## 1nc

### 1NC

#### 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. Vote negative, they explode limits and make the topic bidirectional because the plan can tinker with the worst aspect of a topic area and say that makes everything else legitimate

### 1NC

#### T ARMED FORCES

#### Interpretation – US Armed Forces are limited to uniformed personnel – military is distinct because it includes civilian employees

**Opinion of the Eastern District Court of PA 2002**

(NO. 01-6241, http://www.paed.uscourts.gov/documents/opinions/02d0669p.pdf)

Those courts recognize that the term "military departments" used in 42 U.S.C. § 2000e-16(a) is not interchangeable with the term "armed forces." As defined by Congress in 5 U.S.C. § 102, the term "military departments" includes the Department of the Army, the Department of the Navy, and the Department of the Air Force. Id. § 102. By contrast, the term "armed forces," as defined by Congress in 10 U.S.C. § 101(a)(7), includes "the Army, Navy, Air Force, Marine Corps, and Coast Guard." Id. § 101(a)(7). The courts have thus construed the term "military departments" to only include civilian employees of the Army, Navy, or Air Force, while construing the term "armed forces" as only referring to uniformed military personnel. In Gonzalez, relying on the legislative history of the statute, the court explained that "[t]he two differing definitions show that Congress intended a distinction between `military departments' and `armed forces,' the former consisting of civilian employees, the latter of uniformed military personnel." 718 F.2d at 928 (citation omitted).

#### Vote Negative

#### 1. Limits and Ground-plan allows weapons and personnel of the week AFFs AND as they move away from armed forces the relationship to war powers is watered down compromising core neg ground

#### 2. Precision – minor legal distinctions are key – attention to detail is necessary in the context of legal debates

**Grant, Regent law professor, 2007**

(Larry, “Deconstructing Thinking Like a Lawyer: Analyzing the Cognitive Components of the Analytical Mind," 29 Campbell L. Rev. 413, lexis)

Implicit in much of the above discussion is another cognitive skill lawyers develop: attention to detail. Lawyers, in general, are very detail oriented. n290 Scholars have recognized this attention to detail by [\*471] contending that any good legal argument is characterized by "precision." n291 Legal rules and principles consistently make fine distinctions; the use of one word over another or the placement of a particular punctuation mark may dramatically change the legal import of a text. n292 Legal thinkers thus must recognize those distinctions both to understand the law and to know how to apply it to a particular factual scenario. n293 Several students in the Regent survey stressed the importance of precision and detail orientation in legal thinking. n294 At the same time, however, legal thinking involves being able to discern which distinctions are important and which ones are not. n295 Knowing the import of distinctions is related to the skill noted above regarding determining relevance. n296

### 1NC

#### Deal coming now-missteps lead to Congressional sanctions that tank negotiations

**Slavin, Atlantic Council senior fellow, 11-12-13**

(Barbara, “Despite Hitch, Iran Nuclear Deal in Sight”, <http://www.cfr.org/iran/despite-hitch-iran-nuclear-deal-sight/p31838>, ldg)

The prospects for an interim agreement between Tehran and world powers to limit Iran's nuclear enrichment program are "better than fifty-fifty" when diplomacy resumes in Geneva next week, says Barbara Slavin, an Iran expert for the Atlantic Council. Iranian president Hassan Rouhani faces growing political pressure at home to move negotiations forward, she explains. "He's about to cross the hundred-day line, and he was supposed to get an agreement with the West to lift some of the sanctions, and he hasn't achieved that yet." Meanwhile, she says that a separate deal Iran struck with the International Atomic Energy Agency this week, which allows the nuclear watchdog access to certain nuclear facilities, was a "very important step." We've had a long weekend of nuclear diplomacy between Iran and the so-called P5+1 group [the United States, Britain, France, Russia, China, and Germany], which failed to reach an interim agreement. How close are we to an accord? My impression is that we are close. Several individuals involved in the talks that I've spoken to over the weekend said that they are optimistic, that we're not far from an agreement, that there are still a couple of important questions that need to be settled, but that they're still expecting, as Secretary of State John Kerry has said, that this is a "doable deal" when talks resume November 20. Do we know what held up the signing of an agreement this weekend? It appears that the French were adamant on a couple of points—they wanted a specific commitment by the Iranians not to complete a heavy-water reactor at Arak that poses proliferation concerns; meanwhile, the Iranians wanted an explicit acknowledgement in the document of their "right" to enrich uranium. That was something that apparently the P5+1 would not accept at this stage. So there needed to be a return to capitals to figure out how to get over these obstacles. And separately, Iran struck an agreement on Monday (November 11) with the International Atomic Energy Agency (IAEA). What is the significance there? This is an overall joint statement on a framework for cooperation. It's the first such agreement in six years. It's quite detailed and says that the Iranians will give the IAEA early notification of any new nuclear facilities it is going to undertake. This is something that Iran is not obliged to do under the Nuclear Nonproliferation Treaty, but it is something that has been eagerly sought by the IAEA for some time—so it's a very important step. If you look at the annex to the agreement, you see that there is access that will be given to a uranium mine [Gchine mine in Bandar Abbas]. Information will be provided on all new research reactors, as well as information on sixteen sites designated for the construction of nuclear power plants. But in terms of the Arak facility, the Iranians have promised access to the heavy water production plant, but not the actual reactor under construction. So this may be a point of friction. Also, there's no mention of a site called Parchin, where the Iranians are alleged to have done some nuclear weapons research. The Iranians have essentially turned the site into a parking lot, so what, if anything, the IAEA would be able to discover if it actually went there is in question. Nevertheless it has been something that [IAEA Director-General] Yukiya Amano has called for in the past. One other point: I saw Amano when he was in Washington about ten days ago, and I've never seen him so upbeat about cooperation with Iran. He said that after going around in circles for years with Iranians when Mahmoud Ahmadinejad was president, the Iranians really were seeking to make significant progress. So I think this is an important agreement. It doesn't give away the whole store, but it has some important provisions that the IAEA has been looking for. Going back to the Geneva talks over the weekend, what are your thoughts? I thought they were incredibly interesting because you had the foreign ministers of the six countries, except China—which had its deputy foreign minister there—and they were all really involved. For instance, Secretary Kerry was in a meeting for five hours with the Iranian foreign minister Javad Zarif and Catherine Ashton, the European Union high representative. That's one of the most positive developments we've seen, because it's become routine for the United States and Iran to talk to each other at a high diplomatic level. It shows exactly how serious these talks are, and how close they appear to have become. It's highly ironic that the French now are being seen as an obstacle in some way to an agreement. I remember very clearly when I was researching my book, Bitter Friends, Bosom Enemies, talking to French diplomats who complained bitterly about U.S. obstruction during the George W. Bush administration. The good news is that the United States and Iran are talking together routinely, and surely they have reached some understandings. The question is: can they put it into language that everybody can accept? What is driving the French on this? Why did they come out so strongly on this one? They generally take a hard line on the Iranian nuclear program. When it was the so-called "EU3," they were tougher than the British and the Germans. They have remained tough under [former president Nicolas] Sarkozy and under [President] Francois Hollande—it's the same bureaucrats who are advising Hollande as advised Sarkozy. So the French are generally tough on this, but there are other things. Hollande is going to Israel this week—maybe he's trying score some points there. The French have important arms deals with the Saudis. The French are also angry at [the United States] because we didn't bomb Syria after they went out on a limb saying they would be willing to join us, even after the British parliament refused to give approval for strikes. And the French like to be French—they like to tack left when the world goes right, and tack right when the world goes left. So when the negotiations resume November 20 in Geneva, what do you think the odds are for an interim accord? Better than fifty-fifty. I think there is a real, compelling need on the Iranian side to have an agreement. I was in Iran in August when [President] Hassan Rouhani was inaugurated, and the audience he really has to satisfy is back home. There is tremendous skepticism about his presidency. He's about to cross the hundred-day line, and he was supposed to get an agreement with the West to lift some of the sanctions, and he hasn't achieved that yet. So, the Iranians desperately need sanctions lifted. How much relief from sanctions would they get in this first round? My understanding is they get what was on the table earlier this year, namely a lifting of sanctions on petrochemical exports, trade, and precious metals. And they get access to their oil revenues, which have been frozen in bank accounts in China, Japan, South Korea, Turkey, and India—the countries that are still importing Iranian oil. And that's very important because currently they're basically stuck buying local products with the money in those accounts. The Iranians want to be able to have normal trade and purchase things like medicine from the United States and Western Europe. Do you think the failure to reach agreement in Geneva over the weekend is going to give some hard-line U.S. senators an opportunity to raise the issue of more sanctions? This is a big concern. We have two weeks now. Congress will be back in session before the Thanksgiving recess. This is supposed to be it, I think, for the Senate, and they have to pass a National Defense Authorization Bill. And there will be efforts to tack on a new Iran sanctions bill; this was done in 2011. This would be very damaging to the process right now. The sanctions currently in place are already having an enormous impact on Iran; that's one of the reasons the Iranians are at the table now. To put more sanctions on would just convince Iran's Supreme Leader that there is no point in negotiating because the United States is after regime change. It's a way for some in Congress to score points with an election year coming up, but it would be very harmful [to the negotiations].

#### Political capital is key to prevent more sanctions

**Pillar, Georgetown security studies professor, 10-18-13**

(Paul, “Sabotaging Iran Nuclear Talks”, <http://www.opednews.com/articles/Sabotaging-Iran-Nuclear-Ta-by-Consortium-News-Iran_Iran-Versus-Israel_Nuclear-Powers_Obama-131018-347.html>, ldg)

But if you are interested in avoiding an Iranian nuclear weapon -- the focus of negotiations this week in Geneva -- at least the way the crisis of governance in Washington ended provides a silver lining to this sorry chapter in American political history. This is because if President Obama is going to reach an agreement to keep the Iranian nuclear program peaceful and to make that agreement stick, he needs to demonstrate the ability and willingness to rein in destructive behavior in Congress that would preclude such an agreement. But it would not be sufficient, and would not be a fair trade, for the concessions and restrictions we want from Iran in a comprehensive and lasting agreement. Nor would it be sufficient for the President, as has been suggested, merely to be lax in the enforcement of legislatively impose sanctions. Besides showing disrespect for the law, this would hardly reassure the Iranians that an agreement would stick. They would understandably fear that what one U.S. president might decline to enforce the next one would. The administration will need congressional cooperation to undo sanctions that were erected supposedly to induce the Iranians to accept just such an agreement. The President can accomplish some rollback of sanctions on his own authority, and that might be sufficient for some sort of partial, interim, confidence-building deal. Even before getting to the point of striking a deal, congressional action can scuttle the prospects for one or at least make it far harder to reach an agreement. The imposition of still more sanctions, and the rattling of more sabers through legislation that refers to military force, are the sorts of congressional actions that would be a slap in the face of a new Iranian administration that has just placed a constructive proposal on the negotiating table, would feed already understandable Iranian suspicions that the United States is interested only in regime change and not in an agreement, and thereby would weaken the Iranian incentive to make still more concessions. Unfortunately legislation for more sanctions and more saber-rattling has already been introduced in Congress. Pushing back against the promoters of such legislation involves some of the same perpetrators who had to be pushed back to avoid default and to end the shutdown. All of the co-sponsors of a bill from Rep. Trent Franks, R-Arizona, that is a thinly disguised authorization for launching a war against Iran were among those who this week voted against the resolution that ended the funding and debt crisis. Mr. Obama's demonstration of backbone this month will help on the Iran issue, but there still are other reasons to question whether the administration will similarly show sufficient fortitude on behalf of an agreement to keep the Iranian nuclear program peaceful. For one thing, the President does not have the unanimous support of his own party, as he did in the standoff that just ended. A significant number of Democrats, not just Republicans, have come under the sway of those determined to prevent an agreement. Also, even those who consider the Iranian issue important have to admit that avoidance of default (and keeping the U.S. government running) is about as serious a matter as the President is likely to face, and he cannot be expected to give as much priority to every issue as he did to that one. Besides political capital, it also takes time and attention to tend directly to a foreign policy initiative, and to keep beating back unhelpful behavior in Congress that threatens to undermine the initiative. The attempt of congressional miscreants to play chicken has taken a toll here, too. The President skipped a couple of East Asian summit meetings to deal with that problem in Washington. Secretary of State Kerry subbed for him, which meant Kerry had that much less time and attention to devote to other matters that are his responsibility, such as the Israeli-Palestinian talks (remember those?) and the Iranian nuclear negotiations. That senior policymakers have only so much energy and so many hours in a day is an understandable drag on many things we expect them to do. But Obama and Kerry have to muster the time and attention for what is happening on these other issues and particularly Iran, not only at negotiating tables in the Middle East or Geneva but also on Capitol Hill.

#### Congressional debate over the plan distracts Obama from his agenda

Kriner, 10

(Douglas, Assistant professor of poly sci at Boston University, “After the

Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec

1, 2010)

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.

#### Negotiations failure triggers military strikes and regional proliferation-causes escalatory wars and collapses the economy.

**Cordesman, CSIS, 2013**

(Anthony, “Negotiating with Iran: The Strategic Case for Pragmatism and Real Progress”, 9-23, <http://csis.org/publication/negotiating-iran-strategic-case-pragmatism-and-real-progress>, ldg)

Nevertheless, it makes no sense at all to reject Hassan Rouhani’s opening or condemn the Obama Administration’s response. Iran’s nuclear programs have moved to the point where it is extremely doubtful that there will be another chance to begin what may be a long and difficult process for all nations involved, and an attempt at resolution is far better than any of the real world alternatives. As long as any negotiations that follow are realistic in terms of their content, and do not endorse indefinite delay in a U.S. response while Iran’s nuclear programs move forward, they offer what will be the last real hope of avoiding preventive strikes or a process of containment that would lock the region into an Iranian-Israeli nuclear arms race, a probable Saudi effort to acquire its own nuclear weapons, and a U.S. commitment to extended deterrence. The Uncertain Outcome of Preventive Strikes The United States, Iran, and all the other nations involved need to be far more pragmatic about what will happen if time does run out and Iran does go nuclear. Iran may well face a series of preventive strikes – triggered by Israel or planned by the United States – that will destroy far more than its nuclear facilities. This may or may not actually halt the Iranian nuclear effort. A limited set of Israeli preventive strikes could either force the United States to follow up, or create a situation in which Iran rejects all arms control and UN inspection and carries out a massive new disperse nuclear program or a crash basis. It could also drive Iran to lash out into a new wave of confrontation with the United States and Iran’s neighbors. A U.S.-led set of preventive strikes would be more successful, but the United States could only be sure of suppressing a meaningful Iran nuclear effort if it quickly re-strikes any known target it fails to destroy the first time, carries out constant surveillance of Iran, and repeatedly and thoroughly strikes at the targets created by any new Iranian initiatives. The United States would need regional support to do this and probably prolonged regional agreement to U.S. basing. At a minimum, the result would be years more of a regional arms race, military tension, and Iranian efforts to find ways to attack or pressure the Arab states, Israel, and United States. As the current conflict in Syria makes all too clear, no one can predict how much support the United States will really get from any of its allies, its own U.S. Congress, and no one can predict the limits to Iran’s reactions, ability to use third parties, and willingness to confront the United States and the region with new nuclear, missile, and asymmetric threats. The United States would face an almost certain challenge in the UN from Russia and China, and there is no way any U.S. action against Iran could be separated from Iran’s efforts in Iraq, Syria, or Lebanon; Afghanistan, or any other issue where Iran could try to find some form of revenge. This is not an argument for not acting. The risk of a fully nuclear Iran is simply too great. It is a very strong argument for finding a good alternative if one can be negotiated on realistic terms. The Uncertain Outcome of Iran Nuclear Weapons and Containment: The Most Likely Outcome is a No Win Escalation Ladder Contest If there are no preventive strikes – or preventive strikes fail to halt Iran – what is now a largely quiet one-sided nuclear arms race would become far more threatening. At one level, this arms race would become one between Iran and any allies it could find and the United States and its Arab allies in or near the Gulf. A nuclear Iran could change the balance in terms of the credibility of U.S. and Arab willingness to engage against Iranian threats, intimidation, and use of its asymmetric forces. It would inevitably make Gulf petroleum exports the scene of an ongoing arms race and constant tension, and risk a clash that might escalate in untended ways. What is less apparent – and needs far more realistic attention in Iran and outside assessments of the Iranian nuclear threat – is the impact of Iran actually going nuclear. One or several crude nuclear devices do not create a nuclear force. Iran cannot produce enough capable nuclear forces for at least the next decade to pose more of an existential threat to Israel than Israel can pose to Iran. Israel would scarcely be passive, however, and Israel already has far more capable missiles than Iran. Israel also has thermonuclear weapons, rather than the early fission devices Iran will probably be limited to for at least the next half-decade. As a result Israel will pose more of an existentialist threat to an Iran as dependent on the survival of Tehran than Iran can pose to an Israel dependent on the survival of Tel Aviv. As the United States and former Soviet Union both learned during the Cold War, even Iranian parity or superiority would be meaningless. The problem with mutually assured destruction is that no state can ever win an existential strike contest. As for the rest of the Middle East, if Iran shows it is going nuclear to enhance its power and dominate the Gulf region – as may be Iran’s real motive – the resulting threat to world oil exports and the world economy is not likely to intimidate to any degree that will benefit Iran. It will push both the United States and Arab states into responding. The fact Iran succeeded in acquiring nuclear weapons might increase the level of deterrence of a direct invasion, but would not lead the United States, or surrounding Arab states to passively accept the result. The United States already is transferring more than ten times the value of Iran’s total arms imports to its Gulf allies. Its ties to Kuwait, Bahrain, Qatar, Saudi Arabia, the UAE, and Oman already give the United States and its Gulf allies the ability to devastatingly defeat Iran in any direct military confrontation. Iran can only vastly increase the scale of the resulting destruction that the United States and its allies inflict if Iran ever actually escalates to the use of nuclear weapons. But the United States, the Arab allies, Israel, and other regional states will suffer as well – along with the global economy – if the end result is a major interruption in the flow of Gulf petroleum exports.

### 1NC

#### XO COUNTERPLAN

#### The Executive branch of the United States should issue an executive order mandating the following:

#### -preclude the President from initiating warfare without prior authorization from Congress, unless acting to repel armed attacks against the United States.

#### -All new authorizations of such use of force should state clearly whether they contemplate an open-ended conflict or limited war.

#### -Require the President to seek reauthorization for use of such military force that exceeds two years and withdrawal from hostilities within one year absent congressional reauthorization -an accompanying Fact Sheet explaining the administration’s rationale includes abiding by international law and the law of armed conflict

#### -make enforcement of the order subject to judicial review.

#### -Require the development of prompt global strike capabilities adhere to congressional oversight

#### Executive orders avoid politics, have the force of law, and are rarely overturned

Cooper-prof public administration Portland State- 2 [Phillip, By Order of the President: The Use and Abuse of Executive Direct Action” p.59

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though itis certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors.¶ The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time consuming legislative process. They may also use this device to avoid some times equally time-consuming administrative procedures, particularly the rulemaking processes required by the Administrative Procedure Act.84 Because those procedural requirements do not apply to the president, it is tempting for executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to move through the process. Moreover, there is the added plus from the agency's perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president's order than it is to move an agency rule to judicial review. There is nothing new about the practice of generating executive orders outside the White House. President Kennedy's executive order on that process specifically pro­vides for orders generated elsewhere

### 1NC

#### RULES OF LIMITED WAR COUNTERPLAN

#### Text: The United States Congress should use Rules of Limited War that prohibit appropriations for the offensive use of military force, unless to repel attacks on the United States, lasting more than two years absent explicit congressional reauthorization providing no more than one year of additional appropriations after the initial two year time limit has expired.

#### It competes-it excludes the first part of the plan that requires upfront congressional authorization

#### The CP solves the case and avoids upfront restrictions on the initiation of force

Ackerman and Hathaway-1AC-11(Bruce, Sterling Professor of Law and Political Science at Yale Law School, Oona, Gerard C. and Bernice Latrobe Smith Professor of International Law, "Limited War and the Constitution: Iraq and the Crisis of Presidential Legality," January 1)

IV. New Rules for Limited War

A distinctive pattern emerges from the modern experience. The constitutional legitimacy of funding cut-offs was ringingly reaffirmed in the aftermath of Iran-Contra. But the real-world deployment of the power of the purse has been a different matter. Congress has not been entirely passive.\*" As Pan III showed, it has repeatedly used the purse to discipline presidential unilateralism. But the deployment of this weapon has grown more erratic and unpredictable—largely because the appropriations process is increasingly stacked in the president's favor. This dynamic has only accelerated with the normalization of "emergency" appropriations over the past decade. If Congress is to reclaim its authority over limited war, it must transform the erratic use of funding cut-offs into a predictable system that will deter future presidents from repeating the bait-and-switch techniques perfected during the Iraq war. This is the aim of our proposed "Rules for Limited War." They allow the House and Senate to make a credible commitment to cut off funds for wars that exceed congressional limits—and thereby deter the president from unilateral acts of escalation. Even better, the rules will typically have this deterrent effect without the need for Congress to pull the cut-off switch—saving the nation from the melodrama precipitated by the actual termination of funds. The new rules will work proactively through a three-stage process. The rules first require all new authorizations for the use of force to state clearly whether they contemplate an open-ended conflict or a limited war. In the absence of a clear statement, the rules will create a presumption for limited war. They will presume a two-year sunset unless the House or Senate specifies a different lime period. Second, the rules permit the House or Senate to reauthorize the war for another period before the expiration date arrives. If the two houses fail to take affirmative action, the third and final stage kicks into operation: the rules prohibit all further appropriations for the conflict once the time limit has elapsed, with the exception of a one-year appropriation of funds for the orderly withdrawal of troops and other forces from the battle zone. During this withdrawal period, the president remains free to try to convince Congress and the public that u more extended war is in the national interest. But there is only one way for him to press onward: he must gain the explicit consent of both houses to another military authorization, which once again will be governed by a two-year sunset unless Congress provides otherwise. In the meantime, withdrawal must proceed in a responsible fashion. Congress has ample authority to take these steps. The Constitution gives each house the power to "determine the Rules of its Proceedings. Because the Constitution grants the House and Senate the sole authority to make their rules, each chamber can act without the threat of a presidential veto. And because the two chambers each determine their rules independently, either the Senate or the House can take the lead. If one chamber reasserts its constitutional power, the question of limited war will be placed on the table—though there are added deterrence effects when both join to- gether. Our proposal thus represents the most politically feasible way for Congress to reassert effective power. Passing the new rules will not be easy, lt will require a sober determination by members of the House or Senate to learn the lessons of the recent past and assure themselves, and the American people, that they will prevent future presidents from transforming limited conflicts into unlimited wars. But at the very least, our proposal makes it clear that it is up to the House and Senate, and nobody else, to reassert their centrality in an age of limited wars. In this case at least, Harry Truman was wrong: the buck does not stop in the Oval Office. It slops with the House and Senate.’

### 1NC

#### PMC DA

#### Private military contractor use is decreasing

**Schwartz, CRS defense acquisition specialist, 2010**

(Moshe, “The Department of Defense’s Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress”, 6-22, <http://fpc.state.gov/documents/organization/145576.pdf>, ldg)

According to DOD, from September 2007 to June 2009, the number of armed security contractors increased from 5,481 to a high of 13,232, an increase of 140%. However, from June 2009 to March 2010 the number of armed security contractors has decreased by 2,203, or 17% (see Figure 1 ). 24 DOD officials anticipate that the number of armed contractors in Iraq will continue to decrease, much as the overall number of contractors and troops in Iraq has also decreased.

#### Restricting armed forces results in a shift towards PMC use – circumvents regulation

**Michaels, Second Circuit law clerk, 2004**

(Jon, “Article: Beyond Accountability: The Constitutional, Democratic, And Strategic Problems With Privatizing War”, 82 Wash. U. L. Q. 1001, lexis, ldg)

[\*1008] Military privatization of combat duties, on the other hand, decidedly does. It has the potential to introduce a range of novel constitutional, democratic, and strategic harms that have few, if any, analogues in the context of domestic, commercial outsourcing. Military privatization can be, and perhaps already has been, used by government policymakers under Presidents Bill Clinton and George W. Bush to operate in the shadows of public attention, domestic and international laws, and even to circumvent congressional oversight. For a variety of political and legal reasons, the Executive may at times be constrained in deploying U.S. soldiers. The public's aversion to a military draft, the international community's disdain for American unilateralism, and Congress's reluctance to endorse an administration's hawkish foreign goals may each serve to inhibit, if not totally restrict, the president's ability to use U.S. troops in a given zone of conflict. In such scenarios, resorting to private contractors, dispatched to serve American interests without carrying the apparent symbolic or legal imprimatur of the United States, may be quite tempting. In those instances, it would not necessarily be the cheaper price tag or specialized expertise that makes private contractors desirable. Rather, it might be the status of the actors (as private, non-governmental agents) vis-a-vis public opinion, congressional scrutiny, and international law that entices policymakers to turn to contracting. Indeed, "tactical privatization," as I call it, is motivated at least in part by a desire to alter substantive policy: Private agents would be used to achieve public policy ends that would not otherwise be attainable, were the government confined to relying exclusively on members of the U.S. Armed Forces. Tactical privatization thus stands in contradistinction to what is widely understood to be the conventional privatization agenda, driven by economic goals, that strives for verisimilitude in replicating government responsibilities (only more efficiently). n19 To elude public debate, circumvent Congress's coordinate role in conducting military affairs, and evade Security Council dictates may help an administration achieve short-term, realpolitik ends; but in the process, the structural damage to the vibrancy and authenticity of public deliberation, to the integrity of America's constitutional architecture of separation of powers, and to the legitimacy of collective security may prove irreparable.

#### PMC reliance destroys readiness and results in Balkans conflict and WMD terrorism

**Singer, Brookings Institution 21st Century Defense Initiative director, 2002**

(P.W., “Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security”, International Security, 26.3, lexis, ldg)

INCOMPLETE INFORMATION AND MONI TORING DIFFICULTIES. Problems of incomplete information and monitoring generally accompany outsourcing. Yet these are intensified in the military realm because few clients have experience in contracting with security agents. In most cases, there is ei ther little oversight or a lack of clearly defined requirements, or both. Add in the fog of war, and proper mon itoring becomes extremely difficult. Moreover, PMFs are usually autonomous and thus require extraterritorial monitoring. And at times, the actual consumer may not be the contracting party: Some states, for example, pay PMFs to supply personnel on their behalf to international organizations. Another difficulty is the firms' focus on the bottom line: PMFs may be tempted to cut corners to increase their profits. No matter how powerful the client, this risk cannot be 23 completely eliminated. During the Balkans conflict, for example, Brown & Root is alleged to have failed to deliver or severely overcharged the U.S. Army on four out of seven of its contractual obligations. 43 A further manifestation of this monitoring difficulty is the danger that PMFs may not perform their missions to the fullest. PMFs have incentives not only to prolong their contracts but also to avoid taking undue risks that might endanger their own corporate assets. The result may be a protracted conflict, which perhaps could have been avoided if the client had built up its own military forces or more closely monitored its private agent. This was certainly true of mercenaries in the Biafra conflict in the 1970s, and many suspect that this was also the case with PMFs in the Ethiopia-Eritrea conflict in 1997ñ99. In the latter instance, the Ethiopians essentially leased a small but complete air force from the Russian aeronautics firm Sukhoió including a wing of Su-27 jet fighter planes, pilots, and ground staff. Some contend, though, that this private Russian force failed to prosecute the war fullyófor example, by rarely engaging Eritreaís air force, which itself was rumored to have hired Russian and Ukrainian pilots. 44 A CRITICAL LOSS OF CONTROL. As PMFs become increasingly popular, so too does the danger of their clients becoming overly dependent on their services. Reliance on a private firm means that an integral part of one’s strategic success is vulnerable to changes in market costs and incentives. This can result in two potential risks to the security of the client: (1) the agent (the firm) might leave its principal (the client) in the lurch, or (2) the agent might gain dominance over the principal. A PMF may have no compunction about suspending a contract if a situation becomes too risky, in either financial or physical terms. Because they are typically based elsewhere, and in the absence of applicable international laws to enforce compliance, PMFs face no real risk of 24 punishment if they or their employees defect from their contractual obligations. Industry advocates dismiss these claims by noting that firms failing to fulfill the terms of their contracts would sully their reputation, thus hurting their chances of obtaining future contracts. Nevertheless, there are a number of situations in which shorter-term c onsiderations could prevail over long-term market punishment. In game-theoretic terms, each interaction with a private actor is sui generis. Exchanges in the international security market take the form of one-shot games, rather than guaranteed repeated plays. 45 Sierra Leone faced such a situation in 1994, when the type 1 firm that it had hired (the Gurkha Security Guards, made up primarily of Nepalese soldie rs) lost its commander in a rebel ambush. Reports suggest that the commander was la ter cannibalized. The firm decided to break its contract, and its employees fled the country, leaving its client wi thout an effective military option until it was able to hire another firm. 46 The loss of direct control as a result of privatization carries risks even for strong states. For U.S. military commanders, an added worry of terrorist targeting or the potential use of weapons of mass destruction is that their forces are more reliant than ever on the surge capacity of type 3 support firms. The employees of these firms, however, cannot be forced to stay at their posts in the face of these or any other dangers. 47 Because entire functions, such as weapons maintenance and supply, have become completely privatized, the entire military machine would break down if even a modest number of PMF employees chose to leave. In addition to sometimes failing to fulfill thei r contractual obligations, type 1 firms may pose another risk. In weak or failed states, PMFs , which are often the most powerful force on the local scene, may take steps to protect their own interests. Thus early termination of a contract, dissatisfaction with the terms of payment, or di sagreements over specific orders could lead to unpleasant repercussions for a weak client. Ind eed the corporate term "hostile takeover" may 25 well take on new meaning when speaking of the privatized military industry. The precedent does existófrom the condottieri , who took over their client regime s in the Middle Ages to the 1969 Mercenary Revolt in Zaire. More recently, there is continued suspicion that in 1996 Executive Outcomes helped to oust the leader of Sierra Le one, who headed the very regime that had hired it, in favor of another local general with w hom the firmís executives had a better working relationship

#### Balkans conflict goes nuclear

**Scherbak, Institute for Sustainable Development of Ukraine president, 2008**

(Yuri, “Ten Theses about the Russian-Georgian Conflict: A View from Ukraine”, <http://www.boell.pl/downloads/Georgia_war_from_UA_perspective_by_Y.Scherbak.pdf>, ldg)

2. The war in Caucasus attested that frozen conflicts, preserving tensions around them, pose a constant threat and, under the influence of interested parties, can explode despite international regimes and limitations, thus causing geopolitical changes in the region. This refers not only to Caucasus but also to Balkans, Transdnistria and other similar regions of the world. 3. The Russian-Georgian war became the first war between the member-states of the Commonwealth of Independent States and, as such, has actually put an end to the post-Soviet, post-Belovezzian world, which was grounded on the interests of the FSU republics and their recognition of the Russia’s leading role. 4. Compared to Ukrainian political parties, the Ukrainian civil and expert society has made a more sober assessment of the causes and consequences of this 5-day war. Among the main conclusions are the following: - by conducting the so-called soft ethnical cleansing (moving the Georgian population out of the self-proclaimed republics) and issuing passports of the Russian Federation to Abkhazians and Ossetians, for 17 years Russia has been deliberately preparing the recognition of the puppet regimes in order to undermine the integrity of Georgia and prohibit it from joining NATO; - the events in Caucasus are demonstrate the dangerous ignoring of international norms by the Russian leadership (Helsinki accords and international treaties) for the sake of reaching their geopolitical goals; - the strategic objective of Russia is to establish control over the routes of Caspian oil and gas transportation on the territory of Georgia and to prevent creation of independent routes for transferring energy carriers beyond Russia’s area of influence; - there is a strong possibility of a growing threat from Russia to Ukraine to be realized by artificial creation of a conflict, most likely on the territory of Crimea, to prevent Ukraine from joining NATO. 5. The current harsh financial and economic crisis with unpredictable geopolitical and social consequences is a new destructive element affecting the situation in the Russian Federation, Ukraine, Caucasus states and the whole European region. There is a danger of neo-totalitarian regimes appearing on the continent, xenophobia and aggressive nationalism growing stronger and new isolationism adopted as main political philosophy. All of these developments could dramatically change the political map of Europe. 6. One of the results of the war between Georgia and Russia is a new challenge of Russia to Ukraine, Azerbaijan, Moldova, NATO and EU member states, which can mean abandonment of the post-Helsinki world and returning to the 19th-20th-century style division of spheres of influence among superpowers. 7. Taking into account the deep political crisis, conflict in leadership and division in society, the situation in Ukraine is chaotic and unbalanced. No one, except for the President and the National Security and Defense Council, stands against the Russian doctrine of Putin-Medvedev regarding the legitimacy of Russia’s military actions towards its closest neighbors on the grounds of protecting “Russian citizens” on the territory of sovereign states. The official Kyiv has no uniform action strategy regarding the existing threats from Moscow. The Ukrainian expert community considers the following optional strategies that Ukraine could adhere to in this situation: - increase efforts to ensure that Ukraine joins NATO as soon as possible; - withdraw the issue of NATO membership from the country’s agenda and instead concentrate on making progress in relationship with the European Union, following the advice of German and French experts; - start rearmament and modernization of the Armed Forces of Ukraine, with some experts calling for renewal of the nuclear-missile potential of Ukraine; - conclude a separate military pact between Ukraine and the United States; - give in to Moscow’s pressure and proclaim a neutral, non-bloc state of Ukraine. 8. An important factor of the Russian pressure on Ukraine is the Black Sea Military Fleet of the Russian Federation, consisting of more than 100 warships and based in Sevastopol, which took part in the military operations in Caucasus. Moscow will insist on the prolongation of its stay in Sevastopol after 2017 (the final date of the stay provided for in the current bilateral treaty). At present, Ukraine has little means of control over the movement of the Russian warships on its own territory. 9. As a result of the massive campaign of Russian media, which could be considered an information war against Ukraine, 56% of Russians believe that Ukraine is hostile to Russia. Meanwhile only 8% Ukrainians consider Russia hostile to Ukraine. 10.The uniform position of the EU and NATO regarding common energy and security policy, involving participation of Ukraine and Georgia, could stop the Russia’s expansion in the postSoviet area. CONCLUSIONS - 1. The war between Georgia and Russia opened a new dangerous phase of political instability. Russia took the road of building a new empire in the post-Soviet space and ignoring international legal norms. The use of force by a great nuclear power against its weak neighbors can lead to a new global conflict.

### 1NC Warfighting

WARFIGHTING

#### Congressional involvement on every use of force emboldens enemies and damages presidential credibility-academic consensus.

**Howell et al., Chicago political science professor, 2007**

(William, While Dangers Gather: Congressional Checks on Presidential War Powers, google books, ldg)

SIGNALING RESOLVE To the extent that congressional discontent signals domestic irresolution to other nations, the job of resolving a foreign crisis is made all the more difficult. As Kenneth Schultz shows, an ''opposition party can undermine the credibility of some challenges by publicly opposing them. Since this strategy threatens to increase the probability of resistance from the rival state, it forces the government to be more selective about making threats "—and, concomitantly, more cautious about actually using military force.'4 When members of Congress openly object to a planned military operation, would-be **adversaries** of the United States may feel emboldened, believing that the president lacks the domestic support required to see a military venture through. Such nations, it stands to reason, will be more willing to enter conflict, and if convinced that the United States will back down once the costs of conflict are revealed, they may fight longer and make fewer concessions. Domestic political strife, as it were, weakens the ability of presidents to bargain effectively with foreign states, while increasing the chances that military entanglements abroad will become **protracted and unwieldy.** A large body of work within the field of international relations supports the contention that a nation's ability to achieve strategic military objectives in short order depends, in part**,** on the head of state's **credibility in conveying political resolve.** Indeed, a substantial game theoretic literature underscores the importance of domestic political institutions and public opinion as state leaders attempt to credibly commit to war,75 Confronting widespread and vocal domestic opposition, the president may have a difficult time signaling his willingness to see a military campaign to its end, While congressional opposition may embolden foreign enemies, the perception on the part of allies that the president lacks support may make them wary of **committing any troops at all.**

#### Compromises speed and secrecy and causes isolation-that triggers prolif, terrorism and rogue state aggression

Yoo 12 (John, professor of law at the University of California, Berkeley, “War Powers Belong to the President,” <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>)

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### Rogue states multiply and cause extinction

**Johnson, Forbes contributor and Presidential Medal of Freedom winner, 2013**

(Paul, “A Lesson For Rogue States”, 5-8, <http://www.forbes.com/sites/currentevents/2013/05/08/a-lesson-for-rogue-states/>, ldg)

Although we live in a violent world, where an internal conflict such as the Syrian civil war can cost 70,000 lives over a two-year period, there hasn’t been a major war between the great powers in 68 years. Today’s three superpowers–the U.S., Russia and China–have no conflicts of interest that can’t be resolved through compromise. All have hair-trigger nuclear alert systems, but the sheer scale of their armories has forced them to take nuclear conflict seriously. Thus, in a real sense, nuclear weapons have succeeded in abolishing the concept of a winnable war. The same cannot be said, however, for certain paranoid rogue states, namely North Korea and Iran. If these two nations appear to be prospering–that is, if their nuclear threats are winning them attention and respect, financial bribes in the form of aid and all the other goodies by which petty dictators count success–other prospective rogues will join them. One such state is Venezuela. Currently its oil wealth is largely wasted, but it is great enough to buy entree to a junior nuclear club. Another possibility is Pakistan, which already has a small nuclear capability and is teetering on the brink of chaos. Other potential rogues are one or two of the components that made up the former Soviet Union. All the more reason to ensure that North Korea and Iran are dramatically punished for traveling the nuclear path. But how? It’s of little use imposing further sanctions, as they chiefly fall on the long-suffering populations. Recent disclosures about life in North Korea reveal how effectively the ruling elite is protected from the physical consequences of its nuclear quest, enjoying high standards of living while the masses starve. Things aren’t much better in Iran. Both regimes are beyond the reach of civilized reasoning, one locked into a totalitarian vise of such comprehensiveness as to rule out revolt, the other victim of a religious despotism from which there currently seems no escape. Either country might take a fatal step of its own volition. Were North Korea to attack the South, it would draw down a retribution in conventional firepower from the heavily armed South and a possible nuclear response from the U.S., which would effectively terminate the regime. Iran has frequently threatened to destroy Israel and exterminate its people. Were it to attempt to carry out such a plan, the Israeli response would be so devastating that it would put an end to the theocracy forthwith. The balance of probabilities is that neither nation will embark on a deliberate war but instead will carry on blustering. This, however, doesn’t rule out war by accident–a small-scale nuclear conflict precipitated by the blunders of a totalitarian elite. Preventing Disaster The most effective, yet cold-blooded, way to teach these states the consequences of continuing their nuclear efforts would be to make an example of one by destroying its ruling class. The obvious candidate would be North Korea. Were we able to contrive circumstances in which this occurred, it’s probable that Iran, as well as any other prospective rogues, would abandon its nuclear aims. But how to do this? At the least there would need to be general agreement on such a course among Russia, China and the U.S. But China would view the replacement of its communist ally with a neutral, unified Korea as a serious loss. Compensation would be required. Still, it’s worth exploring. What we must avoid is a jittery world in which proliferating rogue states perpetually seek to become nuclear ones. The risk of an accidental conflict breaking out that would then drag in the major powers is too great. This is precisely how the 1914 Sarajevo assassination broadened into World War I. It is fortunate the major powers appear to have understood the dangers of nuclear conflict without having had to experience them. Now they must turn their minds, responsibly, to solving the menace of rogue states. At present all we have are the bellicose bellowing of the rogues and the well-meaning drift of the Great Powers–a formula for an eventual and monumental disaster that could be the end of us all.

#### Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Obama will resist the plan-fights over war powers create intractable national diversions and impairs military decision making

**Lobel, Pittsburgh law professor, 2008**

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, Ohio State Law Journal, vol 69, lexis, ldg)

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53 The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority. Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law. Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary. If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute. Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

#### Crisis pressure and information asymmetry means Congress will defer to the executive

**Posner et al., Chicago law professor, 2011**

(Eric, The Executive Unbound, pg 7-10, ldg)

Having defined our terms as far as possible, our main critical thesis is that liberal legalism has proven unable to generate meaningful constraints on the executive. Two problems bedevil liberal legalism: delegation and emergencies. The first arises when legislatures enact statutes that grant the executive authority to regulate or otherwise determine policy, the second when external shocks require new policies to be adopted and executed with great speed. Both situations undermine the simplest version of liberal legalism, in which legislatures themselves create rules that the executive enforces, subject to review by the courts. Delegation suggests that the legislature has ceded lawmaking authority to the executive, de facto if not de jure,14 while in emergencies, only the executive can supply new policies and real-world action with sufficient speed to manage events. The two problems are related in practice. When emergencies occur, legislatures acting under real constraints of time, expertise, and institutional energy typically face the choice between doing nothing at all or delegating new powers to the executive to manage the crisis. As we will see, legislatures often manage to do both things; they stand aside passively while the executive handles the first wave of the crisis, and then come on the scene only later, to expand the executive's de jure powers, sometimes matching or even expanding the de facto powers the executive has already assumed. A great deal of liberal legal theory is devoted to squaring delegation and emergencies with liberal commitments to legislative governance. Well before World War I, the Madisonian framework of separated powers began to creak under the strain of the growing administrative state, typically thought to have been inaugurated by the creation of the Interstate Commerce Commission in 1887. For Madisonian theorists, delegation threatened the separation of powers by effectively combining lawmaking and law-execution in the same hands, and emergencies threatened legislative primacy by requiring the executive to take necessary measures without clear legal authorization, and in some cases in defiance of existing law. (We refer to the Madisonian tradition as it has developed over time and as it exists today, not to Madison himself, whose views before the founding were less legalistic than they would become during the Washington and Adams administrations.) As to both delegation and emergencies, Madisonian liberals have repeatedly attempted to compromise with the administrative state, retreating from one position to another and attempting at every step to limit the damage. In one prominent strand of liberal legal theory and doctrine, which has nominally governed since the early twentieth century, delegation is acceptable as long as the legislature supplies an "intelligible principle"15 to guide executive policymaking ex ante; this is the so-called "nondelegation doctrine." This verbal formulation, however, proved too spongy to contain the administrative state. During and after the New Deal, under strong pressure to allow executive policymaking in an increasingly complex economy, courts read the intelligible principle test so capaciously as to allow statutes delegating to the president and agencies the power to act in the "public interest," nowhere defined.'6 Before 1935, the U.S. Supreme Court mentioned nondelegation in dictum but never actually applied it to invalidate any statutes; in 1935, the Court invalidated two parts of the National Industrial Recovery Act on nondelegation grounds;" since then, the Court has upheld every challenged delegation. Subsequently, liberal legal theorists turned to the hope that legislatures could create administrative procedures and mechanisms of legislative and judicial oversight that would enforce legal constraints on the executive ex post, as a second-best substitute for the Madisonian ideal. In American administrative law, a standard account of the Administrative Procedure Act (APA), the framework statute for the administrative state, sees it as an attempt to translate liberal legalism into a world of large-scale delegation to the executive, substituting procedural controls and judicial review for legislative specification of policies. The APA applies to administrative action in a broad range of substantive areas, but does not apply to presidential action, so Congress has also enacted a group of framework statutes that attempt to constrain executive action in particular areas. Examples are the War Powers Resolution, which regulates the presidential commitment of armed forces abroad, the National Intelligence Act, which structures the intelligence agencies and attempts to require executive disclosure of certain intelligence matters to key congressional committees, and the Inspector General Act, which installs powerful inspectors general throughout the executive branch. As to emergencies, starting at least with John Locke's discussion of executive "prerogative," liberal political and constitutional theorists have struggled to reconcile executive primacy in crises with the separation of powers or the rule of law or both. Such questions have become all the more pressing in the twentieth and twenty-first centuries, when a series of wars, economic emergencies, and other crises have multiplied examples in which the executive proceeded with dubious legal authority or simply ignored the laws. Here too, the response has been a series of legal constraints, such as the APA's restrictions on emergency administrative action, and framework statutes such as the National Emergencies Act, which regulates the president's ability to invoke grants of emergency powers granted under other laws. One of our main claims is that these approaches are palliatives that have proven largely ineffective, and that fail to cure the underlying ills of liberal legalism. The same institutional and economic forces that produce the problems of delegation and emergencies also work to undermine legalistic constraints on the executive. The complexity of policy problems, especially in economic domains, the need for secrecy in many matters of security and foreign affairs, and the sheer speed of policy response necessary in crises combine to make meaningful legislative and judicial oversight of delegated authority difficult in the best of circumstances. In emergencies, the difficulties become insuperable—even under the most favorable constellation of political forces, in which the independently elected executive is from a different party than the majority of the Congress. Liberal legalism, in short, has proven unable to reconcile the administrative state with the Madisonian origins of American government. The constitutional framework and the separation-of-powers system generate only weak and defeasible constraints on executive action. Madisonian oversight has largely failed, and it has failed for institutional reasons. Both Congress and the judiciary labor under an informational deficit that oversight cannot remedy, especially in matters of national security and foreign policy, and both institutions experience problems of collective action and internal coordination that the relatively more hierarchical executive can better avoid. Moreover, political parties, uniting officeholders within different institutions, often hobble the institutional competition on which Madisonian theorizing relies.'8 Congressional oversight does sometimes serve purely political functions—legislators, particularly legislators from opposing parties, can thwart presidential initiatives that are unpopular—but as a legal mechanism for ensuring that the executive remains within the bounds of law, oversight is largely a failure. The same holds for statutory constraints on the executive—unsurprisingly, as these constraints are the product of the very Madisonian system whose failure is apparent at the constitutional level. In the terms of the legal theorist David Dyzenhaus, the APA creates a series of legal "black holes" and "grey holes" that either de jure or de facto exempt presidential and administrative action from ordinary legal requirements, and hence from (one conception of) the rule of law.19 The scope of these exemptions waxes and wanes with circumstances, expanding during emergencies and contracting during normal times, but it is never trivial, and the administrative state has never been brought wholly under the rule of law; periodically the shackles slip off altogether.

#### Congress won’t use appropriations power to check executive-Massive delay

Heder-JD BYU-10 41 St. Mary's L. J. 445

ARTICLE: THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER

Congress can end a war, therefore, through use of the appro-priation power or by dissolving the army. 21 However, Congress [\*452] routinely shirks the exercise of its appropriation power, likely for political purposes. Few members of Congress would want to cut funding for a war effort, which could endanger the lives of their soldier constituents and lead many to label the legislators as defeatists. 22 This was no more evident than in the later stages of the Vietnam War. Disapproving of the war effort generally, and of the President's handling of it more specifically, Congress repealed the Gulf of Tonkin Resolution, which had been its initial authorization for war. 23 Nevertheless, Congress could not muster the political will to cut appropriations for the war effort until years later. 24 A more recent example occurred in May 2009, when Congress approved funding bills for President Obama's proposed troop buildup in Afghanistan, even while some members of Congress expressed doubts that the plan would work. 25 In a stark illustration of Congress's unwillingness to flex its appropriation-power muscles, House Appropriations Committee Chairman David Obey stated, "I frankly have very little faith that it will work;" he nonetheless voted for the appropriations bill. 26

#### President will circumvent with slush funds or reallocations

Heder-JD BYU-10 41 St. Mary's L. J. 445

ARTICLE: THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER

Moreover, Congress's appropriation power may not be an altogether effective or efficient tool with which to limit or end a war. Professor Louis Fisher strenuously makes this point. He points out that, despite Congress's best efforts to ensure otherwise, the Reagan Administration secured financing for the Nicaraguan Contras for many years before it finally was forced to stop. 27 [\*453] Congress not only denied the President any appropriations for the operations, but also held hearings to ensure the President was not securing funding from other sources. 28 While arguing that the President's arguments and actions were unconstitutional, Fisher points out that the Administration was able to accomplish its goals for some time even in the absence of properly appropriated funds. 29 Indeed, he points out in a later article that at any given time a President has "billions of dollars in previously appropriated funds" and always can reallocate money from other accounts to achieve his purposes. 30 Assuming the President and Congress disagree about how and whether a war ought to be concluded, Congress's appropriation power is not always an effective limit on the President's powers. 31

### 1NC PGS

#### PGS

#### Prompt global strike got significantly curtailed over the summer-their ev is old and proves PGS can never reach the finish line

**Grossman, Global Security Newswire, 2013**

(Elaine, “Pentagon, Lawmakers Deal Blows to Navy Fast-Strike Missile Effort”, 7-31, <http://news.yahoo.com/pentagon-lawmakers-deal-blows-navy-fast-strike-missile-140203809.html>, ldg)

Senate appropriators on Tuesday moved to cancel a U.S. Navy program to develop a medium-range missile for launch by fast-attack submarines, but only after top Defense Department brass significantly restricted the Virginia Payload Module in a secret meeting late last year, Global Security Newswire has learned. Lawmakers on the Senate Appropriations Defense Subcommittee said their markup of fiscal 2014 funding legislation for the Defense Department “terminates the Virginia Payload Module due to high cost, risk, and lack of validated requirement.” The move comes just 18 months after the Pentagon’s high-profile proposal to use the new missile aboard Virginia-class submarines as a non-nuclear means of quickly hitting targets almost anywhere around the world. Defense leaders envision so-called “prompt-strike” weapons as potential substitutes for atomic-armed, submarine-based missiles or ICBMs when faced with urgent threats, such as a North Korean nuclear weapon being prepared for launch or a key terrorist leader spotted at a hideout. A five-page statement released on Tuesday describes markup highlights, but a detailed text of the subcommittee’s version of the bill was not yet available. This is the second consecutive year in which the same panel has criticized and cut funds for the Navy project. The idea behind the wonky-sounding “module” has been to alter the design of today’s Virginia-class attack submarines when new vessels are built in the future, so that they could carry additional Tomahawk land-attack cruise missiles. Eventually, the structure of the submerged vessels could also be modified for launch of as many as 12 medium-range, conventionally armed ballistic missiles. The latter could involve what is roughly estimated at billions of dollars in investment in submarine redesign, and in missile development and production. Then-Defense Secretary Leon Panetta publicly unveiled the concept in January 2012, describing the Virginia Payload Module as “a design that will allow new Virginia-class submarines to be modified to carry more cruise missiles and develop an undersea conventional prompt-strike option.” The Senate lawmakers’ action -- which still must go through a full committee markup, floor vote and conference with the House before it could be signed into law by the president -- follows a little-known setback for the Navy project at the hands of a secretive military review panel, Global Security Newswire has confirmed. The Pentagon’s Joint Requirements Oversight Council -- a top-level panel that determines what equipment the U.S. military needs for its assigned missions – last November determined in closed-door session that future technologies for prompt strike must do a better job of balancing affordability with desired warfighting capabilities, according to sources. For the first time, a mix of short-, medium- and long-range weapons would be considered for undertaking the non-nuclear mission previously called “prompt global strike” -- only now, the “global” might be dropped in recognition of varying degrees of reach. To help defray the cost of prompt strike, the top Pentagon panel reportedly said that if a ballistic missile for Virginia-class submarines is to go forward, the new weapon and submarine alterations would have to be paid for out of the Navy’s own coffers. The effort could no longer be funded from a multiservice spending account for conventional prompt strike, Adm. James Winnefeld, the vice chairman of the Joint Chiefs of Staff is said to have determined in February. Given intense pressures on the Navy to finance a top-priority shipbuilding program in the coming years -- to include a new nuclear-armed ballistic missile submarine to replace today’s Ohio-class vessels -- the service’s independent development of an expensive new weapon for attack boats appears unlikely, issue experts say. Lawmaker concern about Navy investment in conventional prompt-strike weapons over the years since the idea was first hatched has extended beyond tight budgets. Congress killed the first concept for a non-nuclear version of the Trident D-5 missile that was to be based on Ohio-class submarines, citing concerns about strategic “ambiguity” or miscues.

#### PGS at least 10 years away

**Barrie, IIS senior fellow, 11-5-13**

(Douglas, “Douglas Barrie: Conventional prompt global strike: another ten years?”, <http://www.iiss.org/en/militarybalanceblog/blogsections/2013-1ec0/october-966d/prompt-strike-0756>, ldg)

A decade after the US Department of Defense’s first conceptualisation of ‘Prompt Global Strike’, the Conventional Prompt Global Strike (CPGS) initiative is still at least a further ten years from deployment. And that is if, according to James Acton, Senior Associate in the Nuclear Policy Program at the Carnegie Endowment for International Peace, Washington decides to pursue the capability.

### 1NC SOP

#### SOP

#### Social science proves no modeling- US signals are dismissed

**Zenok, CFR fellow, 2013**

(Micah, “The Signal and the Noise”, 2-2, [www.foreignpolicy.com/articles/2013/02/20/the\_signal\_and\_the\_noise](http://www.foreignpolicy.com/articles/2013/02/20/the_signal_and_the_noise), ldg)

Later, Gen. Austin observed of cutting forces from the Middle East: "Once you reduce the presence in the region, you could very well signal the wrong things to our adversaries." Sen. Kelly Ayotte echoed his observation, claiming that President Obama's plan to withdraw 34,000 thousand U.S. troops from Afghanistan within one year "leaves us dangerously low on military personnel...it's going to send a clear signal that America's commitment to Afghanistan is going wobbly." Similarly, during a separate House Armed Services Committee hearing, Deputy Secretary of Defense Ashton Carter ominously warned of the possibility of sequestration: "Perhaps most important, the world is watching. Our friends and allies are watching, potential foes -- all over the world." These routine and unchallenged assertions highlight what is perhaps the most widely agreed-upon conventional wisdom in U.S. foreign and national security policymaking: the inherent power of signaling. This psychological capability rests on two core assumptions: All relevant international audiences can or will accurately interpret the signals conveyed, and upon correctly comprehending this signal, these audiences will act as intended by U.S. policymakers. Many policymakers and pundits fundamentally believe that the Pentagon is an omni-directional radar that uniformly transmits signals via presidential declarations, defense spending levels, visits with defense ministers, or troop deployments to receptive antennas. A bit of digging, however, exposes cracks in the premises underlying signaling theories. There is a half-century of social science research demonstrating the cultural and cognitive biases that make communication difficult between two humans. Why would this be any different between two states, or between a state and non-state actor? Unlike foreign policy signaling in the context of disputes or escalating crises -- of which there is an extensive body of research into types and effectiveness -- policymakers' claims about signaling are merely made in a peacetime vacuum. These signals are never articulated with a precision that could be tested or falsified, and thus policymakers cannot be judged misleading or wrong. Paired with the faith in signaling is the assumption that policymakers can read the minds of potential or actual friends and adversaries. During the cycle of congressional hearings this spring, you can rest assured that elected representatives and expert witnesses will claim to know what the Iranian supreme leader thinks, how "the Taliban" perceives White House pronouncements about Afghanistan, or how allies in East Asia will react to sequestration. This self-assuredness is referred to as the illusion of transparency by psychologists, or how "people overestimate others' ability to know them, and...also overestimate their ability to know others." Policymakers also conceive of signaling as a one-way transmission: something that the United States does and others absorb. You rarely read or hear critical thinking from U.S. policymakers about how to interpret the signals from others states. Moreover, since U.S. officials correctly downplay the attention-seeking actions of adversaries -- such as Iran's near-weekly pronouncement of inventing a new drone or missile -- wouldn't it be safer to assume that the majority of U.S. signals are similarly dismissed? During my encounters with foreign officials, few take U.S. government pronouncements seriously, and instead assume they are made to appease domestic audiences.

#### Preventive norms are locked in and the AFF doesn’t change it

**Fisk et al., Claremont political science PhD, 2013**

(Kerstin, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm”, 4-15, International Studies Perspectives, Wiley, ldg)

Preventive self-defense entails waging a war or an attack by choice, in order to prevent a suspected enemy from changing the status quo in an unfavorable direction. Prevention is acting in anticipation of a suspected latent threat that might fully emerge someday. One might rightfully point out that preventive strikes are nothing new—the Iraq War is simply a more recent example in a long history of the preventive use of force. The strategic theorist Colin Gray (2007:27), for example, argues that “far from being a rare and awful crime against an historical norm, preventive war is, and has always been, so common, that its occurrence seems remarkable only to those who do not know their history.” Prevention may be common throughout history, but this does not change the fact that it became increasingly difficult to justify after World War II, as the international community developed a core set of normative principles to guide state behavior, including war as a last resort. The threshold for war was set high, imposing a stringent standard for states acting in self-defense. Gray concedes that there has been a “slow and erratic, but nevertheless genuine, growth of a global norm that regards the resort to war as an extraordinary and even desperate measure” and that the Iraq war set a “dangerous precedent” (44). Although our cases do not provide a definitive answer for whether a preventive self-defense norm is diffusing, they do provide some initial evidence that states are re-orienting their military and strategic doctrines toward offense. In addition, these states have all either acquired or developed unmanned aerial vehicles for the purposes of reconnaissance, surveillance, and/or precision targeting. Thus, the results of our plausibility probe provide some evidence that the global norm regarding the use of force as a last resort is waning, and that a preventive self-defense norm is emerging and cascading following the example set by the United States. At the same time, there is variation among our cases in the extent to which they apply the strategy of self-defense. China, for example, has limited their adaption of this strategy to targeted killings, while Russia has declared their strategy to include the possibility of a preventive nuclear war. Yet, the preventive self-defense strategy is not just for powerful actors. Lesser powers may choose to adopt it as well, though perhaps only implementing the strategy against actors with equal or lesser power. Research in this vein would compliment our analyses herein. With the proliferation of technology in a globalized world, it seems only a matter of time before countries that do not have drone technology are in the minority. While preventive self-defense strategies and drones are not inherently linked, current rhetoric and practice do tie them together. Though it is likely far into the future, it is all the more important to consider the final stage of norm evolution—internalization—for this particular norm. While scholars tend to think of norms as “good,” this one is not so clear-cut. If the preventive self-defense norm is taken for granted, integrated into practice without further consideration, it inherently changes the functioning of international relations. And unmanned aerial vehicles, by reducing the costs of war, make claims of preventive self-defense more palatable

to the public. Yet a global norm of preventive self-defense is likely to be destabilizing, leading to more war in the international system, not less. It clearly violates notions of just war principles—jus ad bellum. The United States has set a dangerous precedent, and by continuing its preventive strike policy it continues to provide other states with the justification to do the same.

## 2nc

## XO

### AT: HLR

#### Executive Orders spillover to legislation-avoids politics DA

LeRoy, Professor for the University of Illinois, 96

Michael LeRoy, Associate Professor for the Institute of Labor & Industrial Relations and College of Law, University of Illinois, “Presidential Regulation of Private Employment: Constitutionality of Executive Order 12954 Debarment of Contractors who Hire Permanent Striker Replacements”

37 B.C. L. Rev 229

Second, many of these orders served as models for legislation. As a result of their experimentation, they occasionally provided Congress with blueprints for workable and politically feasible legislation. This explains in part why Congress initially focused on race discrimination in enacting the 1964 Civil Rights Act. Presidential orders had focused on this form of discrimination since 1941 and therefore developed a lengthy track record. It is notable that every employment discrimination law regarding race, gender, age, and disability followed rather than preceded a related executive order.

#### ---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.

### AT: Object Fiat

#### E. Literature makes the counterplan germane and predictable-The Executive order counterplan is key to topic education

Rudalevige ‘12

[Rudalevige, A. (March 2012). The contemporary presidency: executive orders and presidential unilateralism.  Presidential Studies Quarterly, 42, 1. p.138(23). ETB]

In the last decade or so, students of the American presidency have renewed their interest in the formal authorities and unilateral possibilities of presidential power, driven both by methodological logic and by events. On the theoretic side, scholars working within the broad framework of the "new institutionalism," especially its rational choice variant, have made a case that the formal, legal, and organizational aspects of the presidency--and the incentives and constraints for presidential behavior these implied--had been too long neglected in favor of impressionistic accounts of the "personal presidency." A focus on the formal powers that underlay the presidential office, and the way these could be used to enhance an incumbent's influence, was needed to fill that gap (e.g., Howell 2003; Kelley 2007; Moe 1985, 1993; Moe and Howell 1999). After all, as Kenneth Mayer argued (2001, 11), "in most cases, presidents retain a broad capacity to take significant action on their own, action that is meaningful both in substantive policy terms and in the sense of protecting and furthering the president's political and strategic interests."¶ The assertive--even "imperial"--stance taken by recent presidents provided empirical grist for this mill. President George W. Bush was particularly notable in acting aggressively to expand his office's powers vis-a-vis other political actors (Cooper 2002; Goldsmith 2007; Rudalevige 2005, 2010; Savage 2007). Redressing the perceived constriction of the presidential office after the Watergate/Vietnam years provided a new rationale for unilateral command--even before the terrorist attacks of September 11, 2001. Barack Obama, while disavowing some of his predecessor's rationales, has acted in a similar manner in a number of areas. The assassination of American citizens acting with al-Qaeda in Yemen; the evasion of the War Powers Resolution in Libya; the use of the state secrets act in fending off judicial inquiry--all these suggest a continuing approach to presidential authority that overrides shifts in the incumbent's personality.¶ From either direction, the upshot has been important recent work on a presidential administrative toolkit that includes appointments (Lewis 2008), signing statements (Evans 2011; Kelley and Marshall 2010; Korzi 2011), executive agreements (Krutz and Peake 2009), proclamations (Rottinghaus and Bailey 2010; Rottinghaus and Maier 2007), rulemaking and guidance (Graham 2010; Kerwin and Furlong 2010), and especially executive orders (Gibson 2009; Howell 2003; Mayer 1999, 2001; Rodrigues 2007; Warber 2006; Wigton 1996). Indeed, at this point it is safe to say that a standard textbook in the field could not--as it did even after Watergate--exclude "executive orders" and "signing statements" from the index (Koenig 1975). The study of the contemporary presidency thus requires serious attention to that office's executive authority.

### AT: Moss

#### Moss says congress needs a role, not that we need legislation to create a congressional role, the order says this is the only way to abide by LOAC and Ilaw and makes the enforceable by the court, we give standing and create binding precedent, it gets internationally perceived <card>

Nachbar-prof law Virginia-11

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967217>

Executive Order 13567: Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention

Conclusion Neither the Order nor the accompanying Fact Sheet will have a major impact on U.S. detention operations. The Order applies only to a small group of detainees, all of whom have been subjected to similar procedures in the recent past. The Fact Sheet’s signaling of compliance with Article 75 is not technically applicable to the current conflict, and ratification of AP II is still beyond the horizon. Moreover, the procedures contained in the Order (which do not differ dramatically from the procedures they replace) arguably conform with Article 75 and APII, neither of which contain robust procedures with regard to detention, except perhaps with regard to the use of classified information (an area in which states are likely to receive considerable leeway given the vague requirements of Article 75) and the continued detention of detainees identified for release but for whom the U.S. is unable to locate an acceptable non-U.S. destination. The procedures and substantive standards contained in the Order do not dramatically change the landscape of U.S. detention policy and practice, but that does not mean that the Order and the Fact Sheet are of no moment. The U.S. has previously been careful to maintain a strong approach to the lex specialis conception of LOAC, but Article 75 and AP II represent an approach to LOAC that more closely tracks human rights protections than earlier instruments, like the GCs themselves. It is often the executive branch that argues most strongly for the U.S.- exceptionalist view of international law; if the Fact Sheet signals a shift by the executive branch, it is likely to be followed by a shift by courts as well. In many times, the content of the international law of armed conflict has been mostly a matter of academic interest in the U.S., but today, many cases applying domestic law turn directly on the content of the law of armed conflict, which means that the content of international human rights law as implicated by a shifting approach to LOAC may soon find itself in domestic law, binding by U.S. federal courts on the conduct of the current armed conflict. Even those changes are, for the moment, hypothetical. The policy announced by the Fact Sheet – the administration’s willingness to embrace aspects of the law of armed conflict closely tied with international human rights law – has the potential for substantially altering the evolution of U.S. detention law and policy by providing even more space to incorporate international legal norms into U.S. domestic law. Of course, the most important implication of the Fact Sheet’s embrace of Article 75 and AP II is one for diplomats, not lawyers—at least not yet. By finally saying in a public forum that the U.S. will apply Article 75 in IAC out of a sense of legal obligation and that the administration will pursue ratification of AP II, the Obama administration is signaling future engagement with the international community on matters relating to armed conflict. Doing so likely changes the diplomatic landscape more than it does the legal landscape in the near term, although the impact over the long term may be more profound than the recognition of any particular rule or the ratification of any particular treaty. I leave it to the diplomats to debate whether that change should be welcomed.198

#### Chicken and Egg-we are each making the same law, just using different starting agencies, if Obama/Future presidents ignore the CP they will ignore the plan by saying their use of hostilities is repelling armed attack

But the CP’s cause of action is sufficient even if that’s not true

Ostrow-GW law review-87 55 Geo. Wash. L. Rev. 659, \*

55 Geo. Wash. L. Rev. 659

NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Even if an executive order has the force and effect of law, courts will not recognize a private cause of action against the government under the executive order unless there is evidence of presidential intent to create a cause of action. 32 For example, in Acevedo v. Nassau County, 33 members of low-income minority groups brought a class action alleging that the General Services Administration had violated an executive order 34 by planning a federal office building without considering the adequacy of low-income housing in the area. 35 The Second Circuit affirmed the district court's dismissal on the ground, inter alia, that the executive order created no right of action, either express or implied. 36 The court found that the order did not expressly grant a cause of action and that the obligations imposed by the order were "so broad and vague" that inferring a private cause of action might engender protracted lawsuits by persons with little at stake. 37 If presidential intent is not explicit, courts frequently will look to the history of the executive order or the administrative scheme established by the order to determine whether there exists an implied right of action. Using this analysis, some courts refuse to allow a cause of action under an executive order based on an "exclusivity [\*666] of remedy" rationale. 38 The Fifth Circuit in Farkas v. Texas Instrument, 39 for example, held that there was no right of action under an executive order because the administrative remedies prescribed by the order were intended to be the exclusive mode of enforcement. 40 Plaintiff asserted that he was discharged in violation of an executive order 41 that forbade government contractors from discriminating against employees or applicants on the basis of national origin. 42 Plaintiff had unsuccessfully pursued his administrative remedies under the order by seeking relief before the President's Committee on Equal Employment Opportunity. 43 The court concluded that the Committee's refusal to grant relief was final and that the President did not contemplate a private cause of action directly under the order "[i]n light of the Order's emphasis on administrative methods of obtaining compliance with the required contractual provisions." 44 It therefore affirmed the district court's dismissal of the discrimination claim for failure to state a cause of action. 45 These decisions illustrate the formidable barriers that plaintiffs must overcome to assert a cause of action directly under an executive order. Courts have been extremely reluctant to infer rights of action when, as is frequently the case, the orders are silent on the subject of private enforcement and establish their own administrative remedial schemes. 46 Instead of looking exclusively to the executive order for a cause of action, courts should look to the APA as an alternative basis for judicial review of an agency's violation of an order.

### AT: pdcp

#### A. Interpretation-There is a distinction between exercise and restrict.

DANIEL MCFADDEN, 2008 (Boston College Law Review, 49 B.C. L. Rev 1131, Retrieved 6/1/2013 from Lexis/Nexis)

("Whether or not the President has independent power, absent congressional authorization, to convene military commissions, he may not disregard limitations that Congress has, in proper exercise of its own war powers, placed on his powers." (citing Steel Seizure, 343 U.S. at 637 ( Jackson, J., concurring))); Chevron, U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842-43 (1984) (stating that, in an administrative law context, "the [C]ourt, as well as the agency, must give effect to the unambiguously expressed intent of Congress"); Little v. Barreme, 6 U.S. (2 Cranch) 170, 177-78 (1804) (declaring unlawful a military order authorizing captures on the high seas because the order exceeded authority granted by Congress). But see David J. Barron & Martin S. Lederman, The Commander in Chief at the Lowest Ebb--Framing the Problem, Doctrine, and Original Understanding, 121 HARV. L. REV. 689, 766 (2008) (concluding that, although the Court has accepted the proposition that Congress may restrict executive military activity, the Court has not ruled out the possibility that the executive retains some inherent and inviolable military authority).

#### ---And, violates authority which explicitly requires one branch acting upon another

Google Dictionary

<https://www.google.com/search?q=define+authoeiry&oq=define+authoeiry&aqs=chrome.0.69i57j0j69i60l2j0l2.3485j0&sourceid=chrome&ie=UTF-8#sa=X&q=authority&tbs=dfn:1&tbo=u&ei=OqXqUfzgO-WSyAGNg4HIBg&ved=0CCwQkQ4&bav=on.2,or.r_cp.r_qf.&bvm=bv.49478099%2Cd.aWc%2Cpv.xjs.s.en_US.c75bKy5EQ0A.O&fp=963b67ef37c3a9d&biw=1168&bih=715>

au·thor·i·ty noun /əˈTHôritē/  /ôˈTHär-/  authorities, plural The power or right to give orders, make decisions, and enforce obedience - he had absolute authority over his subordinates - positions of authority - they acted under the authority of the UN Security Council - a rebellion against those in authority The right to act in a specified way, delegated from one person or organization to another - military forces have the legal authority to arrest drug traffickers Official permission; sanction - the money was spent without congressional authority A person or organization having power or control in a particular, typically political or administrative, sphere - the health authorities - the Chicago Transit Authority - the authorities ordered all foreign embassies to close - she wasn't used to dealing with authority

#### ---Congress enacts “statutory restrictions” the court imposes “judicial restrictions”

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

### AT: No Signal

#### The president is the focal point of American politics – everyone perceives executive action

Fitts-prof law, Penn-96 [Michael, Professor of Law @ UPenn Law School, “The Paradox Of Power In The Modern State”, University of Pennsylvania Law Review, 144 U. Pa. L. Rev. 827, Lexis]

The Presidency A. The Modern Presidency What is the nature of the presidency in the modern state? Numerous political scientists and legal academics claim that our recent chief executives have inherited a "modern presidency," [33](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n33" \t "_self) which began to develop with Franklin Roosevelt and is structurally distinct from earlier regimes. [34](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n34" \t "_self) Of course, the balance of power among the president, Congress, and the agencies is exceedingly complex, since the amount of bureaucratic activity and legislative oversight has increased greatly over the years. Nevertheless, "the resources of modern presidents [are thought by many to] dwarf those of their predecessors." [35](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n35" \t "_self) Commentators point to three related changes that centralize greater formal power in the institution and increase the informal political assets at the president's command. The first change, which is to some extent considered the most important and defining quality of the modern presidency, is the increased visibility of the president as an individual within the electoral process. Prior to the Roosevelt Administration, the president was viewed more as a member of both a party and a complicated and elite system of government. He was also relatively distant from the population. The modern presidents, in contrast, are elected increasingly as individuals in the primary and general elections on the basis of direct public exposure in the media. This [\*842] evolution, which has occurred over a number of years, is a result of social forces, such as the decline of political parties [36](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n36" \t "_self) and the rise of the media, as well as legal changes, such as the ascendancy of primaries. [37](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n37" \t "_self) Second, once in power, modern presidents have increasingly attempted to take greater formal and informal control of the executive branch, through policy expansion of the OMB and the Executive Office of the President and increased oversight of agencies under Executive Order 12,291 [38](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n38" \t "_self) and its successor orders. Indeed, every president since Roosevelt has attempted to centralize power in the White House to oversee the operations of the executive branch and to make its resources more responsive to his policy and political needs. [39](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n39" \t "_self) [\*843] Finally, and relatedly, the modern presidency has become more centralized and personalized through its public media role - that is, its "rhetorical functions." [40](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n40" \t "_self) Given changes in the press and the White House office, the president has become far more effective in setting the agenda for public debate, sometimes even dominating the public dialogue when he chooses. [41](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n41" \t "_self) Economists would probably attribute the president's ability to "transmit information" to the centralized organization of the presidency - an "economy of scale" in public debate. [42](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n42" \t "_self) At the same time, the president can establish [\*844] a "focal point" around preferred public policies. [43](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n43" \t "_self) This proposition can also be stated somewhat differently. As an institution embodied in a single individual, the president has a unique ability to "tell" a simple story that is quite personal and understandable to the public. As a number of legal academics have shown, stories can be a powerful mode for capturing the essence of a person's situated perspective, improving public comprehension of particular facts, and synthesizing complex events into accessible language. [44](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n44" \t "_self) Complex institutions, such as Congress, have difficulty [\*845] assembling and transmitting information as part of a coherent whole; they represent a diversity - some would say a babble - of voices and perspectives. In contrast, presidents have the capacity to project a coherent and empathetic message, especially if it is tied to their own life stories. In this sense, the skill of the president in telling a story about policy, while sometimes a source of pointed criticism for its necessary simplicity, [45](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n45" \t "_self) may greatly facilitate public understanding and acceptance of policy. [46](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n46" \t "_self) B. The Theory of the Unitary Presidency This picture of the modern presidency is quite consistent with those parts of the legal and political science literatures exploring the advantages of presidential (as opposed to legislative) power and advocating a more unitary or centralized presidency. According to this view, [47](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n47" \t "_self) power and accountability in government and in the executive branch should be moved more toward the top, giving the [\*846] president and his staff greater ability to make decisions themselves or to leave them, subject to oversight, in the hands of expert agency officials. In the legal literature, this position is usually associated with support for strengthening the president's directorial powers over the agencies, unfettered presidential removal authority, and Chevron deference to agency regulations [48](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n48" \t "_self) reviewed by the White House. Similarly, political scientists emphasize the plebiscitarian president's growing informal influence with the agencies and the public, as well as the association between a strong president and the "national" interest. [49](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n49" \t "_self) To be sure, legal proponents of a strong unitary presidency usually do not outline a comprehensive policy defense of the legal position but rely more on doctrinal justifications and related policy arguments. [50](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n50" \t "_self) By synthesizing and integrating the interrelated legal and policy rationales in the legal and political science literatures, however, one can sketch the outlines of a common theory. This analysis suggests that the structure of a more unitary, centralized presidency should enhance the power, legitimacy, and effectiveness of the office, especially as compared to Congress, in three different but related ways. [\*847] First, with respect to the administration of the executive branch, centralized power, or at least the opportunity for the exercise of centralized power, is thought to facilitate better development and coordination of national programs and policies. Because federal government programs interrelate in countless ways, a centralized figure or institution such as the president is seemingly in a good position to recognize and respond to the demands of the overall situation. [51](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n51" \t "_self) For similar reasons, as social and political change accelerates, the president may be well-situated to foresee and implement adaptive synoptic changes - that is, to engage in strategic planning. One of the rationales for the existence of the federal government is the national effect of its policies, which under this view can be reconciled most easily at the top. [52](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n52" \t "_self) To the extent that the president is successful in putting together such programs, he should receive political credit, which would redound to his political strength. [53](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n53" \t "_self) Second, centralized power facilitates greater political accountability by placing in one single individual the public's focus of government performance. If the public had to evaluate electorally the activities of hundreds of different officials in the executive branch, its information about the positions, actions, and effects of government behavior would be extraordinarily limited. [54](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n54" \t "_self) Only those most [\*848] interested in a particular function would be likely to have information about its behavior or attempt to influence that behavior through election, lobbying, or litigation. This is the standard concern with New Deal agencies captured by the so-called iron triangle of Washington politics. [55](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n55" \t "_self) By contrast, placing overall political responsibility in one individual is thought to facilitate broader political accountability. While this oversight can have mixed effects depending on presidential performance, it has the potential for strengthening the president's political support and influence. [56](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n56" \t "_self) Because he is more likely to approximate the views of the median voter, [57](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n57" \t "_self) a unitary president is thought to enjoy a clear majoritarian mandate, as the only elected representative of all "The People." This democratic legitimacy should be, in turn, a major source of his political strength. [58](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n58" \t "_self) As one commentator has [\*849] argued: "Every deviation from the principle of executive unitariness will necessarily undermine the national majority electoral coalition." [59](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n59" \t "_self) Finally, on an elite political level, the existence of a single powerful political actor serves a political coordination function. [60](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n60" \t "_self) A dispersed government with a decentralized political structure has a great deal of difficulty in reaching cooperative solutions on policy outcomes. Even if it does reach cooperative solutions, it has great difficulty in reaching optimal results. Today, there are simply too many groups in Washington and within the political elite to reach the necessary and optimal agreement easily. [61](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n61" \t "_self) A central and visible figure such as the president, who can take clear positions, can serve as a unique focal point for coordinating action. [62](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n62" \t "_self) With the ability to focus public attention and minimize information costs, [63](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n63" \t "_self) [\*850] a president can also be highly effective in overcoming narrow but powerful sources of opposition and in facilitating communication (that is, coordination and cooperation) between groups and branches. [64](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n64" \t "_self) In technical terms, he might be viewed as the "least cost avoider." [65](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n65" \t "_self) The budget confrontation between Clinton and Congress is only the most recent example of the president's strategic abilities. [66](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n66" \t "_self) In this regard, it is not surprising that most studies have found that the president's popularity is an important factor in his ability to effectively negotiate with Congress. [67](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n67" \t "_self)

### AT: Links to Politics (Magrid)

#### This card says some people of congress criticize Obama no matter how he enters troops into hostilities, doesn’t prove executive orders drain capital, the cp doesn’t require Obama spend months pushing legislation in congress which bypasses debate.

Sovacool-Research Fellow Public Policy, University of Singapore-9

Dr. Benjamin K. Sovacool 2009 is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of SingaporeArticle: Preventing National Electricity-Water Crisis Areas in the United States, Columbia Journal of Environmental Law 2009 34 Colum. J. Envtl. L. 333,

¶ Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save ¶ ¶ presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails.¶ ¶ 292¶ ¶ Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September ¶ ¶ 11, 2001 attacks on the Pentagon and World Trade Center, for ¶ ¶ instance, the Bush Administration almost immediately passed ¶ ¶ Executive Orders forcing airlines to reinforce cockpit doors and ¶ ¶ freezing the U.S. based assets of individuals and organizations ¶ ¶ involved with terrorist groups.¶ ¶ 293¶ ¶ These actions took Congress ¶ ¶ nearly four months to debate and subsequently endorse with ¶ ¶ legislation. Executive Orders therefore enable presidents to ¶ ¶ rapidly change law without having to wait for congressional action ¶ ¶ or agency regulatory rulemaking.

#### Legislation is the link—has to pass too many hurdles—the president has nothing to do with it---Magrid’s argument is people will be grumpy with Obama, that doesn’t cross the threshold of the link

Paul Light, Founder of the Brookings Institution Center for Public Service, 1999 (The President’s Agenda, p53-4)

Congressional Limits. Presidents face several structural limits on agenda size, but the congressional calendar involves the greatest institutional restrictions. Though Congress can act quickly during a crisis, most legislation must pass through a series of decision points en route to enactment. According to John Kennedy, the process contains a number of hurdles: It is very easy to defeat a bill in the Congress. It is much more difficult to pass one. To go through a subcommittee… and get a majority vote, the full committee and get a majority vote, go to the Rules Committee and get a rule, go to the Floor of the House and get a majority, start all over in the Senate, subcommittee and full committee, and in the Senate there is unlimited debate, so you can never bring a matter to a vote if there is enough determination on the part of the opponents, even if they are a minority, to go through the Senate with the bill. And then unanimously get a conference between the House and Senate to adjust the bill, or if one member objects, to have it go back through the Rules Committee, back through the Congress, and have this done on a controversial piece of legislation where powerful groups are opposing it, that is an extremely difficult task (transcript of television interview, in *Public Papers of The Presidents, 1963*, pp 892, 894) Kennedy’s complaint came long before the rise of subcommittee government and the increased complexity within the legislative process. Past Presidents and their staffs generally have been sensitive to the demands of the congressional process. “The liaison office always walks a tight line,” one Nixon officer suggested. “If you press too hard, you’re likely to anger the committees. They have a heavy work load and won’t take too much White House pressure. But if you don’t press hard enough , the Congress will put your agenda on the back burner.”

#### Executive action avoids politics and are fast

Sovacool-Research Fellow Public Policy, University of Singapore-9

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¶ Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save ¶ ¶ presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails.¶ ¶ 292¶ ¶ Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September ¶ ¶ 11, 2001 attacks on the Pentagon and World Trade Center, for ¶ ¶ instance, the Bush Administration almost immediately passed ¶ ¶ Executive Orders forcing airlines to reinforce cockpit doors and ¶ ¶ freezing the U.S. based assets of individuals and organizations ¶ ¶ involved with terrorist groups.¶ ¶ 293¶ ¶ These actions took Congress ¶ ¶ nearly four months to debate and subsequently endorse with ¶ ¶ legislation. Executive Orders therefore enable presidents to ¶ ¶ rapidly change law without having to wait for congressional action ¶ ¶ or agency regulatory rulemaking.

#### Executive orders reduce expenditure of political capital – Clinton proves

Kassop-prof political science, SUNY-2

The Presidency and the Law: The Clinton Legacy, ed. Alder, p. 6

As a president facing an opposition party in Congress, it is not surprising that President Clinton made bold use of executive orders as a means of circumventing the uncertainties of a legislature that was unlikely to be friendly to his initiatives. Here, too, as in war powers, Clinton followed in the paths of his Republican predecessors, who also operated under conditions of divided government. Thus, Clinton may not have blazed new trails for his successors by his use of executive orders to accomplish indirectly what he was unwilling to spend political capital on to accomplish directly.

#### CP preserves political capital - avoids having to rally and compromise

Howell-Harvard-05

(William, Associate Prof @ Harvard, “Unilateral Powers: A Brief Overview”, September 2005, Presidential Quarterly, <http://www.blackwell-synergy.com/doi/full/10.1111/j.1741-5705.2005.00258.x>)

The actions that Bush and his modern predecessors have taken by fiat do not fit easily within a theoretical framework of executive power that emphasizes weakness and dependence, and offers as recourse only persuasion. For at least two reasons, the ability to act unilaterally is conceptually distinct from the array of powers presidents rely upon within a bargaining framework. First, **when presidents act unilaterally, they move policy first and thereby place upon Congress and the courts the burden of revising a new political landscape.** If they choose not to retaliate, either by passing a law or ruling against the president, then the president's order stands. Only by taking (or credibly threatening to take) positive action can either adjoining institution limit the president's unilateral powers. Second, when the president acts unilaterally, he acts alone. Now of course, he relies upon numerous advisers to formulate the policy, to devise ways of protecting it against congressional or judicial encroachment, and to oversee its implementation (more on this below). **But in order to issue the actual policy, the president need not rally majorities, compromise with adversaries, or wait for some interest group to bring a case to court. The president, instead, can strike out on his own**. Doing so**, the modern president is in a unique position to lead, to break through the stasis that pervades the federal government, and to impose his will in new areas of governance.**

#### Empirically true

## Pmc

### Turns Credibility

#### PMC’s devastate our international image

**Nenyei 2009**

(Judit, “Security outsourced: is it safe?”, <http://www.grotius.hu/doc/pub/MYBSTD/2009_123_nenyei_judit_grotius_e-konyvtar.pdf>, ldg)

It seems obvious that the image formed about mercenaries has been far from positive - and not at all ‟honorable‟, as Lt. Col. Tim Spicer, founder of Sandline International puts it17 - ever since they appeared on the scene. Their bad reputation did not diminish in the ‟60s and ‟70s either – they were participants in (and often promoters of) coup d‟etats, human rights abuses, they fought against UN forces in Congo (ONUC, 1960-64), etc. Although present-day PMSCs are trying hard to prove their difference from their predecessors, public perception is still influenced by the former picture (and, deliberately, by the media). The UN Special Rapporteur on mercenaries has held PMSCs responsible for several criminal activities such as trafficking arms, drugs, and in humans and organs, extortion, kidnapping and links with terrorists. (Ballesteros [2001]). Crimes and abuses committed by private contractors will be discussed in detail later in Section 1.5.

## Case

### No IL to heg

Sequestration dawg

Epoch Times 11/12 (“Joint Chiefs of Staff: Major Combat Operations Jeopardized,” http://www.theepochtimes.com/n3/357170-joint-chiefs-of-staff-major-combat-operations-jeopardized/)

The Joint Chiefs of Staff warned the Senate Armed Services Committee on Nov. 7 of the harmful impacts of the sequester cuts that went into effect in March. The Budget Control Act passed in 2011 requires a $487 billion reduction in defense spending over the next 10 years. Cuts will degrade the services’ readiness, modernization and reduce their capability to conduct major operations, according to the chiefs. While morale remains high for the soldiers, sailors, Marines, and airmen, morale on the civilian side has been hurt by furloughs and uncertainty. “If sequestration continues, the services will have to cut active and reserve components end strength, reduce force structure, defer repair of equipment, delay or cancel modernization programs and allow training levels to seriously decline, reducing our ability to respond to global crises,” said Sen. Carl Levin (D-Mich.), chairman of the committee. The ranking member on the committee, Sen. James Inhofe (R-Okla.), worried that if the sequestration is allowed to continue, our forces will be unable to support various operational plans around the world and may not be able to succeed “in even one major contingency operation.”

#### Either takes out the aff or means its resil

Epoch Times 11/12 (“Joint Chiefs of Staff: Major Combat Operations Jeopardized,” http://www.theepochtimes.com/n3/357170-joint-chiefs-of-staff-major-combat-operations-jeopardized/)

The cutbacks are bound to affect morale, according to the chiefs. The Army furloughed 197,000 civilian employees, 48 percent of whom are veterans, and the air force furloughed 164,000 civilians, according to written statements provided by the speakers. In both the Army and Air Force, the civilians lost eight hours per week—a 20 percent pay cut for six weeks. Gen. Odierno said the civilians, with the furloughs, shutdown, and reductions, “are questioning how stable is their work environment.” For soldiers, “morale is good but tenuous,” he said. Recruiting and reenlistment has been steady, but “there is a lot of angst,” as he put it, with all the discussions about the future of the Army, possible reduction in benefits, not knowing whether they will have a job, etc. Yet despite their uncertain future, “they continue to do what we ask them,” which he found inspiring and personally frustrating.

### Chilling Effect – 2NC

#### Plan freezes all military options

**Howell et al., Chicago political science professor, 2007**

(William, While Dangers Gather : Congressional Checks on Presidential War Powers, pg 23, ldg)

Immersed in all of the uncertainty that precedes war, presidents struggle mightily to assess the possibility that the military's plans will fail, and to evaluate whether Congress in due course either will publicly condemn him and actively work to dismantle the engagement or will affirm its allegiance to him and give him the money and delegated authority he needs to proceed. If Congress will come to the president's aid and ptovide him with political cover, then he may have the assurances he needs to incur the risks involved. On the other hand, if the president looks up at Capitol Hill and sees a swarm of representatives poised to pounce at the first misstep taken, he may instead choose to abandon military options altogether. In chapter 2 of this book, we discuss in some detail how presidents make this calculation.

#### Wouldn’t pursue necessary interventions even if the president would win-doesn’t want the fight or strategy changes

**Heder, BYU JD, 2010**

(Adam, “The Power To End War: The Extent And Limits Of Congressional Power,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>, ldg)

Congressional attempts to repeal an authorization for war, in fact, would conflict with the President’s plenary powers contained in the Commander in Chief Clause. The Commander in Chief Clause, if it means anything, means the power to prosecute a war. 87 As noted, the structure of the Constitution splits the war powers between the two elected branches. Giving Congress the unilateral power to legally end, limit, or redefine a conflict would, no doubt, deter the President from executing a war in the way he sees fit. If the President’s goals or strategies diverge from those of Congress, then Congress would have an incredibly robust veto power over the President — one that would not **suffer the** extreme political or practical consequences **that a use of the appropriation power would**. Consequently, knowing that Congress is always looking over his shoulder, the President likely would **not conduct the war as he deems fit;** he would conduct the war more consistently with Congress’s strategies. 88 Such a scheme would tilt the scales heavily in favor of Congress and **run afoul of the basic power-sharing scheme of the Constitution,** wherein neither branch has some unilateral right to effectively control all major aspects of a war. 89

### Circumvention – 2NC – RR

#### They assume Congress is on the same page-they aren’t.

**Devins, William and Mary government professor, 2009**

(Neal, “Presidential Unilateralism and Political Polarization: Why Today's Congress Lacks the Will and the Way to Stop Presidential Initiatives”, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1025&context=facpubs>, ldg)

In highlighting differences between the Watergate-era Congress and the modem Congress, Part III will examine the profound role that political polarization has played in defining today's Congress. Initially, I will call attention to how political polarization makes it impossible for Democrats and Republicans in Congress to work together. I will then extend that lesson to the highly partisan impeachment of President Clinton and, more importantly, to the ways in which modem day Presidents have assumed more and more power through unilateral action. Making matters worse (at least if you think Congress should stand as a check to presidential unilateralism), members of Congress see little personal gain in standing together to assert Congress's institutional prerogatives. On national security matters, today's Congress-unlike the post-1969 Viet Nam era Congress-sees little benefit in asserting legislative prerogatives. Put another way: Today's Congress, unlike the Watergate-era, has neither the will nor the way to check presidential initiatives

#### Obama would just commit forces then Congress would give up-best academic position

**Kriner, Boston political science professor, 2010**

(Douglas, After the Rubicon: Congress, Presidents, and the Politics of Waging War, pg 6-8, ldg)

The role that Congress plays in deciding whether a war is continued or concluded is of intrinsic interest to academics, policymakers, and casual observers of contemporary American politics alike. Yet the belief that Congress retains some capacity to shape the conduct of military affairs after a venture is launched is also a critically important and untested proposition underlying most theories **asserting** congressional influence over the initiation of military action. Why, according to this emerging literature, do presidents facing a strong opposition party in Congress use force less frequently than do their peers with strong partisan majorities in Congress? The most commonly offered answer is that presidents anticipate Congress's likely reaction to a prospective use of force and respond accordingly.14 Presidents who confront an opposition-led Congress anticipate that it is more willing and able to challenge the administration's conduct of military action than a Congress controlled by their partisan allies. Therefore, the frequency with which presidents use force abroad covaries with the strength of their party in Congress. However, this anticipatory logic requires that Congress has the ability to raise the costs of military action for the president, once that action has begun. If Congress lacks this capacity, presidents have little reason to adjust their willingness to initiate the use of force in anticipation of an adverse congressional response." As a result, determining whether and how Congress can influence the scope and duration of ongoing military operations is critically important even to evaluating prior research that asserts congressional influence over the initiation of military actions. Without it, such analyses rest on shaky ground. Unfortunately, because the dynamics change dramatically once American troops are deployed abroad, simply drawing lessons from existing studies

of interbranch dynamics in military policymaking at the conflict initiation phase and applying them to the conflict conduct phase is unlikely to offer much insight." The decision-making environment at the conflict conduct phase differs from that at the conflict initiation phase along at least three key dimensions: the incentives and constraints governing congressional willingness to challenge presidential discretion; the relative institutional capacities of the executive and legislative branches to affect military policymaking; and finally, the ability of unfolding conflict events to change further the political and strategic environment in which the two branches vie for power. With regard to the political constraints that limit would-be adversaries in Congress, the president may **be in an even stronger position** after American troops are deployed in the field. Ordering troops abroad is akin to other unilateral presidential actions; by seizing his office's capacity for independent action, a president can dramatically **change the status quo** and fundamentally alter the political playing field on which Congress and other actors must act to challenge his policies.17 Once the troops are overseas, the political stakes for any congressional challenge to the president's policies are inexorably raised; any such effort is subject to potentially ruinous charges of failing to support the troops. Georgia Senator Richard Russell's conversion from opposition to U.S. intervention in Vietnam in the early 196os to stalwart support for staying the course after Lyndon Johnson's escalation of the American commitment there illustrates this change: "We are there now, and the time for debate has passed. Our flag is committed, and—more importantly—American boys are under fire."" Russell's sentiment was loudly echoed forty years later in the allegations by the Bush administration and its partisan allies in Congress that any legislative efforts to curtail the war in Iraq undermined the troops. As a result of these potentially **intense political costs**, there are reasons to question whether Congress can mount an effective challenge to the policies of the commander in chief. If it cannot, this would compel a reassessment of prior theories asserting congressional influence over the initiation of military actions through the logic of anticipated response. Certainly, more empirical analysis is needed to answer this question.

### A2: Plan Is Precise

#### Unless in defense is super ambiguous

**Sitkowski, UN researcher and consultant, 2006**

(Andrzej, UN Peacekeeping: Myth and Reality, p. 14)

Non-use of force except in self-defense is the sole principle directly related to armed contingents and is the most ambiguous. According to the UN interpretation, self-defense includes armed response to forceful actions of the warring parties preventing the peacekeepers from discharging their mandate. It boils down to nothing less than a blanket authorization to use force in defense of the mandates, thus. But as if an effort to offset such a conclusion, the Secretariat pronounces every use of force other than in self-defense to constitute peace enforcement which is inconsistent with peacekeeping and should be avoided at any costs: "The logic of peacekeeping Hows from premises that are quite distinct from enforcement and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate. To blur the distinction between the two can undermine the viability of peacekeeping operation and endanger its personnel."4 The distinction looks good as long it is not exposed to the logic of war, the only logic to which the warring parties normally subscribe. Is removing by force of an illegal roadblock to enable the progress of a UN convoy an act of self-defense against an obstruction in discharging a peacekeeping mandate or an offensive action in peace enforcement? The UN distinction between the defensive and offensive use of force is blurred at the outset.

#### The US will act on this ambiguity

**Neack, Miami Ohio political science professor, 2007**

(Laura, Security: States First, people last, pg 106)

Although our discussion has been about the use of military force, we still are on the topic of defense and deterrence rather than on the offensive use of force. It is, though, in some sense hard to dispute the old axiom that what appear as defensive measures to some appear as offensive and therefore threatening measures to others. This is part of the dilemma in the security dilemma. Sometimes countries embrace this ambiguity to enhance the danger of underestimating them, and sometimes countries attempt to dispel this ambiguity by adopting policies that are overtly transparent and nonthreatening.

## 1nr

## Iran DA

### 1NR Impact Overview

Secondary sanctions on Iran undermine US leadership-collapses global rules based international order and turns the aff

Leverett-professor at Pennsylvania State University's School of International Affairs-7/5/12

<http://www.worldfinancialreview.com/?p=3490>

America’s Iran Policy and the Undermining of International Order

Second, secondary sanctions are a political house of cards. American officials are well aware of their presumptive illegality. Successive U.S. administrations have been reluctant to impose them on non-U.S. entities transacting with Iran, precisely to avoid formal challenges at the WTO. U.S. secondary sanctions are, in effect, an enormous bluff, leveraging the specter of legal and reputational risk in America to bully companies and banks in third countries to stop transacting with Iran, but without pulling the trigger on the threat to punish those that continue doing business in Iran. The UK and European sanctions now facing legal challenges are a product of this bullying campaign. For over a decade, the EU has condemned America’s threatened ‘extraterritorial’ application of national trade law, warning it would go to the WTO if Washington ever sanctioned European companies over Iran-related business. Over the last several years, though, enough British and European businesses stopped transacting with Iran that the EU was no longer under pressure to defend European commercial interests and could begin subordinating its Iran policy to American preferences. By last year, it has imposed a nearly comprehensive economic embargo against the Islamic Republic. While Europe has surrendered on having an independent Iran policy, the U.S. bluff on secondary sanctions will soon be called, most likely by China. To be sure, Beijing does not seek confrontation with America over Iran, and has sought to accommodate Washington in many ways—e.g., by not developing trade and investment positions in the Islamic Republic as rapidly as it might have, and by shifting some Iran-related transactional flows into renminbi to help the Obama administration avoid sanctioning Chinese banks. While China’s imports of Iranian oil appear, in the aggregate, to be growing, Beijing reduces them when the administration is deciding about six-month sanctions waivers for countries buying Iranian crude. The Obama administration, for its part, continues giving China sanctions waivers; the one Chinese bank barred from America for Iran-related transactions is a Chinese energy company subsidiary with no U.S. business. But as Congress legislates more secondary sanctions, Obama’s room to maneuver is shrinking. Obama will soon be in the position of demanding that China cut Iranian oil imports in ways that would harm its economy, and that Chinese banks stop virtually all Iran-related transactions. Beijing will not be able to accommodate such radical demands; it will have to say ‘no’, putting Obama in a classic lose-lose situation. “If America wants a nuclear deal grounded in the NPT, Hassan Rohani is an ideal interlocutor. But this would require Washington to bring its own policy in line with the NPT.” Obama could retreat. But then the world will know that secondary sanctions are a bluff, undercutting their deterrent effect. Alternatively, he could sanction major Chinese firms and banks. But that will force Beijing to respond—at least by taking America to the WTO (where China will win), perhaps by retaliating against U.S. companies. At this point, Beijing has more ways to impose costs on America for violations of international economic law impinging on Chinese interests than Washington has levers to coerce Chinese compliance with U.S. policy preferences. America and its partners will not come out ahead in this scenario. Third, U.S. secondary sanctions accelerate the shift of economic power from West to East. As non-Western economies surpass more Western countries in their relative importance to the global economy, America has a strong interest in keeping non-Western states tied to established, U.S.-dominated mechanisms for conducting, financing, and settling international transactions. Secondary sanctions, though, push in the opposite direction, incentivizing emerging powers to speed up development of non-Western alternatives to existing transactional platforms. “Strategic recovery will also entail reversing Washington’s reliance on secondary sanctions—not because of Iranian surrender (which won’t be forthcoming), but because they delegitimize America’s claim to continuing leadership in international economic affairs.” This trend will diminish Western influence in myriad ways—e.g., reducing the dollar’s role as a transactional currency, lowering the share of cross-border commodity trades on New York and London exchanges, and shrinking the global near-monopoly of Western-based reinsurance companies and P&I clubs. Add the cost of a U.S.-instigated trade dust-up with China, and the self-damaging quality of America’s dysfunctional Iran policy becomes even clearer. Finding a New Approach Putting America on a better strategic trajectory will take thoroughgoing revision of its Iran policy. In this regard, the election of Hassan Rohani—who ran the Islamic Republic’s Supreme National Security Council for sixteen years, was its chief nuclear negotiator during 2003-2005, and holds advanced degrees in Islamic law and civil law—as Iran’s next president is an opportunity. If America wants a nuclear deal grounded in the NPT, Rohani is an ideal interlocutor. But this would require Washington to bring its own policy in line with the NPT—first of all, by acknowledging Iran’s right to safeguarded enrichment. Strategic recovery will also entail reversing Washington’s reliance on secondary sanctions—not because of Iranian surrender (which won’t be forthcoming), but because they delegitimize America’s claim to continuing leadership in international economic affairs. This, however, is even more difficult than revising the U.S. position on Iranian enrichment—for Congress has legislated conditions for lifting sanctions that stipulate Iran’s abandonment of all alleged WMD activities, cutting all ties to those Washington deems terrorists, and political transformation. Overcoming this will require Obama to do what President Nixon did to enable America’s historic breakthrough with China—going to Tehran, strategically if not physically, to accept a previously demonised political order as a legitimate entity representing legitimate national interests. None of this is particularly likely. But if America doesn’t do these things, it condemns itself to a future as an increasingly failing, and flailing, superpower—and as an obstacle, rather than a facilitator, of rules-based international order.

#### New round of sanctions would threaten broad enforcement of extraterritorial sanctions

Kahl-Director, Middle East Security Program, Center for a New American Security-11/13/13

<http://docs.house.gov/meetings/FA/FA00/20131113/101478/HHRG-113-FA00-Wstate-KahlC-20131113.pdf>

Second, and somewhat paradoxically, escalating sanctions at this moment could actually end up weakening international pressure on Iran. For better or worse, Rouhani has already succeeded in shifting international perceptions of Iran. If the United States, rather than Iran, comes across as the intransigent party, it will become much more difficult to maintain the international coalition currently isolating Tehran. In particular, if negotiations on a comprehensive framework collapse because of Washington’s unwillingness to make a deal on limited enrichment – a deal Russia and China and numerous other European and Asian nations support – it will likely become much harder to enforce sanctions. Some fence sitters in Europe and Asia will start to flirt with Iran again, leaving the United States in the untenable position of choosing between imposing extraterritorial sanctions on banks and companies in China, India, Japan, South Korea, Turkey and elsewhere, or acquiescing to the erosion of the comprehensive sanctions regime.

#### That undermines US trade leadership and Sino-US relations

Leverett-professor at Pennsylvania State University's School of International Affairs-2/25/13

Imposing secondary sanctions on non-US entities transacting with Iran could backfire on Washington if implemented.

<http://www.aljazeera.com/indepth/opinion/2013/02/201322584515426148.html>

Secondary sanctions Secondary sanctions are a legal and political house of cards. They almost certainly violate American commitments under the World Trade Organisation, which allows members to cut trade with states they deem national security threats but not to sanction other members over lawful business conducted in third countries. If challenged on the issue in the WTO's Dispute Resolution Mechanism, Washington would surely lose. India aims to cash in on Iran sanctions Consequently, US administrations have been reluctant to impose secondary sanctions on non-US entities transacting with Iran. In 1998, the Clinton administration waived sanctions against a consortium of European, Russian and Asian companies developing an Iranian gas field; over the next decade, Washington declined to make determinations whether other non-US companies' Iranian activities were sanctionable. The Obama administration now issues blanket waivers for countries continuing to buy Iranian oil, even when it is questionable they are really reducing their purchases. Still, legal and reputational risks posed by the threat of US secondary sanctions have reduced the willingness of companies and banks in many countries to transact with Iran, with negative consequences for its oil export volumes, the value of its currency and other dimensions of its economic life. Last year, the European Union - which for years had condemned America's prospective "extraterritorial" application of national trade law and warned it would go to the WTO's Dispute Resolution Mechanism if Washington ever sanctioned European firms over Iran-related business - finally subordinated its Iran policy to American preferences, banning Iranian oil and imposing close to a comprehensive economic embargo against the Islamic Republic. In recent weeks, however, Europe's General Court overturned European sanctions against two of Iran's biggest banks, ruling that the EU never substantiated its claims that the banks provided "financial services for entities procuring on behalf of Iran's nuclear and ballistic missile programmes". The European Council has two months to respond - but removing sanctions against the banks would severely weaken Europe's sanctions regime. Other major players in Iran's economy, including the Central Bank of Iran and the National Iranian Oil Company, are now challenging their own sanctioned status. On the other side of the world, America is on a collision course with China over sanctions. In recent years, Beijing has tried to accommodate US concerns about Iran. It has not developed trade and investment positions there as rapidly as it might have, and has shifted some Iran-related transactional flows into renminbito to help the Obama administration avoid sanctioning Chinese banks (similarly, India now pays for some Iranian oil imports in rupees). Whether Beijing has really lowered its aggregate imports of Iranian oil is unclear - but it clearly reduces them when the administration is deciding about six-month sanctions waivers for countries buying Iranian crude. The administration is taking its own steps to forestall a Sino-American conflict over sanctions. Besides issuing waivers for oil imports, the one Chinese bank Washington has barred from the US financial system for Iran-related transactions is a subsidiary of a Chinese energy company - a subsidiary with no business in the US. However, as Congress enacts additional layers of secondary sanctions, President Obama's room to manoeuver is being progressively reduced. Therein lies the looming policy train wreck.

#### US-Sino relations prevent nuclear war

Wittner 11 (Wittner, Emeritus Professor of History at the State University of New York/Albany and former editor of Peace & Change, a journal of peace research, “COMMENTARY: Is a Nuclear War with China Possible?,” November 28, <http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html>)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction. Moreover, in another decade the extent of this catastrophe would be far worse. The Chinese government is currently expanding its nuclear arsenal, and by the year 2020 it is expected to more than double its number of nuclear weapons that can hit the United States. The U.S. government, in turn, has plans to spend hundreds of billions of dollars “modernizing” its nuclear weapons and nuclear production facilities over the next decade. To avert the enormous disaster of a U.S.-China nuclear war, there are two obvious actions that can be taken. The first is to get rid of nuclear weapons, as the nuclear powers have agreed to do but thus far have resisted doing. The second, conducted while the nuclear disarmament process is occurring, is to improve U.S.-China relations. If the American and Chinese people are interested in ensuring their survival and that of the world, they should be working to encourage these policies.

### 1NR A2: Sanctions Now

#### Obama successfully avoiding sanctions now

**Abdi, National Iranian American Council policy director, 11-15-13**

(Jamal, “Tide Turns Towards Diplomacy as Key Senators Oppose New Iran Sanctions”, <http://www.huffingtonpost.com/jamal-abdi/tide-turns-towards-diplom_b_4283626.html>, ldg)

President Obama and the White House have been engaged in a battle in the Senate to block the chamber from passing new sanctions that could derail ongoing negotiations with Iran. The White House has been clear: new sanctions could kill the talks and put the U.S. on a "path to war." Groups including NIAC, FCNL, Peace Action, Americans for Peace Now, J Street, and International Campaign for Human Rights in Iran have all come out against new Senate sanctions. Groups including AIPAC and Foundation for Defense of Democracies are, as usual, advocating more sanctions. AIPAC even says they will explicitly try to kill a deal. But it looks like the pro-diplomacy side is winning. Senators Carl Levin, Christopher Murphy, and Dianne Feinstein have all now come out in opposition to new Iran sanctions, saying they will instead support the ongoing negotiations with Iran. And today, even Senator John McCain (R-AZ) told the BBC today he will not support new sanctions for now, saying, "I am skeptical of talks with Iran but willing to give the Obama administration a couple months." Here are the three Senators who are leading the charge to protect diplomacy from a new sanctions push: Senator Carl Levin (D-MI), Chairman of the Senate Armed Services Committee: "Whether it is a 10%, 40% or 60% chance [that the change is real], it should be tested and probed. We should not at this time impose additional sanctions." Senator Dianne Feinstein (D-CA), Chairwoman of the Senate Select Committee on Intelligence: "I am baffled by the insistence of some senators to undermine the P5+1 talks. I will continue to support these negotiations and oppose any new sanctions as long as we are making progress toward a genuine solution." Senator Chris Murphy (D-CT), Member of the Senate Foreign Relations Committee: "At this critical juncture in these negotiations when Iran may be on the verge of making serious concessions regarding its nuclear program, I worry it would be counterproductive for Congress to authorize a new round of sanctions, diminishing American leverage and weakening the hands of Secretary Kerry and his counterparts in the P5+1." While the House of Representatives voted in support of new sanctions just days before Rouhani's inauguration, a recent letter calling for the Senate to support new sanctions drew less than half as many supporters as a previous letter supporting diplomacy and calling for sanctions to be traded in for Iranian nuclear concessions. Now, it is now up to the Senate to decide whether to pass a sanctions bill opposed by the White House. The chamber has yet to advance their own bill despite prodding from hawks like Mark Kirk (R-IL) and Lindsey Graham (R-SC). The most likely path for the new sanctions was the National Defense Authorization Act, expected to be on the Senate floor next week. But with the two Senators who will manage the bill - Levin and McCain - now opposed to adding sanctions, U.S. negotiators are likely to have more space to conduct talks and secure a framework for a deal without Congressional interference.

#### PC deciding factor-otherwise entire sanction regime unravels

**Leverett et al., Penn St. IR professor, 11-4-13**

(Flynt, “America’s Moment of Truth on Iran”, <http://thediplomat.com/2013/11/04/americas-moment-of-truth-on-iran/>, ldg)

If Obama does not conclude a deal recognizing Iran’s nuclear rights, it will confirm suspicions already held by many Iranian elites—including Ayatollah Khamenei—and in Beijing and Moscow about America’s real agenda vis-à-vis the Islamic Republic. It will become undeniably clear that U.S. opposition to indigenous Iranian enrichment is not motivated by proliferation concerns, but by determination to preserve American hegemony—and Israeli military dominance—in the Middle East. If this is so, why should China, Russia, or rising Asian powers continue trying to help Washington—e.g., by accommodating U.S. demands to limit their own commercial interactions with Iran—obtain an outcome it does not actually want? America can also fail Iran’s test if it is unable to provide comprehensive sanctions relief as part of a negotiated nuclear settlement. The Obama administration now acknowledges what we have noted for some time—that, beyond transitory executive branch initiatives, lifting or even substantially modifying U.S. sanctions to support diplomatic progress will take congressional action. During Obama’s presidency, many U.S. sanctions initially imposed by executive order have been written into law. These bills—signed, with little heed to their long-term consequences, by Obama himself—have also greatly expanded U.S. secondary sanctions, which threaten to punish third-country entities not for anything they’ve done in America, but for perfectly lawful business they conduct in or with Iran. The bills contain conditions for removing sanctions stipulating not just the dismantling of Iran’s nuclear infrastructure, but also termination of Tehran’s ties to movements like Hizballah that Washington (foolishly) designates as terrorists and the Islamic Republic’s effective transformation into a secular liberal republic. The Obama administration may have managed to delay passage of yet another sanctions bill for a few weeks—but Congressional Democrats no less than congressional Republicans have made publicly clear that they will not relax conditions for removing existing sanctions to help Obama conclude and implement a nuclear deal. If their obstinacy holds, why should others respect Washington’s high-handed demands for compliance with its extraterritorial (hence, illegal) sanctions against Iran? Going into the next round of nuclear talks in Geneva on Thursday, it is unambiguously plain that Obama will have to spend enormous political capital to realign relations with Iran. America’s future standing as a great power depends significantly on his readiness to do so.

### 1NR A2: “Thumpers”

#### Iran and foreign policy separated from domestic issues---their uniqueness arguments aren’t relevant but the plan is

**Hammond, Oxford Analytica geopolitical analyst, 11-14-13**

(Andrew, “Iranian diplomacy underscores Obama's search for legacy”, <http://www.cnn.com/2013/11/13/opinion/iran-obama-legacy-hammond/>, ldg)

Despite the concerns of regional U.S. allies like Israel and Saudi Arabia, and also a significant number of legislators in the U.S. Congress, it is clear that the Obama administration is pushing strongly for deal as part of its wider Middle Eastern strategy. Indeed, Kerry has now spent more time negotiating with counterpart Iranian officials than any other U.S. high-level engagement for perhaps three decades. The seriousness of negotiations was emphasized by the fact that, as well as Kerry and his Iranian counterpart Mohammad Javad Zarif, foreign ministers from Russia, the United Kingdom, Germany and France, and the Chinese deputy foreign minister, came together. If agreement can be reached, an interim deal (potentially setting the ground for a later comprehensive agreement) would reportedly see Iran's nuclear capacity capped for six months and opened up to U.N. inspections. In exchange, Iran would be given limited, sequenced relief from sanctions. Remaining disagreements reportedly include the status of the Arak heavy-water reactor, and production of highly enriched uranium -- both processes, that can potentially be used to produce nuclear weapons. A second problem to resolve is how to handle the existing Iranian stockpile of uranium that Iran enriched to 20%. Progress in nuclear diplomacy with Iran, combined with continued uncertainty in Syria and Egypt, has refocused Washington's attention towards the Middle East in a manner unanticipated by Obama only a few months ago. In addition to Syria and Egypt, the administration has spent significant political capital resuming Israeli-Palestinian peace talks. The urgency of U.S. focus there reflects growing international conviction that, 20 years after the Oslo Process began, the "window of opportunity" for securing a two-state solution may be receding. Intensified U.S. focus on the Middle East has accentuated a shift, common to many recent re-elected presidents, of increased focus on foreign policy in second terms of office. In part, this reflects the fact that presidents often see foreign policy as key to the legacy they wish to build. For instance, after the 2001 terrorist attacks, George W. Bush sought to spread his freedom agenda across the Middle East. Bill Clinton also devoted significant time to trying to secure a comprehensive Israeli-Palestinian peace deal. As important as an Iran nuclear agreement might prove to be, the Middle East is one of only two regions in which Obama is looking for legacy. Since he was elected in 2008, Asia in general, and China in particular, has assumed greater importance in U.S. policy. To this end, Obama is seeking to continue the so-called pivot towards Asia-Pacific through landmark initiatives like the Trans-Pacific Partnership. Key threats, however, remain on the horizon to securing this re-orientation. These include a dramatic, sustained escalation of tension in the Middle East (perhaps in Syria or Egypt); and/or the remaining possibility of further terrorist attacks on the U.S. homeland. As well as legacy-building, the likelihood of Obama concentrating more on foreign policy also reflects domestic U.S. politics. Particularly the intense polarization and gridlock of Washington. Since re-election, Obama has achieved little domestic policy success. His gun control bill was defeated, immigration reform faces significant opposition in the Republican-controlled House of Representatives, and the prospect of a long-term federal budgetary "grand bargain" with Congress looks unlikely. Moreover, implementation of his landmark healthcare initiative has been botched. Many re-elected presidents in the post-war era have, like Obama, found it difficult to acquire domestic policy momentum. In part, this is because the party of re-elected presidents, as with the Democrats now, often hold a weaker position in Congress. Thus Dwight Eisenhower in 1956, Richard Nixon in 1972, and Bill Clinton in 1996 were all re-elected alongside Congresses where both the House and Senate were controlled by their partisan opponents. Another factor encouraging foreign policy focus in second terms is the fact that re-elected presidents have often been impacted by domestic scandals in recent decades. Thus, Watergate ended the Nixon administration in 1974, Iran-Contra badly damaged the Reagan White House, and the Lewinsky scandal led to Clinton being impeached. Since Obama's re-election, a series of problems have hit the administration. These include revelations that the Internal Revenue Service targeted some conservative groups for special scrutiny; and the Department of Justice's secret subpoenaing of private phone records of several Associated Press reporters and editors in the wake of a terrorist plot leak. Even if Obama escapes further significant problems, he will not be able to avoid the "lame-duck" factor. That is, as a president cannot seek more than two terms, political focus will refocus elsewhere, particularly after the November 2014 congressional ballots when the 2016 presidential election campaign kicks into gear. Taken overall, Iranian diplomatic progress and wider recent events in the Middle East are therefore likely to accentuate the incentives for Obama to place increasing emphasis on foreign policy -- which Congress has less latitude over -- in his remaining period of office. And, this shift is only likely to be reinforced if, as anticipated, the U.S. economic recovery continues to build up steam in 2014.

#### No immigration thumper

Investor Place 11/15/13

http://investorplace.com/investorpolitics/boehner-says-immigration-reform-2013/#.UobLZPmkpEI

Comprehensive immigration reform will not happen this year, according to House Speaker John Boehner, R-Oh. On Wednesday, Boehner repeated his opposition to a bill that the Senate passed earlier this year, saying “I’ll make clear we have no intention ever of going to conference on the Senate bill.” Last week, the third-ranking Republican in the House, Majority Whip Kevin McCarthy of California, told immigration reform advocates that there was not enough time for the House to take up the issue this year. There are 13 days of session left this year. Advertisement This comes despite Boehner’s previous statements that it was time for Congress to pass major reforms. President Barack Obama won re-election in part due to overwhelming support from Hispanic voters. However, despite the growing Hispanic voter bloc in the U.S., there are sharp splits within Boehner’s party on immigration. Many conservative oppose any legislation that would provide a path to citizenship for illegal immigrants or any sort of legal status for undocumented workers. But even bills on less controversial aspects of immigration reform — border security and enforcement — have not been called to floor votes after leaving the House Judiciary Committee. During a naturalization ceremony yesterday in Atlanta, Vice President Joe Biden called out Boehner for his comments, calling the move a “step backward in the history of the country.”

#### No health care thumper

**Bernstein, Washington Monthly, 11-15-13**

(Jonathan, “The Obama Polling Collapse is Massively Overstated”, [http://www.washingtonmonthly.com/ten-miles-square/2013/11/the\_obama\_polling\_collapse\_is047796.php#](http://www.washingtonmonthly.com/ten-miles-square/2013/11/the_obama_polling_collapse_is047796.php), ldg)

Sometimes, I think it helps to be a solid 1500 miles away from Washington. Or maybe it helps to have read a little history. Or maybe I’m just an old guy. Anyway: we’re at a point at which even Jonathan Chait, writing against panic, says that “the current sense of dread enveloping the Democratic Party has a very real basis. President Obama’s poll numbers are plunging to unprecedented depths.” Yes, it’s all massively overstated. Plunging? His approval (and some associated numbers) have definitely dropped. I suppose “plunge” is subjective, but HuffPollster’s estimate, set for “less smoothing” and therefore (over?) sensitive to recent polls, is that he’s lost maybe 2.5 percentage points over the last five or so weeks. He’s been losing ground all year including, mostly likely, during the shutdown. Depending on what adjustments one does, that might have accelerated after the shutdown, or maybe not. It doesn’t sound like a “plunge” to me. Obama’s popularity is probably at the low point of his presidency (again, depending on the adjustments, he’s either a bit below or a bit above his previous low. But it’s not any kind of unusually low low point (he’s nowhere near Truman, Carter, Nixon, W.), there’s no particular reason to expect the slump to continue, and myths aside no reason to believe he won’t recover if the news turns better. Granted, it’s hard to know what to expect from healthcare.gov, but it’s not as if it’s getting worse over time. I’m not saying his numbers will go up. Just that it’s more or less equally likely as further drops. (Actually…if I had to guess, I’d say a run of either stability or improvement is probably more likely, at least if the next budget deadlines come and go quietly. Gallup’s economic confidence index has been steadily recovering from its shutdown/debt limit plunge — yes, that one was a real plunge — and Jamelle Bouie is right that the economy is a very big part of presidential approval, although I think he somewhat understates the ability of other events to matter). As for electoral effects? I wrote an item dismissing direct electoral effects of the shutdown against Republicans back last month; that post pretty much works now, in reverse for effects against Democrats. I should say: it’s far easier for sentiment against the president to translate into midterm electoral losses than it is for feelings against the out-party. So if Obama is unpopular in November 2014, it will hurt Democrats. But today’s frenzy about the ACA is going to be mostly forgotten by then, one way or another, just as the shutdown seems forgotten today. That’s probably even true, believe it or not, if the program totally collapses, although I don’t think that’s going to happen. Anyway, Obama’s approval ratings have in fact fallen from the mid-40s to the low-40s, and over the course of the year from around 50 to the low 40s. It’s obviously not good news for him, but it seems a lot less dramatic than a lot of the chatter this week would have it be

### 1NR A2: Coercive Diplomacy Fails

#### The deal is working – we control uniqueness – this disproves their empirical basis

**WSJ 11-15-13**

(“U.S. Moves to Clear Obstacles to Iran Nuclear Deal”, <http://online.wsj.com/news/articles/SB10001424052702303559504579200382814398364>, ldg)

Obama administration officials said they have taken a series of steps in recent days to overcome the sticking points that tripped up an international agreement over Iran's nuclear program and are set for new talks in the coming week. Senior U.S. officials said that after the failure of world powers to reach an accord in negotiations with Tehran earlier this month, despite high levels of confidence then, most of the problems are being addressed. These officials cited deliberations that have taken place over key issues: Iran's demand for the right to produce its own nuclear fuel domestically; the purity levels for Iranian enrichment and the control of its stockpiles; and the future of a heavy-water reactor that could be capable of producing weapons-usable plutonium within two years. "We're very close to a deal," said a senior U.S. official involved in the diplomacy Friday. "We have a much clearer sense of the text we're negotiating going into this round…So we're definitely much closer to a deal heading into this round than the last one." U.S. negotiators will join with global powers for three days of negotiations with Iran starting Wednesday night in Geneva. It will be the third round of talks since the August inauguration of Iranian President Hasan Rouhani, who has pledged to revitalize his country's economy and roll back international sanctions.

### 1NR A2: Plan Solves

#### The plan doesn’t solve – it collapses the deal and negotiations

**Miller, Woodrow Wilson International Center for Scholars new indicatives vice president, 9-26-13**

(Aaron, “Dealing with Iran: Get ready for a wild ride”, <http://www.latimes.com/opinion/commentary/la-oe-miller-iran-nuclear-negotiations-20130926,0,6474158.story>, ldg)

U.S. diplomacy must take these fears into account, both for their merits and for political reasons. Washington will have to negotiate not just for itself but for its vulnerable allies. And Israel is the key. The task will be to determine what the Israelis really need, and then to reconcile those needs with U.S. goals, making it unmistakably clear that the president will not participate in a charade that allows the Iranians to run down the diplomatic clock while continuing to develop nuclear weapons capacity. In the end, the president needs to be willing — and make his willingness clear — to use any means, including force, to prevent Iran from making weapons. Iranian President Hassan Rouhani and President Obama both have tough domestic politics to deal with. Even though Iran's supreme leader, Ayatollah Ali Khamenei, empowered Rouhani to launch his diplomatic bid, that hardly means he's a believer in an enhanced U.S.-Iranian relationship. Indeed, tension in that relationship may actually serve to consolidate Khamenei's control. Sanctions have created pressure to reach an agreement with the U.S. But suspicious hard-liners, including Khamenei, will be watching and weighing both U.S. diplomacy and Rouhani's own capacity to negotiate carefully and avoid missteps or traps.

### 1NR A2: Horsetrading

#### Hardliners are trying to increase the presidents war power authority now to collapse negotiations---the plan emboldens hardliners by doing the exact opposite of what they want

Buchanan 11/12/13 (Patrick, Political commentator, “A Deal With Iran – or War With Iran?,” http://www.realclearpolitics.com/articles/2013/11/12/a\_deal\_with\_iran\_--\_or\_war\_with\_iran\_120633.html)

To abort Obama's Iran initiative, Bibi is moving on four tracks. First, get Congress to accept Israel's nonnegotiable demand -- Iran must give up all enrichment, shut down all nuclear facilities and ship all enriched uranium abroad -- before any sanctions are lifted. This is an ultimatum masquerading as a negotiating position. Acceptance would entail an Iranian surrender Rouhani could never take home. It is a deal killer. Everyone knows it, even the Republicans now embracing the Israeli position as their own. Second, persuade Israel's collaborators in Congress to impose harsh new sanctions, rub Iran's nose in them, and scuttle the talks. Third, arouse Jewish communities worldwide to pressure home governments to block any deal. Sunday, Bibi told the General Assembly of Jewish Federations of North America that what Kerry was prepared to sign was a "bad and dangerous deal" that threatened Jewish survival, and, "on matters of Jewish survival, I will not be silenced." Bibi intends to use the explosive issue of imperiled Jewish survival to break Obama and Kerry and force them to abandon their Iranian initiative. Finally, the Israeli lobby is behind the push by Lindsay Graham and Rep. Trent Franks to have Congress preemptively surrender its war powers, by authorizing Obama to launch a war on Iran at a time of his own choosing, without any further consultation with Congress. Remarkable. Self-proclaimed constitutional Republicans are about to vote Barack Obama a blank check for war. What the GOP fears is another episode like the one last summer where America rose as one and told Congress not to authorize any war on Syria. A panicked Congress capitulated, and there was no war. Today, though Obama and Kerry insist “all options are on the table,” Obama has no more authority to attack Iran today than he did Syria last summer. Hill Republicans seek to remedy that by a preemptive congressional surrender of their war power.

#### Restricting presidential war authority renders Obama impotent

Seeking Alpha 9-10, 9-10-2013, “Syria Could Upend Debt Ceiling Fight,” http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.

#### 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.

resolution "becomes vastly more difficult." n187

### 1NR A2: Ideology Outweighs

#### Empirical studies and expert consensus proves political capital is key to the agenda

**Wang 10**( Yuhua Wang Department of Political Science University of Michigan, he is also a member of the Wo Wang Clan, a group of poli sci profs who are also ill rappers. “Congressional Weakness, Political Capital, and the Politics of Presidential Agency Design” <http://sitemaker.umich.edu/wangyh/files/presidential_agency_design_yuhua_wang.pdf>)

Presidents’ popularity with the public is a resource that may influence members of Congress (Neustadt 1960). Some **recent studies have noticed the “political capital”** the president possesses (Light 1999; Johnson and Roberts 2005). Several scholars demonstrate that popular presidents are able to win more often in Congress (Brace and Hinckley 1992; Edwards and Wood 1999;Ostrom and Simon 1985; Rivers and Rose 1985). Krutz, Fleisher, and Bond (1998) argue that, “Washingtonians widely accept the view that Congress is more inclined to give presidents what they want when public support is high rather than low” (873). For Light, presidents’ strength includes their public approval ratings and their margin of victory in the most recent election (Light 1999: 32). When these factors increase, presidents gain political capital and are therefore more likely to garner Congressional support for their domestic agenda in Congress. Although some studies identify methodological and theoretical reasons to question the importance of presidential capital (Bond and Fleisher 1990; Collier and Sullivan 1995), it is worthwhile to test this in models of agency design. This paper predicts that when Congress is strong and united, “weak” presidents enjoy less discretion creating agencies by executive orders; in contrast, popular presidents are not constrained by Congress in agency design1.

#### Also- studies prove the theory of political capital

Eshbaugh-Soha, M. (2008). Policy Priorities and Presidential Success in Congress. Conference Papers -- American Political Science Association, 1-26. Retrieved from Political Science Complete database.

Presidential-congressional relations are a central topic in the scientific study of politics. The literature is clear that a handful of variables strongly influence the likelihood of presidential success on legislation. Of these variables, party control of Congress is most important (Bond and Fleisher 1990), in that conditions of unified government increase, while conditions of divided government decrease presidential success, all else equal. The president’s approval ratings (Edwards 1989) and a favorable honeymoon (Dominguez 2005) period may also increase presidential success on legislation. In addition, presidential speeches that reference policies or roll-call votes tend to increase the president’s legislative success rate (Barrett 2004; Canes-Wrone 2001; Eshbaugh-Soha 2006). In their landmark examination of presidential success in Congress, Bond and Fleisher (1990, 230) identify yet another condition that may facilitate presidential success on legislation when they write that “the president’s greatest influence over policy comes from the agenda he pursues and the way it is packaged.” Moreover, the policies that the president prioritizes have “a major impact on the president’s relationship with Congress.” Taken together, these assertions strongly suggest that the policy content of the president’s legislative agenda—what policies the president prioritizes before Congress—should be a primary determinant of presidential success in Congress.