorrow: Voices and visions" edited by D.B. Gurung.

## Relations Advantage

### Russia Turn

#### Plan’s restrictions tank perception of resolve - Congress and Obama must present UNITED FRONT to deter Russia

DePetris and French 3/19/14

<http://nationalinterest.org/commentary/the-ugly-pointless-domestic-fight-over-ukraine-10078?page=1>

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Legitimate critiques notwithstanding, it is long past time to stop carping over the Obama administration’s initial response. Instead, Republicans and Democrats alike need to work together in a rare act of bipartisanship to implement a unified policy that is helpful to Ukraine’s future, punishes Russia for its clear violation of the United Nations Charter and highlights U.S. resolve during a time of international crisis. Taken from an objective perspective, it is difficult to see what the United States can plausibly do to convince the Russians to withdraw their 20,000+ soldiers from Crimea, short of Western acceptance of Moscow’s de-facto annexation of the peninsula. The same policies that hawkish conservatives are recommending—strict economic sanctions on Russian oligarchs surrounding President Putin; increased military commitment to NATO countries like Poland and the Baltic states; the deployment of the USS Truxton to the Black Sea for exercises; diplomatic isolation of the Russian Federation in the world community—are either already occurring, or are being actively embraced. A broad system of visa restrictions and asset freezes on Russian individuals “[who] undermine democratic processes and institutions in Ukraine [and] threaten its peace, security, stability, sovereignty, and territorial integrity” have been in effect since March 6. The U.S. House of Representatives swiftly passed a $1 billion loan package to the interim Ukrainian Government in a bipartisan fashion last week, and the Senate Foreign Relations Committee has passed their own bipartisan assistance package in an overwhelming 14-3 vote. And in a show of support to the NATO alliance, Washington has taken military steps as well, including the deployment of six additional F-15 aircraft to the Baltic Air patrol fleet and an enhanced military training partnership with Poland. Indeed, the only major recommendations that that the Obama administration has neglected to fully adopt or implement are those that could very well work at cross-purposes with a political solution to the crisis, including preparing the Republic of Georgia for admission into NATO. The United States may be the world’s remaining superpower, but even a country that possesses unparalleled military, political, and economic power would be wise to operate on a classic realist paradigm: what are America’s core national security interests in the Ukraine, and how can the United States best accomplish those objectives within a reasonable cost? Fortunately, after a few days of rancorous partisan bickering about the administration’s “reset” policy and President Obama’s credibility on the world stage, it now appears that the White House and Congress—while still divided on the intricacies of the response—are all in agreement that the U.S. must defend above all else the very basic obligations of the UN charter: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” The Russian incursion into Crimea is an unquestionable breach of international law and a clear violation of Ukraine’s territorial integrity and sovereignty. Vladimir Putin, however, seems to care little about these concerns, particularly when he believes that Moscow’s national interests are directly at stake. The trick for the United States, the European Union, NATO, and every other power opposed to the use of brute force is to respond in unison, but without provoking Putin into a further act of aggression. This problem represents a classic deterrence-reassurance dilemma—the US must balance between deterring further Russian aggression and reassuring Putin that the US, EU, and NATO do not plan on threatening Russia’s interests if it behaves like a responsible power. While the US must show strength and resolve, it must also better understand why Moscow is acting in such a bold and aggressive manner. Some, like Rep. Paul Ryan, have called for the reinstatement of the Bush-era missile defense shield in Eastern Europe as a perfect way to demonstrate America’s resolve. Yet even this option could create more problems for the United States than it solves: if the objective is to punish Moscow while at the same time deescalating the crisis in Crimea, it is difficult to see how more missile defenses in Russia’s neighborhood could achieve that balance. Playing to Putin’s sense of insecurity is not the best recipe for preventing further aggression. Moving forward, Washington should focus on how to solve the crisis at hand rather than dithering over the Obama administration’s previous policies. The last thing the US needs when its credibility is on the line is to have its own politicians repeatedly questioning the country’s credibility. Political debates over whether the administration’s past policy toward Russia has been naïve can take place once this crisis has been resolved.

#### Obama resolve is currently sufficient to avoid escalation

O’Hanlon 3/5/14

<http://www.foxnews.com/opinion/2014/03/05/why-believe-putin-western-leaders-will-find-solution-for-ukraine-crisis/>

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It is risky to say this, but I am slightly less anxious about the Ukraine crisis than many people seem to be, for several reasons. First, I see no fundamental test of U.S. resolve or President Obama underway, no broad international doubting about America’s commitment to global leadership. To be sure, there are problems in our foreign policy, starting with Syria. And President Obama’s rhetoric on Afghanistan focuses too much on ending the war, not enough on highlighting our gains and seeking to lock them in. But on balance, the president looks reasonably resolute to me in most of his actual policies. For starters in Afghanistan itself, where actions speak louder than words, and 35,000 U.S. troops remain. Then there's Iran, where I think he means it when he insists that Iran will not get a nuclear bomb on his watch. And, on the Asia-Pacific rebalance, where the main threat to success is not Obama but sequestration (something the president is trying to overturn). As for the situation in Ukraine itself, as badly behaved as President Putin has been in this crisis, there have been limits. - He hasn't killed people, at least not yet. - He is apparently trying to show force in a way that gets a specific task done. - He wants to protect his military bases in Crimea, where the Russian Black Sea Fleet (historically one of Russia's big four) is based. - He wants, he says, to protect fellow ethnic Russians and Russian speakers, of whom there are many in Crimea and eastern Ukraine. This latter point does raise the worry that he will move into eastern Ukraine, but it also suggests there are ways for the government in Kiev to make such an intervention less likely by working hard to stabilize the situation there.

#### Extinction

Baum 3/7/14

<http://www.huffingtonpost.com/seth-baum/best-and-worst-case-scena_b_4915315.html>

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No one yet knows how the Ukraine crisis will play out. Indeed, the whole story is a lesson in the perils of prediction. Already we have a classic: "Putin's Bluff? U.S. Spies Say Russia Won't Invade Ukraine," published February 27, just as Russian troops were entering Crimea. But considering the best and worst cases highlights some important opportunities to make the most of the situation. Here's the short version: The best case scenario has the Ukraine crisis being resolved diplomatically through increased Russia-Europe cooperation, which would be a big step towards world peace. The worst case scenario has the crisis escalating into nuclear war between the United States and Russia, causing human extinction. Let's start with the worst case scenario, nuclear war involving the American and Russian arsenals. How bad would that be? Put it this way: Recent analysis finds that a "limited" India-Pakistan nuclear war could kill two billion people via agricultural declines from nuclear winter. This "limited" war involves just 100 nuclear weapons. The U.S. and Russia combine to possess about 16,700 nuclear weapons. Humanity may not survive the aftermath of a U.S.-Russia nuclear war. It seems rather unlikely that the U.S. and Russia would end up in nuclear war over Ukraine. Sure, they have opposing positions, but neither side has anywhere near enough at stake to justify such extraordinary measures. Instead, it seems a lot more likely that the whole crisis will get resolved with a minimum of deaths. However, the story has already taken some surprising plot twists. We cannot rule out the possibility of it ending in direct nuclear war. A nuclear war could also occur inadvertently, i.e. when a false alarm is misinterpreted as real, and nuclear weapons are launched in what is believed to be a counterattack. There have been several alarmingly close calls of inadvertent U.S.-Russia nuclear war over the years. Perhaps the most relevant is the 1995 Norwegian rocket incident. A rocket carrying scientific equipment was launched off northern Norway. Russia detected the rocket on its radar and interpreted it as a nuclear attack. Its own nuclear forces were put on alert and Boris Yeltsin was presented the question of whether to launch Russia's nuclear weapons in response. Fortunately, Yeltsin and the Russian General Staff apparently sensed it was a false alarm and declined to launch. Still, the disturbing lesson from this incident is that nuclear war could begin even during periods of calm. With the Ukraine crisis, the situation today is not calm. It is even more tense than last year, when the United States was considering military intervention in Syria.

### TRA Alt Cause

#### Arms sales is an alt cause – 1AC concludes

Ponnudurai 11 (Parameswaran, “US Ties with Taiwan Questioned”, 3/11, http://www.rfa.org/english/commentaries/east-asia-beat/security-03312011211454.html)

In the latest recommendation, two former retired admirals who had commanded troops in the Asia-Pacific and seven other scholars and business experts wanted "serious, official steps be taken to break the vicious circle" of U.S. arms sales to Taiwan

#### And they don’t solve hotspots – 1AC – ev concludes China co-operation is zero sum

Holslag 9 (Jonathan, Research Fund Flanders Fellow – Brussels Institute of Contemporary China Studies, “Embracing Chinese Global Security Ambitions”, Washington Quarterly, July, http://www.twq.com/09july/docs/09jul\_Holslag.pdf)

On the other hand, the United States needs to be sensitive to concerns of allies such as Australia, India, Japan, and South Korea who might see closer cooperation with China, particularly if it appears to prioritize it over Taiwan, at the expense of their strategic interests.

#### It’s the biggest sticking point

**Guangqian, People's Daily Overseas Edition, 2011**

(Peng, “US should abolish 'Taiwan Relations Act”, <http://english.peopledaily.com.cn/90780/7605019.html>, ldg)

The United States has argued that they have decided to sell arms to Taiwan based on the Taiwan Relations Act passed in 1979. This is even more ridiculous. The Taiwan Relations Act is a domestic law of the United States and an abnormal act designed by the forces that were unwilling to give up their vested interests and sought to impede the normal development of China-U.S. relations. The United States blatantly claimed that it would provide some separatist forces within a sovereign country with so-called "defensive" arms. Using domestic acts to interfere in other countries' internal affairs and defy the principles of international law is a great invention of the United States. Publicly putting a country's domestic laws above the principles of international law can only be interpreted as hegemonic politics and Cold War mindsets. It could be said that the Taiwan Relations Act was illegal and invalid from the scratch. Using the Taiwan Relations Act as a cover for arms sales to Taiwan simply does not make sense. The late U.S. President Richard Nixon's historic visit to China and handshake with Chinese leaders 40 years ago changed the two countries as well as the entire world. The two countries are far more interconnected and interdependent than they were 40 years ago. The healthy development of their relations will benefit both nations and all human beings. However, certain people who are unhappy to see the healthy development of China-U.S. relations or peace and harmony around the world, always want to use Taiwan as a political tool to contain China. The U.S. arms sales to the island in accordance with the so-called Taiwan Relations Act is a classic case of the Cold War mentality and power politics, which are obviously outdated, pointless and will eventually hurt itself and others. An increasing number of far-sighted Americans have been calling for repeal of the Taiwan Relations Act in recent years as more and more people have realized that the act is outdated and is against the trend of the peacefully evolving cross-Taiwan Strait relations. Furthermore, it is not conducive to the establishment of a cooperative partnership between China and the United States and does not serve the strategic interests of the United States. This legal obstacle must be removed to ensure the smooth development of China-U.S. relations.

### No Solvency

#### Won’t help relations---the US and China are engaged in security competition---concessions on one issue won’t contain that

Rehman 2/28—Iskander, is a fellow at the Center for Strategic and Budgetary Assessments, “Why Taiwan Matters” National Interest. http://nationalinterest.org/commentary/why-taiwan-matters-9971?page=show

At first glance, some of the arguments invoked by those in favor of abrogating the Taiwan Relations Act (TRA) might appear compelling. Indeed, since the earliest days of the Taiwan-U.S. military relationship, U.S. decision makers have fretted over the risks of entrapment. To this day, the United States still struggles to calibrate its policy of “dual deterrence,” which seeks to not only deter China from aggressing Taiwan, but also to dissuade Taiwan’s leadership from sparking conflict by overtly declaring independence. Even the staunchest defenders of the U.S.-Taiwan relationship also recognize that the issue of U.S. arms sales to Taiwan remains a major irritant in Sino-U.S. relations. Nevertheless, despite the validity of these concerns, an abandonment of Taiwan would constitute a major strategic blunder for several reasons. First, abandoning Taiwan would likely fail to improve the Sino-U.S. relationship. Second, the abandonment of Taiwan might considerably enhance China’s geostrategic position in Asia and endanger that of the United States and its allies. Last but not least, forsaking the small island democracy would severely erode American credibility in the Indo-Pacific, add fuel to an ongoing regional arms race, and encourage nuclear proliferation. Abandoning Taiwan would likely fail to ameliorate the Sino-U.S. Relationship. There are certain core issues troubling the Sino-U.S. relationship that extend far beyond the Taiwan Strait. Whether it is Beijing’s assertiveness towards its neighbors, some of whom, like Japan and the Philippines, are treaty allies of the United States, or issues related to cyber-espionage and human rights, the challenges currently testing the bilateral relationship are profound and numerous. China is a revisionist power—and its claims on the international system do not end with Taiwan. One should not surmise, therefore, that Sino-U.S. strategic competition would abate were the Taiwan issue to be resolved. Indeed, a growing body of work in the strategic studies community has suggested that Sino-U.S. tensions are more structural than conjectural, and are the natural result of the friction that traditionally occurs between rising and established powers.

#### Net worse for US/China relations

Tucker 11—Nancy is Professor of History at Georgetown University and at the Edmund A. Walsh School of Foreign Service. She also is a Senior Scholar at the Woodrow Wilson International Center for Scholars “Should the United States Abandon Taiwan?” The Washington Quarterly 34:4 pp. 23-37 http://csis.org/files/publication/twq11autumntuckerglaser.pdf

At the same time, Barack Obama and his administration would incur serious costs should they seek to fix U.S.—China relations by walking away from Taiwan. The Taiwan Relations Act (TRA) of 1979 and Ronald Reagan’s Six Assurances of 1982 created a framework for Washington—Taipei interaction after the United States withdrew diplomatic recognition in 1979.6 Although neither measure involved a legally binding expectation that Washington come to Taiwan’s rescue particularly if it requires the use of force they do provide for the supply of defensive weapons and maintaining a U.S. capability in the region to help Taiwan. They have prevented successive administrations from pressuring Taiwan into cross-Strait negotiations or undertaking mediation, lest Washington become responsible for implementing agreements and managing the consequences of failure. Various U.S. interests support continuing arms sales to, and close economic relations with, an autonomous Taiwan. For instance, the U.S. defense industry profits from, and so encourages, Taiwan’s weapons procurement. Diplomats, the Pentagon, scholars, and other analysts have argued that arms sales help Taiwan defend itself, strengthen morale among Taiwan’s population, deter Beijing, insure Taipei has the confidence to negotiate with China, and that if talks go wrong Taiwan could fight until U.S. forces arrived. Weapons manufacturers also focus on the money and the jobs to be had for Americans. F-16 fighter aircraft illustrate the critical significance of defense contractors in sustaining the Taiwan relationship. George H. W. Bush, ignoring commitments to Beijing as well as objections from within his administration, decided to sell 150 fighters to Taipei during the 1992 presidential election campaign, hoping to insure re-election by providing a $4 billion contract and 5,800 jobs to General Dynamics’ operations in Texas.7 In 2011, a bipartisan group of 45 U.S. senators advocating new F-16 sales and upgrades of existing aircraft not only warned President Obama that Taiwan would be forced to ground some 70 percent of its fighters by 2020 without U.S. action, but that Lockheed Martin’s F-16 production line would shut down without orders for Taiwan. Industry analysts estimate this would mean the loss of some 11,000 jobs in 43 states.8 Another side to U.S. abandonment of Taiwan is the trajectory of events that would follow such a momentous alteration of U.S. policy. Would it help or hurt U.S. interests that Taiwan, almost certainly, would not be able to sustain its de facto independence, and would be compelled, in some form, to accommodate China’s unification agenda? That alone could be profoundly disturbing to American liberals as well as conservatives for whom Taiwan’s vibrant democracy has appeared to be a vanguard for political development in Asia. China has promised it would not station forces on Taiwan, use the island to project power into the Pacific, interfere with critical commercial and military sea lanes, or control Taiwan’s affairs apart from foreign and military relations. It has pledged to facilitate Taiwan’s presence in international organizations and be generous in multiplying and deepening economic ties. But as the application of China’s ‘‘one country, two systems’’ formula in Hong Kong has demonstrated, nurturing democratic institutions under a communist umbrella is all but impossible. So if China were to be perceived as coercive, unreasonable, or unjust, Taiwan’s fate would undermine U.S.—China relations, nullifying the original purpose of abandonment.

## China War

### \*Turn

The plan abandons Taiwan

Farley 13—Robert, Assistant Professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, “Does the President Have the Power to Protect US Allies?” http://thediplomat.com/2013/09/does-the-president-have-the-power-to-protect-us-allies/

Again, the chances that this clause would be enforced in any meaningful way under any imaginable circumstances approach zero. However, it is conceivable that a President might share an expansive view of the War Powers Resolution (some have argued that Obama’s decision to seek prior authorization from Congress implies this). How might this affect some extant U.S. commitments? With regards to either South Korea or Japan, there would be little legal difficulty in using U.S. forces without immediate Congressional authorization. An attack by China or North Korea would clearly place U.S. armed forces in imminent jeopardy of attack, triggering any authority the President might need in order to conduct those conflicts (although the conduct would presumably need to be pursuant to the other elements of the WPR, such as notification, consultation, and time-frame). Moreover, the wide range of bilateral agreements between the U.S. and Seoul and Tokyo would likely suffice to satisfy the statutory authorization requirement, as well. The ability of the U.S. to intervene in a cross-straits conflict with China over Taiwan is more hazy. With no deployed units in Taiwan, U.S. troops would only be placed in jeopardy after intervention. Given the speed at which the modern PLA might defeat Taiwanese resistance, the delay required for Congressional authorization (to the extent, for example, of the current debate on Syria) could make it impossible for the United States to meaningfully intervene. The Taiwan Relations Act specifies some responsibilities on the part of the United States towards Taiwan, but it would be hard to argue that this constitutes specific authorization. Although the stakes are lower, a similar logic applies to U.S. intervention in conflict between China, Vietnam, and the Philippines over the South China Sea.

That causes fast prolif in east asia

Rehman 2/28—Iskander, is a fellow at the Center for Strategic and Budgetary Assessments, “Why Taiwan Matters” National Interest. http://nationalinterest.org/commentary/why-taiwan-matters-9971?page=show

Abandoning Taiwan would erode American credibility in the Indo-Pacific and add fuel to an ongoing regional arms race. Taiwan policy cannot be compartmentalized, and viewed in isolation from the pivot and U.S. policy towards Asia. Decision-makers in Seoul, Tokyo, and Manila would naturally question U.S. resolve and Washington’s commitment to their security in the event of an abandonment of Taiwan. Japan, in particular, would feel threatened by the stationing of Chinese forces on Taiwan—in essence losing a valuable geopolitical buffer—in such close proximity to its southwestern approaches. Heightened threat perceptions in Tokyo, if combined with a lack of faith in the credibility of U.S. conventional and nuclear deterrence, could lead Japan to acquire a nuclear-weapons capability. The corrosive effect of forfeiting Taiwan would also extend to other key allies such as South Korea, which might question Washington’s determination to defend it from North Korean aggression. Indeed, recent public-opinion polls have indicated that a growing proportion of the South Korean public now favors the development of a South Korean nuclear arsenal. Revealingly, the reasons invoked for such a shift were growing concerns over North Korea’s increasingly unpredictable and belligerent behavior, as well as over the continued viability of the United States’ security guarantee. Meanwhile, smaller regional states might find themselves both disinclined to place their faith in the United States, and cowed into submission by a more self-assured and advantageously positioned China. An abandonment of Taiwan could thus lead to a creeping Finlandization—or rapid nuclearization—of large tracts of the Indo-Pacific, and, in time, to the sunset of American primacy in Asia. Taiwan, therefore, most certainly matters.

**Nuclear war**

Cirincione 2k [Director of the nonproliferation project at the Carnegie Endowment for International Peace, 3/22/00 (Foreign Policy)]

The blocks would fall quickest and hardest in Asia, where proliferation pressures are already building more quickly than anywhere else in the world. If a nuclear breakout takes place in Asia, then the international arms control agreements that have been painstakingly negotiated over the past 40 years will crumble. Moreover, the United States could find itself embroiled in its fourth war on the Asian continent in six decades--a costly rebuke to those who seek the safety of Fortress America by hiding behind national missile defenses.Consider what is already happening: North Korea continues to play guessing games with its nuclear and missile programs; South Korea wants its own missiles to match Pyongyang's; India and Pakistan shoot across borders while running a slow-motion nuclear arms race; China modernizes its nuclear arsenal amid tensions with Taiwan and the United States; Japan's vice defense minister is forced to resign after extolling the benefits of nuclear weapons; and Russia--whose Far East nuclear deployments alone make it the largest Asian nuclear power--struggles to maintain territorial coherence.Five of these states have nuclear weapons; the others are capable of constructing them. Like neutrons firing from a split atom, one nation's actions can trigger reactions throughout the region, which in turn, stimulate additional actions. These nations form an interlocking Asian nuclear reaction chain that vibrates dangerously with each new development. If the frequency and intensity of this reaction cycle increase, critical decisions taken by any one of these governments could cascade into the second great wave of nuclear-weapon proliferation, bringing regional and global economic and political instability and, perhaps, the first combat use of a nuclear weapon since 1945.

### No Taiwan Crisis

#### All their Taiwan crisis scenarios are made up

**Wu, China Foundation for International Studies Center for American Studies executive director, 2013**

(Zurong, “China and America’s Innate Goal: Avoiding War Forever”, 7-30, <http://watchingamerica.com/News/217271/china-and-americas-innate-goal-avoiding-war-forever/>, ldg)

China and the U.S. are currently constructing a new kind of relationship between major powers, with several aims. One intrinsic aim is especially worthy of attention, namely that China and the U.S. will not go to war today, nor in the future, and will forever maintain a peaceful association. The Chinese and American governments and people are striving toward this goal unceasingly because it is in the best interests of the people of China, America and the whole world. To avoid conflict, to keep from fighting, to be mutually respectful and to embark upon a path of mutual cooperation — acting in these ways would benefit everyone. First of all, the globalization of the economy, information and other essential factors have created a global village, and the U.S. and China live and work together within this community; their interests are intertwined and neither can break the inseparable bond each has with the other. The global financial crisis of 2007 once again made clear the great extent to which the Chinese and American economies are linked and mixed, for when one sinks into a recession or depression, it is almost impossible for the other to recover and flourish alone. When it comes to international security, climate change, energy, counterterrorism, oceans and all sorts of other unprecedented areas, China and the U.S. share more common interests every day, and cooperative negotiations are unceasingly strengthened. Within this sort of atmosphere, discussing whether the U.S. and China want to go to war seems a little bit untimely and excessive. Second, the current period is fundamentally different than the era of the Cold War, for the development of peace is the theme of the present. People from countries around the world are all concentrating their energy on revitalizing the economy and improving quality of life. After the end of the Cold War, America launched several localized wars in smaller countries under the banner of the fight against terrorism, in the process bringing upon itself a heavy financial and economic burden. Perhaps it was upon consideration of the fact that large-scale conflicts could yield a level of suffering and destruction that would be difficult to endure that America has not launched any wars against the great powers that are in possession of nuclear arms. Even in the Cold War, during the Cuban missile crisis of 1962, America and the Soviet Union did not go to war. The experience of history tells us that the inherent goal of this new form of Sino-U.S. relations will have the support of the strength of the entire ranks of the world’s great powers; thus as long as both China and the U.S. have unflagging perseverance, it can be achieved. Third, for over 40 years, China and the U.S. have promoted a strategy of mutual trust, of the expansion of cooperation, of controlling differences of opinion. These lessons from experience are the U.S. and China’s most valuable treasure. Since Nixon visited the Chinese, Sino-American relations have gone through wind and rain but have always developed onward; moreover, the speed, breadth and depth of the development have far exceeded everyone’s expectations. Indeed, Sino-U.S. relations enjoy a great vitality. And since the foundations were laid fairly recently, Sino-U.S. relations continually make significant progress. The highest leaders communicate freely and military leaders exchange visits often. The two militaries are in the process of issuing plans for Chinese troops to participate in the 2014 Pacific Rim joint military exercises. Both sides have decided to actively investigate significant military activities, report mechanisms to each other and continue to research matters of security and issues regarding standards of conduct, which are relevant to the Chinese and American navies and air forces. These collaborations will give rise to a significant and far-reaching influence on world peace and international security and will vigorously promote the actualization of the inherent goal of the new form of Sino-U.S. great power relations.

### No China Russia

#### No China-Russia war

**Spears, Brooks Foreign Policy Review chief foreign policy writer, 2009**

(Collin, “Leering Bear, Rising Dragon: Life Along the Sino-Russian Border”, 5-1, <http://brooksreview.wordpress.com/2009/05/01/leery-bear-rising-dragon-life-along-the-sino-russian-border/>, DOA: 3-16-13, ldg)

Although China is facing water shortages and will need inordinate amounts of resources to keep its economy growing, there is no evidence the Chinese government is purposefully moving “settler populations” into Russia to prepare for impending annexation of the Far East or Siberia. In addition, China has shown no interest in territorial expansion since the Qing Dynasty. For the last decade, China’s primary interest has been to secure a stable border to its West and North, where it can gain access to energy supplies and expand its political and economic reach into East and Southeast Asia. Any move at colonization by China could result in a very destruction war that could become nuclear. In fact**,** Russia’s vast nuclear deterrent is its security guarantee for the region, as China has proved to be a rational actor.

### No Accidental War

#### No risk of accidents – safety devices and conflict management prevent war

**Mueller, OSU security studies professor, 2009**

(John, Atomic Obsession, pg. 100-1, ldg)

It is a plausible argument that, all other things equal, if the number of nuclear weapons in existence increases, the likelihood one will go off by accident will also increase. In fact, all things haven't been equal. As nuclear weapons have increased in numbers and sophistication, **so have safety devices and procedures**. Precisely because the weapons are so dangerous, extraordinary efforts to keep them from going off by accident or by an unauthorized deliberate act have been instituted, and these measures have, so far, been effective: no one has been killed in a nuclear explosion since Nagasaki. Extrapolating further from disasters that have not occurred, many have been led to a concern that, triggered by a nuclear weapons accident, a war could somehow be started through an act of desperation or of consummate sloppiness. Before the invention of nuclear weapons, such possibilities were not perhaps of great concern, because no weapon or small set of weapons could do enough damage to be truly significant. Each nuclear weapon, however, is capable of destroying in an instant more people than have been killed in an average war, and the weapons continue to exist in the tens of thousands. However, even if a bomb, or a few bombs, were to go off, it does not necessarily follow that war would result. For that to happen, it is assumed, the accident would have to take place at a time of war-readiness, as during a crisis, when both sides are poised for action and when one side could perhaps be triggered – or panicked –into major action by an explosion mistakenly taken to be part of, or the prelude to, a full attack. This means that the unlikely happening –a nuclear accident – would have to coincide precisely with an event, a militarized international crisis, something that is **rare** to begin with, became more so as the cold war progressed, and has become even less likely since its demise. Furthermore, even if the accident takes place during a crisis, **it does not follow that escalation** or hasty response **is** inevitable, or even **very likely**. As Bernard Brodie points out, escalation scenarios essentially impute to both sides "a well-nigh limitless concern with saving face" and/or "a deal of ground-in automaticity of response and counterresponse." None of this was in evidence during the Cuban missile crisis when there were accidents galore. An American spy plane was shot down over Cuba, probably without authorization, and another accidentally went off course and flew threateningly over the Soviet Union. As if that weren’t enough, a Soviet military officer spying for the West sent a message, apparently on a whim, warning that the Soviets were about to attack.31 **None of these remarkable events** triggered anything in the way of precipitous response. They were duly evaluated and then ignored. Robert Jervis points out that "when critics talk of the impact of irrationality, they imply that all such deviations will be in the direction of emotional impulsiveness, of launching an attack, or of taking actions that are terribly risky. But irrationality could also lead a state to **passive acquiescence**." In moments of high stress and threat, people can be said to have three psychological alternatives: (1) to remain calm and rational, (2) to refuse to believe that the threat is imminent or significant, or to panic, lashing out frantically and incoherently at the threat. Generally, people react in one of the first two ways. In her classic study of disaster behavior, Martha Wolfenstein concludes, “The usual reaction is one of being unworried.” In addition, the historical record suggests that **wars simply do** not begin by accident. In his extensive survey of wars that have occurred since 1400, diplomat-historian Evan Luard concludes, "It is impossible to identify a single case in which it can be said that a war started accidentally; in which it was not, at the time the war broke out, the deliberate intention of at least one party that war should take place." Geoffrey Blainey, after similar study, very much agrees: although many have discussed "accidental" or "unintentional" wars, "it is difficult," he concludes, "to find a war which on investigation fits this description." Or, as Henry Kissinger has put it dryly, "Despite popular myths, large military units do not fight by accident."

# 2nc

### 2NC CP Legitimate

#### ---The issue of nullification is intrinsic to the topic-the question of how to best restrict authority at the federal level cannot leave out the counterplan

Woods 10

Nullification : how to resist Federal tyranny in the 21st century Google Books

Thomas E. "Tom" Woods, Jr. is an American historian, political analyst, and author. Woods is a New York Times best-selling author and has published eleven books

It is not clear what the alternative to Jefferson's remedy of nullification might be. Unconstitutional laws have indeed been passed, in very great abundance, so the question he poses about what to do in such a situation is not merely academic. Should people gather petitions, asking those who drafted the objection- able law to change their minds? Good luck with that They could instead appeal to the courts. Although it would be nice if the courts were to grant us relief, what if they do not? The federal courts have, for all intents and purposes, ceased to police the federal government. We cannot be expected to believe that the matter is settled, and an odious law to be complied with merely because a handful of politically well-connected lawyers whom we are urged to treat with superstitious awe have solemnly informed us that all is well. It is not difficult to find support in history for the general principle that an unconstitutional law is void. Alexander Hlamilton contended in Federalist #78 that "there is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid, lb deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men, acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid." This principle should be beyond debate. The controversy arises when we consider how and by whom an unconstitutional law should be declared void (and thus not enforced). It was Hamilton's view that the courts would put things right. But what if they didn't? And since the federal courts are themselves a branch of the federal government, how can the people be expected to consider them impartial arbiters? The Supreme Court itself, after all, although usually pointed to as the monopolistic and infallible judge of the constitutionality of the federal government's actions, is itself a branch of the federal government So in a dispute between the states and the federal government, the resolution is to come from...the federal government? Jefferson refused to accept that answer. Under that arrangement, the states would inexorably be eclipsed by the federal government. It was impossible for Jefferson to believe that the states would have agreed to a system that assured their unjust subordination. Spencer Roane, a Virginia judge who would have been appointed Chief Justice of the United States by Thomas Jeffer- son had John Adams not chosen John Marshall in the waning hours of his presidency, noted that if the federal judiciary were to arbitrate such a dispute between itself and the states, it would be presiding over its own case, a clear absurdity: It lias, however, been supposed by some that... the right of the State governments to protest against, or to resist encroachments on their authority is taken away, and transferred to the Federal judiciary, whose power extends to all cases arising under the Constitution; that the Supreme Court is the umpire to decide between the States on the one side, and the United States on the other, in all questions touching the constitutionality of laws, or acts of the Executive. There are many cases which can never be brought before that tribunal, and I do humbly conceive that the States never could have committed an act of such egregious lolly as to agree thai their umpire should he altogether appointed and paid by the other party. The Supreme Court may be a perfectly impartial tribunal to decide between two States, but cannot be considered in that point of view when the contest lies between the United States and one of its members—The Supreme Court is but a department of the general government. A department is not competent to do that to which the whole government is inadequate\_\_\_\_They cannot do it unless we tread underfoot the principle which forbids a party to decide Ins own cause. Joseph Desha, governor of Kentucky, identified the very same problem in 182>: When the general government encroaches upon the rights of the State, is it a safe principle to admit that a portion of the encroaching power shall have the right to determine finally whether an encroachment has been made or not? in fact, most of the encroachments made by the general gov- ernment flow through the Supreme Court itself, the very tri- bunal which claims to be the final arbiter of all such disputes. What chance for justice have the States when the usurpers of their rights are made their judges? Just as much as individuals when judged by their oppressors. Desha concluded that it is "believed to be the right, as it may hereafter become the duty of the State governments, to protect themselves from encroachments, and their citizens from oppres- sion, by refusing obedience" to "unconstitutional mandates/ Once we accept the underlying premise that an unconstitu- tional law is ipso facto void, it is not a long way to Jefferson's commonsense conclusion that someone ought to protect the people from the enforcement of such a law, and that the state governments, each one speaking only for itself, arc the logical choice to do so.9

#### Future academics---learning about state policy is of vital importance, its increasingly relevant

Watkins 12 – Thesis for partial fulfillment of the requirements for the Degree of Bachelor of Arts with Departmental Honors in Economics at Wesleyan University [Miles, April 2012, “Party in the House? Examining the Effects of Political Control on State Government Spending,” Page 3-4, <http://wesscholar.wesleyan.edu/cgi/viewcontent.cgi?article=1796&context=etd_hon_theses>]

Focusing on American state governments, rather than those at the national or local levels, offers *several methodological advantages*. The states together provide a cross-section of data that is consistent over time, where all units face a “common institutional framework and cultural milieu” (Dye 1966 p. 11). This would not be available in a study of federal spending, and allows for the use of more powerful and precise econometric techniques; for example, I am able to eliminate from my regressions the perturbing effects of a state’s culture, geography, and political history. State data also trumps that of local governments, which suffer from incomplete and highly disaggregated information. Especially pertinent to my study is the fact that the majority of municipalities hold nonpartisan elections; this would prevent me from using an unbiased sample in my regressions (Ferreira & Gyourko 2009). Overall, little is sacrificed by choosing to study the states; the results of my study of state governments are largely applicable to local and federal ones as well, since in general there are great similarities in politics between different levels of American government (Gray et al. 1985 p. 89). Beyond those statistical issues, state public policy is also worthy of analysis in and of itself. States provide residents with crucial public goods and services, such as welfare, higher education, and transportation infrastructure. Further, in light of an increasingly polarized and gridlocked Washington, in the coming years state governments will likely take on more importance in determining the economic and social future of the United States (Katz & Bradley 2011).

#### Paying attention to the different forms of federalism opens up possibilities for legislative innovation

Resknik 1 (Judith, Arthur Liman Professor of Law-Yale, “Categorical Federalism: Jurisdiction, Gender, and the Globe”, *Yale Law Journal,* <http://yalelawjournal.org/the-yale-law-journal/essay/categorical-federalism:-jurisdiction,-gender,-and-the-globe/> )

Thus, and second, we ought to pay more attention to the legal and political import of the many forms of federalism extant within this country. One important example is the interstate compact, which permits lawful means for joint ventures between contracting states. A classical use of compacts has been to resolve border disputes. But dozens of compacts now do more, ranging from sharing natural resources to managing transportation systems to administering economic programs. The use of compacts increased during the twentieth century, and a greater number and more varieties (including interstate agreements that do not result in formal legal compacts) are likely in the coming years. Attention to such agreements opens up possibilities for legislative innovation. For example, why assume that a new cause of action for VAWA victims could only exist in a state or a federal court? State court systems might coordinate their responses to victims of gender-based violence, as they already coordinate the movement and transfer of prisoners, and as they have begun to do in response to certain kinds of multistate actions such as mass torts and consumer products litigation. Further, in an array of such aggregate litigations (including a school desegregation case in Baltimore, asbestos claims in New York, and environmental injuries in Alaska), state and federal judges have crossed jurisdictional lines to respond to shared problems. A comparable joint venture, drawing on state courts' claimed advantages from working directly with families in disarray and on federal courts' association with equality law, could be forged to address violence against women.

### 2NC Perm-Do Both

Mutually exclusive-the plan removes the authority that the counterplan nullifies-Nullification literally requires authority to invalidate

Wolverton-prof American Government, Chattanooga State-5/7/12 The Case for Nullification

<http://thenewamerican.com/usnews/constitution/item/11158-the-case-for-nullification>

#### Americans who wish to reverse the growing power of the federal government only need to remember that any federal law that is unconstitutional has no legal effect. As the United States of America is manipulated closer and closer to an economic and social abyss, the concomitant consequences of this decline are becoming familiar to all citizens. In fact, many of the youth, whose future is being mortgaged by those determined to perpetuate never-ending war and ever-expanding national debt, are awakening to a sense of this dire situation. And they are recurring to the brief history of our nation to locate a lever for braking the runaway train hurtling toward the ruin of our Republic. This generation is subjected as none before them to the painful injection of government into every fiber of the body politic. On what seems like a daily schedule, the Congress passes and the President signs into law measures ostensibly permitting the manhandling of people at airports, the suspension of the requirements of due process, and the monitoring by the never-blinking eye of a surveillance state into the virtual and actual behavior of anyone believed to one day possibly pose a threat to the security of "the homeland." As they sift among the various legal methods available to them for the civil combat against economic enslavement and the federal government's intrusions into every aspect of our lives, they have stumbled across a timeless principle of self-defense used by our Founding Fathers to fight their own battle against the forces of federal oppression - nullification. Simply stated, nullification is a concept of legal statutory construction that endows each state with the right to nullify, or invalidate, any federal measure that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

#### It links to the net benefits:

#### A. Politics-still includes immediate legislative battles in congress over the plan that derail the agenda

### 2NC Perm-Do CP

#### Severs out of USFG-this is the states’ counterplan for crying out loud-severance is illegitimate because no counterplan would compete if the 2AC could pick which parts of the plan to defend

**Dictionary of Government and Politics 1998**

(PH Collin, pg 292)

United States of America (USA) [ju:’naitid ‘steits av e’merike] noun independent country, a federation of states (originally thirteen, now fifty in North America; the United States Code = book containing all the permanent laws of the USA, arranged in sections according to subject and revised from time to time COMMENT: the federal government (based in Washington D.C.) is formed of a legislature (the Congress) with two chambers (the Senate and House of Representatives), an executive (the President) and a judiciary (the Supreme Court). Each of the fifty states making up the USA has its own legislature and executive (the Governor) as well as its own legal system and constitution

#### ---Severs the unconditional adoption of the plan-it is analogous to the difference between Congress passing legislation and the President asking Congress to pass legislation.

#### ---One actor directing another to act does not on face increase restrictions

Marcus-Brandeis Center for Human Rights Under Law-9

Race & Social Problems, Vol. 1, No. 1, pp. 36-44, March 2009

http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1678008

The post-9/11 surge in America's Muslim prison population has stirred deep-seated fears, including the specter that American prisons will become a breeding system for "radicalized Islam." With these fears have come restraints on Muslim religious expression. Some mistreatment of Muslim prisoners violates the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), which Congress passed in part to protect prisoners from religious discrimination. Despite RLUIPA, many Muslim prisoners still face the same challenges that preceded the legislation. Ironically, while Congress directed courts to apply strict scrutiny to these cases, courts continue to reject most claims. One reason is that many courts are applying a diluted form of the legal standard. Indeed, the "war on terror" has justified increasing deference to prison administrators to the determine of incarcerated Muslims and religious freedom.

#### ---Severs “should” it means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or *immediately effective*, as opposed to something that *will* or *would* become effective *in the future [in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

### Georgia Solvency Wall

#### The CP captures their congressional authorization arguments-it restores congressional authority over war powers

Bulman-Pozen-Attorney-Adviser, Office of Legal Counsel, Department of Justice-12

http://columbialawreview.org/federalism-as-a-safeguard-of-the-separation-of-powers/

Federalism as a Safeguard of the Separation of Powers

States frequently administer federal law, yet scholars have largely overlooked how the practice of cooperative federalism affects the balance of power across the branches of the federal government. This Article explains how states check the federal –––executive in an era of expansive executive power and how they do so as champions of Congress, both relying on congressionally conferred authority and casting themselves as Congress’s faithful agents. By inviting the states to carry out federal law, Congress, whether purposefully or incidentally, counteracts the tendency of statutory ambiguity and broad delegations of authority to enhance federal executive power. When states disagree with the federal executive about how to administer the law, they force attention back to the underlying statute: Contending that their view is consistent with Congress’s purposes, states compel the federal executive to respond in kind. States may also reinvigorate horizontal checks by calling on the courts or Congress as allies. Cooperative federalism schemes are a more practical means of checking federal executive power than many existing proposals because such schemes do not fight problems commentators emphasize— a vast administrative state, broad delegations, and polarized political parties—but rather harness these realities to serve separation of powers objectives.

#### Nullification is a more effective restriction on Presidential war power than the plan-the audience cost associated with the counterplan ensures compliance

Wolverton-prof American Government, Chattanooga State-5/7/12 The Case for Nullification

<http://thenewamerican.com/usnews/constitution/item/11158-the-case-for-nullification>

Americans who wish to reverse the growing power of the federal government only need to remember that any federal law that is unconstitutional has no legal effect. As the United States of America is manipulated closer and closer to an economic and social abyss, the concomitant consequences of this decline are becoming familiar to all citizens. In fact, many of the youth, whose future is being mortgaged by those determined to perpetuate never-ending war and ever-expanding national debt, are awakening to a sense of this dire situation. And they are recurring to the brief history of our nation to locate a lever for braking the runaway train hurtling toward the ruin of our Republic. This generation is subjected as none before them to the painful injection of government into every fiber of the body politic. On what seems like a daily schedule, the Congress passes and the President signs into law measures ostensibly permitting the manhandling of people at airports, the suspension of the requirements of due process, and the monitoring by the never-blinking eye of a surveillance state into the virtual and actual behavior of anyone believed to one day possibly pose a threat to the security of "the homeland." As they sift among the various legal methods available to them for the civil combat against economic enslavement and the federal government's intrusions into every aspect of our lives, they have stumbled across a timeless principle of self-defense used by our Founding Fathers to fight their own battle against the forces of federal oppression - nullification. Simply stated, nullification is a concept of legal statutory construction that endows each state with the right to nullify, or invalidate, any federal measure that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof. What the Founders Thought Or, as was so authoritatively explained by Alexander Hamilton in The Federalist, No. 33: If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.] Here, Hamilton (notably one of the Founders often claimed by proponents of an all-powerful central government as their philosophical progenitor) responds to the charges by those opposed to the Constitution, particularly in this instance to the clause in Article VI known as the "Supremacy Clause." This clause reads in relevant part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." A plain reading of the black letter of this provision leaves no doubt that when the federal government acts within me scope of its constitutionally established powers, those acts are to be accepted as the supreme law of the land. Or as Hamilton expressed in an earlier letter in The Federalist: "The laws of the Confederacy as to the enumerated and legitimate objects of its jurisdiction will become the SUPREME LAW of the land." (Emphasis in original.) The corollary to this clear statement of constitutional distribution of power would be that whenever the federal government enacts laws not provided for in the roster of enumerated powers, those acts are not laws at all. Instead, they are "merely acts of usurpations" and do not merit the respect and adherence due to other, constitutionally sound measures. Put simply, acts of Congress are the supreme law of the land if they are made in pursuance of its constitutional powers, not in defiance thereof. As if the foregoing weren't sufficient evidence of the Founders' view on not only the proper role of the federal government, but of the adherence due to any act perpetrated by it that reaches beyond its limited constitutional grasp, Hamilton wrote very plainly in The Federalist, No. 78; "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid." Nullification in Action Nowhere is the concept and application of nullification more firmly secured to sure footings of constitutionality and morality than in the Kentucky and Virginia Resolutions of 1 798 and 1 799. The Kentucky and Virginia Resolutions were terse statements written in 1798 and 1799 proposing the proper response by states to the passage by the federal government of the Alien and Sedition Acts. The drafters of these resolves insisted that as the powers to be exercised by the federal government under the authority of the Alien and Sedition Acts were not given to it in the Constitution, the legislatures of the several states had not only the right but the moral and legal obligation to disregard these acts and brand them as unconstitutional. After their distribution among the various state governments, it was revealed that the Kentucky and Virginia Resolutions were in truth the product of a collaboration by Thomas Jefferson and James Madison. Jefferson penned the former while Madison wrote the latter. Although branded by some advocates of a stronger central government as the "infernal plan of exciting insurrections and tumults," as one can see from the arguments laid out over a decade earlier in the Federalist Papers, these measures were nothing more radical or incendiary than a restatement of well-settled tenets of constitutional federalism. As Thomas E. Woods wrote in his inestimable analysis of states' rights, Nullification: How to Resist Federal Tyranny in the 21st Century, in the Kentucky Resolution: Jefferson was merely building upon an existing line of political thought dating back to Virginia's ratifying convention and even into the colonial period. Consequently, an idea that may strike us as radical today was well within the mainstream of Virginian political thought when Jefferson introduced it. In order to appreciate the simplicity and sensibility of the proposed nullification of any federal act expanding upon the slate of its specifically delegated powers, one need only read a sample of the resolutions comprising these proposals. Kentucky's Resolution 1 declares: That the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each state acceded as a state, and is an integral party, its co-States forming, as to itself, the other party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress. The second of the Kentucky Resolutions was intended to specifically set forth the legal and constitutional basis for the denial to the Congress of the power to punish crimes not explicitly listed in the Constitution. Congress had assumed this authority, so Jefferson averred, by passing various of the provisions of the Alien and Sedition Acts, which were signed into law by John Adams. Of particular importance is the reliance of this provision on the 10th Amendment. Resolution 2 states: That the Constitution of the United States, having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on the high seas, and offenses against the law of nations, and no other crimes, whatsoever; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," therefore the act of Congress, passed on the 14th day of July, 1798, and intitled [sic] "An Act in addition to the act intitled [sic] An Act for the punishment of certain crimes against the United States," as also the act passed by them on the - day of June, 1 798, intitled [sic] "An Act to punish frauds committed on the bank of the United States," (and all their other acts which assume to create, define, or punish crimes, other than those so enumerated in the Constitution,) are altogether void, and of no force watsoever [sic]. In his resolution (there were two Kentucky Resolutions, but only one in the Old Dominion), Madison echoed Jefferson's reasoning, asserting that the states were justified (in fact, required) in serving as arbiters of constitutionality. The Virginia Resolution took the additional step of labeling as legitimate the interposition of states to the passing by Congress of unconstitutional acts. Madison wrote: That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights and liberties, appertaining to them. Similar Spirit Thankfully, the spirit of Jefferson's and Madison's resolutions lives on in several present-day state legislators. As has been reported in The New American, a handful of state and local lawmakers have passed resolutions of their own designed to (in some degree or another) nullify the National Defense Authorization Act (NDAA) and its ostensible grant of authority to the President of the United States to deploy the military to apprehend and indefinitely detain American citizens he suspects of posing some sort of vaguely defined threat to national security. These courageous men and women are motivated by more than just a jealousy for the sovereignty of states. They understand that there is more at stake than the accurate delineation of borders between the jurisdiction of the states and the federal government. In statements released by these sponsors of state-sovereignty-saving acts, there is expressed an appreciation for the moral obligation imposed upon all Americans to steadfastly demand that the federal government not exceed its constitutional authority. One of these legislators, when interviewed by The New American, explained the source of his insistence on the securing of the restraints placed on federal power. Speaking of the eternal vigilance that is the price of liberty, Virginia Delegate Bob Marshall said: You can't let them get away with exceptions because they won't stop with one. The procedural guarantees for liberty are there for a reason. Go back in the New Testament. When the Pharisees were trying to find something to charge Christ with, they wanted to catch him violating the Mosaic Code, so they find a woman who had committed adultery and brought her to Christ We assume that this woman was caught in the act. What did Christ do? He wrote in the sand and said, "Which of you will accuse her?" This is so important because according to Jewish law, you couldn't accuse another of a crime unless you had clean hands. Any death penalty decree had to be in writing and the Pharisees knew it, but thought they could get away with violating that provision of the law. Christ wrote in the sand, thus fulfilling the requirements of Mosaic due process. The Pharisees probably got the message and we should too. If Christ, who was God, was concerned about due process, we mere humans must be as well. Turning to Marshall's fellow Virginian James Madison, we learn that the requirement that the enumeration of powers to the central government be rigidly and faithfully observed is not just laudable - it is that "which can alone secure its [the Union's] existence, and the public happiness thereon depending." Once it is widely understood that any unconstitutional law passed by Congress is without legal effect, then it is easy to accept that the states are uniquely situated to perform the function described by James Madison in a speech to Congress in 1789: "The state legislatures will jealously and closely watch the operation of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty." Nullification is commendable principally because its persistent practice engenders trust between the elected and the electorate and encourages the recognition of reliable patterns of interaction between the state and local authorities and the federal government. By consistently demanding that Washington confine itself to its small sphere of influence, everyone - citizen, state lawmaker, U.S. President, and Congressman - knows where they stand and can act knowing they enjoy the good will of those by whom they were chosen to serve. If the people will not allow deviance from the terms of the compact, then legislators at last will be disabused of their commonly perceived illusion that the people can be easily lulled into a lethargic stupor rendering them unwilling and eventually unable to withstand the steady herding of our nation into me corrals of despotism. Finally, of all the legal verities and moral virtues of nullification, there is one that sits at the pinnacle of them all. Nullification, as defined by Jefferson and Madison and as being proposed and practiced by contemporary Americans, is a fail-safe protection of popular sovereignty and limited government. Chiefly this is because the keys to these fetters are kept by the people. A growing number of concerned citizens of this Republic are no longer willing to recur to Congress to repeal unconstitutional laws or to file legal complaints in the hope that the courts will strike down offensive measures. They understand that while perhaps commendable, these tactics are futile and offer no guarantee of the restoration of constitutionally ensured freedom. They refuse to wait on this or that President, this or that Congressman, or this or that political party to acknowledge their pleas for relief from federal oppression. Instead, they unashamedly will assume their right and their duty to derail the "long train of abuses and usurpations" and "provide new Guards for their future security" - the states and themselves.

### 2NC Politics Net Benefit

The Counterplan causes norm cascading that changes federal policy-it also avoids politics by building constituencies for the plan

Robinson-JD Yale-7 40 Akron L. Rev. 647

ARTICLE: Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy

4. Laws and actions that influence the nation's foreign policy Localities' actions often attempt to influence national foreign policy. Some of these actions merely help reinforce and support preexisting federal foreign policy. The most prominent example of this is localities' support of the U.S. military in their operations abroad. 305 However, localities' actions may also be in protest to U.S. foreign policy or designed to change it. The Central American sanctuary movement grew out of dissatisfaction with the U.S.'s policy towards Central America in the 1980's and the belief that refugees from El Salvador and Guatemala were politically persecuted despite U.S. support for these regimes. In all, "more than 20 cities and two states declared themselves sanctuaries for Central American refugees." 306 During this same period, 87 cities created sister city type relationships with communities in Nicaragua, in part to show solidarity against U.S. policy there. 307 U.S. sanctions on Cuba have similarly been a target of state and local action both on political and economic grounds. The Illinois and Texas state legislatures have passed resolutions in support of normal relations between the U.S. and Cuba. 308 Some cities in the United States have established "Sister City" type relations with Cuban cities to express their support for more normal relations between the United States and Cuba. 309 After lobbying by agricultural interests, Illinois Governor Ryan [\*708] led a mission to Cuba in 1999 to promote trade and deliver aid. 310 During the trip he met with Cuban President Fidel Castro. 311 Shortly after returning he stated, "My hope is there will be other state delegations that go, and hopefully we'll lift this embargo." 312 In 2002, Havana hosted governors and other representatives from seven states at a Food and Agribusiness Exhibition. 313 Over one hundred cities passed resolutions calling for the end of the Iraq War. 314 In early 2005 during the annual town hall day in Vermont, 49 cities and towns passed a resolution that asked the state legislature to investigate what the impact of National Guard deployments to Iraq are having on the state. 315 Several cities across the country have passed resolutions calling on their states to withdraw their National Guard troops from Iraq. 316 Dozens of local ballot initiatives in communities across the country called on the federal government to bring the troops home from Iraq in the November 2006 elections. 317 State governors have also been openly critical of the U.S.'s involvement in the conflict in Iraq. 318 In March 2007, several towns in Vermont passed resolutions calling for the impeachment of President Bush and Vice President Cheney. In April 2007, the Vermont State Senate in a non-binding resolution called on members of the U.S. House of Representatives to begin impeachment proceedings against the President and Vice President because of their actions in the United States and abroad, including Iraq. These calls for [\*709] impeachment, which highlight a deep internal divide within the United States over its policy in Iraq, were reported upon by media around the world. 319 States and localities have pushed to change U.S. foreign policy more broadly as well. For example, after the failure of SALT II during the Carter administration, the unwillingness of Reagan to support a nuclear test ban treaty, and the development of the Strategic Defense Initiative, citizens banded together to promote a freeze on the production of nuclear weapons in the 1980s. Through town meetings, local referenda, resolutions, or other initiatives, more than 900 local governments acted on the freeze issue. 320 After the end of the Cold War, at least 70 mayors in the United States as well as hundreds of mayors from over 100 countries have signed a statement in support of a nuclear free world. 321 State assemblies have similarly passed resolutions calling for the end of nuclear weapons. 322 Some states have taken a different approach towards this national defense issue with at least 10 states having passed resolutions calling upon the national government to deploy a missile defense system since 1997. 323 States have also urged the United States to sign and ratify international agreements. For example, several state governments have passed resolutions in support of the Convention on the Elimination of Discrimination Against Women (CEDAW). 324 Often state and local action arises out of dissatisfaction with the perceived inadequacy or incorrectness of a federal policy towards a foreign policy issue. Catherine Powell calls the impact of state and local [\*710] laws on national foreign policy "dialogic federalism." 325 She argues that enough local ordinances can create a norm cascade that affects federal policy. 326 The U.S. federal sanctions against South Africa passed by Congress over President Reagan's veto in 1986 were arguably in part a result of just such a norm cascade created by anti-apartheid resolutions and laws at the state and local level. 327 In many ways, it is the mobilization of citizens around, more than the passage of a resolution or act on a foreign policy issue that leads to a norm cascade which changes federal policy. The effort required to convince legislators and their fellow citizens to support a locality's official action gives citizens a tangible and reachable local goal to focus their efforts on. This helps organize constituencies locally that can develop into a national coalition. For example, someone who has worked continuously to garner support for a local divestment initiative on Sudan is also more likely to call their Congressperson to urge them to pass the Darfur Accountability Act. Norm cascades created by localities' actions do not only impact the policy they are directed at, but have a wider impact as well. For instance, the South Africa or Sudan divestment campaigns can be seen as national human rights moments. These are moments in which a segment of the American public becomes unusually organized to promote a human rights-based foreign policy goal. Most voters remain generally unaware of how U.S. foreign policy implicates human rights in other countries. Further, most voters do not base their vote on foreign policy human rights issues. The signal given by these human rights moments, however, creates an environment in which sympathetic legislators and policymakers can prioritize human rights concerns in other areas of foreign policy, knowing there is a constituency that generally supports this type of action.

#### B. Legislation like the plan crowds out the agenda

Mark Seidenfeld, Associate Professor, Florida State University College of Law, 1994 (80 Iowa L. Rev. 1)

The cumbersome process of enacting legislation interferes with the President's ability to get his legislative agenda through Congress much as it hinders direct congressional control of agency policy-setting. n196 A President has a limited amount of political capital he can use to press for a legislative agenda, and precious little time to get his agenda enacted. n197 These constraints prevent the President from marshalling through Congress all but a handful of statutory provisions reflecting his policy [\*39] vision. Although such provisions, if carefully crafted, can significantly alter the perspectives with which agencies and courts view regulation, such judicial and administrative reaction is not likely to occur quickly. Even after such reaction occurs, a substantial legacy of existing regulatory policy will still be intact.In addition, the propensity of congressional committees to engage in special-interest-oriented oversight might seriously undercut presidential efforts to implement regulatory reform through legislation. n198 On any proposed regulatory measure, the President could face opposition from powerful committee members whose ability to modify and kill legislation is well-documented. n199 This is not meant to deny that the President has significant power that he can use to bring aspects of his legislative agenda to fruition. The President's ability to focus media attention on an issue, his power to bestow benefits on the constituents of members of Congress who support his agenda, and his potential to deliver votes in congressional elections increase the likelihood of legislative success for particular programs. n200 Repeated use of such tactics, however, will impose economic costs on society and concomitantly consume the President's political capital. n201 At some point the price to the President for pushing legislation through Congress exceeds the benefit he derives from doing so. Thus, a President would be unwise to rely too heavily on legislative changes to implement his policy vision.

### case

#### **Security issues overwhelm their minor concession**

Roy 1/16—Denny Roy is a Senior Fellow at the East-West Center, “U.S.-China Relations and the Western Pacific” http://thediplomat.com/2014/01/us-china-relations-and-the-western-pacific/?allpages=yes

After the Yellow Sea and the East China Sea, the other maritime region on China’s periphery is the South China Sea. The Chinese claim to at least partial ownership over the South China Sea is even stronger. To date Beijing refuses to clarify or disavow the infamous “9-dashed line” that on Chinese maps marks a boundary encompassing most of the South China, or the sea within the “first island chain” south of Taiwan. Beijing demonstrated that this claim is not merely symbolic when in 2012 it dispatched government ships to blockade Philippine fishermen from entering Scarborough Shoal, which is over 600 miles from the nearest Chinese coast but is within the exclusive economic zone of the Philippines. Thus, if we disregard the claim of Chinese officials that China doesn’t want a sphere of influence, what we are left with is a growing pile of indications that China does indeed intend to establish a maritime sphere of influence, with exclusive rights to resources. This is not to say that China’s desire for a sphere of influence is limited to the oceans. Beijing also has or is trying to cultivate disproportionate influence in the capitals of Cambodia, Laos, Thailand, the Central Asian states, Burma and North Korea. But it is in the maritime Asia-Pacific region that the clash of U.S. and Chinese designs is most serious. A Chinese sphere of influence here would require the eviction of American strategic leadership, including U.S. military bases and alliances in Japan and South Korea, U.S. “regional policeman” duties, and most of the security cooperation between America and friends in the region that now occurs. Washington is not ready to give up this role, seeing a strong presence in the western Pacific rim and the ability to shape regional affairs as crucial to American security. A basic problem, then, is that Beijing wants a sphere of influence, while Washington is not willing to accede it. Unfortunately, therefore, U.S.-China relations are not poised for a breakthrough that could be achieved with a few concessions. American abandonment of Taiwan will not solve this basic dispute over influence in the region. Nor will it go away if Americans stop complaining about human rights abuses in China or the Chinese government’s involvement in organizing cyber attacks against U.S. corporate and government computer systems. The booming bilateral trade relationship and other ties create reasons to avoid war, but these have not solved the security problems that can independently drag the two countries into conflict.

#### **Relations won’t be perfect---but cooperation is sufficient to prevent war and secure collaboration---they compartmentalize disputes.**

Hachigian 12/27—Nina Hachigian is a senior fellow at the Center for American Progress and the editor of "Debating China: The U.S.-China Relationship in Ten Conversations." http://articles.latimes.com/2013/dec/27/opinion/la-oe-hachigian-u-s--china-relationship-20131227

The economic realm delivered more cause for optimism. China's third party plenum in November resulted in an impressive array of promises for significant domestic policy changes, best encapsulated by the sentence in the official communique that the market should play a decisive role in the allocation of resources in the economy. If fully implemented, these reforms would mean that state-owned enterprises will be less privileged and Chinese consumers more empowered, both positive developments for U.S. businesses. Further, national security advisor Susan Rice's recent speech on Asia policy explicitly opened the door for China to join the Trans-Pacific Partnership, or TPP, at a future date when China can meet the high standards currently being devised by the 12 negotiating countries. Chinese analysts seem more willing now to believe that the TPP is not an underhanded U.S. attempt at containment but a genuine effort to loosen economic flows between nations while also protecting labor, the environment and intellectual property. Bilateral investment treaty negotiations between the U.S. and China also continue. On climate and energy, the important agreement this year between the United States and China to phase out production of hydrofluorocarbons — particularly potent greenhouse gases — was a great first step. But implementing this promise will take a great deal more work. Cooperation on clean energy is minimal but increasing. The realm of values was fraught in 2013. Not only was there no notable progress on individual rights in China, but Beijing also continued its crackdown on lawyers, professors, activists and writers trying to hold China accountable to its own laws and international human rights standards. Foreign media have been increasingly targeted, with scores of New York Times and Bloomberg reporters unsure whether their visas will be renewed. The infamous "Document 9," issued in August from the highest level of the Communist Party, cautioned all cadres to beware of the "seven perils" of Western ideals, such as constitutional democracy, media independence and universal human rights. The party laments the lack of trust in the U.S.-China relationship while simultaneously instructing its members to guard against the influence of Americans' most deeply held values. For better or worse, this complex brew of tension, hope, progress and retrenchment is what we can expect from the modern-day U.S.-China relationship. The two huge powers have divergent interests but also deep interdependence. Working together is hard and frustrating, but not working together is worse. Both countries have managed to compartmentalize disagreements so cooperation in some areas can generate real progress. Given the differences, even these modest successes are worth celebrating.

**Freeman, former ambassador, 2011**

(Chas, “Beijing, Washington and the Shifting Balance of Prestige”, 5-10, <http://www.mepc.org/articles-commentary/speeches/beijing-washington-and-shifting-balance-prestige>, ldg)

Antagonistic encounters in China’s near seas are a significant factor in worsening Sino-American military relations but they do not have the impact of U.S. moves to shore up Taiwan’s resistance to reunion with the mainland. The Taiwan issue is the only one with the potential to ignite a war between China and the United States. To the PLA, U.S. programs with Taiwan signal fundamental American hostility to the return of China to the status of a great power under the People’s Republic. America’s continuing arms sales, training, and military counsel to Taiwan’s armed forces represent potent challenges to China’s pride, nationalism, and rising power, as well as to its military planners. These U.S. programs appear to reflect judgments by the American elite that the Communist dictatorship on the mainland is fundamentally illegitimate and should be prevented from extending its sway to other parts of China even by peaceful means. U.S. interactions with Taiwan and Tibet belie the lip service American officials pay to the notion of “one China.” The message China’s civilian and military elite get from these interactions is that the United States wants “one China in name but not in fact — not now, and perhaps never, if America has anything to say about it.” The Chinese don’t think we should have anything to say about it. The kind of long-term relationship of friendship and cooperation China and America want with each other is incompatible with our emotionally fraught differences over the Taiwan issue. These differences propel mutual hostility and the sort of ruinous military rivalry between the two countries that has already begun. We are coming to a point at which we can no longer finesse our differences over Taiwan. We must either resolve them or live with the increasingly adverse consequences of our failure to do so. For Chinese, the Taiwan issue presents an increasingly stark choice between national pride commensurate with rising prestige and continuing deference to America’s waning power. With Taiwan and the mainland integrating in practice, China sees the policies of the United States as the last effective barrier to the arrival of a ripe moment for the achievement of national unity under a single, internationally respected sovereignty. Dignity and unity have been and remain the core ambitions of the Chinese revolution. China may, for now, continue to emphasize the avoidance of conflict with the United States. But the political dynamics of national honor will sooner or later force Beijing to adopt less risk-averse policies than it now espouses.

# 1NR

## Patent Reform DA

### 1NR Impact

#### Economic growth constrains all conflict – allows for U.S. military hegemony that prevents and deescalates conflict and interdependence that defuses the tensions between the U.S. and China- there’s serveral scenarios for nuclear war

Kemp 2010

Geoffrey, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, pg. 233-4

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

#### Turns Relations

Yang, Senior Lecturer in International Relations at the University of Auckland, Associate Editor of The Australasian Journal of Human Security, and Chair of the NZIIA’s Auckland Branch, ’06 (Jian, September 1, “China’s Rise: The Security Implications” New Zealand International Review, Vol 31 No 5, p 12, lexis)

Policy implications It is important for the rest of the world to appreciate Chinas desire for a peaceful international environment. It has profound implications for the making of policy toward China. Chinas desire for peace means incentives for it to integrate with the international society and this provides a solid basis for engaging China. Some argue that China is simply waiting for the time when it is strong enough to challenge other great powers. Indeed, no one can guarantee that China will not follow this path. However, this is by no means inevitable. There is a good chance that China continues to integrate with the international society, keeps learning the rules of the game and eventually graduates as a good international citizen. Masaru Tamamoto has a vision for China, that is vastly different from that ofrealists: It is hard to imagine how an economically successful China so enmeshed in global capitalism will threaten the very system that made it rich and middle class. Bourgeois success tends to diminish military efficacy in international relations. In the long run, the Chinese threat to the United States, Japan and the world comes from an economically faltering China, not a prosperous, self-confident China. (18) Chinas rise often reminds us of the rise of Japan and Germany in the late 19th and early 20th centuries. Both resulted in major military clashes. Realists often argue that history repeats itself. This argument neglects the fact that the rise of the United States was peaceful. The United States rose rapidly from 1820 to 1913, which benefitedother great powers. To be more specific, American GDP per capita rose at an average rate of about 1.5 per cent per year, while that of Britain, France, and Germany rose at roughly 1.1-to-1.3 per cent annually. (19) China's rise can be a great opportunity, too. Increasing influenceChina should learn the rules of the game. At the same time, other great powers, especially the United States, should make efforts to accommodate the rise of China. Although China will not be able to substantially challenge the United States strategically in the coming years, its influence is likely to increase. One important reason why the rise of the United States was peaceful was the accommodation of GreatBritain to America's rise. Despite the differences between Anglo-American relations in those years and Sino-American relations today, theUnited States needs to accept China playing a greater role in world affairs and give China due respect.

#### Turns China modernization and all their China impacts

Mead 4 (Walter Russell, Henry A. Kissinger senior fellow in U.S. foreign policy at the Council on Foreign Relations, Foreign Policy no141 46-50, 52-3 Mr/Ap)

The United States' global economic might is therefore not simply, to use Nye's formulations, hard power that compels others or soft power that attracts the rest of the world. Certainly, the U.S. economic system provides the United States with the prosperity needed to underwrite its security strategy, but it also encourages other countries to accept U.S. leadership. U.S. economic might is sticky power. How will sticky power help the United States address today's challenges? One pressing need is to ensure that Iraq's economic reconstruction integrates the nation more firmly in the global economy. Countries with open economies develop powerful trade-oriented businesses; the leaders of these businesses can promote economic policies that respect property rights, democracy, and the rule of law. Such leaders also lobby governments to avoid the isolation that characterized Iraq and Libya under economic sanctions. And looking beyond Iraq, the allure of access to Western capital and global markets is one of the few forces protecting the rule of law from even further erosion in Russia. China's rise to global prominence will offer a key test case for sticky power. As China develops economically, it should gain wealth that could support a military rivaling that of the United States; China is also gaining political influence in the world. Some analysts in both China and the United States believe that the laws of history mean that Chinese power will someday clash with the reigning U.S. power. Sticky power offers a way out. China benefits from participating in the U.S. economic system and integrating itself into the global economy. Between 1970 and 2003, China's gross domestic product grew from an estimated $106 billion to more than $1.3 trillion. By 2003, an estimated $450 billion of foreign money had flowed into the Chinese economy. Moreover, China is becoming increasingly dependent on both imports and exports to keep its economy (and its military machine) going. Hostilities between the United States and China would cripple China's industry, and cut off supplies of oil and other key commodities. Sticky power works both ways, though. If China cannot afford war with the United States, the United States will have an increasingly hard time breaking off commercial relations with China. In an era of weapons of mass destruction, this mutual dependence is probably good for both sides. Sticky power did not prevent World War I, but economic interdependence runs deeper now; as a result, the "inevitable" U.S.-Chinese conflict is less likely to occur. Sticky power, then, is important to U.S. hegemony for two reasons: It helps prevent war, and, if war comes, it helps the United States win. But to exercise power in the real world, the pieces must go back together. Sharp, sticky, and soft power work together to sustain U.S. hegemony. Today, even as the United States' sharp and sticky power reach unprecedented levels, the rise of anti-Americanism reflects a crisis in U.S. soft power that challenges fundamental assumptions and relationships in the U.S. system. Resolving the tension so that the different forms of power reinforce one another is one of the principal challenges facing U.S. foreign policy in 2004 and beyond.

#### WE turn warming

Kahin-CCIA-10

http://www.ccianet.org/blog/2010/01/patent-reform-should-be-key-part-of-our-innovation-agenda/

Patent Reform Should Be Key Part Of Our Innovation Agenda

The federal government seldom invests directly in innovation, except where it supports a recognized federal purpose such as defense. State governments (as well as other countries) have been more adventuresome, sometimes putting money into incubators, technology parks, research consortia, investment funds, regional clusters, research institutions, and region-specific technologies. Yet the federal government plays a critical role in setting the right conditions for innovation. It supports a vast amount of scientific research and data collection. The federal government sets the ground rules for intellectual property, environmental protection, corporate reporting, financial markets, trade, consumer protection, and health and safety standards – all of which shape innovation and competition. Innovation is key to long-term economic growth through productivity gains and new wealth creation. Innovation enables the U.S. – and the rest of the world – to prosper and to address monumental challenges such healthcare and climate change. At the same time, the United States faces an increasingly competitive global economy in which other traditional advantages are less distinctive. Fortunately, our country has a unique capacity and culture for innovation. The problem is getting the right mix of policies and programs to optimize opportunities, conditions, and payoffs. Not just in manufacturing, but in services, research, learning, and government itself. Resources are limited and old policies and practices do not automatically apply to the growing diversity of innovation. The ecology of innovation is changing rapidly, and we need to know how programs, policies, and practice interact. The Obama Administration’s Strategy for American Innovation is a big step in the right direction. However, it needs work. It advocates building roads and bridges but ignores the problems of the patent system. While roads and bridges are important to the efficiency of the economy as a whole, the connection to innovation is remote. Whereas the patent system, which dates back to the Constitution, is at the heart of U.S innovation policy, and it needs serious attention.

### 1NR A2: NO PC

#### Their ev concludes Obama can come back

Strassel 3/27/14 (Kim, Wall St Journal, "Strassel: Obama's Inequality Pitch Falls Flat," http://online.wsj.com/news/articles/SB10001424052702304418404579465751297102582?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304418404579465751297102582.html)

If they don't, Democrats can hammer the GOP as villains through November, thereby changing the political subject, and rallying the Democratic base. A version of this, after all, worked for Mr. Obama against Mitt Romney

Obama pushing-has enough juice for patent reform

Hopkins-Crains Business-3/18/14

http://www.crainscleveland.com/article/20140318/BLOGS05/140319786

The bell tolls for patent trolls in 2014

For patent trolls, the end may be near — and good riddance. After years of extorting tribute from America's best and brightest industries, patent trolls can expect 2014 to be the year of living dangerously. A patent troll is an entity created just to make money by claiming intellectual property rights and filing lawsuits. Once upon a time, patent trolls challenged the Googles and Oracles of the world. A new study warned that the life sciences — research institutions and the biopharmaceutical industry especially — could be next. Patent trolls have already demanded billions of dollars from grocers, hotels and retailers without the time or money to litigate. According to press accounts, one patent troll sent 8,000 letters to small businesses demanding compensation because the companies provided Wi-Fi to customers. As New York's Attorney General Eric Schneiderman has stated, “so-called 'patent trolls' exploit loopholes in the patent system and have become a scourge on the business community.” The problem is growing. Litigation has threatened to replace innovation as a way to make money. A Boston University study found that in 2011, 2,150 companies were forced to mount 5,842 defenses in lawsuits filed by patent trolls, up from roughly 1,400 in 2005. Fortunately, the rules of the game may change. Patent trolls face life-threatening challenges on numerous fronts. President Barack Obama has said patent trolls “hijack somebody else's idea and see if they can extort some money out of them.” In his State of the Union, Obama urged Congress to “pass a patent reform bill that allows our businesses to stay focused on innovation, not costly, and needless litigation.” Despite the partisan divide in Washington, the president may get his wish. The House overwhelmingly passed legislation to eliminate abusive patent lawsuits against corporations and small businesses that purchased high-technology. The bill requires companies filing infringement lawsuits to disclose more information and encourages judges to require losing plaintiffs to pay defendants' legal fees. Senate Judiciary Committee chairman Patrick Leahy, D-Vt., introduced a similar bill

Obama approval ratings stable-their evidence exaggerates

Examiner 3/3/14

Obama's approval still higher than Bush's was at this point during his 2nd term

http://www.examiner.com/article/obama-s-approval-still-higher-than-bush-s-was-at-this-point-during-his-2nd-term

Barack Obama is still polling ahead of George W. Bush during his second term in office. President Obama has watched his approval dip lately and the trend line has looked like a nauseating roller coaster ride over the last year. Though the president would prefer his approval to be higher, it's not nearly as bad as the man he followed. President Obama's approval rating is now sitting in the mid 40's. Gallup's poll from February 17-23 found President Obama's approval at just 45 percent and dipped the following week to 42 percent. The right leaning Rasmussen Reports daily Presidential Tracking Poll polled President Obama's approval at 51 percent at the end of February and has fluctuated from 47 percent to 51 percent ever since. While an approval of mid 40s to low 50s isn't exactly ideal, considering the slow recovery from the recession, the overall low approval of Congress and Washington and general distrust of government on the rise, President Obama should actually be somewhat pleased. Things could be worse, and you don't have to look to far to see why. Comparing President Obama's current approval with that of George W. Bush during this time of his presidency is a sight to see. According to Gallup, George W. Bush was polling at only 38 percent at this time during his presidency. That number didn't improve and slowly dropped to the low 30s throughout much of 2007 and the early part of 2008. Following the financial collapse in September of 2008, Bush watched as his approval rating continued to fall, hitting rock bottom in the middle of October with only 25 percent of the American people approving of his job performance. Bush was able to regain some trust but still left office with a 34 percent job approval. President Obama still has some work to do to regain the trust of the majority of the American people, but considering how the last president fared, he seems to be in solid shape.

#### Popularity doesn’t boost support for policies

Paul Light, founder of the Brookings Institution Center for Public Service, 1999 (The President’s Agenda, p27)

Further, Presidents and staffs tend to view party support as critical in the day-to-day conduct of domestic affairs. Public approval can be used to sway congressional votes, but with only limited success. “Everyone has a poll,” one aide noted. “You can find any number of groups which can present a poll to support a given proposal. Depending upon how you word the questions and how you select the sample, you can get a positive result. Congress is fairly suspicious of polls as a bargaining tool, and public approval ratings are too general to be of much good.” Public opinion is important over the term; it affects both midterm losses and the President’s chances for reelection. Yet, public opinion is not easily converted into direct influence in the domestic policy process. Most often it is an indirect factor in the congressional struggle. Presidents cannot afford to ignore public opinion, but in the closed world of Washington politics, the party comes into play virtually every day of the term. Party support thereby becomes the central component of the President’s capital.

### 1NR A2: No Fight

#### Their 1AC Yoo evidence concludes the plan is a loss

Yoo 11 (John – Professor of Law, Berkeley Law School, University of California at Berkeley; Visiting Scholar, American Enterprise Institute, “RATIONAL TREATIES: ARTICLE II, CONGRESSIONAL-EXECUTIVE AGREEMENTS, AND INTERNATIONAL BARGAINING”, 2011, 97 Cornell L. Rev. 1, lexis)

The first is simply the costs of the political effort to secure Senate or congressional approval. A President will expend political capital to build a majority or supermajority to approve the agreement, just as the executive [\*29] will incur costs to convince Congress to pass its domestic legislative program. Presidents may take time and resources away from other priorities, offer legislators favors for their votes, and risk public support to push an international agreement forward

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### Disagreements over authority trigger constitutional showdowns – even if the executive wants the plan – it’s about who decides, not the decision itself

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 75-77)

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute. We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40 Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination. So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics. Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy

**Posner and Vermeule, 8 -** \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, “Constitutional Showdowns” 156 U. Pa. L. Rev. 991, lexis)

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

### 1NR A2: Winners Win

#### Concede the logic of winners win – means that losers lose is true – the plan is a loss because Obama isn’t pushing the plan because he would fight to maintain his authority since the plan is Congressional action

#### This is illogical – if this was true every president would be magic and pass all of their legislation

#### And political capital is key and finite

Schultz 1/22/13 (David Schultz is a professor at Hamline University School of Business, where he teaches classes on privatization and public, private and nonprofit partnerships. He is the editor of the Journal of Public Affairs Education (JPAE) “Obama's dwindling prospects in a second term” http://www.minnpost.com/community-voices/2013/01/obamas-dwindling-prospects-second-term)

Presidential power also is a finite and generally decreasing product. The first hundred days in office – so marked forever by FDR’s first 100 in 1933 – are usually a honeymoon period, during which presidents often get what they want. FDR gets the first New Deal, Ronald Reagan gets Kemp-Roth, George Bush in 2001 gets his tax cuts. Presidents lose political capital, support But, over time, presidents lose political capital. Presidents get distracted by world and domestic events, they lose support in Congress or among the American public, or they turn into lame ducks. This is the problem Obama now faces. Obama had a lot of political capital when sworn in as president in 2009. He won a decisive victory for change with strong approval ratings and had majorities in Congress — with eventually a filibuster margin in the Senate, when Al Franken finally took office in July. Obama used his political capital to secure a stimulus bill and then pass the Affordable Care Act. He eventually got rid of Don’t Ask, Don’t Tell and secured many other victories. But Obama was a lousy salesman, and he lost what little control of Congress that he had in the 2010 elections. Since then, Obama has be stymied in securing his agenda. Moreover, it is really unclear what his agenda for a second term is. Mitt Romney was essentially right on when arguing that Obama had not offered a plan for four more years beyond what we saw in the first term. A replay wouldn't work Whatever successes Obama had in the first term, simply doing a replay in the next four years will not work. First, Obama faces roughly the same hostile Congress going forward that he did for the last two years. Do not expect to see the Republicans making it easy for him. Second, the president’s party generally does badly in the sixth year of his term. This too will be the case in 2014, especially when Democrats have more seats to defend in the Senate than the GOP does. Third, the president faces a crowded and difficult agenda. All the many fiscal cliffs and demands to cut the budget will preoccupy his time and resources, depleting money he would like to spend on new programs. Obama has already signed on to an austerity budget for his next four years – big and bold is not there. Fourth, the Newtown massacre and Obama’s call for gun reform places him in conflict with the NRA. This is a major battle competing with the budget, immigration, Iran and anything else the president will want to do. Finally, the president is already a lame duck and will become more so as his second term progress. Presidential influence is waning One could go on, but the point should be clear: Obama has diminishing time, resources, support and opportunity to accomplish anything. His political capital and presidential influence is waning, challenging him to adopt a minimalist agenda for the future. What should Obama do? Among the weaknesses of his first term were inattention to filling federal judicial vacancies. Judges will survive beyond him and this should be a priority for a second term, as well as preparing for Supreme Court vacancies. He needs also to think about broader structural reform issues that will outlive his presidency, those especially that he can do with an executive order. Overall, Obama has some small opportunities to do things in the next four years – but the window is small and will rapidly close.

## XO

### 2NC Overview

#### Presidential commitments credible

Marvin Kalb 13, Nonresident Senior Fellow at Foreign Policy, James Clark Welling Presidential Fellow, The George Washington University Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University, 2013, "The Road to War," book,pg. 7-8, www.brookings.edu/~/media/press/books/2013/theroadtowar/theroadtowar\_samplechapter.pdf

As we learned in Vietnam and in the broader Middle East, a presidential commitment could lead to war, based on miscalculation, misjudgment, or mistrust. It could also lead to reconciliation. We live in a world of uncertainty, where even the word of a president is now questioned in wider circles of critical commentary. On domestic policy, Washington often resembles a political circus detached from reason and responsibility. But on foreign policy, when an international crisis erupts and some degree of global leadership is required, the word or commitment of an American president still represents the gold standard, even if the gold does not glitter as once it did.

### 1NR A2: Perm

#### IT still links to the DA

Moe and Howell, Fellow for the Hoover Institution and Harvard Professor, 99

Terry M. Moe and William G. Howell, senior fellow for the Hoover Institution and Associate Professor for the Government Department at Harvard University, “Unilateral Action and Presidential Power: A theory”, LexisNexus.com 12-99

If the president had the power to act unilaterally in this same situation, as depicted in Figure 1B, things would turn out much more favorably. He would not have to accept Congress's shift in policy from [SQ.sub.2] to [SQ.sub.2\*] and could take action on his own to move the status quo from [SQ.sub.2\*] to V--using his veto to prevent any movement away from this point. V would be the equilibrium outcome (as it was in the earlier case of unilateral action). And although the president would still lose some ground as policy moves from the original [SQ.sub.2] to V, unilateral action allows him to keep policy much closer to his ideal point--and farther from Congress's ideal point--than would otherwise have been the case. He clearly has more power over outcomes when he can act unilaterally.

### 1NR A2: No Enforcement

#### ---Political barriers check – new, stronger constituencies

Branum-Associate Fulbright and Jaworski- 2

Tara L, Associate, Fulbright & Jaworski L.L.P, “President or King? The Use and Abuse of Executive Orders in Modern Day America” Journal of Legislation 28 J. Legis. 1

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) Many were controversial and the need for the policies he instituted was debatable. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

### 1NR A2: Perm Do CP

#### A. It severs congressional action

Kershner-JD Candidate, Cardoza-10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

n17 The phrase "statutory restrictions" is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws (search for "Appointments Clause"). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase "hyper-partisan atmosphere" has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking\_news/2010/01/scores\_wait\_for.html (reporting on then Senator-Elect Scott Brown explaining that "he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election" ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at http://www.ocregister.com/opinion/bayh-234673-sen-one.html (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as "using the occasion to decry the hyperpartisan atmosphere in Washington"). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the "advice and consent" of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 ("President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats."). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The phrase "political party restrictions" is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

### 1NR A2: Links to Politics

#### Only Congressional moves to reclaim war power authority triggers the DA

**Howell, Chicago American politics professor, 9-3-13**

(William, “All Syria Policy Is Local”, [www.foreignpolicy.com/articles/2013/09/03/all\_syria\_policy\_is\_local\_obama\_congress?page=full](http://www.foreignpolicy.com/articles/2013/09/03/all_syria_policy_is_local_obama_congress?page=full), ldg)

From a political standpoint, seeking congressional approval for a limited military strike against the Syrian regime, as President Barack Obama on Saturday announced he would do, made lots of sense. And let's be clear, this call has everything to do with political considerations, and close to nothing to do with a newfound commitment to constitutional fidelity. The first reason is eminently local. Obama has proved perfectly willing to exercise military force without an express authorization, as he did in Libya -just as he has expanded and drawn down military forces in Afghanistan, withdrawn from Iraq, significantly expanded the use of drone strikes, and waged a largely clandestine war on terrorism with little congressional involvement. The totality of Obama's record, which future presidents may selectively cite as precedent, hardly aligns with a plain reading of the war powers described in the first two articles of the constitution. Obama isn't new in this regard. Not since World War II has Congress declared a formal war. And since at least the Korean War, which President Harry Truman conveniently called a "police action," commanders-in-chief have waged all sorts of wars -small and large -without Congress's prior approval. Contemporary debates about Congress's constitutional obligations on matters involving war have lost a good deal of their luster. Constitutional law professors continue to rail against the gross imbalances of power that characterize our politics, and members of whichever party happens to be in opposition can be counted on to decry the abuses of war powers propagated by the president. But these criticisms -no matter their interpretative validity -rarely gain serious political traction. Too often they appear as arguments of convenience, duly cited in the lead-up to war, but serving primarily as footnotes rather than banner headlines in the larger case against military action. Obama's recent decision to seek congressional approval is not going to upend a half-century of practice that has shifted the grounds of military decision-making decisively in the president's favor, any more than it is going to imbue the ample war powers outlined in Article I with newfound relevance and meaning. For that to happen, Congress itself must claim for itself its constitutional powers regarding war. Obama did not seek Congress's approval because on that Friday stroll on the White House lawn he suddenly remembered his Con Law teaching notes from his University of Chicago days. He did so for political reasons. Or more exactly, he did so to force members of Congress to go on the record today in order to mute their criticisms tomorrow. And let's be clear, Congress -for all its dysfunction and gridlock -still has the capacity to kick up a good dust storm over the human and financial costs of military operations. Constitutional musings from Capitol Hill -of the sort a handful of Democrats and Republicans engaged in this past week -rarely back the president into a political corner. The mere prospect of members of Congress casting a bright light on the human tolls of war, however, will catch any president's attention. Through hearings, public speeches, investigations, and floor debates, members of Congress can fix the media's attention -and with it, the public's -on the costs of war, which can have political repercussions both at home and abroad. Think, then, about the stated reasons for some kind of military action in Syria. No one is under the illusion that a short, targeted strike is going to overturn the Assad regime and promptly restore some semblance of peace in the region. In the short term, the strike might actually exacerbate and prolong the conflict, making the eventual outcome even more uncertain. And even the best-planned, most-considered military action won't go exactly according to plan. Mishaps can occur, innocent lives may be lost, terrorists may be emboldened, and anti-American protests in the region will likely flare even hotter than they currently are. The core argument for a military strike, however, centers on the importance of strengthening international norms and laws on chemical and biological weapons, with the hope of deterring their future deployment. The Assad regime must be punished for having used chemical weapons, the argument goes, lest the next autocrat in power considering a similar course of action think he can do so with impunity. But herein lies the quandary. The most significant reasons for military action are abstract, largely hidden, and temporally distant. The potential downsides, though, are tangible, visible, and immediate. And in a domestic political world driven by visual imagery and the shortest of time horizons, it is reckless to pursue this sort of military action without some kind of political cover. Were Obama to proceed without congressional authorization, he would invite House Republicans to make all sorts of hay about his misguided, reckless foreign policy. But by putting the issue before Congress, these same Republicans either must explain why the use of chemical weapons against one's people does not warrant some kind of military intervention; or they must concede that some form of exacting punishment is needed. Both options present many of the same risks for members of Congress as they do for the president. But crucially, if they come around to supporting some form of military action -and they just might -members of Congress will have an awfully difficult time criticizing the president for the fallout. Will the decision on Saturday hamstring the president in the final few years of his term? I doubt it. Having gone to Congress on this crisis, must he do so on every future one? No. Consistency is hardly the hallmark of modern presidents in any policy domain, and certainly not military affairs. Sometimes presidents seek Congress's approval for military action, other times they request support for a military action that is already up and running, and occasionally they reject the need for any congressional consent at all. And for good or ill, it is virtually impossible to discern any clear principle that justifies their choices. The particulars of every specific crisis -its urgency, perceived threat to national interests, connection to related foreign policy developments, and what not -can be expected to furnish the president with ample justification for pursuing whichever route he would like. Like jurists who find in the facts of a particular dispute all the reasons they need for ignoring inconvenient prior case law, presidents can characterize contemporary military challenges in ways that render past ones largely irrelevant. Partisans and political commentators will point out the inconsistencies, but their objections are likely to be drowned out in rush to war. Obama's decision does not usher in a new era of presidential power, nor does it permanently remake the way we as a nation go to war. It reflects a temporary political calculation -and in my view, the right one -of a president in a particularly tough spot. Faced with a larger war he doesn't want, an immediate crisis with few good options, and yet a moral responsibility to act, he is justifiably expanding the circle of decision-makers. But don't count on it to remain open for especially long.