### 2AC T-Lorber

#### We meet--- even Harold Koh thinks we’re T

Corker and Koh 2011 (Senator Bob Corker, R-Tenn., and Harold Koh, former Legal Adviser of the Department of State, “HEARING BEFORE THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE,” LIBYA AND WAR POWERS, http://www.fas.org/irp/congress/2011\_hr/libya.pdf)

Senator CORKER. Well, I do not think we are really making any ¶ decisions than are different than what you are carrying out. So we ¶ are rushing to make ourselves irrelevant this afternoon by virtue ¶ of passing something out that basically says—you know what it ¶ says. ¶ So let me ask you this. The chairman mentioned that since no ¶ American is being shot, there are no hostilities. Of course, by that reasoning, we could drop a nuclear bomb on Tripoli and we would not be involved in hostilities. It just goes to the sort of preposterous argument that is being made. ¶ But I do think one of the issues of precedence that you are setting is that Predators now—and I do want to remind you the Justice Department of this administration has spent lots of time trying ¶ to deal with people’s rights as it relates to terrorism and that kind ¶ of thing. And yet, basically what you all are doing by arguing this ¶ narrow case is saying that any President of the United States, ¶ Republican or Democrat, can order Predator strikes in any country ¶ and that is not hostilities. And of course, we know what Predators ¶ do. I think you know what they do, and lots of times human beings ¶ are not alive after they finish their work. ¶ So basically what you are doing is arguing that a President can ¶ order Predator strikes in any place in the world by virtue of this ¶ narrow argument that you have taken and that is not hostilities ¶ and Congress plays no role in that. ¶ Mr. KOH. Senator, that is not what I am arguing. Obviously, if ¶ Predator strikes were at a particular level or if we were carpet ¶ bombing a country using Predators, that would create a dramatically different situation. But the scenario that I have described to ¶ Senator Casey is a very different one. Within the constraints of this ¶ particular mission without ground troops, the Predators are playing a particular role with regard to the elimination of certain kinds ¶ of assets of Qadhafi that are being used to kill his own civilians. ¶ Even the numbers that Senator Casey mentioned are not close to ¶ the kind of level that we would consider to be ones that would trigger the pullout provision. ¶ So I think the important thing—and the question that had been ¶ asked was are we presenting a limited position. Yes, because all ¶ four limitations are what bring it within the line of the statute. We ¶ do not say that any element at all by itself could not be expanded ¶ out of shape and require a reexamination under the War Powers ¶ Resolution. I gave the example of a U.N. Security Council situation, ¶ Desert Storm, that required approval because of the scale of the ¶ operation.

#### Counter interp--- introducing USAF into hostilities includes bombing, it’s a question of scale not kind of engagement--- consensus of topic experts vote aff

Holan 2011 (Angie Drobnic Holan and Louis Jacobson, June 22, 2011, “Are U.S. actions in Libya subject to the War Powers Resolution? A review of the evidence,” Politifact, http://www.politifact.com/truth-o-meter/article/2011/jun/22/are-us-actions-libya-subject-war-powers-resolution/)

When is dropping bombs on another country not considered "hostilities"? That question is at the heart of a debate about whether the War Powers Resolution requires President Barack Obama to keep Congress informed about U.S. military activities in Libya.¶ The Obama administration is claiming that actions in Libya aren't subject to the War Powers Resolution because they don't meet the definition of "hostilities." We wanted to fact-check this statement, but experts we spoke with -- even those who disagreed with the Obama administration -- told us this is a complicated case and perhaps not a checkable fact. Rather, it's a legal claim that will be settled by either the courts or the political process.¶ Still, we decided it would be useful to readers to lay out all the evidence we've gathered here. And we want to be clear: The Obama administration's argument violates our standards of common sense, and we didn't find one independent expert who whole-heartedly supported the claim that actions in Libya are not "hostilities."¶ Libya and the War Powers Resolution¶ U.S. involvement in Libya began on March 19, 2011, as part of a NATO mission to support rebels attempting to overthrow the long-serving authoritarian leader Muammar Gadhafi. Obama said Gadhafi was launching military actions that were causing civilian deaths and forcing ordinary Libyans to escape to neighboring countries, threatening a humanitarian crisis within Libya and instability for its neighbors, Egypt and Tunisia. The NATO coalition initiated a bombing campaign and set up a no-fly zone designed to restrain Gadhafi.¶ "Left unaddressed, the growing instability in Libya could ignite wider instability in the Middle East, with dangerous consequences to the national security interests of the United States," Obama said.¶ Under the War Powers Resolution, a president can initiate military action but must receive approval from Congress to continue the operation within 60 days. If approval is not granted and the president deems it an emergency, then an additional 30 days are granted for ending operations.¶ But since NATO action in Libya began, Obama has not sought or received approval from Congress. In fact, individual members of Congress have warned Obama that he can't continue military action unilaterally. That's what has caused the current face-off between the White House and Congress.¶ On paper, the War Powers Resolution seems clear-cut. But in practice, Congress and the White House have skirmished repeatedly over it.¶ While the Constitution (Article I, Section 8) assigns the right to declare war to Congress, the last time that actually happened was at the beginning of World War II, when Franklin D. Roosevelt was president. Since then, presidents have generally initiated military activities using their constitutionally granted powers as commander-in-chief without an official declaration of war to support their actions. In some cases, such as the wars in Iraq and Afghanistan, Congress has complied with a presidential request for specific approval, short of a formal declaration of war.¶ The War Powers Resolution, passed in the wake of the Vietnam War, was intended to stop presidents from fighting wars without input from Congress. However, presidents from both parties have regularly ignored it, and Congress has often been reluctant to assert itself. Some critics have suggested that the resolution has functioned so poorly that it should be scrapped. ¶ "It is ineffective at best and unconstitutional at worst. No president has recognized its constitutionality, and Congress has never pressed the issue. Nor has the Supreme Court ever ruled on its constitutionality. In fact, courts have largely shied away from refereeing war-powers disputes between the two political branches," wrote James Baker and Warren Christopher in 2008. The two former secretaries of state, one a Republican and one a Democrat, studied the issue for a year and then recommended that it be replaced.¶ But for now, the law remains in force. So, earlier this month, butting up against the 90-day mark since action in Libya began, the Obama administration released a report summarizing its actions in Libya. The administration did not claim that the War Powers Resolution was unconstitutional but argued instead that its actions in Libya didn't meet the definition of "hostilities," so the War Powers Resolution did not apply.¶ "U.S. military operations are distinct from the kind of 'hostilities' contemplated by the Resolution's 60-day termination provision," the report said. "U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors."¶ The report also argued that NATO was leading the efforts in Libya and that U.S. strikes rely on remotely piloted drone planes for its attacks.¶ Members of Congress from both parties expressed skepticism.¶ "You know, the White House says there are no hostilities taking place," said U.S. House Speaker John Boehner, a Republican. "Yet we've got drone attacks underway. They're spending $10 million a day, part of an effort to drop bombs on Gadhafi's compounds. It just doesn't pass the straight-face test in my view, that we're not in the midst of hostilities."¶ Rep. Brad Sherman, D-Calif., also rejected the administration's argument. "The War Powers Act is the law of the land," Sherman told Glenn Greenwald, a liberal blogger with Salon. "It says if the president deploys forces, he's got to seek Congressional authorization or begin pulling out after 60 days. Too many presidents have simply ignored the law."¶ Sherman argued that "when you're flying Air Force bombers over enemy territory, you are engaged in combat."¶ What the law says¶ To research the administration's claim, we first turned to the law itself. The War Powers Resolution, passed in 1973, is not long; you can read it here. The resolution doesn't define "hostilities," but it does say that the president must go to Congress under three possible conditions if there is no formal declaration of war:¶ "In any case in which United States Armed Forces are introduced—¶ (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;¶ (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or¶ (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation."¶ By our reading, dropping bombs on a country would fall under the second point. We then turned to a range of experts on military affairs, international relations and the law to see what the consensus was.¶ What the experts say¶ Most of the experts we talked to said that what is happening in Libya does, in fact, constitute hostilities and that to claim otherwise -- as the White House is doing -- is false. ¶ "The U.S. has deployed manned and unmanned aircraft to fire missiles and drop bombs — the type of weapons only permissible for use in armed conflict hostilities," said Mary Ellen O'Connell, a University of Notre Dame law professor.¶ Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute, said that "this is akin to the argument that what we're doing isn't war but 'kinetic military action.' Now, the War Powers Act itself is problematic constitutionally, but you absolutely cannot say that what we’re doing in Libya isn’t 'hostilities,' in the lay or technical sense." And legal commentator Stuart Taylor Jr. said it's "not a close call, in my opinion. Our military has been dropping bombs and killing people in Libya over a period of several months."

#### USAF are the four branches

DOD Dictionary No Date http://www.dtic.mil/doctrine/dod\_dictionary/data/a/2554.html

United States Armed Forces

(DOD) Used to denote collectively the Army, Marine Corps, Navy, Air Force, and Coast Guard. See also Armed Forces of the United States.

#### Includes nukes

Manuel 2012 (Victor Manuel, JD UC-SD, “Is the Second Amendment outdated?,” http://www.victortorreslaw.com/blog/is-the-second-amendment-outdated.html)

The Second Amendment to the Constitution prevents the government from infringing individual rights to keep and bear arms. As a part of the Bill of Rights, the Second Amendment.is apart of the bulwark of individual rights protections that the Framers felt necessary to include in the Constitution. But where did the right originate and what was its purpose?¶ As with most of our laws, their origin was in England. For many years prior to the American Revolution the English folk were in conflict with the King and Parliament. Part of the conflict was over attempts by the King to disarm his subjects and whether there should be a standing army during peacetime. These were times in which the most lethal weapons were muskets and canon.¶ Times have changed. Today, no one questions the need for the government to maintain a standing army for the common defense, even in peacetime. Today’s modern armed forces include nuclear weapons, cruise missiles and smart bomb technology. In the event that a tyrannical government overcomes the will of the people is it realistic to believe that groups of citizens will be able to use armed revolt with assault weapons and other legally available firearms to successfully defeat the government? The result of such thinking is playing out today in Syria. Fighting in the streets, mass civilian slaughters and untold human suffering.

#### Prefer our interp:

#### Best limit--- infinite small “troops” affs--- peacekeeping, SEAL teams, Jason Bourne affs--- drawing the line at SCALE limits to big controversies

#### They overlimit--- modern war is about weapons not soldiers--- core of the lit is about missiles not a ground invasion of Russia

#### Predictability--- We’re what the WPR meant

Fisher 2011 (Louis Fisher, Scholar in Residence at the Constitution Project, previously he worked for four decades at the Library of Congress as Senior Specialist in Separation of Powers, June 28, 2011, Statement by Louis Fisher, ¶ The Constitution Project, ¶ Before the ¶ Senate Committee on Foreign Relations, ¶ “Libya and War Powers,” http://www.foreign.senate.gov/imo/media/doc/Fisher\_Testimony.pdf)

In response to a House resolution passed on June 3, the Obama administration on June 15 ¶ submitted a report to Congress. A section on legal analysis (p. 25) determined that the word ¶ “hostilities” in the War Powers Resolution should be interpreted to mean that hostilities do not ¶ exist with the U.S. military effort in Libya: “U.S. operations do not involve sustained fighting or ¶ active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a ¶ conflict characterized by those factors.” ¶ This interpretation ignores the political context for the War Powers Resolution. Part of ¶ the momentum behind passage of the statute concerned the decision by the Nixon administration ¶ to bomb Cambodia.17 The massive air campaign did not involve “sustained fighting or active ¶ exchanges of fire with hostile forces,” the presence of U.S. ground troops, or substantial U.S. ¶ casualties. However, it was understood that the bombing constituted hostilities.

#### Nukes topic education outweighs--- 1AC Willis ev says “bomb power” is the root of ALL OTHER executive war powers authority

#### Reasonability--- competing interps causes race to the bottom--- AND it’s written into the rez

CC 12 (October 26, 2012, “Special Programs - Centenary College Wiki,” wiki.centenarycollege.edu/index.php/Special\_Programs‎)

An “area of study” is defined as a field of study or a related cluster within one of the College's academic departments.

### Launch Authority

#### Small risks of nuclear launch every day add up to a large cumulative probability of launch

Martin E. Hellman (Professor of Electrical Engineering, Stanford University, Fellow of the Institute of Electrical and Electronics Engineers) April 2008 (last modified) “http://www-ee.stanford.edu/~hellman/Breakthrough/book/pdfs/hellman.pdf

These events justify Kennedy's estimate that the Cuban missile crisis created a high probability of nuclear war and was equivalent to a game of nuclear roulette with very few unloaded chambers in the gun. Crises of lesser magnitude also threaten the world, and on a much more constant basis. There are more chambers in the gun — the probability of disaster is smaller for each pull of the trigger — but that does not change the inevitability of the gun going off. Paul Bracken in this volume describes how a minor crisis ignited World War I in just this way. There was only a small probability that the assassination of Archduke Ferdinand in 1914 would lead to general war in Europe. But with sufficient pulls of the trigger, even such a limited terrorist attack in an out-of-the-way place can be the act which ushers in catastrophe. Every "small" war pulls the trigger in nuclear roulette. Because the US and the USSR back different sides, the conflict in Nicaragua has the potential for disaster. The Iran-Iraq war is another. Because Saudi Arabia provides Iraq with vital financial aid, Iran has threatened to cut off the flow of Saudi oil. Such action would be likely to bring American military action against Iran. This would be as unacceptable to the Soviets as it would be for America if the Soviets attacked Mexico.The USSR and Iran share a border. Every day in which a missile or computer system can fail also pulls the trigger in nuclear roulette. It has been established that on December 28, 1984, a Soviet cruise missile went off course and flew over Finland and Norway. The results of such an accident can be horrendous, particularly if it happens in a more populated part of Western Europe, in the Mideast, or during a time of tension. In 1979 and the first half of 1980, there were 3,703 low-level false alerts in the United States alone. A few were sufficiently serious to come within minutes of launching nuclear war. One false alert lasted for a full six minutes before the error was discovered — a dangerously long time considering that the flight time for some submarine-launched ballistic missiles is less than ten minutes. (6) Because it takes time to detect a launch and orders must be given some minutes before retaliation can take place, the decision time is even shorter or nonexistent. Even events as dangerous as the Cuban missile crisis could be repeated. General Edward Meyer, former army Chief of Staff, reported that during his tenure, "a naval quarantine or blockade of both Nicaragua and Cuba" had been considered. (7)Every day, the United States depends on 30,000 nuclear weapons for its security. Every day, the Soviet Union depends on 20,000 nuclear weapons for its security. These weapons are ready for use. There are plans for how to use them, so every day there is a small probability they will be used. In the metaphor of nuclear roulette, every day, we pull the trigger of the many chambered nuclear gun pointed at the head of civilization. Every day, there is a small chance that one of the forty conflicts going on in the world will escalate. With many of these wars touching upon the perceived vital interests of the major powers, with the experience of the past forty years in the Middle East, with the experience of the 1962 Cuban crisis, there is ample evidence that every war pulls the trigger. Every day, there is a small chance that a Third World hot spot will escalate and push the interlocking command and control systems of the US and the USSR into instability. There is an unhealthy parallel between today's military plans and those which catapulted Europe into World War I. Each time the far-flung military forces of the two great powers go on alert, the trigger is pulled in nuclear roulette. Every day, there is a small chance that failures in high technology military equipment will start an accidental nuclear war. Every computer error, every false alert, every test missile that goes off course, pulls the trigger. Every day, there is a small chance that a governmental or military group high up in either nation will succumb to group dynamics to such a degree that individual judgment will be lost and rash decisions made. Each time a team is called upon to decide how to respond to a provocative incident, each time warriors gather to decide what steps to take, the trigger is pulled.Each of the hundreds of thousands of people with responsibility for nuclear weapons who drinks or uses drugs adds a small increment to the chance for nuclear war. Each time a custodian of nuclear materials, or nuclear plans, or keys to a nuclear facility, uses alcohol or other drugs, the trigger is pulled. Every day, there is a small chance that terrorists or renegade governments will construct a nuclear weapon. The know-how, the materials, andthe places where such construction can occur are scattered all over the globe. Fissionable material suitable for use in weapons is produced as an unwanted by-product at every civilian nuclear power plant in the world. More than 100,000 nuclear weapons could be built from the world's current nuclear wastes. Every coffee cup of fissionable material that a terrorist might obtain pulls the trigger in nuclear roulette. (8) Each of these probabilities, by itself, is small. But taken together over a year's time, they add up to a cumulative probability which is no longer small. Taken together over a decade, the probability is significant. Taken together over a century, they make nuclear war virtually inevitable. We cannot continue on our present course forever.

### 2AC Amendment CP--- Court Capital NB

#### Perm do both--- shields the link to the net benefit

#### Amendment CPs are a voting issue--- not real world: fiats multiple cooperative actions by multiple actors, not a real world policy option or opportunity cost--- bad model of decisionmaking--- trades off with substantive topic education

Baker 2010

[Director of the Con Law Center at Drake, 10 Widener J. Pub. L. 1]

There is a reason that there have been only 27 amendments over more than 200 years: Constitutional amendments must have the sustained and one-sided support of great majorities in the Congress and across the states. Very few issues ever garner such importance and support.

#### Obviously links to the net benefit OR it doesn’t solve deference--- the CX was a mess on this issue

#### Only the court solves launch authority--- amendments are meaningless

Strauss 2001 (David A. Strauss, law professor at U Chicago, “Do Constitutional Amendments Matter?,” CHICAGO PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO., 05http://www.law.uchicago.edu/files/files/05.%20Strauss.Amendments1.pdf)

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

#### Conditionality is a voting issue--- skews the 2AC, most important speech for aff offense--- can’t read best offense, kills strategic thinking and best policy option

#### NO rollback--- fiat is durable

### 2AC K

#### Role of the ballot is to evaluate effects of the plan- other interps arbitrarily exclude 9 min of aff offense--- Judge should choose reps that best test plan desirability, must evaluate the effects of the plan to determine the desirability of our language/reps/knowledge

#### consequences key to testing desirability of method/ontology/epistemology

#### Debate dialectic sufficient filter for knowledge production and epistemology args, it’s their job to indict each piece of ev--- existence is a prerequisite to value

#### --- vague alts make the aff a moving target, floating PIKs steal the aff and justify perm do the alt

#### Policy debates about our aff prevent extinction

Zacher 2013 (Jules Zacher, Esquire, sole practitioner engaged in the practice of law since 1974 in state and federal court in Pennsylvania, April 19, 2013, “Presidential Authority and Nuclear Weapons: Taking Back Our Rights,” Presented at the Sovereignty and Rule of Law Conference, Center for Ethics and the Rule of Law, University of Pennsylvania Law School, https://www.law.upenn.edu/live/files/1942-zacherpresidential-authority-and-nuclear-weapons) [Gender modified]

B. Academics Most academics have bought into the concept of nuclear deterrence and the inability to put “the genie back into the bottle”, rarely speaking out about achieving a nuclear weapons free world. This unfortunate state of affairs is in no small part due to the numbing and avoidance principles mentioned above. Academics, however, have played crucial roles in previous Administrations, as well as the¶ current one. Indeed, President Obama has reached out to academia on numerous occasions for guidance with health policy and the economy. Surely academia can advise the President on a topic such as nuclear weapons, a topic he already has a¶ strong interest in. Writing papers and holding seminars are but two ways an¶ organized effort can be sustained to reach the President’s ear and establish the¶ intellectual underpinnings for a nuclear weapons free world. V. Conclusion¶ A nuclear weapons free world is a possibility which can only be achieved in part through a change of thinking that only the President has the right to determine when and how nuclear weapons can be deployed and utilized. The very security of¶ our country and every person’s fundamental right to existence must be asserted by¶ two groups most capable of doing this, lawyers and academics. Indeed, the very¶ existence of Humankind depends on such an effort.

#### Democratic checks prevent their impact from escalating

O’Kane 1997 (“Modernity, the Holocaust, and politics”, Economy and Society, February, ebsco)

Chosen policies cannot be relegated to the position of immediate condition (Nazis in power) in the explanation of the Holocaust. Modern bureaucracy is not ‘intrinsically capable of genocidal action’ (Bauman 1989: 106). Centralized state coercion has no natural move to terror. In the explanation of modern genocides it is chosen policies which play the greatest part, whether in effecting bureaucratic secrecy, organizing forced labour, implementing a system of terror, harnessing science and technology or introducing extermination policies, as means and as ends. As Nazi Germany and Stalin’s USSR have shown, furthermore, those chosen policies of genocidal government turned away from and not towards modernity. The choosing of policies, however, is not independent of circumstances. An analysis of the history of each case plays an important part in explaining where and how genocidal governments come to power and analysis of political institutions and structures also helps towards an understanding of the factors which act as obstacles to modern genocide. But it is not just political factors which stand in the way of another Holocaust in modern society. Modern societies have not only pluralist democratic political systems but also economic pluralism where workers are free to change jobs and bargain wages and where independent firms, each with their own independent bureaucracies, exist in competition with state-controlled enterprises. In modern societies this economic pluralism both promotes and is served by the open scientific method. By ignoring competition and the capacity for people to move between organizations whether economic, political, scientific or social, Bauman overlooks crucial but also very ‘ordinary and common’ attributes of truly modern societies. It is these very ordinary and common attributes of modernity which stand in the way of modern genocides.

#### No mindless intervention

Mandelbaum 2011 (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011)

I think it is, Richard. And I think that this period really goes back two decades. I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs. But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. Nation building has never been popular. The country has never liked it. It likes it even less now. And I think we're not going to do it again. We're not going to do it because there won't be enough money. We're not going to do it because there will be other demands on the public purse. We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy. And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind. So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit. And that unit has come to an end.

#### Human life is inherently valuable

Penner 2005 Melinda Penner (Director of Operations – STR, Stand To Reason) 2005 “End of Life Ethics: A Primer”, Stand to Reason, http://www.str.org/site/News2?page=NewsArticle&id=5223

Intrinsic value is very different. Things with intrinsic value are valued for their own sake. They don’t have to achieve any other goal to be valuable. They are goods in themselves. Beauty, pleasure, and virtue are likely examples. Family and friendship are examples. Something that’s intrinsically valuable might also be instrumentally valuable, but even if it loses its instrumental value, its intrinsic value remains. Intrinsic value is what people mean when they use the phrase "the sanctity of life." Now when someone argues that someone doesn’t have "quality of life" they are arguing that life is only valuable as long as it obtains something else with quality, and when it can’t accomplish this, it’s not worth anything anymore. It's only instrumentally valuable. The problem with this view is that it is entirely subjective and changeable with regards to what might give value to life. Value becomes a completely personal matter, and, as we all know, our personal interests change over time. There is no grounding for objective human value and human rights if it’s not intrinsic value. Our legal system is built on the notion that humans have intrinsic value. The Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that each person is endowed by his Creator with certain unalienable rights...." If human beings only have instrumental value, then slavery can be justified because there is nothing objectively valuable that requires our respect. There is nothing other than intrinsic value that can ground the unalienable equal rights we recognize because there is nothing about all human beings that is universal and equal. Intrinsic human value is what binds our social contract of rights. So if human life is intrinsically valuable, then it remains valuable even when our capacities are limited. Human life is valuable even with tremendous limitations. Human life remains valuable because its value is not derived from being able to talk, or walk, or feed yourself, or even reason at a certain level. Human beings don’t have value only in virtue of states of being (e.g., happiness) they can experience. The "quality of life" view is a poison pill because once we swallow it, we’re led down a logical slippery slope. The exact same principle can be used to take the life of human beings in all kinds of limited conditions because I wouldn't want to live that way. Would you want to live the life of a baby with Down’s Syndrome? No? Then kill her. Would you want to live the life of an infant with cerebral palsy? No? Then kill him. Would you want to live the life of a baby born with a cleft lip? No? Then kill her. (In fact, they did.) Once we accept this principle, it justifies killing every infant born with a condition that we deem a life we don’t want to live. There’s no reason not to kill every handicapped person who can’t speak for himself — because I wouldn’t want to live that way. This, in fact, is what has happened in Holland with the Groningen Protocol. Dutch doctors euthanize severely ill newborns and their society has accepted it.

#### Biopolitics is not bad and the alternative fails. the examples their impact cards have are historically out of context

John Parry (Associate Professor, University of Pittsburgh School of Law) 2005 “Society Must be Regulated” November, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=854564 ]

That said, I want to close by suggesting that biopolitics, while perhaps not necessarily good, is at least not wholly bad. Absent realistic alternatives, this claim is certainly worth considering. Foucault, for example, never charted a way out of biopolitics beyond developing an individual aesthetic of self-discipline and regulation—the “care of the self.”94 Other writers speak of achieving something like a “new politics,” which usually means some combination of personal freedom that includes the substance—but often not the legal baggage—of individual human rights, combined with an ideal of community that fits uneasily with the ideal of personal freedom (thus the “politics,” which are likely to be anything but new), as well as a more egalitarian economic arrangement and the social safety net of the modern welfare state, but without the modern state itself. Even assuming this vision is desirable, no one has any practical idea how to make it happen.95 My basic assertions are that the ills laid at the feet of biopolitics are not entirely its fault and that they are in any event the costs of “progress.” Consider, first, the charges. Critics point out that in the modern, centralized, biopolitical state, our individuality is suppressed to the larger goal of managing the population. As a result, we become detached and alienated, even as we are disciplined and regulated. At best we can resort to coping strategies, but larger transformation of our social environment is impossible.96 The flaw in this diagnosis is that it treats the alienated individual as problematic, as if there were an acontextual, dehistoricized thing known as “an individual” that is capable of being alienated or not, with the result that we should try to make it less, rather than more, alienated. Far more likely is that the idea of the individual developed in the modern period along with the modern state and that alienation is part of what defines an individual. To the extent the “problem” of the alienated individual has significance in the contemporary world, in other words, it is a direct consequence of the enlightenment and can only be solved through biopolitics. Indeed, biopolitics simply reflects the enlightenment project of promoting reason in place of “superstition” and arbitrary power. Social structures have become rationalized, so that governments are more likely to operate by articulated policy instead of fiat, the rule of law instead of whim, and democracy instead of hereditary rule or warlordism. The creation of the individual—a rational, rights-bearing but also alienated entity—is critical to all of these developments. Importantly, under this account, these changes may not be liberating in any objective sense, because the freedoms they create come with real costs—the costs of being free in this way as well as the consequences of being part of a power structure in which these particular freedoms are defined, managed, and subject to suspension. Still, this process leads not only to centralization and state violence but also to rights that channel the exercise of state power, to pervasive regulation of our lives and environment but also to a significant amount of predictability and security for many people. Our modern anxiety can be imperfectly assuaged by the comforts that flow from management and technology, and there is no reason to believe we are any less happy than people were in the past—although neither is it clear that we are any happier. How the costs and benefits of the enlightenment and biopolitics shake out, and whether that should even be the way we assess them (it appears to be a loaded standard, after all), are political and moral issues. Even more, however, they are questions of aesthetics. The comforts and controls of biopolitics will appeal to many people. Others will find fulfillment in acts of resistance along a variety of fronts. Beyond that, and what the future will bring, who can say?

#### No Impact - Biopolitics does not cause huge global massacres

Mika Ojakangas (PhD in Social Science and Academy research fellow @ the Helsinki Collegium for Advanced Studies @ University of Helsinki) 2005 “The Impossible Dialogue on Biopower: Foucault and Agamben,” May 2005, Foucault Studies, No. 2, http://www.foucault-studies.com/no2/ojakangas1.pdf

Admittedly, in the era of biopolitics, as Foucault writes, even “massacres have become vital.” This is not the case, however, because violence is hidden in the foundation of biopolitics, as Agamben believes. Although the twentieth century thanatopolitics is the “reverse of biopolitics”, it should not be understood, according to Foucault, as “the effect, the result, or the logical consequence” of biopolitical rationality. Rather, it should be understood, as he suggests, as an outcome of the “demonic combination” of the sovereign power and biopower, of “the citycitizen game and the shepherd-flock game” or as I would like to put it, of patria potestas (father’s unconditional power of life and death over his son) and cura maternal (mother’s unconditional duty to take care of her children). Although massacres can be carried out in the name of care, they do not follow from the logic of biopower for which death is the “object of taboo”. They follow from the logic of sovereign power, which legitimates killing by whatever arguments it chooses, be it God, Nature, or life.

#### Extinction outweighs – as long as there is some life there’s only a risk they retain ontological capacity

Jonas 1996 Hans Jonas (Former Alvin Johnson Prof. Phil. – New School for Social Research and Former Eric Voegelin Visiting Prof. – U. Munich) 1996 “Morality and Mortality: A Search for the Good After Auschwitz”, p. 111-112)

With this look ahead at an ethics for the future, we are touching at the same time upon the question of the future of freedom. The unavoidable discussion of this question seems to give rise to misunderstandings. My dire prognosis that not only our material standard of living but also our democratic freedoms would fall victim to the growing pressure of a worldwide ecological crisis, until finally there would remain only some form of tyranny that would try to save the situation, has led to the accusation that I am defending dictatorship as a solution to our problems. I shall ignore here what is a confusion between warning and recommendation. But I have indeed said that such a tyranny would still be better than total ruin; thus, I have ethically accepted it as an alternative. I must now defend this standpoint, which I continue to support, before the court that I myself have created with the main argument of this essay. For are we not contradicting ourselves in prizing physical survival at the price of freedom? Did we not say that freedom was the condition of our capacity for responsibility—and that this capacity was a reason for the survival of humankind?; By tolerating tyranny as an alternative to physical annihilation are we not violating the principle we established: that the How of existence must not take precedence over its Why? Yet we can make a terrible concession to the primacy of physical survival in the conviction that the ontological capacity for freedom, inseparable as it is from man's being, cannot really be extinguished, only temporarily banished from the public realm. This conviction can be supported by experience we are all familiar with. We have seen that even in the most totalitarian societies the urge for freedom on the part of some individuals cannot be extinguished, and this renews our faith in human beings. Given this faith, we have reason to hope that, as long as there are human beings who survive, the image of God will continue to exist along with them and will wait in concealment for its new hour. With that hope—which in this particular case takes precedence over fear—it is permissible, for the sake of physical survival, to accept if need be a temporary absence of freedom in the external affairs of humanity. This is, I want to emphasize, a worst-case scenario, and it is the foremost task of responsibility at this particular moment in world history to prevent it from happening. This is in fact one of the noblest of duties (and at the same time one concerning self-preservation), on the part of the imperative of responsibility to avert future coercion that would lead to lack of freedom by acting freely in the present, thus preserving as much as possible the ability of future generations to assume responsibility. But more than that is involved. At stake is the preservation of Earth's entire miracle of creation, of which our human existence is a part and before which man reverently bows, even without philosophical "grounding." Here too faith may precede and reason follow; it is faith that longs for this preservation of the Earth (fides quaerens intellectum), and reason comes as best it can to faith's aid with arguments, not knowing or even asking how much depends on its success or failure in determining what action to take. With this confession of faith we come to the end of our essay on ontology.

### 2AC Nuke Primacy DA

#### No link--- aff doesn’t change nuclear arsenal, just changes who is in charge

#### No primacy now

Gertz 2013 (Bill Gertz, June 20, 2013, “Obama Directs New Limits on Pentagon Nuclear Weapons Use,” Washington Free Beacon, http://freebeacon.com/obama-directs-new-limits-on-pentagon-nuclear-weapons-use/)

President Barack Obama this week ordered new limits on the use of U.S. nuclear weapons and called for sharp warhead cuts in a speech in Berlin aimed at what he called achieving “peace with justice.”¶ “Peace with justice means pursuing the security of a world without nuclear weapons, no matter how distant that dream may be,” Obama said on the eastern Berlin side of the Brandenburg Gate.¶ “And so as president, I’ve strengthened our efforts to stop the spread of nuclear weapons and reduce the number and role of America’s nuclear weapons.”¶ Obama announced that, after reviewing U.S. nuclear doctrine, “I’ve determined that we can ensure the security of America and our allies and maintain a strong and credible strategic deterrent while reducing our deployed strategic nuclear weapons by up to one-third.”¶ It was not clear from the speech whether the president planned to cut the deployed warhead arsenal from the 2010 New START arms treaty level of 1,550 to around 1,000 unilaterally or with another arms pact with Moscow.¶ Obama said he intended to seek “negotiated cuts” with Russia but appeared to leave open a unilateral one-third warhead arsenal reduction by the United States.

#### Aff doesn’t hurt primacy

Forrester 1989 (Ray Forrester, Professor, Hastings College of the Law, University of California, former dean of the law schools at Vanderbilt, Tulane, and Cornell August 1989, “Presidential Wars in the Nuclear Age: An Unresolved Problem,” The George Washington Law Review, Lexis)

Obviously, it is not feasible to convene Congress for a decision as to whether the circumstances justify a declaration of war and the immediate launching of the missile. But perhaps it is not too bizarre to consider the use of three "nuclear footballs." Since the President is now able to have the "black bag" by his side at all times, it would seem feasible to require that a bag also be constantly available to a representative of the House and a representative of the Senate. Inconvenient, yes, but if the President can live with it, representatives of the Congress should also be able to do so. In this age of miracles in instant communication, the messages going to the President could be transmitted to all three at the same time, thereby prompting immediate consultation. The three, of course, would receive constant protection as the President is protected now. If one should not be available due to incapacity, the others would consult alone. My own inclination would be to require the President to receive the concurrence of at least one of the two in the President's plan of action. But for those more willing to trust the judgment of one person, the President's decision could control subject only to the safeguard of prior consultation.

#### Aff key to credibility of US nuke arsenal

Hemesath 2000 (Paul A. Hemesath, J.D./M.S.F.S. Georgetown University Law Center, School of Foreign Service, August 2000, “Who's Got the Button? Nuclear War Powers Uncertainty in the Post-Cold War Era,” Georgetown Law Journal, lexis)

The explosion of the first atomic weapon over Hiroshima in 1945 is often referred to as the closing event of the Second World War as well as the opening move in the Cold War. 3 Accordingly, the constitutional implications of using atomic, and then nuclear, weapons have been considered only in the context of the Cold War--a period of highly charged international tensions and unprecedented military build-up. 4 The dangers of the Cold War required the President [\*2474] of the United States to maintain effective control of offensive nuclear triggers in order to present a credible and immediate counter-threat to Soviet aggressions. 5 Thus, although not explicitly authorized by any congressional declaration of war, the Executive's near total control of nuclear weapons was countenanced because of its constitutional duty 6 and practical responsibility to maintain stability during the Cold War. 7¶ But now, with the end of the Cold War and the advent of a new era in foreign relations, the constitutional justifications for unlimited presidential power to launch an offensive nuclear attack without congressional consultation should be reexamined for legal defects. 8 The Cold War provided a justification--an excuse grounded in the preeminence of national security--for the allowance of such a concentration of nuclear authority in the hands of the President. 9 However, the Cold War is now over. The Framers' intentions may be reconsidered in light of a return to normalcy. Unfortunately, such examination reveals the potential for harmful uncertainty.¶ This uncertainty stems from the dispute between the President and Congress regarding the war powers and, particularly, nuclear war powers. Both branches claim plausible bases for a stake in war powers authority: Congress is the sole branch constitutionally authorized to declare a war; the President is Commander in Chief and possesses the mechanisms required to put a nuclear strike in motion. 10 Assuming a conflict of opinion between the branches during the contemplation of an offensive nuclear strike, the uncertainty of constitutional authority in such a unique and momentous scenario portends severe consequences ranging from suspicions of illegitimacy to a full-blown constitutional crisis. 11

#### No impact --- nobody else is going to use nukes--- prefer 1AC Arquilla ev, only evidence that’s about other countries’ nuke strategies

#### Aggressive posture is antiquated--- only minimum deterrence is necessary

Nichols 2013 (Tom Nichols, professor of national security affairs at the U.S. Naval War College and a professor of government at the Harvard Extension School, March 14, 2013, “Time To Change America’s Atomic Arsenal,” The Diplomat, http://thediplomat.com/2013/03/14/time-to-change-americas-atomic-arsenal/?all=true)

This is largely the product of a long spell of inertia in American strategic planning. The Cold War mission of deterring another nuclear superpower by preparing for global nuclear combat, insofar as that idea ever made sense, is now a part of history and should be left behind. The new mission for U.S. nuclear weapons for at least for the next two decades, if not longer, should be one of minimum deterrence, meaning the prevention of a major nuclear attack on America with a small nuclear force — perhaps as low as 300 strategic weapons — targeted only for retaliation for the attempted destruction of the United States and nothing else.¶ This is not a radical proposal: some American military and civilian leaders gravitated to the idea of a minimum deterrent as early as the 1950s. Unfortunately, the rapid construction of nuclear arsenals during the Cold War overwhelmed any such possibility as both superpowers rushed to develop large nuclear forces divided among bombers, submarines, and land-based intercontinental ballistic missiles.¶ Advocates of this traditional “triad” argue that this force helped to win the Cold War. They are only partially correct; the more we find out about the Cold War, the more the evidence points to a more refined conclusion. U.S. and Soviet leaders, as it turns out, weren’t deterred by the massive use of nuclear weapons: they were deterred by the thought of almost any use of nuclear weapons. If the objective is to deter an attack on the United States, then a triad of thousands of strategic weapons is, literally, overkill. During the Cold War, we fell into the trap of devising strategies to serve weapons systems, rather than the other way around. To think about tomorrow’s nuclear force, we need to abandon the tradition of simply remolding our existing nuclear deterrent into smaller versions of itself every few years. The strategic deterrent should do one thing, and one thing only: prevent the nuclear destruction of the United States by a peer like China or Russia.¶ What about the rogues, who can inflict great harm but not existential destruction on the U.S. or its allies? The mission of deterring WMD attacks from rogue states is not, and in reality has never been, a nuclear mission. After the Cold War, we are no longer confronting a fellow nuclear Goliath; instead, we now face a coterie of smaller Davids, each armed with various kinds of weapons of mass destruction. Threats of brute nuclear force against these smaller nations are not only useless, they are immoral. Policy wonks and armchair generals speak casually about nuclear retaliation against countries like North Korea or Iran, but the fact of the matter is that no responsible democracy like the United States would drop nuclear weapons in the crowded regions of East Asia or the Middle East any more than it would order its police to clear a street riot with a bazooka. Moreover, keeping the full panoply of nuclear forces only serves to undermine political efforts to restrain rogues like Iran and North Korea.¶ Whether the United States will choose to maintain conventional forces that can deliver a violent reckoning to rogue states, and thus to deter their leaders, is a separate question. It is a mission that the U.S. and its allies have already proven they can execute, as deposed autocrats like Slobodan Milosevic and Saddam Hussein could attest if they were still alive. The successful hunt for Osama Bin Laden likewise should confirm that a U.S. promise to exact justice, no matter how long it takes, should not be treated lightly.¶ Where strategic nuclear weapons are concerned, however, it is time to end the incoherence that has plagued debates about the U.S. deterrent since the end of the Cold War.

#### Liber and Press are wrong

Elkind 2012 (David J. Elkind, research intern for the Project on Nuclear Issues at CSIS, May 22, 2012, “American Nuclear Primacy: the End of MAD or a New START?,” CSIS, http://csis.org/blog/american-nuclear-primacy-end-mad-or-new-start)

These results show that the United States cannot reasonably claim to have obtained nuclear primacy. Reductions in the two nations’ respective arsenals, coupled with the large number of Russian targets collaborate to make it exceptionally difficult to destroy the Russian arsenal in a counterforce first strike. Even though my results demonstrate a modest level of confidence in the baseline scenario, I believe that mutually assured destruction remains in place. Because the costs of even a single Russian warhead surviving would have such devastating consequences for the United States, I do not believe that any President or military planner would care to wager America’s most populous cities in conducting a nuclear first strike. While these results speak to the purely military considerations of that choice, the political, ethical and humanitarian considerations likewise make such an action highly unlikely.¶ ¶ Even though this article concludes that the US could not carry out a counterforce strike on the Russian arsenal in 2012, and therefore does not possess nuclear primacy, this should not be interpreted as a call to restart the arms race or otherwise acquire primacy. Liber and Press write that “the shift in the nuclear balance could significantly damage relations among the great powers and increase the probability of nuclear war,” and outline a variety of possible mechanisms by which this could come to pass and present rebuttals to counterarguments (interested readers should refer to Lieber and Press, “The End of MAD?” 31-38). To bridge the gap in nuclear capabilities, Russia and China may undertake perilous activities to restore the nuclear balance, such as pre-delegated launch authority, a launch-on-warning posture, or larger nuclear arsenals. Pre-delegated launch authority increases the risk of unauthorized nuclear use; Cold War experience confirms that launch-on-warning postures are vulnerable to false alarms initiating a counter-attack to imaginary missiles; arms races carry the risk that one side will perceive that it has gained the upper hand and undertake a nuclear first use. Furthermore, nuclear primacy carries considerable risks in times of crisis. In the event of a political crisis or a conventional war between the US and a rival power, the threat of a disarming strike by the United States may predispose the rival to land the first blow while it still has the means to do so. In this way, having a reduced confidence in the ability of the US to carry out a first strike should be read as a stabilizing feature of international politics, as strategic stability (if it had ever departed) has been restored as a pillar of the international system.¶ ¶ External to these considerations, achieving nuclear primacy would be a pyrrhic victory. The preceding analysis assumes that the United States is in possession of perfect intelligence on the locations and attributes of Russian nuclear weapons facilities and is able to carry out such an attack unhindered by air- or missile-defenses (and concludes such an attack is ill-advised despite possessing perfect information). Even if mobile missiles do not continuously patrol, it would make sense for Russia to shuttle them from one garrison to another in order to decrease Russia’s opponents’ confidence in accounting for all of them. Furthermore, Russia’s decision to deploy its mobile forces in the event of a crisis (or continuously as a matter of policy) could spark concerns in Washington that either a Russian attack is immanent or simply that United States’ confidence in a first-strike option has evaporated, creating further perceptions of insecurity and upsetting the strategic environment which, in the mind of US policymakers, has assumed nuclear primacy. What’s more, mobile deployments are a cheap, easy countermeasure that would effectively negate the confidence gained (such as any is gained) from believing that the United States has nuclear primacy. Achieving, and then maintaining, a position of primacy introduces several significant strategic concerns of its own, and would hardly enhance the security of the United States or the international system.¶ ¶ I would like to advance this line of argumentation one step further. If this model accurately reflects reality and a Liber and Press-style counterforce strike on Russia’s nuclear arsenal is unlikely to succeed, then deep cuts to the nuclear arsenal and the decision to abandon counterforce targeting gains credibility. That is, deep cuts to the nuclear arsenal would not mean abandoning counterforce doctrine because that has already happened. Simply put, attempting the counterforce attack would include an inescapable risk to the United States – and we can rest easier knowing that this is the case.

#### Nuclear primacy doenst work on China

Bruce G. Blair (President, World Security Institute) and Chen Yali (editor in chief of Washington Observer) 2006 “The Fallacy of Nuclear Primacy” http://www.wsichina.org/cs4\_4.pdf

China not only completely discounts the utility of nuclear primacy, but also believes that other nuclear powers share its view in spite of the lip service those powers pay to the importance of nuclear weapons. China simply does not believe others truly believe nuclear primacy can serve utilitarian purposes.28 China’s experiences in dealing with U.S. nuclear threats have only strengthened its conviction that nuclear primacy has negligible utility. The United States considered using nuclear weapons against China in 1953 during the Korean War, in 1954-1955 during the cross-strait crises, and in 1964 before China carried out its first nuclear test. These cases in which U.S. leaders clearly thought about using nuclear weapons against China but ultimately decided against it reveal a multitude of reasons for counseling against their use. A nuclear taboo was ascendant at the time. Allies of the United States would oppose their use. Attacking China would create a vacuum for an even more hostile adversary, the Soviet Union, to occupy. Attacking China could not guarantee the destruction of China’s fledging nuclear program, due to sketchy information on the location of facilities in China’s nuclear infrastructure. Without the ability to achieve total victory and occupy China, the United States could not prevent China from rebuilding any destroyed facilities and revitalizing its nuclear program. The United States had better choices, especially given China’s flexibility in negotiating and compromising in resolving conflicts with the United States.29

### Groupthink Add on

#### Courts don’t take over the thing

#### Nothing is ever that urgent, seriously

Miller 1987 (William G. Miller, former Staff Director, Senate Select Committee on Intelligence.“A Congressional Committee on National Security: The Perspective from the Hill,” from First Use of Nuclear Weapons: Under the Constitution, Who Decides?, Questia)

B. The Need for Expeditious Action¶ Another argument against congressional participation is that the time-urgency of national security decision making prevents consultation with Congress. This urgency allegedly makes the congressional deliberative process impossible; indeed the attendant delay could endanger the security of the nation.¶ Although this argument is plausible, it is not supported by the historical record. Even in sudden emergencies like the seizure of the Mayaguez, the shooting down of KAL 007, or the rescue of Americans in Grenada, there was sufficient time available for extensive consultation with Congress before decisions were made. In fact, the Mayaguez rescue might have been accomplished without loss of life if there had been more deliberation using the better information which later became available. In the case of Grenada, the political crisis on that small island had been brewing for several years, the Carter administration had consulted with Congress, and consultation by the Reagan administration would clearly have been desirable. In the KAL 007 incident, it was several days before the facts were available even to the executive.¶ It is clear, however, that the President could within his constitutional authority act without consultation if he reasonably believed that any delay would seriously endanger the security of the United States or certainly result in the death of Americans. The constitutionality of his actions would in these cases be measured by the results. But few, if any, issues that come before the President in the NSC or its informal variants for consideration, deliberation, or decision are of this immediacy. The case usually cited as an example of an urgent matter--the Cuban Missile Crisis--in fact extended over seven days, and the roots of the crisis went back months and years before the event.

#### There’d be three nuclear footballs

Forrester 1989 (Ray Forrester, Professor, Hastings College of the Law, University of California, former dean of the law schools at Vanderbilt, Tulane, and Cornell August 1989, “Presidential Wars in the Nuclear Age: An Unresolved Problem,” The George Washington Law Review, Lexis)

Obviously, it is not feasible to convene Congress for a decision as to whether the circumstances justify a declaration of war and the immediate launching of the missile. But perhaps it is not too bizarre to consider the use of three "nuclear footballs." Since the President is now able to have the "black bag" by his side at all times, it would seem feasible to require that a bag also be constantly available to a representative of the House and a representative of the Senate. Inconvenient, yes, but if the President can live with it, representatives of the Congress should also be able to do so. In this age of miracles in instant communication, the messages going to the President could be transmitted to all three at the same time, thereby prompting immediate consultation. The three, of course, would receive constant protection as the President is protected now. If one should not be available due to incapacity, the others would consult alone. My own inclination would be to require the President to receive the concurrence of at least one of the two in the President's plan of action. But for those more willing to trust the judgment of one person, the President's decision could control subject only to the safeguard of prior consultation.

**No risk of great power conflict in Central Asia: incentives to de-escalate and stable balance of power**

Zhao **Huasheng**, director of the Center for Russia and Central Asia Studies at Fudan University, February **2005**, CEF Quarterly, http://www.silkroadstudies.org/new/docs/CEF/CEF\_Quarterly\_Winter\_2005.doc.pdf, p. 31

**China, Russia, and the United States will not go to open confrontation** for several reasons. Generally speaking, the relations of the three powers in Central Asia depend on their general relations. In other words, if their general relations sour, their relations in Central Asia will go tense or intensify. Otherwise, **if their general relations are good, their relations in Central Asia will not be hostile** and openly confrontational. Conversely, in spite of the tripartite configuration among the three powers, especially the confrontation between Russia and the United States, **like two tigers gazing at each other** in their military bases in Tajikistan and Kyrgyzstan, **none of the three powers wants to undermine bilateral relations on** the parochial issue of **Central Asia. The coexistence of the three powers** in Central Asia **restrains their open confrontation** as well. **None of the three powers intends to ally with one against the other.** Or, none is pleased to see a united front formed by two against one. At the same time, none wants to see Central Asia to be monopolized by one power. Therefore, the game played by three powers is good for the balance of power and not for open confrontation in any forms.

#### Justiciability enables groupthink

**William P. Marshall**, 2010 Professor of Law at University of NC, (http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)hm

The expansion of presidential power is also a product of executive branch lawyering. Because of justiciability limitations, many of the questions surrounding the scope of presidential power, such as war powers,never reach the courts.39In these circumstances, the Department of Justice (DOJ) and its Office of Legal Counsel (OLC), the division that is charged with advising the President as to the scope of his or her powers, are the final legal authorities opining on these issues.40This means, in effect, that the executive branch is the final judge of its own authority. Not surprisingly, this dynamic leads to broad interpretations of executive power for a variety of reasons.To begin with, the President, simply by his power of appointment, can assure that his Attorney General views the primary duty of the office is to empower the administration and not to some abstract, dispassionate view of the law.President Kennedy selected his brother to be Attorney General, President Nixon his campaign manager. Neither appointment, I suspect, was based on the desire to have a recalcitrant DOJ. Moreover, even when the President chooses a person renowned for her independence, the pressures to bend to the President’s will are considerable. Not only does the Attorney General act under the threat of removal, but she is likely to feel beholden to the President and bound, at least in part, by personal loyalty. Some might argue that even if the Attorney General may be overly susceptible to the influence of the President who appointed her, the same should not be true of the career legal staff of the DOJ, many of whom see their role as upholding the Constitution rather than implementing any President’s specific agenda. But the ability of the line lawyers at DOJ to effectively check executive branch power may be more illusory than real. First, the lawyers in the DOJ are likely to have some disposition in favor of the government if only because their clients are the President and the executive branch. Second, those DOJ lawyers who are hired for their ideological and political support of the President will likely have little inclination to oppose the President’s position in any case. Third, as a recent instance at DOJ demonstrates, the President’s political appointees can always remove or redeploy staff attorneys 2008]if they find them too independent.Fourth, even if some staff lawyers have initial resistance to the President’s position, the internal pressures created by so-called “group-think” may eventually take over.The ability of a staff attorney to withstand the pressures of her peers in adhering to legal principle in the face of arguments based on public safety or national security can often be tenuous, particularly when the result of nay-saying may lead the lawyer to exile in a less attractive assignment. To be sure, the DOJ has, at times, viewed itself as a truly independent voice. Attorney General Edward Bates, appointed by Lincoln reportedly stated that it was his duty “to uphold the Law and to resist all encroachments, from whatever quarter of mere will and power.”Robert H. Jackson, in contrast, looking back from the perch of a Supreme Court Justice, saw his role as the Attorney General during the Roosevelt Administration otherwise, describing in one case the opinion he offered as Attorney General as “partisan advocacy.”But whatever the views of those individuals holding the position of Attorney General,those views are, at best, only of secondary importance. Far more important are the views of the Presidents who appoint the Attorneys General,and in this respect the positions of the occupants of the White House have been consistent. As one study states, “[t]he President expects his Attorney General . . . to be his advocate rather than an impartial arbiter, a judge of the legality of his action.”Under such a system, the pressure for DOJ to develop expansive interpretations of presidential power is inexorable.

#### Executive Groupthink causes nuclear miscalc

David Gray Adler 8 Prof - Political Science , Idaho State University

“The Judiciary and Presidential Power in Foreign Affairs: A Critique”, 6-1, http://www.freerangethought.com/index.php?option=com\_content&task=blogsection&id=6&Itemid=41

{11} The structure of shared powers in foreign relations serves to deter abuse of power, misguided policies, irrational action, and unaccountable behavior.[[31]](http://www.urich.edu/%7Eperspec/adler.htm#31) As a fundamental matter, emphasis on joint policymaking permits the airing of sundry political, social, and economic values and concerns. Such a structure wisely ensures that the ultimate policies will not merely reflect the private preferences or the short-term political interests of the President.[[32]](http://www.urich.edu/%7Eperspec/adler.htm#32) {12} Of course, this arrangement has come under fire in the postwar period on a number of policy grounds. Some have argued, for example, that fundamental political and technological changes in the character of international relations and the position of the United States in the world have rendered obsolete an eighteenth century document designed for a peripheral, small state in the European system of diplomatic relations. Moreover, it has been asserted that quick action and a single, authoritative voice are necessary to deal with an increasingly complex, interdependent, and technologically linked world capable of almost instantaneous massive destruction. Extollers of presidential dominance also have contended that only the President has the qualitative information, the expertise, and the capacity to act with the necessary dispatch to conduct U.S. foreign policy.[[33]](http://www.urich.edu/%7Eperspec/adler.htm#33) {13} These policy arguments have been reviewed, and discredited, elsewhere; space limitations here permit only a brief commentary.[[34]](http://www.urich.edu/%7Eperspec/adler.htm#34NAME=) Above all else, the implications of U.S. power and action in the twentieth century have brought about an even greater need for institutional accountability and collective judgment than existed two hundred years ago. The devastating, incomprehensible destruction of nuclear war and the possible extermination of the human race demonstrate the need for joint participation in any decision to initiate war. Moreover, most of the disputes at stake between the executive and legislative branches in foreign affairs have virtually nothing to do with the need for rapid response to crisis. Rather, they are concerned only with routine policy formulation and execution, a classic example of the authority exercised under the separation of powers doctrine.[[35]](http://www.urich.edu/%7Eperspec/adler.htm#35) {14} Nevertheless, these joint functions have been fused by the executive branch and have become increasingly unilateral, secretive, insulated from public debate, and hence unaccountable.[[36]](http://www.urich.edu/%7Eperspec/adler.htm#36) In the wake of Vietnam, Watergate, and the Iran-contra scandal, unilateral executive behavior has become ever more difficult to defend. Scholarly appraisals have destroyed arguments about intrinsic executive expertise and wisdom in foreign affairs and the alleged superiority of information available to the President.[[37]](http://www.urich.edu/%7Eperspec/adler.htm#37) Moreover, the inattentiveness of presidents to important details and the effects of "groupthink" that have dramatized and exacerbated the relative inexperience of various presidents in international relations have also devalued the extollers' arguments. Finally, foreign policies, like domestic policies, are reflections of values. Against the strength of democratic principles, recent occupants of the White House have failed to demonstrate the superiority of their values in comparison to those of the American people and their representatives in Congress. {15} The assumption of foreign affairs powers by recent presidents represents a fundamental alteration of the Constitution that is both imprudent and dangerous. We turn now to an examination of the judiciary's contribution to executive hegemony in foreign affairs.