Launch Authority Adv

#### Obama has unilateral authority to launch nuclear weapons now---dramatically lowers the threshold for use

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)

Vice President Richard Cheney in a December 21, 2008 interview with ¶ Chris Wallace stated: The President of the United States now for fifty ¶ years is followed at all times, twenty-four hours a day, by ¶ a military aid carrying a football that contains the nuclear ¶ codes that he would use, and be authorized to use, in an ¶ event of a nuclear attack on the United States. He could ¶ launch the kind of devastating attack the world has never ¶ seen. He doesn’t have to check with anybody, he doesn’t ¶ have to call Congress, he doesn’t have to check with the ¶ courts.i¶ Vice President Cheney’s statement accurately describes the unchallenged ¶ role that the President plays over the United States nuclear arsenal. It is an unfettered and unconstrained power that gnaws at the very core of American ¶ democracy. It is a power that the world has not seen before and no sovereign has ¶ ever held. It is a power that bodes ill not just for the United States but for the rest of the world. As stated in Gary Will’s book Bomb Power:¶ Lodging ‘the fate of the world’ in one man, with ¶ no constitutional check on his actions, caused a violent ¶ break in our whole governmental system…This was in ¶ effect a quiet revolution…The nature of the presidency ¶ was irrevocably altered by this grant of unique power. ¶ The President’s permanent alert meant our permanent submission.

#### Court ruling key to establish Congressional/Executive balance

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)

Unfortunately, a constitutional determination of who holds the ultimate nuclear authority in such a situation depends on several variables that defy definitive resolution under the status quo. Proponents of executive power argue that nuclear weapons are no different than any other weapon under the Constitution and thus the President's power to launch a nuclear attack is no less valid than any of the other 200-plus uses of force executed throughout United States [\*2476] history without congressional approval. 18 The counterargument, however, plausibly contends that the inherently destructive nature of nuclear weapons autodefines them as implicit declarants of political war, and it is thus within congressional power to approve or deny their use as the Framers had intended under the War Powers Clause. 19 On a broader level, many commentators have argued that any use of force must be approved by Congress if not adaptable to specific exceptions derived from the Framers' intent to limit the ability of the President to embroil the country in a state of war. 20 Resolution of these competing views has escaped realization due to constitutional ambiguity and judicial reluctance to interfere in war powers disputes between the President and Congress.¶ Additionally confusing the issue, the changing landscape of post-Cold War international relations may have altered the constitutional limits of presidential use of nuclear force by removing the constitutional fig leaves previously relied upon by the Executive to justify military actions without congressional approval. 21 The threat of Soviet first-strikes and the corresponding need to maintain an immediately responsive counter-force no longer exist to the degree feared during the early stages of the Cold War. 22 In addition, the necessity of an immediately responsive nuclear force has diminished with the rise of terrorist groups that are more likely to be subject to reprisals than to deterrence which may place unilateral executive action out of constitutional bounds. 23¶ As a result of constitutional ambiguities that may threaten the achievement of cohesive, legitimate decisionmaking in the throes of a nuclear crisis, and because of the importance of correctly applying constitutional standards to a decision as critical as the use of nuclear weapons, this Note argues that it is incumbent upon responsible politicians and jurists to consider this problem promptly. Otherwise, the volatile circumstances of an international conflict may force a decision based more on convenience than constitutional principle. In pursuit of a definitive resolution of the nuclear war powers, Congress should more aggressively pursue the recovery of its part in the war-making process through the courts, which have intimated the possibility of forging a resolution to the war powers quandary under the proper circumstances. 24 A judicial resolution, whether or not it favors congressional dominance, would remove the [\*2477] ambiguity that threatens to delegitimize a nuclear decision in the aforementioned scenario.

#### Judicial intervention key to avert crisis of legitimacy and nuclear use

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)

As noted, the judiciary has remained chary of interfering in struggles between the President and Congress, perhaps for good reason. 193 However, as long as the Supreme Court chooses to avoid a merit-based decision and leave the definitive jurisdictional questions to the lower courts, the nature of the disagreement will remain uniquely uncertain and susceptible to presidential fait accompli lacking [\*2501] in legitimacy and considered constitutional judgment. The enactment of a strong, unambiguous statute combined with a propitious set of facts would allow the question to arrive at the Supreme Court for a decision on its merits, or at least an unambiguous jurisdictional determination upon which the Congress and the President may come to depend as to their actual, constitutional powers.¶ A decision before the Supreme Court would provide acceptable clarity in any of the three scenarios that may be imagined. In the case that the Supreme Court is able to put aside standing, ripeness, and political question doctrines as jurisdictional barriers, a settled meaning of the war powers would finally come to light. Whether the Court decides for the supremacy of the Executive or Congress, the harm associated with war powers uncertainty would diminish with the certitude of the decision. Assuming a decision that favors the Executive, Congress would be put on notice that future judicial challenges regarding the war powers would prove fruitless, thus negating future harmful constitutional challenges in the throes of crisis. Although such a decision risks the harms associated with a one-person army, 194 it would allow Congress to prepare for this constitutional reality by carefully structuring appropriations mechanisms or more credibly threatening impeachment in times of controversial military action.¶ Assuming that the Supreme Court holds that the President must respect the war powers authority of Congress, the harmful effects of uncertainty would be diminished as well. In this case, both the President and the Congress would recognize that a legislative lawsuit based on a congressional majority adverse to the President's actions is no longer a wildcard subject to the formerly treacherous and unpredictable procedural hurdles thrown up by lower courts. But most importantly, the validity of the war powers legislation itself, previously slandered for its ineffectiveness and accused of being unconstitutional, 195 would be confirmed in the eyes of both the legislature and the Executive, thereby allowing each branch to plan accordingly. 196

#### Only scenario for nuclear war--- no other major powers will use nukes first

Arquilla 2013 (John Arquilla, professor of defense analysis at the U.S. Naval Postgraduate School, February 19, 2013, “Why America Reserves the Right to Nuke You First,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/02/19/why\_america\_reserves\_the\_right\_to\_nuke\_you\_first?page=0,1)

In 1945, Harry Truman ordered the first atomic bombing of another country; today, Barack Obama reserves the right to mount the world's next nuclear strike -- as have all American presidents since Truman. It is very odd that senior U.S. foreign policy officials, who have devoted most of the past seven decades to trying to control the spread of nuclear weapons, still want Washington to be able to use them first in a pinch. Even President Obama, a supporter of the abolition of all nuclear weapons, wants to be able to fire the first nuclear shot. No wonder North Korea, Iran, and others view efforts to get them to renounce their proliferation programs with much skepticism.¶ To be sure, the American ardor for atomic weapons has cooled since the famous Fortune magazine survey of December 1945, in which 22 percent of the public expressed the view that far more than "just" two nukes should have been dropped on Japan. Yet even as enthusiasm for inflicting massive destruction on others waned, there was still considerable fascination with these weapons in government and the military. Indeed, the idea of waging preventive nuclear war on Soviet Russia or communist China -- that is, hitting them before they had nukes of their own -- was closely considered for years, finally being rejected by Dwight Eisenhower in 1954.¶ This was the same year, however, that he articulated a doctrine of "massive retaliation" for any sort of act of aggression. Thus an incursion by some aggressor's conventional forces was now theoretically subject to a nuclear riposte. The idea was that this threat would keep the peace around the world. It didn't. Instead, a spate of irregular wars and acts of terrorism arose and, as Thomas Schelling put it in his classic Arms and Influence, the massive retaliation policy "was in decline almost from its enunciation."¶ Still, a version of massive retaliation lived on into the 1960s in the minds of NATO strategists who were concerned that Russian numerical superiority in tanks and warplanes was too great to match. And even after Western forces were beefed up, making conventional defense possible, the nuclear option was kept on the table in the form of an attractive euphemism, "flexible response." This meant that NATO would try to defend without resort to nukes, but would use them if it had to. Every "Reforger" exercise that began with conventional defense ended with the call for nuclear strikes.¶ Even as the Cold War was winding down and the Red Army was crumbling, the United States and its NATO allies grimly held on to the option of nuclear first use. Now it was only thought of as a last resort, but it was still on the books. And it remains a policy alternative today for NATO, though the current U.S. nuclear posture limits the right to first use by targeting only those nations who have not signed on or adhered to the various strictures imposed by the Nonproliferation Treaty -- which still leaves considerable room for first use.¶ For all the American intransigence about adopting no first use as policy, the concept has been embraced elsewhere. Next year Beijing will observe 50 years of its declared policy of no first use of nuclear weapons. India has also taken this position as, less credibly, has North Korea. Russia long held to a no first use policy, but renounced it 20 years ago when the country was in a state of freefall after the collapse of the Soviet Union. A decade ago Moscow clarified that it would only reserve the right to first use of nuclear weapons in the face of a massive conventional invasion of Russia. The bottom line is that the United States would be in very good company if a policy of no first use of nuclear weapons were declared.

#### Unitary control over nukes makes accidental or intentional nuke escalation inevitable--- other nuclear states model our launch authority

Wilbur 2009 (E. Packer Wilbur, member of the Dean’s International Council, The Harris School of Public Policy Studies, The University of Chicago and a former member of the Dean’s Council, The John F. Kennedy School of Government, Harvard University, December 29, 2009, “Presidential Authority to Launch a Nuclear Attack,” http://epwilbur.com/wp-content/uploads/2009/12/Presidential-Power-nuclear-article2.pdf)

With a single order and acting by himself, the President of the United ¶ States has the power to dispatch dozens and possibly hundreds of nuclear missiles.¶ The US has approximately 2,200 nuclear warheads available for immediate ¶ use on intercontinental ballistic missiles, submarines and aboard aircraft or ¶ stored at heavy bomber bases. As far as I can determine through ¶ discussions with former officials and through reviewing non-classified ¶ materials, the President can order the deployment of these weapons without any limitation and without consultation with any other person.¶ The only check on this authority is the possibility that one or more ¶ individuals in the chain of command will disobey the order. Because the chain of events from authorization to launch can happen almost instantaneously, there may be very little time for intervention. Under the ¶ present “launch on warning” command system a President, advised of a ¶ possible attack, has just a few minutes to make the decision to launch, ¶ delay or stand down. A launch could be authorized even if there is no warning of an actual, suspected or impending attack. There are carefully devised safeguards in place to prevent accidental or unauthorized use of these weapons but the authority of the President appears to be unlimited. In the 1960’s (and possibly even now) that ¶ authority was actually “pre-delegated” under specified emergency ¶ conditions to military commanders so that they could use pre-distributed ¶ authorization codes to order a rapid nuclear response to an attack. ¶ It is marginally, if cold-bloodedly, comforting to think that the lives lost will ¶ be somewhere else, but what if this single command could bring ¶ destruction to Chicago, Charlotte or Cheyenne or to dozens of other US ¶ cities large or small? Our own self interest assigns maximum value to our ¶ own lives and to the lives of those close to us, but is a human life here ¶ really worth more than a human life somewhere else?¶ Of course, any attack initiated by us is very likely to bring secondary effects and retaliation to the continental US. Airborne radioactive smoke, soot and ¶ dust could sweep quickly across continents and back to us. Retaliation by those we target could result in an unlimited and uncontrolled escalation. Throughout our history, Presidents have become physically incapacitated. ¶ President Woodrow Wilson had two disabling strokes in 1919 and his ¶ disability was shielded by his wife and close advisors. His Vice President ¶ was not allowed to visit him until their last day in office. Several Presidents ¶ have had fatal heart attacks and strokes. President John Kennedy was ¶ sometimes heavily medicated due to various infirmities and several of our ¶ former presidents were, on occasion, intemperate drinkers. President ¶ Reagan was seriously wounded in an assassination attempt but remained ¶ officially in charge. After he left office, he was diagnosed with Alzheimer’s ¶ disease and there is no way of knowing whether the disease began while ¶ he was still in office.¶ Presidents, like the rest of us, get tired, angry, ill, and depressed. They can be impaired by medication or alcohol. Illnesses can be stealthy like Alzheimer’s or a brain tumor or insanity; there is sometimes no clear ¶ dividing line between normal and impaired. Since we are flesh and blood, ¶ our brains operating through chemical and electrical synapses and our ¶ genetic structure the result of continuing evolution, we cannot claim to be ¶ wholly logical or rational. Violence and aggression may be built into our design. It seems self evident that no single person should have the power to order massive and instantaneous worldwide loss of life. Other nuclear nations have similarly flawed systems of nuclear authorization which need revision to provide additional safeguards. Clearly, any changes in these systems will have to be initiated and led by the United States. At the same time, no ¶ one nation, including our own, wants to be the first to reduce its ability to ¶ respond quickly to an attack.¶ Our own system was carefully constructed at the dawn of the nuclear age ¶ to deal with the exigencies of the Cold War. It may or may not have been appropriate then. Half a century later, it is time for us to rethink these ¶ policies.

#### Obama will authorize nuclear retaliation to WMD terror--- NPR explicitly says so

Beljac 2010 (Marko Beljac, PhD at Monash University, Teaches at LaTrobe University and the University of Melbourne, August 17, 2010, National Research Council Report on Nuclear Forensics Exposes the Soft Underbelly of Deterrence Policy, Nuclear Resonances, http://scisec.net/?p=435)

Before looking at this issue it would pay to have a look at the Obama administration's policy on the deterrence of nuclear terrorism. The Obama policy, which essentially reaffirms Bush era policy, was articulated in the 2010 Nuclear Posture Review. The 2010 NPR states that the US will,  **...**hold fully accountable any state, terrorist group, or other non-state actor that supports or enables terrorist efforts to obtain or use weapons of mass destruction, whether by facilitating, financing, or providing expertise or safe haven for such efforts... The use of nuclear weapons are not excluded. In addition, contrary to the National Research Council report, the 2010 NPR states ...In addition, the United States and the international community have improving but currently insufficient capabilities to detect, interdict, and defeat efforts to covertly deliver nuclear materials or weapons—and if an attack occurs, to respond to minimize casualties and economic impact as well as to attribute the source of the attack and take strong action... The above statement encompasses nuclear forensics. The NPR recognises that nuclear forensics is “currently insufficient”, but nonetheless these capabilities are “improving.” That doesn't square with the National Research Council finding that “in some respects” forensic capabilities are “deteriorating.” Given current trends, furthermore, nuclear forensic capabilities will further “decline.” The US deterrence posture is robust, but the nuclear forensic capabilities needed to match declaratory policy are not sufficient and might well decline further, a point to which we return. It is not easy from the above to appreciate just how robust US nuclear deterrence policy is. It is not just that a deliberate transfer of nuclear materials by a state to a terrorist group is being deterred through the threat of nuclear attack. The Bush-Obama policy adopts what is called a “negligence doctrine.” If a state is negligent in its oversight of nuclear materials, and should a terrorist group acquire nuclear materials due to such negligence, then a nuclear attack upon the negligent state falls within the ambit of the policy. This is what that seemingly innocuous word, “enables”, in the NPR deterrence policy refers to**.** In the lexicon of US counter-terrorism policy “enables” has a pretty precise meaning. This meaning encompasses negligence. I will have more discussion of this in my book. A negligence doctrine is pretty extreme. Such a policy leaves open any state to nuclear attack if the US decides that that state was negligent in its oversight over nuclear materials.

#### A nuclear terror attack stays locally contained but nuke retaliation risks escalation with Russia and China

Ayson 2010 (Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack?

#### Extinction

Bostrum 2002 (Nick Bostrum, Professor of Philosophy at Yale, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards,” 2002, http://goo.gl/rmQyl)

A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

#### Nuclear terror is inevitable

Jaspal 2012 (Zafar Nawaz Jaspal, Associate Professor at the School of Politics and International Relations, Quaid-i-Azam University, Islamabad, Pakistan “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, Vol. 19, Issue - 1, 2012, 91:111)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dualuse nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does noteliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth. Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187) Since taking office, President Obama has been reiterating that “nuclear weapons represent the ‘gravest threat’ to United States and international security.” While realizing that the US could not prevent nuclear/radiological terrorist attacks singlehandedly, he launched 47an international campaign to convince the international community about the increasing threat of nuclear/ radiological terrorism. He stated on April 5, 2009: “Black market trade in nuclear secrets and nuclear materials abound. The technology to build a bomb has spread. Terrorists are determined to buy, build or steal one. Our efforts to contain these dangers are centered on a global non-proliferation regime, but as more people and nations break the rules, we could reach the point where the center cannot hold (Remarks by President Barack Obama, 2009, April 5).” He added: “One terrorist with one nuclear weapon could unleash massive destruction. Al Qaeda has said it seeks a bomb and that it would have no problem with using it. And we know that there is unsecured nuclear material across the globe” (Remarks by President Barack Obama, 2009, April 5). In July 2009, at the G-8 Summit, President Obama announced the convening of a Nuclear Security Summit in 2010 to deliberate on the mechanism to “secure nuclear materials, combat nuclear smuggling, and prevent nuclear terrorism” (Luongo, 2009, November 10). President Obama’s nuclear/radiological threat perceptions were also accentuated by the United Nations Security Council (UNSC) Resolution 1887 (2009). The UNSC expressed its grave concern regarding ‘the threat of nuclear terrorism.” It also recognized the need for all States “to take effective measures to prevent nuclear material or technical assistance becoming available to terrorists.” The UNSC Resolution called “for universal adherence to the Convention on Physical Protection of Nuclear Materials and its 2005 Amendment, and the Convention for the Suppression of Acts of Nuclear Terrorism.” (UNSC Resolution, 2009) The United States Nuclear Posture Review (NPR) document revealed on April 6, 2010 declared that “terrorism and proliferation are far greater threats to the United States and international stability.” (Security of Defence, 2010, April 6: i). The United States declared that it reserved the right to“hold fully accountable” any state or group “that supports or enables terrorist efforts to obtain or use weapons of mass destruction, whether by facilitating, financing, or providing expertise or safe haven for such efforts (Nuclear Posture Review Report, 2010, April: 12)”. This declaration underscores the possibility that terrorist groups could acquire fissile material from the rogue states**.**

#### Latest IAEA assessment concludes the risk is underestimated

Sturdee 2013 (Simon Sturdee, AFP reporter, July 1, 2013, “UN atomic agency sounds warning on 'nuclear terrorism',” Fox News, http://www.foxnews.com/world/2013/07/01/un-atomic-agency-sounds-warning-on-nuclear-terrorism/#ixzz2dsmqwOk3)

The head of the UN atomic agency warned Monday against complacency in preventing "nuclear terrorism", saying progress in recent years should not lull the world into a false sense of security.¶ "Much has been achieved in the past decade," Yukiya Amano of the International Atomic Energy Agency told a gathering in Vienna of some 1,200 delegates from around 110 states including 35 ministers to review progress on the issue.¶ "Many countries have taken effective measures to prevent theft, sabotage, unauthorised access, illegal transfer, or other malicious acts involving nuclear or other radioactive material. Security has been improved at many facilities containing such material."¶ Partly as a result, he said, "there has not been a terrorist attack involving nuclear or other radioactive material."¶ "But this must not lull us into a false sense of security. If a 'dirty bomb' is detonated in a major city, or sabotage occurs at a nuclear facility, the consequences could be devastating.¶ "Nuclear terrorism" comprises three main risks: an atomic bomb, a "dirty bomb" -- conventional explosion spreading radioactive material -- and an attack on a nuclear plant.¶ The first, using weapons-grade uranium or plutonium, is generally seen as "low probability, high consequence" -- very difficult to pull off but for a determined group of extremists, not impossible.¶ There are hundreds of tonnes of weapons-usable plutonium and uranium -- a grapefruit-sized amount is enough for a crude nuclear weapon that would fit in a van -- around the world.¶ A "dirty bomb" -- a "radiological dispersal device" or RDD -- is much easier but would be hugely less lethal. But it might still cause mass panic.¶ "If the Boston marathon bombing (in April this year) had been an RDD, the trauma would be lasting a whole lot longer," Sharon Squassoni from the Center for Strategic and International Studies (CSIS) told AFP.¶ Last year alone, the IAEA recorded 17 cases of illegal possession and attempts to sell nuclear materials and 24 incidents of theft or loss. And it says this is the "tip of the iceberg".¶ Many cases have involved former parts of the Soviet Union, for example Chechnya, Georgia and Moldova -- where in 2011 several people were arrested trying to sell weapons-grade uranium -- but not only.¶ Nuclear materials that could be used in a "dirty bomb" are also used in hospitals, factories and university campuses and are therefore seen as easy to steal.¶ Major international efforts have been made since the end of the Soviet Union in 1991 and the September 11, 2001 attacks in the United States to prevent nuclear material falling into the wrong hands.¶ US President Barack Obama hosted a summit in 2010 on the subject which was followed by another one in Seoul last year. A third is planned in The Hague in March.¶ A report issued in Vienna on Monday to coincide with the start of the meeting by the Arms Control Association and the Partnership for Global Security said decent progress had been made but that "significant" work remained.¶ Ten countries have eliminated their entire stockpiles of weapons-grade uranium, many reactors producing nuclear medicines were using less risky materials and smuggling nuclear materials across borders, for example from Pakistan, is harder, it said.¶ But some countries still do not have armed guards at nuclear power plants, security surrounding nuclear materials in civilian settings is often inadequate and there is a woeful lack of international cooperation and binding global rules.¶ "We are still a long way from having a unified regime, a unified understanding of the threat and a way to address it," Michelle Cann, co-author of the report, told AFP.

#### Aff solves--- Congress checks nuke retaliation

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)

Assuming a greater frequency and intensity of terrorist activity, the Executive may be faced with more opportunities to use force against increasingly tenacious and deadly opponents. 167 The present hypothetical, portraying a President who wishes to carry out a nuclear reprisal on terrorists in Afghanistan, represents a situation not altogether removed from the realities of the current state of the world. 168 As noted, the use of nuclear arms to advance foreign policies has [\*2497] been contemplated and actually threatened in the past. 169 Although their use seems inconceivable in the near future, the vicissitudes of world power struggles, the election of a rogue President, 170 or a reign of terrorism that infuriates the American public 171 are all factors that could plausibly lead to a threshold consideration of a U.S. nuclear offensive. 172¶ Declining effectiveness of nuclear deterrence may also alter U.S. willingness to use nuclear weapons against its enemies. The perceived need to strike with nuclear force is theoretically increased over time by the fact that deterrence effectiveness is diminished by its non-use as a punishment mechanism. In this case, the fact that the United States has abstained from using its nuclear arsenal over the last fifty years tends to decrease the perceived credibility of a U.S. promise to carry out a nuclear threat. 173 Thus, as time goes on, the temptation to bolster the credibility of a nuclear threat may increase, if only slightly.¶ Although these factors do not suggest the certainty, or even the probability, of an offensive use of nuclear weapons on the part of the United States, the mere possession of such weapons and the unwillingness to renounce first-use, demands that responsible politicians, jurists, and academicians take serious notice of the constitutional limits applied to the use of nuclear weapons.¶ B. ASSUMING A BIFURCATION OF LEADERSHIP¶ Although congressional opposition to an executive decision to use nuclear weapons is not automatic, it reasonably can be anticipated that a great number of congressmen would oppose such an action on a variety of grounds. Especially since the end of the Cold War, the Executive has faced various levels of congressional opposition for actions far less fraught with international political [\*2498] implications, loss of life, and moral uncertainty. 175 Thus, in the event that the Executive considers the use of a nuclear weapon, it is possible, if not likely, that Congress will wish to take part in the decision, utilizing the arguments described in Part I of this Note as a basis for its participation.¶ Of course, should Congress approve the Executive's decision, actively or silently, to use the nuclear option, the crisis would go the way of so many other unchallenged presidential uses of force--as further evidence for the customary war power of the Executive. 176 However, given the emotionally charged nature of nuclear issues and the congressional realization that such an approval would give the appearance of consent to an expanded grant of nuclear decisionmaking to the Executive, it is unlikely that Congress would approve such usage either actively or through silence. 177 Rather, an institutionally interested legislature would attempt to assert its power so as not to be completely subsumed by the powers of the Commander in Chief, the President. The resulting difference in opinion, because of its probable seriousness and constitutional controversy, may lead to a dangerous crisis.¶ C. CONSTITUTIONAL CRISIS?¶ In the event of a scenario where the nation is faced with a nuclear decision, the absence of clear constitutional authority will ensure a crisis of constitutional dimensions. 178 In the present hypothetical, the Executive would be girded by the customary authority of some 200 non-congressionally approved uses of force, the untested powers of the Commander in Chief, and the de facto power created by being the physical possessor of launch codes necessary for the final triggering of a nuclear attack. 179 The Congress, on the other hand, would possess the authority provided by an uncertain constitutional interpretation of the War Powers Clause, the ambiguous sui generis status of nuclear weapons, 180 and the changing nature of a post-Cold War geopolitical structure, as well as the moral arguments militating against the use of nuclear weapons. 181¶ Although these positions would make for fascinating oral argument before the Supreme Court in times of peace, they constitute a harrowing threat to the legitimacy of the decision if conducted in the throes of a nuclear crisis. One would predict that in such a scenario the Congress, for lack of an effective remedy, 182 would go to the courts to seek enforcement of an arguable, but well [\*2499] supported, constitutional prerogative. Under the status quo, the results of such a venture into the lower judiciary would be unpredictable and, based on the lack of controlling precedent or constitutional authority, subject to extreme controversy.¶ In the case of an offensive nuclear attack, the importance of a coherent and legitimate decision cannot be overestimated. Even with the force of a congressional declaration of war, Harry Truman still faced critics that questioned the sagacity of his atomic decision in World War II. 183 Although the wisdom of any nuclear use may always remain open to criticism, the legality of such a decision should be beyond reproach. As previously noted, the potentially "unlimited costs" of a nuclear war are extremely difficult to fathom, both physically and politically. 184 A legitimate decision to utilize a nuclear weapon thus requires a high level of legality and consensus--two qualities that cannot be attained with a Congress plausibly asserting the nonexistence of the Executive's very constitutional authority to carry out the act.

### Deference Adv

#### The plan is a necessary corrective to excessive judicial deference to the executive on nuclear war powers

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)

As intimated above, the end of the Cold War has brought fundamental change to the war powers regime. The post-Cold War era has signaled a normalization of previously heightened tensions, resulting in a change in the way that nuclear weapons may be classified.¶ First, the decline of Cold War tensions has stripped the Executive of justifications for the accretion of unilateral presidential power, exposing it to attacks regarding the constitutionality of the war powers authority it continues to wield. The decline of Cold War hysteria, perhaps justified at the time, suggests that the "tacit deal" described by Ely may be coming to an end. 113 In its place, the Congress may demand a reversion to the constitutional standards imposed by the Framers. Specifically, in light of the normalization of the national security threat, Congress may assert its claim to be consulted before acts of conventional war, and particularly, acts of possible nuclear war. If the Cold War actually required an exception to the Constitution for the sake of national security, its decline may also signal a necessary return to original principles.¶ Second, the substitution of the dangers of terrorism for the Soviet threat, and the resulting decline of deterrence as a primary strategic tool, has constitutionally redefined the use of nuclear weapons because the use of nuclear weapons may no longer be characterized as merely a repelling action, as envisioned by the Framers. 114 If nuclear arsenals do not effectively deter the violent acts of terrorists, as they deterred the Soviets from first-strikes, any eventual use must be defined under the alternatives: offensive attack or reprisal 115 --military actions that would not be countenanced by the repel exception to the War Powers Clause. 116 Therefore, the transformation of nuclear weapons from deterrence-based, defensive shields to reprisal-seeking, offensive weapons, carrying a possible inherent declaration of war, may bring their use closer to the sphere of congressional control. 117¶ The significance of these two changes is amplified by application of the Steel Seizure case. 118 In a widely accepted concurrence, Justice Jackson divided the foreign powers of the presidency into three zones of constitutional scrutiny. 119 The Executive, Jackson held, wields the most power to act in foreign relations when Congress has explicitly approved its actions, and the least power when Congress explicitly disapproves of its actions. 120 Where Congress remains silent, the President's powers exist in an ambiguous zone of "twilight." 121¶ Applying the Steel Seizure case to congressional attitudes during the Cold War, the phenomenon of presidential aggrandizement could be classified as operating under the ambiguous zone of twilight. Although Congress passed no law explicitly authorizing the President to take control of nuclear weapons, it tacitly supported the presidential control of nuclear weapons because tense U.S.-Soviet relations and the realities of a delicate deterrence strategy demanded deference. 122 Indeed, during the Cold War, to reserve any part of the nuclear command control process to congressional deliberation would have weakened the appearance of a perfectly responsive deterrence mechanism. 123 Thus, during the Cold War, the Executive could be said to have been operating under the middle zone of the Steel Seizure test: with nebulous and tacit congressional approval, but lacking the permanence or legitimacy of a mandate actually legislated by Congress.¶ However, with the decline of traditional deterrence models in the post-Cold War period, extreme deference to the Executive--previously granted to demonstrate the appearance of an immediately responsive nuclear response--is no longer necessary because no enemy retains the ability to launch a counter-force attack, 124 nor is deference to the Executive an effective means of ensuring national security in the context of terrorism. 125 As a result, the status of a solely presidential nuclear decision has transformed from an authority secured by the perceived need for executive brinksmanship to one where Congress may plausibly reassert its prerogatives in light of a return to normalcy.¶ [\*2492] III. THE RESULTING STATE OF UNCERTAINTY¶ Inherent constitutional ambiguities 126 compounded by the complicating effects of the post-Cold War transition 127 have naturally led to an uncertain division of war powers, especially in regard to offensive nuclear authority. As observed in Part I, the determination of nuclear authority is complicated primarily by the indeterminate wording of the Constitution itself and the subsequent ambiguity surrounding the constitutional significance of the repulsion doctrine and the uniqueness of nuclear weapons. Part II recognized that the end of the Cold War has brought fundamental change to the methods of national security employed to assure state survival. This Part argues that these two factors have raised the level of war powers uncertainty to an unsustainable pitch. Further driving and maintaining this uncertainty are recent congressional reassertions of war powers authority in the courts and the resulting judicial ambiguity stemming from those cases.¶ A. GROWING CONGRESSIONAL OPPOSITION¶ Since the end of the Cold War, a surge of congressional interest in recapturing the congressional war powers has appeared in the form of the lawsuit. Although legislative interest in the war powers cause appeared to climax in 1973 with the passage of the War Powers Resolution, its poor wording and rejection by subsequent Presidents significantly reduced its value as a reassertion of war powers authority. 128 These presidential rejections, however, have not obviated Congress's claims to war powers authority as much as they have discredited the flawed vehicle driving them. Regardless of its apparent ineffectiveness, a number of congressmen have recently taken a renewed interest in pursuing enforcement of the Resolution through congressionally sponsored lawsuits.¶ Dellums v. Bush, 129 the first such post-Cold War case, was brought to federal court during the Persian Gulf Crisis on behalf of fifty-three representatives and one senator in hopes of enforcing the War Powers Resolution. 130 The claim was rejected for want of ripeness because Congress had not yet definitively voted whether to approve President Bush's military actions in Kuwait and Iraq. 131 In 1995, Campbell v. Clinton 132 was initiated as a challenge to President Clinton's military efforts in Kosovo. 133 Twenty-six congressmen brought suit, claiming constitutional and statutory violations based on the fact that a House resolution [\*2493] approving the continued use of air and missile strikes against Kosovo had failed, yet the military mission continued. 134 Although the merits of these two lawsuits were not reached due to the procedural obstacles enumerated below, the increasing outcries from Congress indicate a growing dissatisfaction with the Executive's continued assertions of unilateral war powers.¶ B. JUDICIAL UNCERTAINTY¶ The judiciary, the traditional arbiter of constitutional controversy, has done little to dispel the uncertainty of war powers authority. As noted above, the Supreme Court and various lower courts have avoided the question of war powers allocation on a variety of jurisdictional grounds. 135 Recently, however, it has become unclear whether the traditional ripeness, standing, and justiciability questions will continue to fend off more ambitious congressional attempts to bring war powers cases to the courts. The most recent decision in the United States Court of Appeals for the District of Columbia Circuit, Campbell v. Clinton, reached a new level of uncertainty due to its fractured web of concurrences. 136 The introduction of additional facts in future cases, such as a majority of congressional support or the possible use of nuclear weapons, would surely cast further uncertainty on the war powers authority.

#### Exclusive launch authority is the foundational justification for broad deference to the executive on foreign affairs

Wills 2011 (Gary Wills, Emeritus Professor of History at Northwestern and Pulitzer Prize winning historian, 2011, “Bomb Power: The Modern Presidency and the National Security State,” kindle)

If the President has the sole authority to launch nation-destroying weapons, he has license to use every other power at his disposal that might safeguard that supreme necessity. If he says he needs other and lesser powers, how can Congress or the courts discern whether he needs them when they have no supervisory role over the basis of the claim he is making? To challenge his authority anywhere is to threaten the one great authority. If he is weakened by criticism, how can other nations be sure he maintains the political ability to use his ultimate sanction? Every citizen is conscripted into the service of the Commander in Chief. As Vice President Dick Cheney put it on Fox News, in a December 21, 2008, interview with Chris Wallace: The President of the United States now for fifty years is followed at all times, twenty-four hours a day, by a military aide carrying a football that contains the nuclear codes that he would use, and be authorized to use, in the event of a nuclear attack on the United States. He could launch the kind of devastating attack the world has never seen. He doesn’t have to check with anybody, he doesn’t have to call the Congress, he doesn’t have to check with the courts. (Emphasis added) The Vice President was using these facts precisely to justify the policies of the Bush administration on a whole range of issues—warrantless surveillance of American citizens, indefinite detention of suspects without legal representation or habeas corpus, kidnappings across the world by “rendition,” imprisonment of those kidnapped in secret “black sites” outside the United States, “enhanced interrogation” of the accused by techniques like waterboarding. Cheney was right to say that the real logic for all these things is the President’s solitary control of the Bomb. He was also right to say that something like what the Bush administration did was tried, adumbrated, or justified by other Presidents, going all the way back to the creation of the Manhattan Project, without any authorization, funding, or checks by the Congress. That was the seed of all the growing powers that followed. Every President since has found ways to leverage concessions on the basis of the great mystery of his power over the very continuance of the world. Executive power has basically been, since World War II, Bomb Power.

#### Aff strikes a flexible balance of judicial checks--- essential to American legitimacy which is key to sustaining hegemony

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. 378 The result would be radical instability and a greater risk of major war. 379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable. 380 As noted above, other nations have many incentives to continue to tolerate the current order. 381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades. According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. 382 The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. 383 Predictions of American decline are not new, and they have thus far proved premature. 384 [\*148] Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. 385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. 386 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts' institutional competences more than the anarchic realist model. The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations - liberty, accountability, and effectiveness - against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes. The domestic deference doctrines - such as Chevron and Skidmore - are hardly models of clarity, but they are applied and discussed by the courts much more often than foreign affairs deference doctrines, and can be usefully applied to foreign affairs cases as well. 387 The domestic deference doctrines are a recognition that legal interpretation often depends on politics, just as it does in the international realm. 388 Most of the same functional rationales - expertise, accountability, flexibility, and uniformity - that are advanced in support of exceptional foreign affairs deference also undergird Chevron. Accordingly, Chevron deference provides considerable latitude for the executive branch to change its interpretation of the law to adjust to foreign policy requirements. Once courts determine that a statute is ambiguous, the reasonableness threshold is [\*149] easy for the agency to meet; that is why Chevron is "strong medicine." 389 At the same time, Chevron's limited application ensures that agency interpretations result from a full and fair process. Without such process, the courts should look skeptically on altered interpretations of the law. Returning to domestic deference standards as a baseline clarifies the ways in which foreign affairs are truly "special." The best response to the special nature of foreign affairs matters does not lie simply in adopting domestic deference on steroids. Instead, accurate analysis must also take into account the ways in which the constitutional separation of powers already accommodates the uniqueness of foreign affairs. Many of the differences between domestic and foreign affairs play out not in legal doctrine, but in the relationship between the President and Congress. Under the hegemonic model, courts would still wind up deferring to executive branch interpretations much more often in foreign affairs matters because Congress is more likely to delegate law-making to the executive branch in those areas. 390 Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. 391 It is true that the stable nature of American hegemony will prevent truly destabilizing events from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. 392 Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations, for example, which depend on adjusting positions quickly. The need for speed is particularly acute in crises. Threats from transnational terrorist groups and loose nuclear weapons are among the most serious problems facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," 393 but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs.

#### Legitimacy outweighs flexibility in a hegemonic system

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability.421 G. John Ikenberry analogizes America's hegemonic position to that of a “giant corporation” seeking foreign investors: “The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and accountability.”422 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make “abrupt or aggressive moves toward other states.”423¶ The Bush Administration’s detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch.424 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law.425 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions.426 It declared all detainees at Guantánamo to be “enemy combatants” without establishing a regularized process for making an individual determination for each detainee.427 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections.428¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s—a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage.429 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability.430 America’s military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

#### Outweighs material advantage

Kagan 2004 (Robert Kagan, senior associate at the Carnegie Endowment for International Peace, January 24, 2004, “A Tougher War For the U.S. Is One Of Legitimacy,” New York Times, http://www.nytimes.com/2004/01/24/books/a-tougher-war-for-the-us-is-one-of-legitimacy.html?pagewanted=all&src=pm)

Today a darker possibility looms. A great philosophical schism has opened within the West, and instead of mutual indifference, mutual antagonism threatens to debilitate both sides of the trans-Atlantic community. Coming at a time in history when new dangers and crises are proliferating, this schism could have serious consequences. For Europe and the United States to decouple strategically has been bad enough. But what if the schism over ''world order'' infects the rest of what we have known as the liberal West? Will the West still be the West?¶ It is the legitimacy of American power and American global leadership that has come to be doubted by a majority of Europeans. America, for the first time since World War II, is suffering a crisis of international legitimacy.¶ Americans will find that they cannot ignore this problem. The struggle to define and obtain international legitimacy in this new era may prove to be among the critical contests of our time, in some ways as significant in determining the future of the international system and America's place in it as any purely material measure of power and influence.¶ Americans for much of the past three centuries have considered themselves the vanguard of a worldwide liberal revolution. Their foreign policy from the beginning has not been only about defending and promoting their material national interests. ''We fight not just for ourselves but for all mankind,'' Benjamin Franklin declared of the American Revolution, and whether or not that has always been true, most Americans have always wanted to believe that it is true. There can be no clear dividing line between the domestic and the foreign, therefore, and no clear distinction between what the democratic world thinks about America and what Americans think about themselves.¶ Every profound foreign policy debate in America's history, from the time when Jefferson squared off against Hamilton, has ultimately been a debate about the nation's identity and has posed for Americans the primal question ''Who are we?'' Because Americans do care, the steady denial of international legitimacy by fellow democracies will over time become debilitating and perhaps even paralyzing.¶ Americans therefore cannot ignore the unipolar predicament. Perhaps the singular failure of the Bush administration is that it has been too slow to recognize this. Mr. Bush and his advisers came to office guided by the narrow realism that dominated in Republican foreign policy circles during the Clinton years. The Clinton administration, Condoleezza Rice, the national security adviser, wrote in a famous essay in January 2000, had failed to focus on the ''national interest'' and instead had addressed itself to ''humanitarian interests'' or the interests of ''the international community.'' The Bush administration, by contrast, would take a fresh look at all treaties, obligations and alliances and re-evaluate them in terms of America's ''national interest.''¶ The notion that the United States could take such a narrow view of its ''national interest'' has always been mistaken. But besides being an analytical error, the enunciation of this ''realist'' approach by the sole superpower in a unipolar era was a serious foreign policy error. The global hegemon cannot proclaim to the world that it will be guided only by its own definition of its ''national interest.''¶ This is precisely what even America's closest friends fear: that the United States will wield its unprecedented vast power only for itself. In her essay, Ms. Rice derided ''the belief that the United States is exercising power legitimately only when it is doing so on behalf of someone or something else.'' But for the rest of the world, what other source of legitimacy can there be? When the United States acts in its own interests, Ms. Rice claimed, as would many Americans, it necessarily serves the interests of everyone.¶ ''To be sure,'' she argued, ''there is nothing wrong with doing something that benefits all humanity, but that is, in a sense, a second-order effect.''¶ But could even America's closest friends ever be persuaded that an America always pursuing its self-interest could be relied upon to serve their interests, too, as some kind of ''second-order effect''?¶ Both the unipolar predicament and the American character require a much more expansive definition of American interests. The United States can neither appear to be acting only in its self-interest, nor can it in fact act as if its own national interest were all that mattered. Even at times of dire emergency, and perhaps especially at those times, the world's sole superpower needs to demonstrate that it wields its great power on behalf of its principles and all who share them.

#### Hegemony solves great power wars

Thayer 2006 (Bradley A. Thayer, Missouri State University Defense and Strategic Studies Institute, November/December, 2006 “In Defense of Primacy,” NATIONAL INTEREST Issue 86)

THROUGHOUT HISTORY, peace and stability have been great benefits of an era where there was a dominant power--Rome, Britain or the United States today. Scholars and statesmen have long recognized the irenic effect of power on the anarchic world of international politics. Everything we think of when we consider the current international order--free trade, a robust monetary regime, increasing respect for human rights, growing democratization--is directly linked to U.S. power. Retrenchment proponents seem to think that the current system can be maintained without the current amount of U.S. power behind it. In that they are dead wrong and need to be reminded of one of history's most significant lessons: Appalling things happen when international orders collapse. The Dark Ages followed Rome's collapse. Hitler succeeded the order established at Versailles. Without U.S. power, the liberal order created by the United States will end just as assuredly. As country and western great Ral Donner sang: "You don't know what you've got (until you lose it)." Consequently, it is important to note what those good things are. In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for Washington and the world. The first has been a more peaceful world. During the Cold War, U.S. leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy helps keep a number of complicated relationships aligned--between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. This is not to say it fulfills Woodrow Wilson's vision of ending all war. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood, particularly war's worst form: great power wars. Second, American power gives the United States the ability to spread democracy and other elements of its ideology of liberalism: Doing so is a source of much good for the countries concerned as well as the United States because, as John Owen noted on these pages in the Spring 2006 issue, liberal democracies are more likely to align with the United States and be sympathetic to the American worldview.( n3) So, spreading democracy helps maintain U.S. primacy. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Indeed they do. Rather, it is because they are more open, more transparent and more likely to want to resolve things amicably in concurrence with U.S. leadership. And so, in general, democratic states are good for their citizens as well as for advancing the interests of the United States. Critics have faulted the Bush Administration for attempting to spread democracy in the Middle East, labeling such aft effort a modern form of tilting at windmills. It is the obligation of Bush's critics to explain why :democracy is good enough for Western states but not for the rest, and, one gathers from the argument, should not even be attempted. Of course, whether democracy in the Middle East will have a peaceful or stabilizing influence on America's interests in the short run is open to question. Perhaps democratic Arab states would be more opposed to Israel, but nonetheless, their people would be better off. The United States has brought democracy to Afghanistan, where 8.5 million Afghans, 40 percent of them women, voted in a critical October 2004 election, even though remnant Taliban forces threatened them. The first free elections were held in Iraq in January 2005. It was the military power of the United States that put Iraq on the path to democracy. Washington fostered democratic governments in Europe, Latin America, Asia and the Caucasus. Now even the Middle East is increasingly democratic. They may not yet look like Western-style democracies, but democratic progress has been made in Algeria, Morocco, Lebanon, Iraq, Kuwait, the Palestinian Authority and Egypt. By all accounts, the march of democracy has been impressive. Third, along with the growth in the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, and mobility of capital and labor markets. The economic stability and prosperity that stems from this economic order is a global public good from which all states benefit, particularly the poorest states in the Third World. The United States created this network not out of altruism but for the benefit and the economic well-being of America. This economic order forces American industries to be competitive, maximizes efficiencies and growth, and benefits defense as well because the size of the economy makes the defense burden manageable. Economic spin-offs foster the development of military technology, helping to ensure military prowess. Perhaps the greatest testament to the benefits of the economic network comes from Deepak Lal, a former Indian foreign service diplomat and researcher at the World Bank, who started his career confident in the socialist ideology of post-independence India. Abandoning the positions of his youth, Lal now recognizes that the only way to bring relief to desperately poor countries of the Third World is through the adoption of free market economic policies and globalization, which are facilitated through American primacy.( n4) As a witness to the failed alternative economic systems, Lal is one of the strongest academic proponents of American primacy due to the economic prosperity it provides. Fourth and finally, the United States, in seeking primacy, has been willing to use its power not only to advance its interests but to promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The U.S. military has participated in over fifty operations since the end of the Cold War--and most of those missions have been humanitarian in nature. Indeed, the U.S. military is the earth's "911 force"--it serves, de facto, as the world's police, the global paramedic and the planet's fire department. Whenever there is a natural disaster, earthquake, flood, drought, volcanic eruption, typhoon or tsunami, the United States assists the countries in need. On the day after Christmas in 2004, a tremendous earthquake and tsunami occurred in the Indian Ocean near Sumatra, killing some 300,000 people. The United States was the first to respond with aid. Washington followed up with a large contribution of aid and deployed the U.S. military to South and Southeast Asia for many months to help with the aftermath of the disaster. About 20,000 U.S. soldiers, sailors, airmen and marines responded by providing water, food, medical aid, disease treatment and prevention as well as forensic assistance to help identify the bodies of those killed. Only the U.S. military could have accomplished this Herculean effort. No other force possesses the communications capabilities or global logistical reach of the U.S. military. In fact, UN peacekeeping operations depend on the United States to supply UN forces. American generosity has done more to help the United States fight the War on Terror than almost any other measure. Before the tsunami, 80 percent of Indonesian public opinion was opposed to the United States; after it, 80 percent had a favorable opinion of America. Two years after the disaster, and in poll after poll, Indonesians still have overwhelmingly positive views of the United States. In October 2005, an enormous earthquake struck Kashmir, killing about 74 000 people and leaving three million homeless. The U.S. military responded immediately, diverting helicopters fighting the War on Terror in nearby Afghanistan to bring relief as soon as possible To help those in need, the United States also provided financial aid to Pakistan; and, as one might expect from those witnessing the munificence of the United States, it left a lasting impression about America. For the first time since 9/11, polls of Pakistani opinion have found that more people are favorable toward the United States than unfavorable, while support for Al-Qaeda dropped to its lowest level. Whether in Indonesia or Kashmir, the money was well-spent because it helped people in the wake of disasters, but it also had a real impact on the War on Terror. When people in the Muslim world witness the U.S. military conducting a humanitarian mission, there is a clearly positive impact on Muslim opinion of the United States. As the War on Terror is a war of ideas and opinion as much as military action, for the United States humanitarian missions are the equivalent of a blitzkrieg.

#### Decline causes numerous nuclear wars

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For if America falters, the world is unlikely to be dominated by a single preeminent successor -- not even China. International uncertainty, increased tension among global competitors, and even outright chaos would be far more likely outcomes. While a sudden, massive crisis of the American system -- for instance, another financial crisis -- would produce a fast-moving chain reaction leading to global political and economic disorder, a steady drift by America into increasingly pervasive decay or endlessly widening warfare with Islam would be unlikely to produce, even by 2025, an effective global successor. No single power will be ready by then to exercise the role that the world, upon the fall of the Soviet Union in 1991, expected the United States to play: the leader of a new, globally cooperative world order. More probable would be a protracted phase of rather inconclusive realignments of both global and regional power, with no grand winners and many more losers, in a setting of international uncertainty and even of potentially fatal risks to global well-being. Rather than a world where dreams of democracy flourish, a Hobbesian world of enhanced national security based on varying fusions of authoritarianism, nationalism, and religion could ensue. RELATED 8 Geopolitically Endangered Species The leaders of the world's second-rank powers, among them India, Japan, Russia, and some European countries, are already assessing the potential impact of U.S. decline on their respective national interests. The Japanese, fearful of an assertive China dominating the Asian mainland, may be thinking of closer links with Europe. Leaders in India and Japan may be considering closer political and even military cooperation in case America falters and China rises. Russia, while perhaps engaging in wishful thinking (even schadenfreude) about America's uncertain prospects, will almost certainly have its eye on the independent states of the former Soviet Union. Europe, not yet cohesive, would likely be pulled in several directions: Germany and Italy toward Russia because of commercial interests, France and insecure Central Europe in favor of a politically tighter European Union, and Britain toward manipulating a balance within the EU while preserving its special relationship with a declining United States. Others may move more rapidly to carve out their own regional spheres: Turkey in the area of the old Ottoman Empire, Brazil in the Southern Hemisphere, and so forth. None of these countries, however, will have the requisite combination of economic, financial, technological, and military power even to consider inheriting America's leading role. China, invariably mentioned as America's prospective successor, has an impressive imperial lineage and a strategic tradition of carefully calibrated patience, both of which have been critical to its overwhelmingly successful, several-thousand-year-long history. China thus prudently accepts the existing international system, even if it does not view the prevailing hierarchy as permanent. It recognizes that success depends not on the system's dramatic collapse but on its evolution toward a gradual redistribution of power. Moreover, the basic reality is that China is not yet ready to assume in full America's role in the world. Beijing's leaders themselves have repeatedly emphasized that on every important measure of development, wealth, and power, China will still be a modernizing and developing state several decades from now, significantly behind not only the United States but also Europe and Japan in the major per capita indices of modernity and national power. Accordingly, Chinese leaders have been restrained in laying any overt claims to global leadership. At some stage, however, a more assertive Chinese nationalism could arise and damage China's international interests. A swaggering, nationalistic Beijing would unintentionally mobilize a powerful regional coalition against itself. None of China's key neighbors -- India, Japan, and Russia -- is ready to acknowledge China's entitlement to America's place on the global totem pole. They might even seek support from a waning America to offset an overly assertive China. The resulting regional scramble could become intense, especially given the similar nationalistic tendencies among China's neighbors. A phase of acute international tension in Asia could ensue. Asia of the 21st century could then begin to resemble Europe of the 20th century -- violent and bloodthirsty. At the same time, the security of a number of weaker states located geographically next to major regional powers also depends on the international status quo reinforced by America's global preeminence -- and would be made significantly more vulnerable in proportion to America's decline. The states in that exposed position -- including Georgia, Taiwan, South Korea, Belarus, Ukraine, Afghanistan, Pakistan, Israel, and the greater Middle East -- are today's geopolitical equivalents of nature's most endangered species. Their fates are closely tied to the nature of the international environment left behind by a waning America, be it ordered and restrained or, much more likely, self-serving and expansionist. A faltering United States could also find its strategic partnership with Mexico in jeopardy. America's economic resilience and political stability have so far mitigated many of the challenges posed by such sensitive neighborhood issues as economic dependence, immigration, and the narcotics trade. A decline in American power, however, would likely undermine the health and good judgment of the U.S. economic and political systems. A waning United States would likely be more nationalistic, more defensive about its national identity, more paranoid about its homeland security, and less willing to sacrifice resources for the sake of others' development. The worsening of relations between a declining America and an internally troubled Mexico could even give rise to a particularly ominous phenomenon: the emergence, as a major issue in nationalistically aroused Mexican politics, of territorial claims justified by history and ignited by cross-border incidents. Another consequence of American decline could be a corrosion of the generally cooperative management of the global commons -- shared interests such as sea lanes, space, cyberspace, and the environment, whose protection is imperative to the long-term growth of the global economy and the continuation of basic geopolitical stability. In almost every case, the potential absence of a constructive and influential U.S. role would fatally undermine the essential communality of the global commons because the superiority and ubiquity of American power creates order where there would normally be conflict. None of this will necessarily come to pass. Nor is the concern that America's decline would generate global insecurity, endanger some vulnerable states, and produce a more troubled North American neighborhood an argument for U.S. global supremacy. In fact, the strategic complexities of the world in the 21st century make such supremacy unattainable. But those dreaming today of America's collapse would probably come to regret it. And as the world after America would be increasingly complicated and chaotic, it is imperative that the United States pursue a new, timely strategic vision for its foreign policy -- or start bracing itself for a dangerous slide into global turmoil.

#### Independently, deference to the military makes extinction inevitable

Kellman 1989 (Barry Kellman, Professor of Law at Depaul University, December 1998, “Judicial Abdication of Military Tort Accountability: But Who is to Guard the Guards Themselves?,” Duke Law Journal, lexis)

In this era of thermonuclear weapons, America must uphold its historical commitment to be a nation of law. Our strength grows from the¶ resolve to subject military force to constitutional authority. Especially in¶ these times when weapons proliferation can lead to nuclear winter, when¶ weapons production can cause cancer, when soldiers die unnecessarily in¶ the name of readiness: those who control military force must be held¶ accountable under law. As the Supreme Court recognized a generation¶ ago,¶ the Founders envisioned the army as a necessary institution, but one¶ dangerous to liberty if not confined within its essential bounds. Their¶ fears were rooted in history. They knew that ancient republics had¶ been overthrown by their military leaders.¶ ... We cannot close our eyes to the fact that today the peoples of¶ many nations are ruled by the military.¶ We should not break faith with this Nation's tradition of keeping¶ military power subservient to civilian authority, a tradition which we¶ believe is firmly embodied in the Constitution.'¶ Our fears may be rooted in more recent history. During the decade¶ of history's largest peacetime military expansion (1979-1989), more than¶ 17,000 service personnel were killed in training accidents. 2 In the same¶ period, virtually every facility in the nuclear bomb complex has been revealed to be contaminated with radioactive and poisonous materials; the¶ clean-up costs are projected to exceed $100 billion.3 Headlines of fatal BIB bomber crashes, 4 the downing of an Iranian passenger plane,5 the¶ Navy's frequent accidents6 including the fatal crash of a fighter plane¶ into a Georgia apartment complex,7 remind Americans that a tragic¶ price is paid to support the military establishment. Other commentaries¶ may distinguish between the specific losses that might have been preventable and those which were the random consequence of what is undeniably a dangerous military program. This Article can only repeat the¶ questions of the parents of those who have died: "Is the military accountable to anyone? Why is it allowed to keep making the same mistakes? How many more lives must be lost to senseless accidents?"8¶ This Article describes a judicial concession of the law's domain,¶ ironically impelled by concerns for "national security." In three recent¶ controversies involving weapons testing, the judiciary has disallowed tort¶ accountability for serious and unwarranted injuries. In United States v.¶ Stanley, 9 the Supreme Court ruled that an Army sergeant, unknowingly¶ drugged with LSD by the Central Intelligence Agency, could not pursue¶ a claim for deprivation of his constitutional rights. In Allen v. United¶ States, 10 civilian victims of atmospheric atomic testing were denied a¶ right of tort recovery against the government officials who managed and¶ performed the tests. Finally, in Boyle v. United Technologies, 1 the¶ Supreme Court ruled that private weapons manufacturers enjoy immunity from product liability actions alleging design defects. A critical¶ analysis of these decisions reveals that the judiciary, notably the Rehnquist Court, has abdicated its responsibility to review civil matters involving the military security establishment. Standing at the vanguard of "national security" law,13 these three¶ decisions elevate the task of preparing for war to a level beyond legal accountability. They suggest that determinations of both the ends and¶ the means of national security are inherently above the law and hence¶ unreviewable regardless of the legal rights transgressed by these determinations. This conclusion signals a dangerous abdication of judicial responsibility. The very underpinnings of constitutional governance are¶ threatened by those who contend that the rule of law weakens the execution of military policy. Their argument-that because our adversaries¶ are not restricted by our Constitution, we should become more like our¶ adversaries to secure ourselves-cannot be sustained if our tradition of¶ adherence to the rule of law is to be maintained. To the contrary, the¶ judiciary must be willing to demand adherence to legal principles by assessing responsibility for weapons decisions. This Article posits that judicial abdication in this field is not compelled and certainly is not¶ desirable. The legal system can provide a useful check against dangerous¶ military action, more so than these three opinions would suggest. The¶ judiciary must rigorously scrutinize military decisions if our 18th century¶ dream of a nation founded in musket smoke is to remain recognizable in¶ a millennium ushered in under the mushroom cloud of thermonuclear¶ holocaust.¶ History shows that serious consequences ensue when the judiciary¶ defers excessively to military authorities. Perhaps the most celebrated¶ precedent for the deference to military discretion reflected in these recent¶ decisions is the Supreme Court's 1944 decision in Korematsu v. United States. 14 Korematsu involved the conviction of an American citizen of¶ Japanese descent for violating a wartime exclusion order against all persons of Japanese ancestry. That order, issued after Japan's attack on¶ Pearl Harbor, declared that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to¶ national-defense material, national-defense premises, and national-defense utilities." 15 Justice Hugo Black's opinion for the Court, upholding¶ the exclusion order and Korematsu's conviction, stressed the hardships¶ occasioned by war and held that "the power to protect must be commensurate with the threatened danger."16¶ Justice Murphy's dissent from this shameful abdication of responsibility presaged the thesis of this Article:¶ In dealing with matters relating to the prosecution and progress of a¶ war, we must accord great respect and consideration to the judgments¶ of the military authorities who are on the scene and who have full¶ knowledge of the military facts. The scope of their discretion must, as¶ a matter of necessity and common sense, be wide. And their judgments ought not to be overruled lightly by those whose training and¶ duties ill-equip them to deal intelligently with matters so vital to the¶ physical security of the nation.¶ At the same time, however, it is essential that there be definite¶ limits to military discretion, especially where martial law has not been¶ declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance¶ nor support. Thus, like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and¶ its conflicts with other interests reconciled. "What are the allowable¶ limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions

### Plan

#### Plan: The United States federal judiciary should restrict the war powers authority of the President of the United States to introduce nuclear armed forces into hostilities without Congressional approval.

### 2AC T USAF--- LONG VERSION

#### We meet: plan says “nuclear armed forces”--- that’s T

Quester 2006 (George H. Quester, Visiting Professor of International Affairs at the George Washington University's Elliott School of Government, “Nuclear First Strike: Consequences of a Broken Taboo,” gbooks)

Weapons systems of various sorts are proliferating worldwide, and much may depend on what kinds of systems, offensive or defensive, have already been deployed by the time nuclear weapons have been used. A great number of relevant possibilities have to be introduced here. By the time of a such a nuclear escalation, the United States may already have effective missile defenses and resuscitated air defenses, or it may not, despite vast expenditures on such systems; and there may or may not have been a widespread proliferation of chemical and biological weapons in the world.¶ As in all the wars and war plans of the past, much will depend on what kinds of targets are hit. Nuclear weapons are most often thought of as a “countervalue” weapon ¶ , capable of destroying entire cities, as at Hiroshima and Nagasaki; but contingencies have existed, ever since the onset of the Cold War, for much more strictly countermilitary or counterforce uses of nuclear weapons. Again, there may be a great variation in the results achieved such a more specific attack. If important military goals were achieved in the escalation, very different responses might emerge than if the nuclear escalation proved relatively fruitless. Who the actor is would play a critical role in the perception of the event. The next power to use a nuclear weapon in combat could be a state hostile to the United States; to the extent that Americans have been thinking about this problem at all, this is the scenario that naturally captures most attention. But the user could instead be a power which is neither hostile nor friendly to the United States, the use being part of a conflict in which it would be difficult for Americans to identify with either side. The nuclear escalator might even be an ally of the United States. Finally, as noted, the scenarios for the next use of nuclear weapons must also include those involving such action by United States armed forces.

#### Counter interp: 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.

#### We’re the Air Force

OV 2010 (Opposing Viewpoints, “The U.S. Armed Forces,” Gale Group)

The United States Armed Forces are the military forces that serve the United States of America. The U.S. Armed Forces include five service branches: the Air Force, the Army, the Navy, the Marine Corps, and the Coast Guard. On 14 June 1775, the Continental Congress created the Continental Army, and also authorized riflemen from Virginia, Pennsylvania, and Maryland. By 13 October of that year, Congress had established a Naval Committee and authorized two armed ships to capture British vessels traveling to North America. On 10 November 1775, the Continental Congress authorized the creation of the Continental Marines. For these reasons, today's U.S. Armed Forces consider 1775 to be the year the U.S. military was formed.¶ While the United States has had a military since the 1700s, the National Security Act of 1947 established the modern U.S. Armed Forces. The National Security Act of 1947 created the United States Air Force and the current structure of the U.S. Armed Forces. The act also created the Department of Defense out of what had previously been the War Department. Since the 1940s, the U.S. Armed Forces have grown rapidly. As of 31 July 2010, there were 1,478,160 personnel on active duty in the U.S. Armed Forces.¶ Structure and Function¶ The function of the U.S. Armed Forces is to help protect and defend the United States, its people, and its interests. In order to complete these functions, the U.S. Armed Forces operate on a strict chain of command, which allows for discipline, order, and the effective discharge of duties. The president of the United States is the official commander in chief of the U.S. Armed Forces. However, carrying out the policies of the Air Force, the Marine Corps, and the Navy is overseen by the Department of Defense, a federal department. The Department of Homeland Security oversees the Coast Guard during peacetime, while the Coast Guard reports to the Department of Defense through the Navy in times of war.¶ The highest ranking members of the service branches include: the Army Chief of Staff, a four-star general; the Air Force Chief of Staff, a four-star general; the Chief of Naval Operations, an admiral; and the Commandant of the Marine Corps, a four-star general. These officers are members of the Joint Chiefs of Staff, a group of military leaders whose job it is to advise the president. The Coast Guard Commandant commands the Coast Guard, and is not a member of the Joint Chiefs of Staff.¶ In addition to active-duty members of the five service branches, the U.S. military has reserve military service members who serve in the National Guard or the Army, Navy, Air Force, or Marine reserves. These reserves undergo military training and must agree to a certain time commitment to the reserves. They may be called into active duty during times of war. The National Guard is a joint component of the Air Force and the Army. National Guard units are attached to each of the fifty states. The total number of U.S. military reservists is about 1.5 million.¶ U.S. Armed Forces Service Branches¶ While the overall aim of the U.S. Armed Forces is to protect the United States and its people, each of the service branches has a specific role. The role of the U.S. Army, for example, is to defend and protect the United States as well as its interests through use of ground troops, tactical nuclear weapons, tanks, artillery, and helicopters. As of 31 July 2010, there were 567,167 personnel in the U.S. Army.¶ The Air Force defends and protects the United States and any U.S. interests in space and air, often using tanker aircraft, bomber aircraft, transport aircraft, and helicopters. The U.S. Air Force is in charge of the nuclear ballistic missiles and military satellites, as well. As of 31 July 2010, there were 336,031 personnel in the U.S. Air Force.

#### Prefer our interp---

#### Best limit--- infinite small “troops” affs--- like peacekeeping and SEAL teams--- only NUCLEAR weapons require special AUTHORITY to use--- no link to the limits DA

#### DOD definitions key to precision and predictable limits

DOD Dictionary 2010 (http://ra.defense.gov/documents/rtm/jp1\_02.pdf)

1. Scope ¶ The Joint Publication 1-02, Department of Defense Dictionary of Military and Associated ¶ Terms sets forth standard US military and associated terminology to encompass the joint activity of ¶ the Armed Forces of the United States. These military and associated terms, together with their ¶ definitions, constitute approved Department of Defense (DOD) terminology for general use by all ¶ DOD components. ¶ 2. Purpose ¶ This publication supplements standard English-language dictionaries and standardizes military ¶ and associated terminology to improve communication and mutual understanding within DOD, with ¶ other federal agencies, and among the United States and its allies. ¶ 3. Application ¶ This publication applies to the Office of the Secretary of Defense, the Services, the Joint Staff, ¶ combatant commands, DOD agencies, and all other DOD components. It is the primary terminology source when preparing correspondence, to include policy, strategy, doctrine, and planning documents. Criteria for inclusion of terminology in JP 1-02 is enumerated in Department ¶ of Defense Instruction (DODI) 5025.12, Standardization of Military and Associated Terminology, ¶ and Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 5705.01, Standardization of Military ¶ and Associated Terminology.

#### They overlimit--- Neg definition is obsolete--- Outweighs Congressional intent

Dahinden 2011 (Erwin Dahinden,Director, International Relations, Swiss Armed Forces “Impact on military strategy, capability development and doctrine,” p. 67)

2. Technology and military capability¶ Available technologies have always been used by the military to improve ¶ the performance of existing weapon components (superiority versus ¶ denial). Any technological advance has triggered efforts to deny military ¶ advantages. This technological arms race has been a continuous process ¶ since the beginning of civilization11¶ .¶ The potential of new technologies has seldom been identified from the ¶ beginning: e.g. tanks were used in ww i to enforce infantry, and aircraft ¶ was deployed to gather intelligence and support artillery. It was the Italian¶ General Giulio Douhet who transposed concepts of naval warfare to the air ¶ and in his work Domination of the Air of 1921 developed the role of the air ¶ force in claiming “to have command of the air is to have victory”. In ww ¶ ii, General Guderian used the speed and weaponry of tanks and aircraft to ¶ launch deep strikes and to develop them as independent branches (concept ¶ of tanks as shields and aircraft as swords).¶ Technology and sophisticated weaponry alone do not guarantee military ¶ success. Other key factors that must be present are leadership (General ¶ Patton), skills, resilience and logistics.¶ The motivation to replace soldiers by technology is understandable ¶ because of overall costs, vulnerability and political implications. Battle ¶ experience repeatedly corrected this aspiration, e.g. in the 2006 Lebanon ¶ war, where failures were provoked by the overestimation of technical ¶ intelligence and the lack of humint. The concept of relying mainly on air ¶ forces and Special Forces for intervention, the so-called Rumsfeld Doctrine, ¶ failed to meet expectations in enduring freedom in Afghanistan.¶ The technological sophistication of military means is also an important ¶ element that enhances the morale and self-control of a soldier. The more ¶ confidence soldiers have in the effectiveness of their kits, the better ¶ their discipline and, as a consequence, their observance of the Rules of ¶ Engagement (roe).¶ 3. New capabilities and force structure¶ “Revolution in Military Affairs” (rma) became a catchword at ¶ the end of the 20th century. The term was originally coined by the ¶ Soviet military establishment and subsequently adopted by Israel and ¶ the United States12. In essence, rma gave soldiers more information ¶ about battle space, more precise data on potential targets and ensured ¶ better concentration of fire power in time and space (see graph). These ¶ improved capabilities are often summarised with the term “network ¶ enabled operations” (neo).¶ neo was first tested on a larger scale in the 1st Gulf War with impressive ¶ results. neo requires optimum integration of the various systems and ¶ becomes what is called the “system of the systems”. This had important ¶ consequences on force planning, interoperability, upgrading and long-term ¶ financial obligations.¶ New technologies have fundamentally changed the planning process of ¶ armed forces, made the procurement process more challenging and extended ¶ the long-term consequences for budgeting. Given the complex and rapidly ¶ evolving nature of military technologies, maintenance and logistic support ¶ of armed forces are changing substantially: upgrades have to be realised in ¶ harmony with other users requiring international synchronisation too. Repair ¶ consists mostly of exchanging components and it is necessary to engage ¶ more civilian capabilities in the rear area or in operational logistics13¶ .¶ Procurement was always a long-term exercise from the definition of ¶ requirements to the development of prototypes, testing and finally fielding ¶ with training. This took 10-15 years plus 20-30 years of operational ¶ use. The military call this “long-term life cycle management”. As the ¶ following graphical representation illustrates, the main costs encompass ¶ not only the actual procurement costs of a new weapon system, but have ¶ to include those occurring during its operationalisation, maintenance, and ¶ upgrading. These important long-term investments demand that the legal ¶ and budgetary framework for armed forces is highly predictable.¶ 4. Doctrine¶ Forces have to be designed and trained for fundamentally different types ¶ of operations. This requires flexibility in their structure, their command ¶ and control and their training.¶ In this environment the political and military control of the use of force ¶ and escalation becomes critical and necessitates new instruments. The ¶ development of rules of engagement14 for the specific mission should be ¶ seen against this background.

#### Nukes topic education outweighs--- 1AC Willis ev says “bomb power” is the root of ALL OTHER executive war powers--- prerequisite to learning about the other areas of the topic--- it’s unique because sole authority isn’t a role or mission

#### Prefer 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.

### 2AC Deference Adv

#### Court capital is extremely resilient

Gibson 2012 (James L. Gibson, Sidney W. Souers Professor of Government, Department of Political Science, Professor of African and African American Studies, Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy, Washington University in STL, February 27, 2012, Countermajoritarian Conference, University of Texas Law School, pdf)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London1 and Citizens United v. Federal Election Commission2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital.¶ The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions.¶ At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans.4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”;5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy.¶ Political scientists have been studying the legitimacy of the Supreme Court for decades¶ now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells:¶ ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bullet- proof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.¶ ● The degree of legitimacy of political institutions is extremely consequential. For better or for worse, the decisions of legitimate institutions tend to “stick”—to draw the acquiescence of citizens, even those citizens who disagree with the institution’s policy decisions. No political institution could succeed were it dependent upon always pleasing its constituents with its policy decisions. For courts—tasked with a countermajoritarian function in the American political system—displeasing the majority is a regular occurrence. The Supreme Court’s current level of legitimacy contributes mightily to making the Court truly the court of last resort on the policy issues it decides.¶ ● Some threats to the legitimacy of the Supreme Court do exist. Some members of Congress routinely introduce “court-curbing” legislation, often focusing on the Court’s soft underbelly, its dependence on Congress for its case jurisdiction. Yet such efforts typically draw the support of only the most radical members of Congress and legislation of this ilk is rarely even brought to the floor for debate. Generally, with the possible exception of the failure to raise the salaries of federal judges, few serious threats to the institutional integrity of the Supreme Court have surfaced. And there is no evidence that such proposals by gadflies have any degree of support among the American people.¶ ● This is not, of course, to say that the Court’s decisions are pleasing to all, or that they are always pleasing. Many of the rulings of the Court are unpopular with its constituents, as for instance in the Court’s ruling in Kelo on takings and its decision on campaign finance in Citizens United. The puzzle, however, is that dissatisfaction with the policy decisions has not morphed into threats to the legitimacy of the institution itself. One lesson from the research on institutional legitimacy is that policy dissatisfaction with the Court’s rulings does not necessarily or even ordinarily translate into threats to the legitimacy of the institution.¶ ● More generally, it appears that the Supreme Court does not suffer from the partisan and ideological polarization that characterizes so much of contemporary American politics. Democrats and Republicans love the Supreme Court at roughly equal levels, as do liberals and conservatives. Partisan and ideological differences do indeed characterize policy positions on many issues, but faith in and loyalty to the Supreme Court seems to be distributed across the ideological and partisan boards.¶ ● Moreover, despite a relatively turbulent period in American politics, support for the Supreme Court has been obdurate. Very small peaks and valleys can be found, although they are both quite shallow, and they are not necessarily as might be expected (e.g., the Court’s ruling in Bush v. Gore actually elevated popular support for the institution). Even strong ideological divisions on the Court seem not to have subtracted from the institution’s legitimacy. Some wonder whether anything the Court might do would imperil its basic support among the American people.

### CP

#### Legitimacy is key to the laundry list and international cooperation

Loomis 2008 (Andrew Joseph Loomis, PhD in Government from Georgetown, August 4, 2008, “LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP: NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY,” http://repository.library.georgetown.edu/bitstream/handle/10822/553090/loomisAndrewJoseph.pdf?sequence=1)

The results of this study suggest that U.S. authority levels vary with public ¶ perceptions of legitimacy, casting doubt on claims that ideational variables in the form of ¶ international perceptions of the legitimacy of U.S. policy are inconsequential with respect to ¶ the efficacy of U.S. foreign policy and alliance maintenance. These findings suggest that the ¶ United States would strengthen its authority by constructing policy that is sensitive to the ¶ international public voice. The need for allies is self-evident in the turbulent contemporary ¶ environment and most intractable international problems cannot be solved by the United ¶ States alone. Intelligence deficiencies, drug and human trafficking, proliferation of weapons ¶ of mass destruction, failing states, ethnic violence, and environmental catastrophe all ¶ demand joint responses by the world’s most capable countries. The question of what holds ¶ alliances together has immediate importance. The implications of this research suggest the ¶ need for policymakers to reassess the relevance of legitimate behavior and the impact that ¶ administration policy has on U.S. leadership among its allies.

#### Extinction

**Manwaring 2005** (Max G. Manwaring, Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, venezuela’s hugo chávez, bolivarian socialism, and asymmetric warfare, October 2005, pg. PUB628.pdf)

President Chávez also understands that the process leading to state failure is the most dangerous long-term security challenge facing the global community today. The argument in general is that failing and failed state status is the breeding ground for instability, criminality, insurgency, regional conflict, and terrorism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as *Bolivarianismo.* More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. These means of coercion and persuasion can spawn further human rights violations, torture, poverty, starvation, disease, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking and proliferation of conventional weapons systems and WMD, genocide, ethnic cleansing, warlordism, and criminal anarchy. At the same time, these actions are usually unconfined and spill over into regional syndromes of poverty, destabilization, and conflict.62 Peru’s *Sendero Luminoso* calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.63 Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, instability and the threat of subverting or destroying such a government are real.64 But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, the longer dysfunctional, rogue, criminal, and narco-states and people’s democracies persist, the more they and their associated problems endanger global security, peace, and prosperity.65

### 2AC Deference DA

#### Their ev is about judicial review of individual military actions--- aff creates a flexible framework that allows the executive to work within clearly defined bounds

#### Doesn’t hurt readiness or anything

Kovacs 2011 (Kathryn E. Kovacs, Assistant Professor, Rutgers School of Law- Camden, “Leveling the Deference Playing Field,” Oregon Law Review, https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/11964/Kovacs.pdf?sequence=1)

Eskridge and Baer suggest that, regardless of whether the agency ¶ or the court has greater expertise in the subject matter, judicial ¶ “second-guessing” of agency decisions “produce[s] unpredictable ¶ results and often undermine[s] the agency’s ability to carry out the ¶ statutory scheme. . . . [T]wo heads are often not as good as one when it comes to public administration.”292 Perhaps the courts are of the ¶ view that the military can least afford this sort of disruption. ¶ Professor Vermeule presumes that judges “fear the harms to national ¶ security that might arise if they erroneously override executive ¶ policies.”293 Courts may also fear that their judgments may not ¶ engender the same respect as decisions of the elected branches.294¶ But again, Congress presumably considered these factors when it ¶ enacted the APA and exempted the most sensitive military actions ¶ from judicial review in the “military authority” exception. Congress’s ¶ judgment that outside that realm the military is no more sensitive to ¶ regulatory disruption than other agencies should trump the courts’ ¶ unexpressed concerns. ¶ Moreover, Professor Masur demonstrates that the potential harms ¶ from judicial “misjudgment in [military] cases are not always ¶ demonstrably larger than in quotidian civilian administrative ¶ lawsuits.”295 He points out that the rule at issue in State Farm would ¶ have saved thousands of lives and thus may have carried “utilitarian ¶ consequences of the same order of magnitude as prototypical wartime ¶ adjudications.”296 Similarly, the decisions of the Fish and Wildlife ¶ Service and the National Marine Fisheries Service under the ¶ Endangered Species Act carry the weight of an entire species’ ¶ existence.297 Judicial disruption has potentially disastrous ¶ consequences in that context as well, as it does in many others. As ¶ Professor Masur said, “Military cases do not always hold the threat of ¶ substantially greater national peril, nor offer more pressing ¶ exigencies, nor present more intractable fact or policy questions than ¶ do typical administrative law adjudications.”298

#### Legitimacy outweighs--- impact uniqueness question--- Knowles = we can maintain the system with legitimacy

### 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

#### Nuclear primacy not key to deter nuclear attack

Li Bin (a Chinese physicist, works on arms control and international security. He is the Director of the Arms Control Program and Professor of the Institute of International Studies, Tsinghua University) 2006 “Paper Tiger with Whitened Teeth”

The Lieber and Press paper also raises the concern that China might use nuclear weapons to destroy American cities if the United States supports the separatists in Taiwan in a war for separation, a suggestion which arose from a Chinese military scholar. 6 In fact, a more accurate interpretation of this comment is that China could extend its nuclear deterrence to dissuade mass conventional attack from the United States in a Sino-U.S. war over Taiwan. The idea is that China could compensate for its conventional inferiority vis-à-vis the United States by adding the influence of nuclear weapons. However, the United States should not be concerned about this for two reasons. First, China’s leaders fully understand that nuclear weapons are a paper tiger in this kind of conventional conflict. No matter who is defeated in conventional war (if it ever came to that), neither China nor the United States would be able to alter the outcome using nuclear weapons. The second reason is that to deter a nuclear attack (minimum deterrence) does not require nuclear primacy. A retaliatory nuclear force larger than the base criterion described by Robert McNamara should be sufficient for this purpose.7 The coercive power of minimum nuclear deterrence (deterring others from using nuclear weapons) has been held by the United States for over half a century. If the United States would achieve nuclear primacy today, it would make little contribution to the U.S. minimum nuclear deterrence.

#### 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 doesn’t solve Taiwan conflict

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

Some Chinese scholars have argued that because there is an imbalance of interest for Chinese and Americans in Taiwan, the United States would be more inclined to back away from a nuclear confrontation.32 China thus might believe that the nuclear taboo would restrain the United States more than China. Rationally calculating players might apply such logic in their nuclear gamesmanship, but there is not only high risk of miscalculating the other side’s degree of commitment. There is also an element of sheer craziness or stubbornness that defies calculation in the case of a Sino-American showdown over Taiwan. The rational primacy framework at least appears to vastly overrate America’s coercive leverage over China in such a showdown. In all calculations of nuclear primacy and deterrence, the players are assumed to be rational. However, rational actors might lapse into irrational behavior in readily imaginable ways that are completely obtuse to the nuclear primacy framework. The obvious scenario in this regard concerns the defeat of China’s military force in a potential Taiwan conflict. The Taiwan issue has been a core national interest of China, one that arouses such fervent emotions throughout the country that irrational behavior in its use of nuclear weapons cannot be ruled out.

#### Lieber and Press admit that nuclear primacy wont prevent US-China war

Keir A. Lieber (Assistant Professor of Political Science at the University of Notre Dame) and Daryl G. Press (Associate Professor of Government at Dartmouth College) Winter 2007 “U.S. Nuclear Primacy and the Future of the Chinese Deterrent” http://www.wsichina.org/%5Ccs5\_5.pdf

### To be clear, we do not claim that U.S. nuclear primacy will prevent China from fighting a war if Taiwan were to declare independence. The high intensity of Chinese views about Taiwan suggests that Beijing might fight for Taiwan, regardless of the risks of doing so. Rather, we argue that U.S. nuclear primacy may play an important coercive role in such a war – as Blair’s analysis, quoted above, also implies. Specifically, U.S. nuclear primacy could be used to warn China against issuing nuclear threats or alerting its nuclear forces, and hence contain the fighting at the conventional level. In the coming years, in fact, the greatest payoff to Washington from U.S. nuclear primacy might be that it allows the United States to fight and win conventional wars against nuclear-armed adversaries: coercing adversaries to keep their