# 1Nc

### 1

#### Restrictions are prohibitions on action --- the aff is a reporting requirement

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

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

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

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

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

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

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Vote neg---

#### Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

### 2

#### The 1AC reduces war to an object of rational analysis when it was always an inevitable part of our psyche. This represses the sublimity of battle which ensures that war will continue and makes extinction inevitable. Voting neg to sympathetically imagine the wars the affirmative attempts to solve is key to rupture our love for war

Hillman 4 (James, Psychologist and Taught at Yale and Syracuse, A Terrible Love of War, p. 1-11, )

ONE SENTENCE in one scene from one film, Patton, sums up what this book tries to understand. The general walks the field after a battle. Churned earth, burnt tanks, dead men. He takes up a dying officer, kisses him, surveys the havoc, and says: "I love it. God help me I do love it so. I love it more than my life." **We can never prevent war** or speak sensibly of peace and disarmament **unless we enter** this **love of war**. Unless we move our imaginations into the martial state of soul, we cannot comprehend its pull. This means "going to war," and this book aims to induct our minds into military service. We are not going to war "in the name of peace" as deceitful rhetoric so often declares, but rather for war's own sake: to understand the madness of its love. Our civilian disdain and pacifist horror—all the legitimate and deep-felt aversion to everything to do with the military and the warrior—must be set aside. This because the first principle of psychological method holds that any phenomenon to be understood must be sympathetically imagined. No syndrome can be truly dislodged from its cursed condition unless we first move imagination into its heart. War is **first of all a** **psychological task**, perhaps first of all psychological tasks because it threatens your life and mine directly, and the existence of all living beings. The bell tolls for thee, and all. Nothing can escape thermonuclear rage, and if the burning and its aftermath are unimaginable, their cause, war, is not. War is also a psychological task because philosophy and theology, the fields supposed to do the heavy thinking for our species, have neglected war's overriding importance. "War is the father of all," said Heraclitus at the beginnings of Western thought, which Emmanuel Levinas restates in recent Western thought as "being reveals itself as war." 1 If it is a primordial component of being, then war fathers the very structure of existence and our thinking about it: our ideas of the universe, of religion, of ethics; war determines the thought patterns of Aristotle's logic of opposites, Kant's antinomies, Darwin's natural selection, Marx's struggle of classes, and even Freud's repression of the id by the ego and superego. We think in warlike terms, feel ourselves at war with ourselves, and unknowingly believe predation, territorial defense, conquest, and the interminable battle of opposing forces are the ground rules of existence. Yet, for all this, has ever a major Western philosopher—with the great exception of Thomas Hobbes, whose Leviathan was published three and a half centuries ago—delivered a full-scale assault on the topic, or given it the primary importance war deserves in the hierarchy of themes? Immanuel Kant came to it late (1795) with a brief essay written when he was past seventy and after he had published his main works. He states the theme of this chapter in a few words much like Hobbes: "The state of peace among men living side by side is not the natural state; the natural state is one of war." Though war is the primary human condition, his focus is upon "perpetual peace" which is the title of his essay. About peace philosophers and theologians have much to say, and we shall take up peace in our stride. Fallen from the higher mind's central contemplation, war tends to be examined piecemeal by specialists, or set aside as "history" where it then becomes a subchapter called "military history" in the hands of scholars and reporters dedicated to the record of facts. Or its study is placed outside the mainstream, isolated in policy institutions (often at war themselves with rival institutions). The magic of their thinking transmutes killing into "taking out," bloodshed into "body counts," and the chaos of battle into "scenarios," "game theory," "cost benefits," as weapons become "toys" and bombs "smart." Especially needed is not more specialist inquiry into past wars and future wars, but rather an archetypal psychology—the myths, philosophy, and theology of war's deepest mind. That is the purpose of this book. There are, of course, many excellent studies of aggression, predation, genetic competition, and violence; works on pack, mob, and crowd behavior; on conflict resolution; on class struggle, revolution, and tyranny; on genocide and war crimes; on sacrifice, warrior cults, opposing tribal moieties; on geopolitical strategies, the technology of weaponry, and texts detailing the practice and theory of waging wars in general and the analysis by fine minds of particular wars; and lastly, always lastly, on the terrible effects of war on its remnants. Military historians, war reporters long in the field, and major commanders in their memoirs of wars from whom I have learned and respectfully cite in the pages that follow have offered theirheartfelt knowledge. Individual intellectuals and excellent modern writers, among them Freud, Einstein, Simone Weil, Virginia Woolf, Hannah Arendt, Robert J. Lifton, Susan Griffin, Jonathan Schell, Barbara Tuchman, and Paul Fussell, have brought their intelligence to the nature of war, as have great artists from Goya, say, to Brecht. Nonetheless, Ropp's wide-ranging survey of the idea of war concludes: "The voluminous works of contemporary military intellectuals contain no new ideas of the origins of war. . . . In this situation a 'satisfactory' scientific view of war is as remote as ever.' From another more psychological perspective, Susan Sontag concludes similarly: "We truly can't imagine what it was like. We can't imagine how dreadful, how terrifying war is—and how normal it becomes. Can't understand, can't imagine. That's what every soldier, and every journalist and aid worker and independent observer who has put in time under fire and had the luck to elude the death that struck down others nearby, stubbornly feels. And they are right." 3 But, here, she is wrong. "Can't understand, can't imagine" is unacceptable. It gets us off the hook, admitting defeat before we have even begun. Lifton has said the task in our times is to "imagine the real." 4 Robert McNamara, secretary of defense during much of the Vietnam War, looking back, writes: "we can now understand these catastrophes for what they were: essentially the products of a failure of imagination." Surprise and its consequents, panic and terror, are due to "the poverty of expectations—the failure of imagination," according to another secretary of defense, Donald Rumsfeld. 5 When comparing the surprise at Pearl Harbor with that of the Twin Towers, the director of the National Security Agency, Michael Hayden, said, "perhaps it was more a failure of imagination this time than last."' Failure of imagination is another way of describing "persistence in error," which Barbara Tuchman says leads nations and their leaders down the road to disaster on "the march of folly,' as she calls her study of wars from Troy to Vietnam. The origin of these disasters lies in the unimaginative mind-set of "political and bureaucratic life that subdues the functioning intellect in favor of "working the levers." 8 Working the levers of duty, following the hierarchy of command without imagining anything beyond the narrowness of facts reduced to yet narrower numbers, precisely describes Franz Stangl, who ran the Treblinka death camp, 9 and also describes what Hannah Arendt defines as evil, drawing her paradigmatic example from the failure of intellect and imagination in Adolf Eichmann.

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**Hillman – 1NC [2/2]**

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If we want war's horror to be abated so that life may go on, it is necessary to understand and imagine. We humans are the species privileged in regard to understanding. Only we have the faculty and the scope for comprehending the planet's quandaries. Perhaps that is what we are here for: to bring appreciative understanding to the phenomena that have no need to understand themselves. It may even be a moral obligation to try to comprehend war. That famous phrase of William James, "the moral equivalent of war," with which he meant the mobilization of moral effort, today means the effort of imagination proposed by Lifton and ducked by Sontag. The failure to understand may be because our imaginations are impaired and our modes of comprehension need a paradigm shift. If the ponderous object war does not yield to our tool, then we have to put down that tool and search for another. The frustration may not lie simply in the obduracy of war—that it is essentially un-understandable, unimaginable. Is it war's fault that we have not grasped its meanings? We have to investigate the faultiness of our tool: why can't our method of understanding understand war? Answer: according to Einstein, problems cannot be solved at the same level of thinking that created them. You would expect that the war-wise, the masters of war, like Sun Tzu, Mao Tse-tung, Machiavelli, and Clausewitz, would have come to conclusions about war beyond advice for its conduct. For them, however, it is a matter of practical science. "The elements of the art of war are first, measurement of space; second, estimation of quantities; third, calculations; fourth, comparisons; and fifth, chances of victory." 10 Long before there were glimmerings of modern scientific method, that mind-set was already applied to war. The empirical mind-set is timeless, archetypal. It starts from the given—war is here, is now, so what's to do? Speculations about its underlying reason, and why or what it is in the first place, distract from the huge task of how to bring war to victory "No theorist, and no commander," writes Clausewitz, "should bother himself with psychological and philosophical sophistries." 11 Even though the rational science of war admits the obvious, that in "military affairs reality is surprisingly elusive," 12 it omits from its calculations the elusive—and often determining—factors such as fighting spirit, weather, personal proclivities of the generals, political pressures, health of participants, poor intelligence, technological breakdowns, misinterpreted orders, residues in memory of similar events. War is the playground of the incalculable. "As flies to wanton boys, are we to the Gods, / They kill us for their sport" (Lear 4.1.39). A key to understanding war is given by the normality of its surprisingly elusive unreason. War demands a leap of imagination as extraordinary and fantastic as the phenomenon itself. Our usual categories are not large enough, reducing war's meaning to explaining its causes. Tolstoy mocked the idea of discovering the causes of war. In his postscript to War and Peace, widely considered the most imaginative and fullest study of war ever attempted, he concludes: "Why did millions of people begin to kill one another? Who told them to do it? It would seem that it was clear to each of them that this could not benefit any of them, but would be worse for them all. Why did they do it? Endless retrospective conjectures can be made, and are made, of the causes of this senseless event, but the immense number of these explanations, and their concurrence in one purpose, only proves that the causes were innumerable and that not one of them deserves to be called the cause." 13 For Tolstoy war was governed by something like a collective force beyond individual human will. The task, then, is to imagine the nature of this collective force. War's terrifying prospect brings us to a crucial moment in the history of the mind, a moment when imagination becomes the method of choice, and the sympathetic psychologizing learned in a century of consulting rooms takes precedence over the outdated privileging of scientific objectivity. As a psychologist I learned long ago that I could not explain my patients' behavior, nor anyone's, including my own. There were reasons enough: traumas, shames and miseries, defects in character, birth order within the family, physiology—endless causes that I imagined were explanations. But these possible causes gave little understanding that seemed to depend on something else, reasons of another sort. Later on, I learned that this division that baffled me in practice—explaining and the method of science on the one hand and, on the other, understanding and the approach of psychology— had already been made clear by German thinkers from Nietzsche and Dilthey through Husserl, Heidegger, Jaspers, and Gadamer. Ancestor to them all was the Neopolitan genius, Giambattista Vico, who invented a "new science" (the title of his book of 1725) in revolt against unsatisfactory explanations of human affairs that rested on Newton's and Descartes' kind of thinking. Vico thinks like a depth psychologist. Like Freud, he seekS to get below conventional constructs into hidden layers and distant happenings. Causal reasoning comes late on the stage, says Vico. The basic layer of the mind is poetic, mythic, expressed by universali fantastici, which I translate as archetypal patterns of imagination. Thematics are his interest, whether in law or in language or in literature—the recurring themes, the everlasting, ubiquitous, emotional, unavoidable patterns and forces that play through any human life and human society, the forces we must bow to and are best generalized as archetypal. To grasp the underlying pressures that move human affairs we have to dig deep, performing an archeology in the mind to lay bare the mythic themes that abide through time, timelessly. War is one of these timeless forces. The instrument of this dig is penetration: continuing to move forward with insight to gain understanding. "Understanding is never a completed static state of mind," writes the profound philosopher Alfred North Whitehead. "It always bears the character of the process of penetration . . . when we realize ourselves as engaged in a process of penetration, we have a fuller self-knowledge." He continues: "If civilization is to survive, the expansion of understanding is a prime necessity." 14 And how does understanding grow? "The sense of penetration . . . has to do with the growth of understanding."' War asks for this kind of penetration, else its horrors remain unintelligible and abnormal. We have to go to deep thinkers with penetrating minds, and these may not be the experts on war with wide experience or those who breed their theories in think tanks. The fact that philosophers have not put war in the center of their works may be less a sin than a blessing, since what philosophy offers best to this inquiry is less a completed theory than the invitation to enjoy hard thinking and free imagining. The ways philosophers' minds work, their ways of thinking are more valuable to the student than the conclusions of their thought. Archetypal patterns of imagination, the universali fantastici, embrace both rational and irrational events, both normal and abnormal. These distinctions fade as we penetrate into the great universals of experience. Worship; sexual love; violence; death, disposal, and mourning; initiation; the hearth; ancestors and descendents; the making of art—and war, are timeless themes of human existence given meaning by myths. Or, to put it otherwise: myths are the norms of the unreasonable. That recognition is the greatest of all achievements of the Greek mind, singling out that culture from all others. The Greeks perfected tragedy, which shows directly the mythic governance of human affairs within states, within families, within individuals. Only the Greeks could articulate tragedy to this pitch and therefore their imagination is most relevant for the tragedy with which we are here engaged: war. This means that to understand war we have to get at its myths, recognize that war is a mythical happening, that those in the midst of it are removed to a mythical state of being, that their return from it seems rationally inexplicable, and that the love of war tells of a love of the gods, the gods of war; and that no other account— political, historical, sociological, psychoanalytical—can penetrate (which is why war remains "un-imaginable" and "un-understood") to the depths of inhuman cruelty, horror, and tragedy and to the heights of mystical transhuman sublimity. Most other accounts treat war without myth, without the gods, as if they were dead and gone. Yet where else in human experience, except in the throes of ardor—that strange coupling of love with war—do we find ourselves transported to a mythical condition and the gods most real? Before wars begin until their last skirmish, a heavy, fateful feeling of necessity overhangs war; no way out. This is the effect of myth. Human thought and action is subject to sudden interventions of fortune and accident—the stray bullet, the lost order; "for the want of a nail, the shoe was lost . . ." This unpredictability is attested to throughout history. Therefore, a rational science of war can only go so far, only to the edge of understanding. At that point a leap of imagination is called for, a leap into myth.

### 3

#### The aff re-inscribes political violence by centralizing political legitimacy --- voting neg to reject the 1AC’s institutional war power narrative is the most productive political act ---- using the law to restrain itself only re-centralizes power

RANA 2011 - A.B. summa cum laude from Harvard College and his J.D. from Yale Law School. He also earned a Ph.D. in political science at Harvard, where his dissertation was awarded the university's Charles Sumner Prize. He was an Oscar M. Ruebhausen Fellow in Law at Yale (Aziz Rana, “Who Decides on Security?”, August 11, 2011, <http://scholarship.law.cornell.edu/clsops_papers/87/>)

Despite such democratic concerns, a large part of what makes today’s dominant security concept **so compelling** are **two purportedly objective sociological claims** about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. **Thus, the best response is** the **further entrenchment** of Herring’s national security state, with the U.S. **permanently mobilized militarily** to gather intelligence and to combat enemies wherever they strike – at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs.

Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are **not objective empirical judgments** but rather are socially complex and **politically infused interpretations**. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves **riddled with ideological presuppositions and subjective biases**. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that **the question of who decides** – and with it the issue of how democratic or insular our institutions should be – remains open as well.

Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers. 189 But **even if technological shifts make doomsday scenarios more chilling** than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios **tells us little about** their likelihood or **how best to address them**. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view – such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy.

In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have – at times unwittingly – reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, **the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy**. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states.

The key point is that regardless of whether one agrees with such an underlying project, the **value** **of this project** is ultimately **a**n open **political question**. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers – which have been consistent in recent years – place the gravity of the threat in perspective. Rather than a condition of endemic danger – requiring ever increasing secrecy and centralization – such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling.

It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions – like the centrality of global primacy or the view that instability abroad necessarily implicates security at home – shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge.

If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm – the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’ – marked fundamentally by epistemological uncertainty as opposed to verifiable fact – than policymakers admit.

If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that **the central problem** with the **procedural solutions** offered by constitutional scholars – emphasizing new statutory frameworks or greater judicial assertiveness – is that they **mistake a question of politics for one of law**. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants – danger too complex for the average citizen to comprehend independently – it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to **challenge the current framing** of the relationship between security and liberty **must begin by challenging the underlying assumptions** about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

#### (B) Centralized institutionalizion causes genocide and extinction

HINDMARSH 2005 - Professor at the Australian School of Environmental Studies—Griffith University (Richard Hindmarsh, April 2005, Green Biopolitics & the Molecular Reordering of Nature, <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/granada/ws16/Hindmarsh.pdf>)

The first usage of the term ‘biopolitics’ that Braun and Gottweis (2004) refer to aligns to my longstanding analysis of the genetic engineering context. Unconnected to the traditional Foucauldian concept of **‘biopolitics’**, it ‘refers to the new public policy area of biotechnology policy which has co-evolved with the development of the life sciences’ to refer to transformations in medicine and health, or in food, agriculture and the environment. Here, biopolitical analysis is predominantly on biotechnology regulation and bioscientific-technological development. In turn, the second usage refers to the historical tradition of Foucauldian inquiry, which describes and analyses two forms of control and administration (the ‘art of government’) that emerged from the sixteenth century onwards. The first form concerns the disciplining, especially through institutionalisation, of individuals, or collections of individuals, for their usefulness (or performance) for integration into systems of **‘efficient and economic controls’** (Foucault 1990 [French version 1976]: 139). The second form is concerned with administering the biological processes and resources (or subjugation and control) of the species body or populations in general: namely their bodies, and reproduction. This is achieved through their productive engagement with the then emerging scientific methods such as, for example, statistics, in what Foucault calls the investment of the body of the population and its valorization. Typically, this area tackles the urban space, the habitat, the natural resources and their distribution, and within this, public health. Scientists and engineers, deemed holders of ‘**expert knowledges’**, carry out this **disciplining and administration** on behalf of the government (Foucault 1977, Rutherford 1999). This aims to ‘**normalize’ the knowledge** of the experts vis-à-vis other knowledges, although this is not a given but is achieved in a relational way. As such, systems of knowledge-power instead **negotiate and mediate society** and its directions. Forms of knowledge-power to ‘administer life’ (govern) and normalize governmentality, Foucault (1990: 143) refers to as ‘bio-power’, applied as a regime of power within the social body, rather from above it. This is carried out through the application of tactical elements (‘discourses’) or ‘discursive practices’: ‘practices of talk, text, writing, cognition, argumentation, and representation generally’ (Clegg 1989: 151). The exercise of power is thus not understood as a ‘single, all-encompassing strategy’ (Foucault 1990: 103), but, as Clegg (1989: 154) recognises, as ‘a more or less stable or shifting network of alliances extended over a shifting terrain of practice and discursively constituted interests. Points of resistance will open up at many points in the network. Their effect will be to fracture alliances, constitute regroupings and reposit strategies’. Such practices applied to the **administration of resources in managing human populations also introduces the notion of the environment and its control**, and thus the Cartesian body-mind or nature-culture dichotomy — which has been described as ‘the drawing apart of the human subject, or “experiencer”, and the world experienced’ (Pratt et al. 2000: 7). Much environmental thought has since ascribed this divide as the main cause of today’s environmental problems (as discussed below). The Cartesian divide paralleled the emergence of bio-power, during the Enlightenment, with logical links extended to the control of human populations through it partitioning and regulation, the focus of Foucault’s inquiry. Yet, in introducing the broader environmental context, my attention is almost immediately drawn to the point in Foucault’s conceptualisation of bio-power of his recognition that the techniques of the administration of life cannot effect total control, that ‘it [life] constantly escapes them’. Thus, even though Foucault’s focus is on human life and its regulation, where ‘escape’ equates to resistance, ‘escape’, in reference to the management of natural resources where the Foucauldian gaze is also upon the health of the people, institutional and/or technological failure of administration **can instead cause environmental breakdown** that instead exposes human health to undue risk and hazard, the opposite of health**.** This, I would posit, is posed by Foucault, although rather opaquely, in The Will To Knowledge (1990: 137), Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone … the decision that initiates them and the one that **terminates them** are in fact increasingly informed by the naked question of survival … **The atomic situation is now at the end point** of this process: **the power to guarantee an individual’s existence.** The principle underlying the tactics of battle — **that one has to be capable of killing in order to go on living** — **has become the principle that defines the strategy of states**. But the existence in question is no longer the juridical existence of sovereignity; **at stake is the biological existence** of a population. **If genocide is indeed the dream of modern powers**, this is not because of a recent return of the ancient right to kill**; it is because power is situated and exercised at the level of life,** the species, the race, and the large-scale phenomena of population.

### 4

#### A. Congress will raise the debt ceiling now – but it’ll be a tough fight

The Detriot News 9/19/13 (Dale McFeatters, "Another Debt Ceiling Debate?")

The tea party-influenced wing of the House GOP favors passing the CRs but cutting any funds in those bills that would go toward paying for Obamacare. About two dozen House Republicans are in favor of this scheme.¶ But since neither President Barack Obama nor Senate Democrats would go along with this, House Republicans risk shutting down all or parts of the government. The House Republicans’ leadership, which bears no love for Obamacare, thinks this is a terrible idea.¶ National polls and the GOP’s internal polling show that the public would generally blame Republicans for the shutdown and likely take it out on the party in the next election.¶ The beleaguered Republicans who lead the House — Speaker John Boehner, Majority Leader Eric Cantor and whip Kevin McCarthy — prefer to wait until month’s end, when Congress must vote to raise the debt ceiling.¶ Failure to raise the debt limit means the government will begin defaulting on its debts, with dire and unpredictable consequences. Boehner has pledged not to let the government default. But he wants to tie the increase in the debt ceiling to tax reform, which would likely entail cuts in entitlements — anathema to most Democrats.¶ Obama and Senate Democratic leaders say they will not negotiate over the debt limit and have begun making the argument that failing to raise it is unconstitutional and that Congress’ permission might not even be necessary.¶ At a sensitive time in the nation’s economic recovery, the administration could face economic chaos. Younger House Republicans believe Obama would back down. However, faced with growing charges that his leadership is weak and uncertain, the president almost dare not.

#### B. Political capital is key to get the job done

Lillis and Wasson 9/7, Mike, the Hill writer, Erik, the Hill writer, “Fears of wounding Obama weigh heavily on Democrats ahead of vote,” 9/7, http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats#ixzz2fOPUfPNr

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria. **Obama needs** all the political capital he can muster **heading into bruising battles with the GOP over fiscal spending and the debt ceiling**. Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies. But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East. “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said. Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles. "It doesn't help him," Moran said Friday by phone. "**We need a** maximally strong president **to get us through this fiscal thicket. These are going to be very difficult votes."**

#### Political opposition to the plan – Congress does not want to initiate a review process

Buchanon 13 (PRESIDENTIAL POWER AND ACCOUNTABILITY Bruce Buchanan is Professor of Government at the University of Texas at Austin Toward a Presidential Accountability System, Bruce Buchanan, 111)

A serious pre-invasion congressional vetting of any prospective decision for war would certainly be constitutional. It might increase the likelihood of durable public support for the war, and it could be designed to increase the quality of the decision making process. But the Congress has shown no recent inclination to initiate a review of its own. It is only when outsiders forced the issue—either presidents demanding resolutions of congressional support or public opinion signaling implacable opposition to the Vietnam War—that Congress was moved to act at all. Conventional wisdom concerning the fecklessness of Congress in such cases is succinctly captured by former JFK speechwriter Ted Sorensen, who observed: “Congress already has enormous power, if it only had the guts to use it” (quoted in Roberts, 1974: 27). More recently, reﬂecting on the modern legacy of presidential wars of choice pundit George Will made the same point: “Congress’ constitutional powers relevant to war-making have atrophied from disuse” (Will, May 5, 2008:A9). And in an interview shortly before his death, former JFK and LBJ defense secretary Robert McNamara lamented the absence of congressional oversight of ultimately unsuccessful Vietnam War policy during the Johnson Administration. “I think the Congress, particularly with respect to war, should play a greater role than it does … In some way, the Congress should retain a lasting and a continuing interest in war” (Woodward and Goldstein, October 25, 2009: F1).Perhaps it should, but scholars of Congress are not optimistic that it will happen anytime soon. For example, after reviewing the history of the matter, Christopher Deering concluded that “despite the intentions of the founders, the politics of war and foreign aﬀairs are very much transformed relative to the century following the adoption of the Constitution … a dramatic resurgence of congressional inﬂuence in war and foreign aﬀairs is highly unlikely” (Deering, 2005: 372, 373). Similarly, after their book-length assessment of the current state of the institution, Thomas Mann and Norman Ornstein wrote that “We wish we could … restore Congress to what it should be and at times has been. Unfortunately, there is no quick ﬁx … the lesson for our purposes is that major change within Congress is most likely to originate outside” (Mann and Ornstein, 2006: 226; 227). What is it that so consistently prevents Congress from asserting its power on matters of peace and war? The answer is collective action and self-interest problems that leave individual members of both houses with no incentive to join together to vigorously challenge the president on such politically fraught decisions. The reason is that such decisions threaten their hold on elective oﬃce. When confronted with these choices they tend to function defensively. Said Texas Rep. Ron Paul, “Congress would rather give up its most important authorized power to the president and the U.N. than risk losing an election if the war goes badly” (quoted in Rudalevige, 2006: 276). Related to re-election are the kind of partisan incentives described in Chapter 3, illustrated by the tendency of Republicans to uncritically support President Bush’s Iraq policy. Why, then, did many congressional Republicans not oppose President Obama’s decision to order troop increases in Afghanistan and drone attack increases in Pakistan? Both parties supported the president’s expansion of the drone attacks as “a potent weapon against terrorism that put no American lives at risk” (Shane and Schmitt, January 23, 2010: A1). But it was Republicans in greater numbers than Democrats who supported the decision to increase troop deployments to Afghanistan by 30,000.Republican support for the president’s troop increase decision did not reﬂect a sudden emergence of bipartisanship. The president, after all, had been unable to attract a single Republican vote on his health care initiative, a longstanding Democratic Party priority, largely for strategic partisan reasons. The Republicans sided with the president’s troop initiative, however, because it was consistent with what had been Bush Administration policy, and because they knew that most Democrats in Congress were opposed. There was therefore no challenge to the Republican Party’s recent “ownership” of national security issues. On this issue, Republican policy and partisan interests were both served by supporting a president who was defying his own party (Henninger, January 14, 2010: A14).Most noteworthy for present purposes, however, is the absence in these Bush and Obama examples of support for the hypothesis ventured by James Madison in Federalist 51, that “the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means, and the personal motives, to resist encroachment of the others” (Wills, 1982: 262, emphasis added). As the Bush–Obama examples show, this particular personal motive is most decidedly missing. Nowhere inside Congress was there apparent concern for the incentive that the founders hoped their “separation of powers” design would at least encourage if not guarantee: institutional loyalty strong enough to impel members of Congress to set lesser personal motives aside to defend against executive encroachment on their constitutional prerogatives.

**Ptx DA – 1NC [1/3]**

#### Even delaying to raise the debt ceiling would end the recovery

Masters 13 (Jonathan, Deputy Editor at the Council on Foreign Relations, Backgrounder, jan 2 2013"US Debt Ceiling. Costs and Consequences")

Most economists, including those in the White House and from former administrations, agree that the impact of an outright government default would be severe. Federal Reserve Chairman Ben Bernanke has said a U.S. **default could be a** [**"recovery-ending event"**](http://blogs.wsj.com/economics/2011/03/01/bernanke-warns-on-debt-limit-chaos/) that would likely spark another financial crisis. Short of default, officials warn that legislative delays in raising the debt ceiling could also inflict significant harm on the economy.¶ Many analysts say congressional gridlock over the debt limit will likely sow significant uncertainty in the bond markets and place upward pressure on interest rates. Rate increases would not only hike future borrowing costs of the federal government, but would also raise capital costs for struggling U.S. businesses and cash-strapped homebuyers. In addition, rising rates could divert future taxpayer money away from much-needed federal investments in such areas as infrastructure, education, and health care.¶ The protracted and politically acrimonious debt limit showdown in the summer 2011 prompted Standard and Poor's to take the unprecedented step of downgrading the U.S. credit rating from its triple-A status, and analysts fear such brinksmanship in early 2013 could bring about similar moves from other rating agencies.¶ A 2012 study by the non-partisan Government Accountability Office estimated that [delays in raising the debt ceiling](http://www.gao.gov/products/GAO-12-701) in 2011 cost taxpayers approximately $1.3 billion for FY 2011. BPC estimated the ten-year costs of the prolonged fight at roughly $19 billion.¶ The stock market also was thrown into frenzy in the lead-up to and aftermath of the 2011 debt limit debate, with the [Dow Jones Industrial Average](http://www.bizjournals.com/nashville/news/2011/08/08/slideshow-dows-10-worst-days-ever.html) plunging roughly 2,000 points from the final days of July through the first days of August. Indeed, the Dow recorded one of its worst single-day drops in history on August 8, the day after the S&P downgrade, tumbling 635 points.¶ Speaking to the [Economic Club of New York](http://www.reuters.com/article/2012/11/20/idUSW1E8KA00A20121120) in November 2012, Fed Chairman Ben Bernanke warned that congressional inaction with regard to the fiscal cliff, the raising of the debt ceiling, and the longer-term budget situation was creating uncertainty that "appears already to be affecting private spending and investment decisions and may be contributing to an increased sense of caution in financial markets, with adverse effects on the economy."

#### Economic collapse causes nuclear war

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

### 5

#### The plan would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they **may constrain U.S. actions** but because **they** maysend **signal**s **and shape** other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case **reflects the broad constitutional discretion presidents** now **have** to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war **are not just expansive but largely beyond Congress’s authority** to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the **diplomatic weapon** is the possibility of **dissidence at home** which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms.

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**Exec Power DA – 1NC [3/5]**

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Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … **are matters of presidential competence**. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military **action** – endowed with what Alexander Hamilton called “[**d]ecision, activity, secrecy, and dispatch**”116 – **best protects American interests**. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

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Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally **oppose a use of force, they undermine the president’s ability to convince** foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, **allies may be reluctant to contribute** to a military campaign, **and adversaries are likely to fight harder and longer** when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more **immediate** and informed **impact** on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – **provides more information to adversaries** regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175

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As applied to strategies of threatened force, generally **under these proposals the President would lack authority to make good on them** unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps **the *most* important** of all the powers in our constitutional armory to prevent confrontations that could **carry nuclear implications**. … [I]t is the **diplomatic power the President needs** most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that **the law would undermine the credibility of U.S. deterrent** and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

### 6

#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority. The President should request Authorization of Congress prior to initiating warfare unless to repel attacks on the United States.

#### CP is competitive and solves the case ---- Coordination with OLC can ensure executive action

BORRELLI et al 2000 - Professor of Government Chair of the Government and International Relations Department, Connecticut College (Maryanne Borrelli, Karen Hult, Nancy Kassop, “The White House Counsel’s Office”, http://whitehousetransitionproject.org/files/counsel/Counsel-OD.PDF)

The White House **Counsel**’s Office **is at the hub of all presidential activity**. Its mandate is to be watchful for and attentive to legal issues that may arise in policy and political contexts in which the president plays a role. To fulfill this responsibility, **it monitors and coordinates** the presidency’s interactions **with other players** in and out of government. Often called “the president’s lawyer,” the Counsel’s Office serves, more accurately, as the “presidency’s lawyer,” with tasks that extend well beyond exclusively legal ones. These have developed over time, depending on the needs of different presidents, on the relationship between a president and a Counsel, and on contemporary political conditions. The Office carries out many routine tasks, such as vetting all presidential appointments and advising on the application of ethics regulations to White House staff and executive branch officials, but it also operates as a “command center” when crises or scandals erupt. Thus, the more sharply polarized political atmosphere in recent years has led to greater responsibility and demands, as well as heightened political pressure and visibility, on the traditionally low-profile Counsel’s Office. The high-stakes quality of its work has led to a common sentiment among Counsels and their staff that there is “zero tolerance” for error in this office.

In sum, the Counsel’s Office might be characterized as a monitor, a coordinator, a negotiator, a recommender, and a translator: it monitors ethics matters, it coordinates the president’s message and agenda with other executive branch units, it negotiates with a whole host of actors on the president’s behalf (not the least of which is Congress), it recommends myriad actions to the president, and it translates or interprets the law (whether it is the Constitution, federal rules and regulations, treaties or legislation) for all executive branch officials. Past Counsels have lamented that there is no job description for this office, while the opening quote from Peter Wallison makes clear that even if there was, it would be all-consuming and all-inclusive of everything that goes in and out of the president’s office.

In simple terms, the Counsel’s Office performs five basic categories of functions: (1) advising on the exercise of presidential powers and defending the president’s constitutional prerogatives; (2) overseeing presidential nominations and appointments to the executive and judicial branches; (3) advising on presidential actions relating to the legislative process; (4) educating White House staffers about ethics rules and records management and monitoring adherence; and (5) handling department, agency and White House staff contacts with the Department of Justice (see Functions section). In undertaking these responsibilities, the Counsel’s Office interacts regularly with, among others, the president, the Chief of Staff, the White House Office of Personnel, the Press Secretary, the White House Office of Legislative Affairs, the Attorney General, the Office of Management and Budget (on the legislative process), the General Counsels of the departments and agencies, and most especially, the Office of Legal Counsel in the Department of Justice (see Relationships section). In addition to the Counsel, the Office usually consists of one or two Deputy Counsels, a varying number of Associate and Assistant Counsels, a Special Counsel when scandals arise, a Senior Counsel in some administrations, and support staff. Tasks are apportioned to these positions in various ways, depending on the Counsel’s choices, though most Counsels expect all Office members to share the ongoing vetting for presidential appointments (see Organization and Operations section).

Certain responsibilities within the Office are central at the very start of an administration (e.g., vetting for initial nominations and shepherding the appointment process through the Senate), while others have a cyclical nature to them (e.g., the annual budget, the State of the Union message), and still others follow an electoral cycle (e.g., determining whether presidential travel and other activities are partisan/electoral/campaign or governmental ones) (see Organization and Operations). There is, of course, the always unpredictable (but almost inevitable) flurry of scandals and crises, in which all eyes turn to the Counsel’s Office for guidance and answers. Watergate, Iran-contra, Whitewater, the Clinton impeachment, and the FBI files and White House Travel Office matters were all managed from the Counsel’s Office, in settings that usually separated scandal management from the routine work of the Office, so as to permit ongoing operations to continue with minimal distraction. Among the more regular tasks that occur throughout an administration are such jobs as directing the judicial nomination process, reviewing legislative proposals (the president’s, those from departments and agencies, and bills Congress has passed that need the Counsel’s recommendation for presidential signature or veto), editing and clearing presidential statements and speeches, writing executive orders, and determining the application of executive privilege (see both Relationships and Organization and Operations sections).

Perhaps, the most challenging task for the Counsel is being the one **who has the duty** to tell the president “no,” especially when it comes to defending the constitutional powers and prerogatives of the presidency. Lloyd Cutler, Counsel for both Presidents Carter and Clinton, noted that, in return for being “on the cutting edge of problems,” the Counsel needs to be someone who has his own established reputation…someone who is willing to stand up t o the President, to say, “No, Mr. President, you shouldn’t do that for these reasons.” There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It’s almost impossible to avoid, “This man is the President of the United States and you want to stay in his good graces,” even when he is about to do something dumb; you don’t tell him that. You find some way to put it in a very diplomatic manner. (Cutler interview, pp. 3-4)

LAW, POLITICS AND POLICY

A helpful way to understand the Counsel’s Office is to see it as sitting at the intersection of law, politics and policy. Consequently, it confronts the difficult and delicate task of trying to reconcile all three of these without sacrificing too much of any one. It is the distinctive challenge of the Counsel’s Office to advise the president to take actions that are both legally sound and politically astute. A 1994 article in Legal Times warned of the pitfalls: Because a sound legal decision can be a political disaster, the presidential counsel constantly sacrifices legal ground for political advantage. (Bendavid, 1994, p. 13) For example, A.B. Culvahouse recalled his experience upon arriving at the White House as counsel and having to implement President Reagan’s earlier decision to turn over his personal diaries to investigators during the Iran-contra scandal.

Ronald Reagan’s decision to turn over his diary - that sits at the core of the presidency. …You’re setting up precedents and ceding a little power. But politically, President Reagan wanted to get it behind him. (Bendavid, 1994, p. 13)

Nonetheless, Culvahouse added, the Counsel is “the last and in some cases the only protector of the President’s constitutional privileges. Almost everyone else is willing to give those away in part inch by inch and bit by bit in order to win the issue of the day, to achieve compromise on today’s thorny issue. So a lot of what I did was stand in the way of that process...” (Culvahouse interview, p. 28)

Because of this blend of legal, political and policy elements, **the most essential function** a Counsel can perform for a president **is to act as an “early warning system” for potential legal trouble spots before (and**, ultimately, **after**) they erupt. For this role, a Counsel must keep his or her “antennae” constantly attuned. Being at the right meetings at the right time and knowing which people have information and/or the necessary technical knowledge and expertise in specific policy or legal areas are the keys to insuring the best service in this part of the position. C. Boyden Gray, Counsel for President Bush, commented: “As Culvahouse said -- I used to say that the meetings I was invited to, I shouldn’t go to. …It’s the meetings I wasn’t invited to that I’d go to.” (Gray interview, p. 26) Lloyd Cutler noted that

….the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven’t recognized or push under the rug. He says, “Wait a minute. We’ve got to check this out,” and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late. (Cutler interview, p. 4)

One other crucial part of the job where the legal overlaps with the policy and the political -- and which can spell disaster for Counsels who disregard this -- is knowing when to go to the Office of Legal Counsel for guidance on prevailing legal interpretations and opinions on the scope of presidential authority. It is then up to the White House Counsel to sift through these legal opinions, and to bring into play the operative policy and political considerations in order to offer the president his or her best recommendation on a course of presidential action. Lloyd Cutler described how this process works:

### Intervention

#### No uniqueness

Karabell 9/6 (Zachary Karabell, Reuters, President of River Twice Research and River Twice Capital Advisors. His most recent book is Sustainable Excellence: The Future of Business in the 21st Century, “Obama and the End of the Imperial Presidency”, <http://www.theatlantic.com/politics/archive/2013/09/obama-and-the-end-of-the-imperial-presidency/279405/?google_editors_picks=true>, September 6, 2013)

The president's uphill battle to get congressional authorization for the use of force in Syria suggests the pendulum is swinging back from Bush-era excesses. In 1973, Arthur Schlesinger wrote about the tendency in American history for the president to assume sweeping powers in times of war and crisis. The balance of power established by the Constitution gets upended; Congress and the courts take a back seat; and the executive makes decisions about life and death largely unchecked. He called this “the imperial presidency.” Today, with President Obama turning to Congress to endorse a military strike on Syria, the imperial presidency is beginning to wane. It’s about time. The 1990s seemed to presage a return to a more balanced government, with Cold War defense spending slashed and “the peace dividend” contributing to a more balanced budget. But then 9/11 happened; America launched a war on terror; and the rest, as they say, is history. The imperial presidency has some justification in times of acute peril. The immediate aftermath of 9/11 certainly justified some degree of unilateral executive action, as did in its way the financial crisis in the fall of 2008. And few would argue that at times of all-out war, with the country fully mobilized to fight a genuine threat such as Germany and Japan during World War II, ceding powers to the executive branch is imperative. But it is equally vital to pare those back when they are no longer required -- though this is easier said than done. People do not cede power easily, and bureaucracies are far easier to construct than dismantle. The War on Terror has been conducted by an assertive executive branch and a compliant Congress and judiciary. Defenders will say that that’s a good thing, and a necessary one to keep the country safe. Either way, it tilts the balance toward the imperial presidency. It’s a sign of just how far down the imperial path we’ve gone that Obama’s decision to look for congressional authorization before sending missiles into Syria was greeted with surprise and not a little contempt. The decision, apparently made over the weekend before Labor Day, caught even Obama’s aides unawares. And rather than hailing the decision as a sign of respect for the congressional war-making power specified by the Constitution, a fair number of commentators and even congressional representatives decried the move. Rep. Peter King, a New York Republican, denounced the decision in blunt language: “His failure to act was a woeful abdication of the president’s powers as commander-in-chief and sent the entirely wrong signal to an increasingly dangerous world.” The assumption that the president has both the authority and the obligation to strike against Syria because of its use of chemical weapons, and that this authority does not require consultation with Congress, would have astonished generations of Americans. Yes, presidential overreach is hardly a product of recent history, and no, we are better served by treating the Constitution as a “living document” that needs adaptation rather than slavishly cleaving to its every clause, as some devotees of original intent clearly do. However, the degree to which presidents have since the 1950s assumed the power to unilaterally decide to go to war is clearly a level of power unintended by the founders of the United States, undesired by many today, and unconducive to the very openness and transparency of debate and decision-making that forms the foundation of a functional deliberative democracy. There is, in fact, a direct line between the issues raised by Edward Snowden’s revelations of government spying on domestic emails and communications and the near-decision to launch missiles against Syria. This isn’t about whether such policies are the right ones. They were not decided in the right way. That is, the way they were decided assumes not just competence and integrity on the part of the executive but that in most cases, the president is better able to make better decisions than a deliberative body such as Congress. You may think our current Congress is pitiful, but that is always a risk. The Constitution doesn’t say that “Congress shall have the power to declare war … but only if it’s a good Congress.” The point of the American system, at least in theory, is that too many factors play into key societal decisions to make it easy for individuals and institutions invested with great power to exercise that power lightly. That is more true than ever for the United States today. In pure military terms, the United States can do whatever it wants to whomever it wants, and precious few other countries can do a thing about it. As Iraq and Afghanistan demonstrate, of course, overwhelming military power only gets you so far, unless you are willing to indiscriminately kill civilians and then govern the country you’ve destroyed. And even then, the risks of blowback and failure are large. But in terms of firing missiles or deploying commandos or using drones or any number of military measures, the president can literally say go and it is done. Yes, he needs the consensus of his team, but the power is there. And once the missiles are flying, there is no turning back. That type of power is almost impossible to manage well. The temptation to use it is great. We know that because we use it frequently. China, also powerful in its way, does not. Russia, still well-armed, does not. France did dispatch troops to Mali recently, but even with its nuclear arsenal and not inconsiderable military, force is not a primary option. Those domestic systems are not ones most of us would trade for, yet it bears remembering that they are much less tempted to use force to resolve intractable international issues, including dire human rights abuses. There is one more reason to celebrate the waning of the imperial presidency. For too long, the United States has been locked into a role as the sole guardian of global order. Many Americans want to retain that, but in truth, we play that role selectively and erratically. Obama himself noted the contradictions in an interview with The New Republic and asked how any president could weigh the relative merits of intervening in Syria versus intervening in Congo. The very expectation that the United States must do something throughout the world feeds the domestic expansion of presidential powers. But while those powers grow, the ability and willingness of Americans to act as the global policeman and enforcer is erratic at best. That makes for the worst of possible worlds: an overweening domestic executive and an ineffectual global cop. The shifts afoot are partly structural. Without a clear and present danger, it’s natural that the pendulum begins to move away from the executive branch and toward other centers of influence. But Obama in recent months has been quietly accelerating the shift rather than fighting it. That may prove to be one of his greatest legacies, even though the diminution of presidential power is not the kind of thing that makes for compelling historical narrative. It is, however, exactly the sort of thing that makes for a compelling democracy, and I’d rather live in that than read books years hence about how the imperial presidency drove the country in precisely the wrong direction.

#### Turn- drones alt cause

#### International Blowback

Billinger ’11 (John B. Bellinger III, Partner at Arnold & Porter LLP and an adjunct senior fellow in international and national security law at the Council on Foreign Relations. He served as legal adviser for the State Department from 2005 to 2009 and as legal adviser to the National Security Council from 2001 to 2005, “Will drone strikes become Obama’s Guantanamo?”<http://www.washingtonpost.com/opinions/will-drone-strikes-become-obamas-guantanamo/2011/09/30/gIQA0ReIGL_story_1.html>, October 2, 2011)

The killing of the U.S.-born al- Qaeda cleric Anwar Al-Awlaki on Friday along with another U.S. citizen and two other al-Qaeda operatives in Yemen is likely to fuel the international controversy over the legality and wisdom of the Obama administration’s dramatically increased use of drone attacks. For several years, U.S. allies have made no public comment even as U.S. drone strikes have killed twice as many suspected al-Qaeda and Taliban members than were ever imprisoned in Guantanamo Bay. But that acquiescence may change, as human rights groups and the media focus more attention on the legality and collateral damage of drone attacks. The U.S. drone program has been highly effective in killing senior al-Qaeda leaders, but the administration needs to work harder to explain and defend its use of drones as lawful and appropriate — to allies and critics — if it wants to avoid losing international support and potentially exposing administration officials to legal liability. The U.S. position, under the George W. Bush and Obama administrations, has been that drone strikes against al-Qaeda and Taliban leaders are lawful under U.S. and international law. They are permitted by the September 2001 Authorization to Use Military Force Act, which empowered the president to “all necessary and appropriate force” against nations, organizations or persons who planned, committed or aided the Sept. 11 attacks. The United States also believes that drone strikes are permitted under international law and the United Nations Charter as actions in self-defense, either with the consent of the country where the strike takes place or because that country is unwilling or unable to act against an imminent threat to the United States. U.S. officials have been understandably reluctant to confirm whether consent has been given by particular countries. Obama administration officials have explained in the past that strikes against particular militant leaders are permissible, either because the individuals are part of the overall U.S. conflict with al-Qaeda or because they pose imminent threats to the United States. President Obama emphasized Awlaki’s operational role on Friday, stating that he was the “leader of external operations for al-Qaeda in the Arabian Peninsula.” The killing of Awlaki raises additional legal concerns because U.S. citizens have certain constitutional rights wherever they are in the world. Some human rights groups have asserted that due process requires prior judicial review before killing an American, but it is unlikely that the Constitution requires judicial involvement in the case of a U.S. citizen engaged in terrorist activity outside this country. Administration lawyers undoubtedly reviewed the targeting of Awlaki even more carefully than of a non-American, and the Justice Department reportedly prepared an opinion concluding that his killing would comply with domestic and international law. This is likely to be considered sufficient due process under U.S. constitutional standards. But the U.S. legal position may not satisfy the rest of the world. No other government has said publicly that it agrees with the U.S. policy or legal rationale for drones. European allies, who vigorously criticized the Bush administration for asserting the unilateral right to use force against terrorists in countries outside Afghanistan, have neither supported nor criticized reported U.S. drone strikes in Pakistan, Yemen and Somalia. Instead, they have largely looked the other way, as they did with the killing of Osama bin Laden. Human rights advocates, on the other hand, while quiet for several years (perhaps to avoid criticizing the new administration), have grown increasingly uncomfortable with drone attacks. Last year, the U.N. rapporteur for summary executions and extrajudicial killings said that drone strikes may violate international humanitarian and human rights law and could constitute war crimes. U.S. human rights groups, which stirred up international opposition to Bush administration counterterrorism policies, have been quick to condemn the Awlaki killing. Even if Obama administration officials are satisfied that drone strikes comply with domestic and international law, they would still be wise to try to build a broader international consensus. The administration should provide more information about the strict limits it applies to targeting and about who has been targeted. One of the mistakes the Bush administration made in its first term was adopting novel counterterrorism policies without attempting to explain and secure international support for them. White House counterterrorism adviser John Brennan rightly acknowledged in a recent speech that “the effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies.” If the Obama administration wants to avoid losing the tacit support (and potentially the operational and intelligence assistance) of its allies for drone strikes and its other counterterrorism policies, it should try to ensure that they understand and agree with the U.S. policy and legal justification. Otherwise, the administration risks having its largely successful drone program become as internationally maligned as Guantanamo.

#### Groupthink dangers exaggerated- Obama is not their examples

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the Obama administration does not even come close to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. Obama's prolonged—to the point of inviting charges of dithering—internal debates on the Afghanistan War were the **polar opposite** of this. Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

#### Federal courts don’t solve- FISA proves

Mataconis, 13 -- OTB staff, J.D. from George Mason University School of Law

[Doug, "Who’s In Charge Of The FISA Court?" Outside the Beltway, 7-7-13, www.outsidethebeltway.com/whos-in-charge-of-the-fisa-court-john-roberts-and-apparently-just-john-roberts/, accessed 9-21-13, mss]

It’s also easy to see how it is that the Chief Justice ended up being the person responsible for staffing the FISA Court itself.. In addition to heading the Supreme Court, Roberts, whose official title is Chief Justice of the United States, sits at the top of the entire Federal Judiciary. The Court’s administrative arm reports directly to him, for example, and he directly involved in the preparation and presentation of the Judiciary Department’s budget request to Congress each year, among other administrative responsibilities. When the FISA law was adopted in 1978, Congress no doubt saw the idea of the Chief Justice making these appointments, from among a group of Federal Judges who had already been confirmed to lifetime appointments by the Senate, as the best and most efficient manner in which to staff the Court. Ezra Klein, though, sees a danger of group think setting in: Roberts’s nominations to the FISA court are almost exclusively Republican. One of his first appointees, for instance, was Federal District Judge Roger Vinson of Florida, who not only struck down the Affordable Care Act’s individual mandate but the rest of the law, too. (The Supreme Court disagreed.) Vinson’s term expired in May, but the partisan tilt on the court continues: Only one of the 11 members is a Democrat. Critics contend the FISA court is too compromised to conduct genuine oversight. It meets in secret, and the presiding judge **hears only the government’s argument** before issuing a decision that can’t be appealed or even reviewed by the public. “**Like any other group that meets in secret** behind closed doors **with only one constituency** appearing before them, **they’re subject to** capture and **bias**,” said Elizabeth Goitein, co-director of the Brennan Center for Justice’s Liberty and National Security Program. A Reuters investigation found that from 2001 to 2012, FISA judges approved 20,909 surveillance and property search warrants while rejecting only 10. Almost 1,000 of the approved requests required modification, and 26 were withdrawn by the government before a ruling. That’s a startling win rate for the government. (…) The FISA court is composed of federal judges. All are appointed by the same man. All but one hail from the same political party. And unlike judges in normal courts, FISA judges don’t hear opposing testimony or feel pressure from colleagues or the public to moderate their rulings. Under these circumstances, group polarization is almost a certainty. “There’s the real possibility that these judges become more extreme over time, even when they had only a mild bias to begin with,” Cato’s Sanchez said.

#### No accidental launch

Williscroft ‘10 (Six patrols on the *John Marshall* as a Sonar Technician, and four on the *Von Steuben* as an officer – a total of twenty-two submerged months. Navigator and Ops Officer on *Ortolan* & *Pigeon* – Submarine Rescue & Saturation Diving ships. Watch and Diving Officer on *Oceanographer* and *Surveyor*. “Accidental Nuclear War” http://www.argee.net/Thrawn%20Rickle/Thrawn%20Rickle%2032.htm, 2010)

Is there a realistic chance that we could have a nuclear war by accident? Could a ballistic submarine commander launch his missiles without specific presidential authorization? Could a few men conspire and successfully bypass built-in safety systems to launch nuclear weapons? The key word here is “realistic.” In the strictest sense, yes, these things are possible. But are they realistically possible? This question can best be answered by examining two interrelated questions. Is there a way to launch a nuclear weapon by accident? Can a specific accidental series of events take place—no matter how remote—that will result in the inevitable launch or detonation of a nuclear weapon? Can one individual working by himself or several individuals working in collusion bring about the deliberate launch or detonation of a nuclear weapon? We are protected from accidental launching of nuclear weapons by mechanical safeguards, and by carefully structured and controlled mandatory procedures that are always employed when working around nuclear weapons. Launching a nuclear weapon takes the specific simultaneous action of several designated individuals. System designers ensured that conditions necessary for a launch could not happen accidentally. For example, to launch a missile from a ballistic missile submarine, two individuals must insert keys into separate slots on separate decks within a few seconds of each other. Barring this, the system cannot physically launch a missile. There are additional safeguards built into the system that control computer hardware and software, and personnel controls that we will discuss later, but—in the final analysis—without the keys inserted as described, there can be no launch—it’s not physically possible. Because the time window for key insertion is less than that required for one individual to accomplish, it is physically impossible for a missile to be launched accidentally by one individual. Any launch must be deliberate. One can postulate a scenario wherein a technician bypasses these safeguards in order to effect a launch by himself. Technically, this is possible, but such a launch would be deliberate, not accidental. We will examine measures designed to prevent this in a later column. Maintenance procedures on nuclear weapons are very tightly controlled. In effect always is the “two-man rule.” This rule prohibits any individual from accessing nuclear weapons or their launch vehicles alone. Aside from obvious qualification requirements, two individuals must be present. No matter how familiar the two technicians may be with a specific system, each step in a maintenance procedure is first read by one technician, repeated by the second, acknowledged by the first (or corrected, if necessary), performed by the second, examined by the first, checked off by the first, and acknowledged by the second. This makes maintenance slow, but absolutely assures that no errors happen. Exactly the same procedure is followed every time an access cover is removed, a screw is turned, a weapon is moved, or a controlling publication is updated. Nothing, absolutely nothing is done without following the written guides exactly, always under two-man control. This even applies to guards. Where nuclear weapons are concerned, a minimum of two guards—always fully in sight of each other—stand duty. There is no realistic scenario wherein a nuclear missile can be accidentally launched...ever...under any circumstances...period!

### Warfighting

#### Conventional dominance inevitable

Stimson Center ‘9 (Stimson Center, nonprofit, nonpartisan institution devoted to enhancing international peace and security through a unique combination of rigorous analysis and outreach, <http://www.stimson.org/research-pages/key-elements-of-space-assurance/>, 2009)

The United States enjoys unparalleled and unprecedented military superiority. The US will spend close to half a trillion dollars this year on defense (over three times more than Russia, its closest peer competitor). In the 2003 Iraqi war, 130,000 troops decimated opposing forces and occupied a country the size of Montana in three weeks.

#### Hard power is key to hegemony

Kagan ’12 (Robert Kagan, Senior Fellow, Foreign Policy, Center on the United States and Europe, “The Importance of U.S. Military Might Shouldn’t Be Underestimated”, <http://www.brookings.edu/opinions/2012/0202_us_military_power_kagan.aspx>, February 2, 2012)

These days “soft” power and “smart” power are in vogue (who wants to make the case for “dumb” power?) while American “hard” power is on the chopping block. This is, in part, a symbolic sacrifice to the fiscal crisis — even though the looming defense cuts are a drop in the bucket compared with the ballooning entitlement spending that is not being cut. And partly this is the Obama administration’s election-year strategy of playing to a presumably war-weary nation. But there is a theory behind all this: The United States has relied too much on hard power for too long, and to be truly effective in a complex, modern world, the United States needs to emphasize other tools. It must be an attractive power, capable of persuading rather than compelling. It must convene and corral both partners and non-partners, using economic, diplomatic and other means to “leverage” American influence. These are sensible arguments. Power takes many forms, and it’s smart to make use of all of them. But there is a danger in taking this wisdom too far and forgetting just how important U.S. military power has been in building and sustaining the present liberal international order. That order has rested significantly on the U.S. ability to provide security in parts of the world, such as Europe and Asia, that had known endless cycles of warfare before the arrival of the United States. The world’s free-trade, free-market economy has depended on America’s ability to keep trade routes open, even during times of conflict. And the remarkably wide spread of democracy around the world owes something to America’s ability to provide support to democratic forces under siege and to protect peoples from dictators such as Moammar Gaddafi and Slobodan Milosevic. Some find it absurd that the United States should have a larger military than the next 10 nations combined. But that gap in military power has probably been the greatest factor in upholding an international system that, in historical terms, is unique — and uniquely beneficial to Americans. Nor should we forget that this power is part of what makes America attractive to many other nations. The world has not always loved America. During the era of Vietnam and Watergate and the ugly last stand of segregationists, America was often hated. But nations that relied on the United States for security from threatening neighbors tended to overlook the country’s flaws. In the 1960s, millions of young Europeans took to the streets to protest American “imperialism,” while their governments worked to ensure that the alliance with the United States held firm. Soft power, meanwhile, has its limits. No U.S. president has enjoyed more international popularity than Woodrow Wilson did when he traveled to Paris to negotiate the treaty ending World War I. He was a hero to the world, but he found his ability to shape the peace, and to establish the new League of Nations, severely limited, in no small part by his countrymen’s refusal to commit U.S. military power to the defense of the peace. John F. Kennedy, another globally admired president, found his popularity of no use in his confrontations with Nikita Khrushchev, who, by Kennedy’s own admission, “beat the hell out of me” and who may have been convinced by his perception of Kennedy’s weakness that the United States would tolerate his placing Soviet missiles in Cuba. The international system is not static. It responds quickly to fluctuations in power. If the United States were to cut too deeply into its ability to project military power, other nations could be counted on to respond accordingly. Those nations whose power rises in relative terms would display expanding ambitions commensurate with their new clout in the international system. They would, as in the past, demand particular spheres of influence. Those whose power declined in relative terms, like the United States, would have little choice but to cede some influence in those areas. Thus China would lay claim to its sphere of influence in Asia, Russia in eastern Europe and the Caucasus. And, as in the past, these burgeoning great-power claims would overlap and conflict: India and China claim the same sphere in the Indian Ocean; Russia and Europe have overlapping spheres in the region between the Black Sea and the Baltic. Without the United States to suppress and contain these conflicting ambitions, there would have to be complex adjustments to establish a new balance. Some of these adjustments could be made through diplomacy, as they were sometimes in the past. Other adjustments might be made through war or the threat of war, as also happened in the past. The biggest illusion is to imagine that as American power declines, the world stays the same. What has been true since the time of Rome remains true today: There can be no world order without power to preserve it, to shape its norms, uphold its institutions, defend the sinews of its economic system and keep the peace. Military power can be abused, wielded unwisely and ineffectively. It can be deployed to answer problems that it cannot answer or that have no answer. But it is also essential. No nation or group of nations that renounced power could expect to maintain any kind of world order. If the United States begins to look like a less reliable defender of the present order, that order will begin to unravel. People might indeed find Americans very attractive in this weaker state, but if the United States cannot help them when and where they need help the most, they will make other arrangements.

#### And military hard power is key to ALL diplomatic efforts

Holmes ‘9 [Kim, Ph.d., VP for Foreign and Defense Policy Studies and Director of the David Institute for International Studies at the Heritage Foundation, 6-1, “Sustaining American Leadership with Military Power”, <http://s3.amazonaws.com/thf_media/2009/pdf/sr0052.pdf>]

The consequences of hard-power atrophy will be a direct deterioration of America’s diplomatic clout. This is already on display in the western Pacific Ocean, where America’s ability to hedge against the growing ambitions of a rising China is being called into question by some of our key Asian allies. Recently, Australia released a defense White Paper that is concerned primarily with the potential decline of U.S. military primacy and the implications that this decline would have for Australian security and stability in the Asia–Pacific. These developments are anything but reassuring. The ability of the United States to reassure friends, deter competitors, coerce belligerent states, and defeat enemies does not rest on the strength of our political leaders’ commitment to diplomacy; it rests on the foundation of a powerful military. Only by retaining a “big stick” can the United States succeed in advancing its diplomatic priorities. Only by building a full-spectrum military force can America reassure its many friends and allies and count on their future support. . The next British leader - and the rest of our allies - need to know they can count on the U.S. to intervene on their behalf any time, anywhere it has to. That will require hard power, not just soft, diplomatic words murmured whilst strolling serenely along "Obama Beach."

### SOP

#### No risk of entanglement

Hurrell ‘6 (Director of the Centre for International Studies at the University of Oxford and a Fellow of Nuffield College, Oxford (Andrew, Hegemony, liberalism and global order: what space for would-be great powers? (p 1-19), International Affairs, January 24, 2006)

The contrast with the United States is instructive. Much is made of the unique position of the United States and the degree to which, unlike all other modern great powers, it faced no geopolitical challenge from within its region and was able to prevent, or more accurately contain, the influence of extraregional powers. This is certainly true (even if the rise of the US to regional hegemony is often dated too early and its extent exaggerated). But the other important regional aspect of US power is the ability to avoid excessively deep entanglement or involvement and, for the most part, to escape from ensnaring and diverting lower-level conflicts within its ‘backyard’. It has been able to take the region for granted and, for long periods, to avoid having a regional policy at all (as has arguably been the case since 2001). It is this fact that, perhaps counterintuitively, provides Brazil with some capacity to develop a relatively autonomous regional role. Second, attempts to develop a global role can easily stir the animosity, or at least raise the concerns, of regional Panama and the Gulf. A passive world-view encouraged American leaders to ignore troubling developments which eventually metastasized into full blown threats to American security. Manuel Noriega and Saddam Hussein were given reason to believe that the United States did not consider its interests threatened by their behavior, only to discover that they had been misled. In each case, a broader and more forward-leaning conception of the national interest might have made the later large and potentially costly interventions unnecessary

#### We wont start wars just because we can

**Brooks 12**, Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51

temptation. For many advocates of retrenchment, the mere possession of peerless, globe-girdling military capabilities leads inexorably to a dangerous expansion of U.S. definitions of national interest that then drag the country into expensive wars. 64 For example, sustaining ramified, long-standing alliances such as NATO leads to mission creep: the search for new roles to keep the alliance alive. Hence, critics allege that NATO’s need to “go out of area or out of business” led to reckless expansion that alienated Russia and then to a heedless broadening of interests to encompass interventions such as those in Bosnia, Kosovo, and Libya. In addition, peerless military power creates the temptation to seek total, non-Clausewitzian solutions to security problems, as allegedly occurred in Iraq and Afghanistan. 65 Only a country in possession of such awesome military power and facing no serious geopolitical rival would fail to be satisfied with partial solutions such as containment and instead embark on wild schemes of democracy building in such unlikely places. In addition, critics contend, the United States’ outsized military creates a sense of obligation to use it if it might do good, even in cases where no U.S. interests are engaged. As Madeleine Albright famously asked Colin Powell, “What’s the point of having this superb military you’re always talking about, if we can’t use it?” Undoubtedly, possessing global military intervention capacity expands opportunities to use force. If it were truly to “come home,” the United States would be tying itself to the mast like Ulysses, rendering itself incapable of succumbing to temptation. Any defense of deep engagement must acknowledge that it increases the opportunity and thus the logical probability of U.S. use of force compared to a grand strategy of true strategic disengagement. Of course, if the alternative to deep engagement is an over-the-horizon intervention stance, then the temptation risk would persist after retrenchment. The main problem with the interest expansion argument, however, is that it essentially boils down to one case: Iraq. Sixty-seven percent of all the casualties and 64 percent of all the budget costs of all the wars the United States has fought since 1990 were caused by that war. Twenty-seven percent of the causalities and 26 percent of the costs were related to Operation Enduring Freedom in Afghanistan. All the other interventions—the 1990–91 Persian Gulf War, the subsequent airstrike campaigns in Iraq, Somalia, Bosnia, Haiti, Kosovo, Libya, and so on—account for 3 percent of the casualties and 10 percent of the costs. 66 Iraq is the outlier not only in terms of its human and material cost, but also in terms of the degree to which the overall burden was shouldered by the United States alone. As Beckley has shown, in the other interventions allies either spent more than the United States, suffered greater relative casualties, or both. In the 1990–91 Persian Gulf War, for example, the United States ranked fourth in overall casualties (measured relative to population size) and fourth in total expenditures (relative to GDP). In Bosnia, European Union (EU) budget outlays and personnel deployments ultimately swamped those of the United States as the Europeans took over postconflict peacebuilding operations. In Kosovo, the United States suffered one combat fatality, the sole loss in the whole operation, and it ranked sixth in relative monetary contribution. In Afghanistan, the United States is the number one financial contributor (it achieved that status only after the 2010 surge), but its relative combat losses rank fifth. 67 In short, the interest expansion argument would look much different without Iraq in the picture. There would be no evidence for the United States shouldering a disproportionate share of the burden, and the overall pattern of intervention would look “unrestrained” only in terms of frequency, not cost, with the debate hinging on whether the surge in Afghanistan was recklessly unrestrained. 68 How emblematic of the deep engagement strategy is the U.S. experience in Iraq? The strategy’s supporters insist that Iraq was a Bush/neoconservative aberration; certainly, there are many supporters of deep engagement who strongly opposed the war, most notably Barack Obama. Against this view, opponents claim that it or something close to it was inevitable given the grand strategy. Regardless, the more important question is whether continuing the current grand strategy condemns the United States to more such wars. The Cold War experience suggests a negative answer. After the United States suffered a major disaster in Indochina (to be sure, dwarfing Iraq in its human toll), it responded by waging the rest of the Cold War using proxies and highly limited interventions. Nothing changed in the basic structure of the international system, and U.S. military power recovered by the 1980s, yet the United States never again undertook a large expeditionary operation until after the Cold War had ended. All indications are that Iraq has generated a similar effect for the post–Cold War era. If there is an Obama doctrine, Dominic Tierney argues, it can be reduced to “No More Iraqs.” 69 Moreover, the president’s thinking is reflected in the Defense Department’s current strategic guidance, which asserts that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations.” 70 Those developments in Washington are also part of a wider rejection of the Iraq experience across the American body politic, which political scientist John Mueller dubbed the “Iraq Syndrome.” 71 Retrenchment advocates would need to present much more argumentation and evidence to support their pessimism on this subject.

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

Zenko ‘13 [Micah, Council on Foreign Relations Center for Preventive Action Douglas Dillon fellow, "The Signal and the Noise," Foreign Policy, 2-2-13, www.foreignpolicy.com/articles/2013/02/20/the\_signal\_and\_the\_noise, accessed 6-12-13, mss]

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

# 2NC

### Exec CP – Solvency Signaling 2NC [1/2]

**Constraints through executive coordination solves signaling**

**POSNER & VERMEULE 2006** --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involve executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.

This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations.71 Whether or not this picture is coherent,72 it is not the question we examine here, although some of the relevant considerations are similar.73 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government.

Furthermore, our question is subconstitutional; it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling to generate public trust. Accordingly we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations; in general, the solution is to engage in actions that are less costly for good types than for bad types.

We begin with some relevant law; then examine a set of possible mechanisms, emphasizing both the conditions under which they might succeed and the conditions under which they might not; and then examine the costs of credibility.

A. A Preliminary Note on Law and Self-Binding

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.74 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is “yes, at least to the same extent that a legislature can.” Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.75 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have **great de facto power to adopt policies that shape the legal landscape for the future.** A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and **generating new political coalitions** that will act to defend the new rules or policies.

More schematically, we may speak of formal and informal means of self-binding:

(1) The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.

(2) The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.76 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

B. Mechanisms

What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators and judges that his policies rest on judgments about the public interest, rather than on power-maximization, partisanship or other nefarious motives? Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels “internal separation of powers” within the executive branch.77 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger civil-service protections and internal adjudication of executive controversies by insulated “executive” decisionmakers who resemble judges in many ways.78Katyal’s argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed, on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy;79 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large-scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard). Overall, Katyal’s view has a kind of fractal quality – each branch should reproduce within itself the very same separation of powers structure that also describes the whole system – but it is not explained why the constitutional order should be fractal.

Second, Katyal’s proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends.80 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices.81 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an illmotivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal’s premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their costs.

The contrast here must not be drawn too simply. A well-motivated executive, in our sense, might well attempt to increase his power. The very point of demonstrating credibility is to encourage voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully-informed voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.

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**Exec CP – Solvency Signaling 2NC [2/2]**

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Independent commissions. We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal’s idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan.82

We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. The president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.

Consider whether George W. Bush’s credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush shared that knowledge, the public could have inferred that Bush’s professed motive – elimination of weapons of mass destruction – was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.

The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction.83 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event—by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future – merely a plausible inference that the president’s future behavior will track his past behavior.

Bipartisan appointments. In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office.84 A number of statutes require partisan balance on multimember commissions; although these statutes are outside the scope of our discussion, we note that presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place.85 For similar reasons, presidents may consent to restrictions on the removal of agency officials, because the restriction enables the president to commit to giving the agency some autonomy from the president’s preferences.86

Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades and groupthink;87 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president’s privileged access to information, (2) ensuring that policy is partly controlled by officials with preferences that differ from the president’s, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.

A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president’s own party, leaders whose preferences are known to diverge from the president’s on the subject; one point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.

The Independent Counsel Statute institutionalized the special prosecutor and strengthened it. But the statute proved unpopular and was allowed to lapse in 1999.88 This experience raises two interesting questions. First, why have presidents confined themselves to appointing lawyers to investigate allegations of wrongdoing; why have they not appointed, say, independent policy experts to investigate allegations of policy failure? Second, why did the Independent Counsel Statute fail? Briefly, the statute failed because it was too difficult to control the behavior of the prosecutor, who was not given any incentive to keep his investigation within reasonable bounds.89 Not surprisingly, policy investigators would be even less constrained since they would not be confined by the law, and at the same time, without legal powers they would probably be ignored on partisan grounds. A commission composed of members with diverse viewpoints is harder to ignore, if the members agree with each other.

More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic coalitions of the willing. Presidents can informally bargain around the formal separation of powers90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenbergh but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee – including Democrats – on the administration’s secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.

Counter-partisanship. Related to bipartisanship is what might be called counterpartisanship: presidents have greater credibility when they choose policies that cut against the grain of their party’s platform or their own presumed preferences.91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty.92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat.93 By the same logic, George W. Bush is widely suspected of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.

Counter-partisanship can powerfully enhance the president’s credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.

Transparency. The well-motivated executive might commit to transparency, as a way to reduce the costs to outsiders of monitoring his actions.94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.

Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking, and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency – no one expects meetings of the National Security Council to appear on CSPAN – but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.

There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong.96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward presidents who give them access by portraying their decisionmaking in a favorable light.97

We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well-motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

### Exec CP – Politics NB

#### OLC deflects loss/blame on the President

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress 22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. **This response** at least partially **deflects blame from the president**. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OL C’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status.

### No Solvency – 2NC [1/\_\_]

#### No one will intervene

BRADLEY\* AND MORRISON\*\* 2013 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2191700>)

The Executive Branch’s attention to historical practice is also reflected in presidential issuance of “constitutional signing statements.” These statements, made when the President is signing a bill into law, call into question the constitutionality of one or more provisions in the bill and suggest that the President might **not comply** with the provisions, often on the ground that the provisions threaten to interfere with presidential authority. 36 As the Executive Branch has explained, “[p]articularly since omnibus bills have become prevalent, signing statements have often been used to ensure that concerns about the constitutionality of discrete statutory provisions do not require a veto of the entire bill.” 37 Although issued by both Democratic and Republican presidents, 38 these statements are controversial, with some critics claiming that the rule of law and separation of powers are offended when a President reserves the ability to disregard part of bill that he signs into law. 39 It does not appear, however, that Presidents commonly disregard the provisions to which they object in signing statements. This was true even during the George W. Bush Administration, which had a reputation for being particularly aggressive in its issuance of signing statements. 40 Thus, instead of signaling an active intent to disregard the identified provision, signing statements may be better understood as attempts by the Executive Branch to prevent a claim that it has acquiesced in congressional intrusions on executive authority. In other words, these statements appear to be designed, at least in part, to prevent historical gloss from developing in a way that might limit presidential authority. 41

Legal scholarship relating to presidential power, especially in the area of foreign affairs, also frequently refers to historical practice. A number of scholars have referenced such practice, for example, in assessing whether and to what extent the President has the constitutional authority to initiate military operations in the absence of congressional authorization. 42 Other scholars have emphasized practice in considering the circumstances under which the President may conclude international agreements without obtaining the consent of two-thirds of the Senate. 43 Even outside the foreign affairs area, academic debates about presidential authority—such as about the President’s power to remove executive officials from office 44 —are greatly influenced by considerations of historical practice.

B. Limitations on Judicial Review

If courts routinely reviewed contested issues of presidential power, they could decide whether and when to credit historical practice in this area. They could also decide whether novel presidential assertions of authority were justified, before such assertions became established practice. But judicial review in this area is **anything but routine**. Courts obviously do review issues of presidential power in some instances, especially when individual rights are perceived to be at stake, as both Youngstown and the series of Supreme Court decisions concerning the “war on terror” illustrate. 45 When individual rights are not directly implicated, however, courts **often abstain** from addressing questions surrounding the allocation of authority between Congress and the President.

Judicial abstention is particularly common in the foreign affairs area. Consider, for example, the question whether the President is constitutionally required to obtain congressional authorization before initiating military hostilities. Despite numerous presidential initiations of hostilities without congressional authorization in the post-World War II period, courts have generally refused to consider the issue. 46 Courts have similarly avoided addressing whether presidents must obtain congressional or senatorial approval before terminating a treaty, 47 and whether and to what extent presidents may use executive agreements in lieu of treaties. 48

Courts invoke a **variety of doctrines** in support of this abstention. They enforce general standing requirements **strictly** and, at least since the Supreme Court’s 1997 decision in Raines v. Byrd, 49 they typically find that individual members of Congress lack standing to challenge presidential action. 50 Some lower courts also invoke ideas of “political ripeness,” pursuant to which they **will not intervene** in inter-branch disputes until the affected branch has exhausted its own political resources to address the purported problem, a requirement that is rarely if ever satisfied. 51 Another potential barrier to judicial review is the political question doctrine, which the lower courts apply with some frequency in the foreign affairs area. 52

Academic defenders of this judicial abstention have argued either that the political branches have adequate resources to protect their interests, 53 or that the courts lack sufficient competence to resolve separation of powers issues, especially in the foreign affairs and national security areas. 54 Other scholars have bemoaned this abstention as an abdication of the judicial role and have blamed it for contributing to what they perceive to be an undesirable growth in executive power in the modern era. 55 The key point for present purposes is that many issues of presidential power are resolved, if at all, outside the courts. Moreover, even when the courts do intervene, they are likely to give significant deference to patterns of governmental practice, especially if the patterns are longstanding and appear to reflect inter-branch agreement. 56

### No Solvency – 2NC [2/\_\_]

#### Executive has no constraints

BRADLEY\* AND MORRISON\*\* 2013 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2191700)

The general posture of judicial abstention in this area raises questions about whether presidential power is truly subject to legal constraints. It is often easier—or at least more familiar—to talk meaningfully about law if there is a reasonable prospect that the actions in question will face judicial review. Because the courts are unlikely to intervene in many controversies relating to presidential power—and because any such intervention is likely to be deferential to the actions of the political branches—some scholars are inclined to say that presidents face (or will soon face) **virtually no constraints** at all. Part of the concern here is that Congress by itself often seems either **unable or unwilling** to provide adequate checks on executive power. Compounding the problem, in the view of some scholars, is that institutional arrangements within the Executive Branch are not able to constrain presidential decisionmaking. Bruce Ackerman, for example, claims to identify a range of developments in “politics and communications, bureaucratic and military organization,” as well as “executive constitutionalism,” that threaten to turn the presidency into “a vehicle for demagogic populism and lawlessness.” 57

Other scholars contend that presidents face some constraints on their actions, but depict those constraints in extralegal terms. Eric Posner and Adrian Vermeule, for example, argue that “law does little to constrain the modern executive,” and that whatever constraints presidents do face are instead a matter of “politics and public opinion.” 58 On this view, **any** seemingly stable arrangements affecting presidential power are simply “non-normative equilibria” 59 or focal points of coordination **with no authoritative status**. 60 If so, the existence of a particular arrangement might in some instances constrain presidential action, but it provides no strong normative justification for its continued existence if political or other extralegal factors pull in a different direction.

Some of this skepticism, especially when coming from the political left, is related to a more general concern about the growth of presidential power in the modern era, a concern reflected in the historian Arthur Schlesinger’s account of the “imperial presidency.” 61 That concern was especially prominent during the George W. Bush Administration, which was thought by some to have used the post-September 11 security environment as an opportunity to make particularly broad claims of presidential power. 62 But concerns about presidential unilateralism have continued into the Obama Administration. 63 The skepticism may also trace to post-Watergate cynicism about the behavior of government officials, including the extent to which they are likely to act based on internalized norms. 64

#### No willingness to check the executive

HUQ 2012 - Assistant Professor of Law, University of Chicago Law School (Aziz Z. Huq, Binding The Executive (By Law Or By Politics), Chicago Public Law and Legal Theory Working Paper No. 400)

Consider first the case PV make against law and legal institutions as bulwarks against the executive. Their central argument rests on a logic of comparative institutional competence. Congress and judges alike, they argue, **lack incentives or ability** to gather and process information necessary to act quickly or to engage in oversight. Courts suffer from a “legitimacy deficit,” which dampens judicial willingness to intervene (pp 30–31, 57–58). And the Separation Of Powers system **can be gamed** by an executive using a strategy of “divide and conquer” against the two other branches (pp 19–31).38 The net result is that Congress fails to anticipate crises and then is forced to delegate broad new powers after the fact (pp 43–52), while courts lag far behind executive initiatives.

### Case – Group Think

**Advantage puts cart before the horse – agency integration must be sequenced before the plan**

Kotlow 3/31/11 - Visiting Senior Service College Fellow at The Washington Institute. Former Defense and Army Attache at the U.S. Embassy in Yemen and Lebanon [Colonel Kazimierz "Kaz" Kotlow (Former political/military advisor to the Multinational Force (MNF) Commander in Iraq.) “Countering Extremism in Yemen: Beyond Interagency Cooperation,” Small Wars Journal, March 31, 2011]

Extremism, especially violent extremism, is a clear threat to the national security of the United States. It is widely believed that effectively addressing quality of life issues, encouraging peaceful conflict resolution and enhancing political inclusion are critical to neutralizing extremist messaging, helping prevent the development and spread of violent extremism. Traditionally, the United States Agency for International Development (USAID) and The United States Department of State (DOS) are the primary agencies for development, with Department of Defense (DOD) efforts in support. But traditional “interagency cooperation” has **often not resulted in effective programs**. The U.S. Government (USG) should maximize integration of effort, bringing all government elements together from inception to planning and assessment, of a single coherent plan. DOD assets, from doctrine to personnel and funding, can be of great benefit in helping create and execute those integrated efforts.

### Case – War Fighting– Impact Overview 2NC [1/\_\_]

#### DA outweighs and turns case: (A)

DUNN 2007 – PhD, former Assistant Director of the U.S. Arms Control and Disarmament Agency and Ambassador to the 1985 Nuclear Non- Proliferation Treaty Review Conference (Lewis Dunn, Proliferation Papers, “Deterrence Today: Roles, Challenges, and Responses.”)

On the one hand, among many U.S. defense experts and officials it has become almost a cliché to state that an alleged *asymmetry of stakes* between the United States (and/or other outsiders) and a regional nuclear power would make it much more difficult to provide credible nuclear security assurances along the lines suggested above. That purported asymmetry of stakes also is widely seen by those same experts and officials as putting the United States (or other outsiders) at a fundamental disadvantage in any crisis with a regional power and shifting the deterrence balance in its favor. Emphasis on the impact of a perceived asymmetry of stakes partly reflects a view that the intensity of the stakes in any given crisis or confrontation is dependent most on what has been called “the proximity effect”: stakes’ intensity is a function of geography. Concern about an asymmetry of stakes also gains support from the fact that a desire to deter the United States or other outsiders probably is one incentive motivating some new or aspiring nuclear . This line of argument should not be accepted at face value. To the contrary, in two different ways, the stakes for the United States (and other outsiders) in a crisis or confrontation with a regional nuclear adversary would be extremely high. To start, what is at stake is the likelihood of cascades of proliferation in Asia and the Middle East. Such proliferation cascades almost certainly would bring greater regional instability, global political and economic disruption, a heightened risk of nuclear conflict, and a jump in the risk of terrorist access to nuclear weapons. Equally important, nuclear blackmail let alone **nuclear use against U.S.** and other outsiders’ forces, those of U.S. regional allies and friends, or any of their homelands would greatly heighten the stakes for the United States and other outsiders. **Perceptions of** American **resolve** and credibility **around the globe**, the likelihood that an initial nuclear use would be followed by a virtual **collapse of a** six-decades’ plus **nuclear taboo**, and the danger of runaway proliferation all would be at issue. So viewed, **how** the United States and others respond is likely to have a far-reaching impact on their own security as well as longer term global security and stability.

#### (B) And terrorism has its own impact --- triggers full scale war

Hellman ‘8 (Martin E. Hellman\* \* Martin E. Hellman is a member of the National Academy of Engineering and Professor Emeritus at Stanford University. His current project applies risk analysis to nuclear deterrence)

Nuclear proliferation and the specter of nuclear terrorism are creating additional possibilities for triggering a nuclear war. If an American (or Russian) city were devastated by an act of nuclear terrorism, the public **outcry for immediate,** decisive **action would be** even **stronger than Kennedy** had to deal **with** when the **Cuban missiles** first became known to the American public. While the action would likely not be directed against Russia, it might be threatening to Russia (e.g., on its borders) or one of its allies and precipitate a crisis that resulted in a full-scale nuclear war. Terrorists with an apocalyptic mindset **might even** attempt to catalyze a full-scale nuclear war by disguising their act to look like an attack by the U.S. or Russia**.**

[CONTINUED]

**Exec Power DA – Impact Overview 2NC [2/\_\_]**

[CONTINUED]

#### (C) Tie-breaker – strong alliances solve the use of WMD

ROSS 1999 - Douglas Ross, Professor of Political Science – Simon Fraser University, Winter 1998/1999, International Journal, Vol. 54, No. 1, “Canada’s Functional Isolationism And The Future Of Weapons Of Mass Destruction”, Lexis

Thus, an easily accessible tax base has long been available for spending much more on international security than recent governments have been willing to contemplate. Negotiating the landmines ban, discouraging trade in small arms, promoting the United Nations arms register are all worthwhile, popular activities that polish the national self-image. But they should all be supplements to, not substitutes for, a proportionately equitable commitment of resources to the management and prevention of international conflict – and thus the containment of the WMD threat. Future American governments will not ‘police the world’ alone. For almost fifty years the Soviet threat compelled disproportionate military expenditures and sacrifice by the United States. That world is gone. Only by enmeshing the capabilities of the United States and other leading powers in a co-operative security management regime where the burdens are widely shared does the world community have any plausible hope of avoiding **warfare involving nuclear or other WMD**.

#### (D) We control escalation and miscalc ladder

Caves ’10, John P. Caves, Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction at the National Defense University, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent”, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ada514285>

Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particularly if they emerge at a time when a nucleararmed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout. ■ A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante. ■ The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position. ■ Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years. ■ Important U.S. interests could be compromised or abandoned, or a **major war** could occur as adversaries and/or the United States **miscalculate** new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict. Continuing Salience of Nuclear Weapons Nuclear weapons, like all instruments of national security, are a means to an end— national security—rather than an end in themselves. Because of the catastrophic destruction they can inflict, resort to nuclear weapons should be contemplated only when necessary to defend the Nation’s vital interests, to include the security of our allies, and/or in response to comparable destruction inflicted upon the Nation or our allies, almost certainly by WMD. The retention, reduction, or elimination of nuclear weapons must be evaluated in terms of their contribution to national security, and in particular the extent to which they contribute to the avoidance of circumstances that would lead to their employment. Avoiding the circumstances that could lead to the employment of nuclear weapons involves many efforts across a broad front, many outside the military arena. Among such efforts are reducing the number of nuclear weapons to the level needed for national security; maintaining a nuclear weapons posture that minimizes the likelihood of inadvertent, unauthorized, or illconsidered use; improving the security of existing nuclear weapons and related capabilities; reducing incentives and closing off avenues for the proliferation of nuclear and other WMD to state and nonstate actors, including with regard to fissile material production and nuclear testing; enhancing the means to detect and interdict the transfer of nuclear and other WMD and related materials and capabilities; and strength ening our capacity to defend against nuclear and other WMD use. For as long as the United States will depend upon nuclear weapons for its national security, those forces will need to be reliable, adequate, and credible. Today, the United States fields the most capable strategic nuclear forces in the world and possesses globally recognized superiority in any conventional military battlespace. No state, even a nuclear-armed near peer, rationally would directly challenge vital U.S. interests today for fear of inviting decisive defeat of its conventional forces and risking nuclear escalation from which it could not hope to claim anything resembling victory. But power relationships are never static, and current realities and trends make the scenario described above conceivable unless corrective steps are taken by the current administration and Congress. Consider the challenge posed by China. It is transforming its conventional military forces to be able to project power and compete militarily with the United States in East Asia, 1 and is the only recognized nuclear weapons state today that is both modernizing and expanding its nuclear forces. 2 It weathered the 2008 financial crisis relatively well, avoiding a recession and already resuming robust economic growth. 3 Most economists expect that factors such as openness to foreign investment, high savings rates, infrastructure investments, rising productivity, and the ability to leverage access to a large and growing market in commercial diplomacy are likely to sustain robust economic growth for many years to come, affording China increasing resources to devote to a continued, broadbased modernization and expansion of its military capabilities. In contrast, the 2008 financial crisis was the most severe for the United States since the Great Depression, 4 and it led in 2009 to the largest Federal budget deficit—by far—since the Second World War 5 (much of which is financed by borrowing from China). Continuing U.S. military operations in Iraq and Afghanistan are expensive, as will be the necessary refurbishment of U.S. forces when those con flicts end. Those military expenses, however, are expected to be eclipsed by the burgeoning entitlement costs of the aging U.S. “baby boomer” generation. 6 As The Economist recently observed: China’s military build-up in the past decade has been as spectacular as its economic growth. . . . There are growing worries in Washington, DC, that China’s military power could challenge America’s wider military dominance in the region. China insists there is nothing to worry about. But even if its leadership has no plans to displace American power in Asia . . . America is right to fret this could change. 7 As an emerging nuclear-armed near peer like China narrows the wide military power gap that currently separates it from the United States, Washington could find itself more, rather than less, reliant upon its nuclear forces to deter and contain potential challenges from great power competitors. The resulting security dynamics may resemble the Cold War more than the U.S. “unipolar moment” of the 1990s and early 2000s. Concerns about Longterm Reliability With continuing U.S. dependence upon nuclear forces to deter conflict and contain challenges from (re-)emerging great power(s), perceptions of the reliability, adequacy, and credibility of those forces will determine how well they serve those purposes. Perception is all important when it comes to nuclear weapons, which have not been operationally employed since 1945 and not tested (by the United States) since 1992, and, hopefully, will never have to be employed or tested again. If U.S. nuclear forces are to **deter** other nuclear-armed great powers, the individual weapons must be perceived to work as intended (reliability), the overall forces must be perceived as adequate to deny the adversary the achievement of his goals regardless of his actions (adequacy), and U.S. leadership must be perceived as prepared to employ the forces under conditions that it has communicated via its declaratory policy (credibility) These perceptions must be, of course, those of the leadership of adversaries that we seek to deter (as well as of the allies that we seek to assure), but they also need to be **those of the U.S. leadership** lest our leaders fail to convey the confidence and resolve necessary to shape adversaries’ perceptions to achieve deterrence. Weapons reliability is the essential foundation for deterrence since there can be no adequacy or credibility without it.

### Case – War fighting 2 link

#### DA comes faster than the aff solves --- the plan collapses perceptions of deterrence which makes attack on the US more likely --- also prevents new categories of responses

Zeisberg, ‘4 [Mariah Zeisberg, PhD in Politics from Princeton, Postdoc Research Associate at the Political Theory Project of Brown University; “INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS”; June 2004; found in Word document, can be downloaded from [www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc](http://www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc)]

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “**put the Presidency in a straightjacket of a rigid code**, and prevent new categories of action from emerging, **in response** to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources **with a speed and energy** that is **far superior to any other branch.”** Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - **almost instantly,”** and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a **single person** be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would **collapse the system of deterrence, making preemptive strikes by our enemies** more **likely**.” Hence, “modern conditions” require the President to “act quickly, and often alone.” While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes, “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.

### Case – SOP 2NC Internal lInk

#### This internal link makes no sense --- executives just don’t jack SOP

**Posner and Vermeule, 9** - \* University of Chicago – Law School AND \*\*Harvard University – Harvard Law School (Eric and Adrian, “Tyrannophobia” 9/15, SSRN)

Demography and the Administrative State. The best explanation for the lack of dictatorship in America – at least in America today, as opposed to the 19th century – is neither psychological nor institutional, but demographic. Part III examined the strong comparative evidence that wealth is the best safeguard for democracy. Equality, homogeneity, and education matter as well. How does the United States, circa 2009, fare on these dimensions? Ethnic, religious and linguistic homogeneity have declined, but because of its high performance on other margins, there is little cause for concern about American democracy. The United States has an enormously rich, relatively well-educated population and multiple overlapping cleavages of class, race, religion and geography. Simply by virtue of its high per capita income, the likelihood of dictatorship in the United States is almost nil, at least if the historical pattern reflects causation. The highwater mark of the modern presidency’s approach to domestic dictatorship – Nixon’s “third-rate burglary” of the offices of his political opponents – was pathetic stuff in historical and comparative perspective, and immediately put Nixon on a slippery slope to disgrace. Likewise, comparisons between Weimar Germany and the United States of the Bush administration87 were worse than irresponsible; they were ignorant.

We add a less obvious point. Legal scholars, especially those of a libertarian or civil-libertarian bent, often express concern that the formal separation of powers has atrophied over the course of the 20th century. On this account, economic and security crises, the rise of the administrative state, the death of the nondelegation doctrine, the imperial presidency, the ineffectual character of the War Powers Resolution and the other framework statutes of the 1970s, all mean that in many domains presidents operate without substantial legal checks, although they have political incentives to cooperate with Congress and to seek statutory authorization for their actions. Among the framer’s miscalculations was their failure to understand the “presidential power of unilateral action”88 – the president’s power to take action in the real world, with debatable legal authority or none at all, creating a new status quo that then constrains the response of other institutions. In the most overheated version of this view, such developments are taken to pose a real risk of executive tyranny in the United States.89

We suggest, however, that the same large-scale economic and political developments that have caused a relaxation of the legal checks on the executive have simultaneously strengthened the nonlegal checks. Legal checks on the presidency have been relaxed largely because of the need for centralized, relatively efficient government under the complex conditions of a modern dynamic economy and a highly interrelated international order. Yet those economic and political conditions have themselves helped to create de facto constraints on presidential power that make democracy in the United States extremely stable.

The modern economy, whose complexity creates the demand for administrative governance, also creates wealth, leisure, education and broad political information, all of which strengthen democracy and make a collapse into authoritarian rule nearly impossible. Modern presidents are substantially constrained, not by old statutes or even by Congress and the courts, but by the tyranny of public and (especially) elite opinion. Every action is scrutinized, leaks from executive officials come in a torrent, journalists are professionally hostile, and potential abuses are quickly brought to light. The modern presidency is a fishbowl, in large part because the costs of acquiring political information have fallen steadily in the modern economy, and because a wealthy, educated and leisured population has the time to monitor presidential action and takes an interest in doing so. This picture implies that modern presidents are both more accountable than their predecessors and more responsive to gusts of elite sentiment and mass opinion, but they are not dictators in any conventional sense.

More tentatively, we also suggest that the relaxation of legal checks may itself have contributed to the growth of the political checks, rather than both factors simply being the common result of a complex modern economy. On this hypothesis, the administrative and presidential state of the New Deal and later has, despite all its inefficiencies, plausibly supplied efficiency-enhancing regulation, political stability, and a measure of redistribution, and these policies have both added to national economic and cultural capital and dampened political conflict. The administrative state has thus helped to create a wealthy, educated population and a super-educated elite whose members have the leisure and affluence to care about matters such as civil liberties, who are politically engaged to a fault, and who help to check executive abuses. While the direct effects of wealth, education and other factors on the stability of democracy are clear in comparative perspective, there is more dispute about the overall economic effects of regulation and the administrative state,90 so we offer this as a hypothesis for further research.

### Case – SOP 2NC Cred

#### No spillover — lack of credibility in one commitment doesn’t affect others at all

Paul K. MacDonald 11, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power's capabilities or prestige. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. In practice, however, great powers make commitments of varying degrees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalrous, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Retreat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance.

### Case – SOP 2NC Cred

#### Status quo solves multilateralism—Obama’s engaging the international system and other countries are following

WO ‘12, postgraduate student in international affairs at King’s College [“How valuable is multilateral diplomacy in a post-9/11 world?,” <http://worldoutline.wordpress.com/2012/01/24/how-valuable-is-multilateral-diplomacy-in-a-post-911-world/>]

At the turn of the last century, 189 world leaders convened at the Millennium Summit and approved the Millennium Declaration which outlined eight specific goals that the United Nations was to achieve by 2015.[4] Yet, just a year later the 9/11 terrorist attacks tilted the world upon its head. The Security Council was rallied into action after the attacks and unanimously backed the United States against the threat which had caused so much devastation.[5] However, a wounded United States became increasingly relentless and unilateral in their ‘War on Terror’; when the Security Council refused to authorise a US attack upon an allegedly nuclear-armed Iraq, the United States, led by George. W. Bush, launched the assault anyway without UN approval.[6] This has been referred to as the ‘crisis of multilateralism’, as the United States undermined the very institution of which it is the biggest financial contributor and the most influential player.[7] If the founding member of the UN was refusing to follow the guidelines of the institution then why should other states follow the rules? This act set a worrying precedent for the rest of the world and, as Kofi Annan asserted, ‘undermined confidence in the possibility of collective responses to our common problems’.[8] Other instances of American unilateralism are Bush’s abstention from the Human Rights Council, his refusal to sign the Kyoto Protocol and the US departure from the Comprehensive Test Ban Treaty. The United States was losing sight of the benefits that multilateral diplomacy has to offer. However, the arrival of Barack Obama at the Oval Office has **revived multilateral values** within US foreign policy. The Obama administration has realised that it must now engage with the UN and this has marked a ‘*transitional* moment **in** the **history** of multilateralism’.[9] In his 2010 National Security Strategy, Obama acknowledged the fact that the US had been successful after the Second World War by pursuing their interests within multilateral forums such as the United Nations and not outside of them.[10] The global financial crisis of 2008 and the European Union’s sovereign debt crisis have demonstrated just how interdependent the economies of the western world are and these crises have created an age of austerity in which multilateralism is needed more than ever before.[11] The US has overstretched its resources and is now currently winding down two wars in Afghanistan and Iraq; they have realised that they simply do not have the means to conduct their foreign affairs exclusively anymore. Clear indications **of** Washington’simproved **multilateral engagement with the UN** since Obama’s inauguration, and the changing attitude in US foreign policy, are the economic sanctions negotiated over Iran, Obama’s decision for the US to join the Human Rights Council and, more specifically, its participation in the recent Libya mission. In Libya, the US provided support for the mission, yet played a subdued role in the campaign, allowing its European counterparts to take the lead. In contrast to his predecessor, **Obama is displaying pragmatism** rather than sentimentalism in his search for partners, making alliances in order to adapt to the emerging multipolar world; this is typified by Obama’s recent visit to the Asia-Pacific and his tour of South America (Brazil, Chile and El Salvador) in 2010. For the time being, US unipolarity looks to be a thing of the past; its **foreign policy is *changing* from** Bush’s **unilateralism** at the start of the century **to a** more **multilateral** **approach** at the beginning of a new decade under Obama.[12] This is the **correct precedent** that the most powerful nation in the world should be setting for other states to follow. The fact that the US is now engaging with the UN to counter global problems has restored the credibility that the UN had lost after the Iraq debacle and, by setting this example, **other nations will follow suit** and the international community as a whole can only benefit. From this change in US foreign policy, it is clear that multilateral diplomacy is of more value today than it was a decade ago.

#### Alt causes to soft power-

#### IT brain drain and budget cuts

**Wallin ’13** [Matthew, Fellow & Office Manager at American Security Project, where he leads research in public diplomacy, Masters in Public Diplomacy from the University of Southern California B.A. in Political Science with a focus in international relations from California State University, Long Beach, member of the Public Diplomacy Council, “War of the Soft Powers,” 4-29-13, <http://americansecurityproject.org/blog/2013/war-of-the-soft-powers/>]

For America, technological and scientific leadership have long been a strong factor in its soft power reserve. Yet we are at risk of losing this. For example, recent cuts in fusion energy research—one of America’s most challenging, yet promising research fields—may cause this country to lag behind. Explaining the harm this can cause, ASP’s Nick Cunningham and Theodore MacDonald recently wrote in AOL Energy today:¶ As other countries invest more heavily in fusion power, America’s leadership in this field will soon come to an end. Ceding a new high-tech industry to competitors will result in a decline in America’s competitive edge, and its best and brightest scientists will be lured by more advanced facilities abroad.¶ If America wants to maintain its competitive edge in soft power, it needs to take the action necessary to do it. That means continuing to make those scientific breakthroughs that so many admire this nation for. That means continuing to uphold the principles enshrined in our founding documents.¶ Thus, it is in our interest to attract the best and brightest from overseas. Historically, those minds have contributed greatly to all aspects of American society. And is it their contribution to building this country through their intellect and hard work in a framework of economic and cultural freedom that forms the basis of American soft power.

### Case – SOP 2NC Cred

#### The broader US legal system has tanked

Jonathan Turley 10, the Shapiro Professor of Public Interest Law at George Washington University, member of USA TODAY's Board of Contributors, 6/14/10, “Do laws even matter today?,” http://usatoday30.usatoday.com/news/opinion/forum/2010-06-15-column15\_ST\_N.htm

Though I am a critic of the Arizona law, I do not view its supporters in such one-dimensional terms. Indeed, I do not view the public response in purely immigration terms. Whether it is illegal immigration or the mortgage crisis or corporate bailouts, there seems to be a growing sense among many citizens that they are expected to play by the rules while others are exempt.¶ With polls showing about 60% of people supporting the Arizona law and almost half supporting similar laws in their states, it is implausible to suggest that all these people are racists or extremists — let alone fascists. Notably, a majority of Americans also opposed the bank bailouts and mortgage forgiveness. In each of these controversies, there is a sense that the government was stepping in to protect people from the consequences of their actions.¶ In the mortgage crisis, tens of thousands of people accepted high-risk, low-interest loans while other citizens either declined to buy homes or agreed to higher monthly payments to avoid such deals. When Congress intervened with mortgage relief, some of those who had acted responsibly wondered whether they acted stupidly by rejecting low rates and later federal support.¶ Bailouts and immigration¶ Then there were the corporate bailouts. For citizens to secure a loan, they have to meet exacting terms and disclosures. Yet, when banks and firms concealed risks or engaged in financial wrongdoing, Congress bailed them out and allowed their executives to reap fat bonuses. The laws on fraud and deceptive practices simply did not seem to apply to them. Just as several companies were declared "too big to fail," many of their executives appeared too big to lose money — unlike the millions of citizens burned by their business practices.¶ Those prior controversies coalesced with the immigration debate. The last time Congress granted amnesty to illegal immigrants was 1986 — and it was criticized at the time for rewarding those who had evaded deportation. Complaints over the lack of federal enforcement had been percolating for years but exploded along Arizona's long desert border. When a law mandated state enforcement of federal laws, the Obama administration moved to block it.¶ Indeed, high-ranking Obama officials such as John Morton, head of the Immigration and Customs Enforcement, have suggested that they might refuse to deport those arrested under the Arizona law. While we continue to tell millions around the world that they must wait for years to immigrate legally, Congress and the White House are considering a new amnesty proposal to benefit an additional 11 million illegal immigrants.¶ In each of these areas, the perception is that the law says one thing but actually means different things for different people. It is a dangerous perception, and it is not entirely unfounded. Such double-standards have become common as Congress and presidents seek to avoid unpopular legal problems.¶ •Torture: While acknowledging that waterboarding is torture and that torture violates domestic and international law, President Obama and members of Congress have barred any investigation or prosecution of those crimes.¶ •Pollution: While citizens are subject to pay for the full damage they cause to their neighbors and are routinely fined for their environmental damage for everything from dumping in rivers to leaf burning, Congress capped the liability for massive corporations such as BP and Exxon at a ridiculous $75 million. Though BP is likely to spend much more in litigation (particularly if prosecuted criminally), the current law requires citizens to pay the full cost of their environmental damage while capping the costs for companies producing massive destruction.¶ •Privacy: When the telecommunications companies found themselves on the losing end of citizen suits over the violation of privacy laws, Congress (including then-Sen. Obama) and President Bush simply changed the law to legislatively kill the citizen suits and protect the companies.¶ An arbitrary system¶ The message across these areas is troubling. To paraphrase Animal Farm, all people are equal, but some people are more equal than others.¶ A legal system cannot demand the faith and fealty of the governed when rules are seen as arbitrary and deceptive. Our leaders have led us not to an economic crisis or an immigration crisis or an environmental crisis or a civil liberties crisis. They have led us to a crisis of faith where citizens no longer believe that laws have any determinant meaning. It is politics, not the law, that appears to drive outcomes — a self-destructive trend for a nation supposedly defined by the rule of law.

# 1NR

### 1NC/ 2AC

#### Food shortages won’t cause war

Allouche 11, research Fellow – water supply and sanitation @ Institute for Development Studies, frmr professor – MIT

(Jeremy, “The sustainability and resilience of global water and food systems: Political analysis of the interplay between security, resource scarcity, political systems and global trade,” Food Policy, Vol. 36 Supplement 1, p. S3-S8, January)

The question of resource scarcity has led to many debates on whether scarcity (whether of food or water) will lead to conflict and war. The underlining reasoning behind most of these discourses over food and water wars comes from the Malthusian belief that there is an imbalance between the economic availability of natural resources and population growth since while food production grows linearly, population increases exponentially. Following this reasoning, neo-Malthusians claim that finite natural resources place a strict limit on the growth of human population and aggregate consumption; if these limits are exceeded, social breakdown, conflict and wars result. Nonetheless, it seems that most empirical studies do not support any of these neo-Malthusian arguments. Technological change and greater inputs of capital have dramatically increased labour productivity in agriculture. More generally, the neo-Malthusian view has suffered because during the last two centuries humankind has breached many resource barriers that seemed unchallengeable. Lessons from history: alarmist scenarios, resource wars and international relations In a so-called age of uncertainty, a number of alarmist scenarios have linked the increasing use of water resources and food insecurity with wars. The idea of water wars (perhaps more than food wars) is a dominant discourse in the media (see for example Smith, 2009), NGOs (International Alert, 2007) and within international organizations (UNEP, 2007). In 2007, UN Secretary General Ban Ki-moon declared that ‘water scarcity threatens economic and social gains and is a potent fuel for wars and conflict’ (Lewis, 2007). Of course, this type of discourse has an instrumental purpose; security and conflict are here used for raising water/food as key policy priorities at the international level. In the Middle East, presidents, prime ministers and foreign ministers have also used this bellicose rhetoric. Boutrous Boutros-Gali said; ‘the next war in the Middle East will be over water, not politics’ (Boutros Boutros-Gali in Butts, 1997, p. 65). The question is not whether the sharing of transboundary water sparks political tension and alarmist declaration, but rather to what extent water has been a principal factor in international conflicts. The evidence seems quite weak. Whether by president Sadat in Egypt or King Hussein in Jordan, none of these declarations have been followed up by military action. The governance of transboundary water has gained increased attention these last decades. This has a direct impact on the global food system as water allocation agreements determine the amount of water that can used for irrigated agriculture. The likelihood of conflicts over water is an important parameter to consider in assessing the stability, sustainability and resilience of global food systems. None of the various and extensive databases on the causes of war show water as a casus belli. Using the International Crisis Behavior (ICB) data set and supplementary data from the University of Alabama on water conflicts, Hewitt, Wolf and Hammer found only seven disputes where water seems to have been at least a partial cause for conflict (Wolf, 1998, p. 251). In fact, about 80% of the incidents relating to water were limited purely to governmental rhetoric intended for the electorate (Otchet, 2001, p. 18). As shown in The Basins At Risk (BAR) water event database, more than two-thirds of over 1800 water-related ‘events’ fall on the ‘cooperative’ scale (Yoffe et al., 2003). Indeed, if one takes into account a much longer period, the following figures clearly demonstrate this argument. According to studies by the United Nations Food and Agriculture Organization (FAO), organized political bodies signed between the year 805 and 1984 more than 3600 water-related treaties, and approximately 300 treaties dealing with water management or allocations in international basins have been negotiated since 1945 (FAO, 1978 and FAO, 1984). The fear around water wars have been driven by a Malthusian outlook which equates scarcity with violence, conflict and war. There is however no direct correlation between water scarcity and transboundary conflict. Most specialists now tend to agree that the major issue is not scarcity per se but rather the allocation of water resources between the different riparian states (see for example Allouche, 2005, Allouche, 2007 and [Rouyer, 2000] ). Water rich countries have been involved in a number of disputes with other relatively water rich countries (see for example India/Pakistan or Brazil/Argentina). The perception of each state’s estimated water needs really constitutes the core issue in transboundary water relations. Indeed, whether this scarcity exists or not in reality, perceptions of the amount of available water shapes people’s attitude towards the environment (Ohlsson, 1999). In fact, some water experts have argued that scarcity drives the process of co-operation among riparians (Dinar and Dinar, 2005 and Brochmann and Gleditsch, 2006). In terms of international relations, the threat of water wars due to increasing scarcity does not make much sense in the light of the recent historical record. Overall, the water war rationale expects conflict to occur over water, and appears to suggest that violence is a viable means of securing national water supplies, an argument which is highly contestable. The debates over the likely impacts of climate change have again popularised the idea of water wars. The argument runs that climate change will precipitate worsening ecological conditions contributing to resource scarcities, social breakdown, institutional failure, mass migrations and in turn cause greater political instability and conflict (Brauch, 2002 and Pervis and Busby, 2004). In a report for the US Department of Defense, Schwartz and Randall (2003) speculate about the consequences of a worst-case climate change scenario arguing that water shortages will lead to aggressive wars (Schwartz and Randall, 2003, p. 15). Despite growing concern that climate change will lead to instability and violent conflict, the evidence base to substantiate the connections is thin ( [Barnett and Adger, 2007] and Kevane and Gray, 2008).

### Econ– Impact – War

#### Even if the economy doesn’t collapse, a new financial crisis will trigger global wars – prefer empirics

**Mead 9** (Walter Russell, Senior Fellow in U.S. Foreign Policy at the Council on Foreign Relations, New Republic, February 4, 2009)

So far, such half-hearted experiments not only have failed to work; they have left the societies that have tried them in a progressively worse position, farther behind the front-runners as time goes by. Argentina has lost ground to Chile; Russian development has fallen farther behind that of the Baltic states and Central Europe. Frequently, the crisis has weakened the power of the merchants, industrialists, financiers, and professionals who want to develop a liberal capitalist society integrated into the world. Crisis can also strengthen the hand of religious extremists, populist radicals, or authoritarian traditionalists who are determined to resist liberal capitalist society for a variety of reasons. Meanwhile, the companies and banks based in these societies are often less established and more vulnerable to the consequences of a financial crisis than more established firms in wealthier societies. As a result, developing countries and countries where capitalism has relatively recent and shallow roots tend to suffer greater economic and political damage when crisis strikes--as, inevitably, it does. And, consequently, financial crises often reinforce rather than challenge the global distribution of power and wealth. This may be happening yet again. None of which means that we can just sit back and enjoy the recession. History may suggest that financial crises actually help capitalist great powers maintain their leads--but it has other, less reassuring messages as well. If financial crises have been a normal part of life during the 300-year rise of the liberal capitalist system under the Anglophone powers, so has war. The wars of the League of Augsburg and the Spanish Succession; the Seven Years War; the American Revolution; the Napoleonic Wars; the two World Wars; the cold war: The list of wars is almost as long as the list of financial crises. Bad economic times can breed wars. Europe was a pretty peaceful place in 1928, but the Depression poisoned German public opinion and helped bring Adolf Hitler to power. If the current crisis turns into a depression, what rough beasts might start slouching toward Moscow, Karachi, Beijing, or New Delhi to be born? The United States may not, yet, decline, but, if we can't get the world economy back on track, we may still have to fight.

### Hegemony – I/Ls

#### Failure to raise debt ceiling collapses military effectiveness and heg

Masters 1/2/13 (Jonathan, Deputy Editor for the Council on Foreign Relations, “US Debt Ceiling Costs Consequences,” <http://www.cfr.org/international-finance/us-debt-ceiling-costs-consequences/p24751>)

The government must be able to issue new debt as long as it continues to run a budget deficit. The debt limit, or "ceiling," sets the maximum amount of outstanding federal debt the U.S. government can incur by law. As of January 2013, this number stands at $16.39 trillion. Increasing the debt limit does not enlarge the nation's financial commitments, but allows the government to fund obligations already legislated by Congress. Hitting the debt ceiling would hamstring the government's ability to finance its operations, like **providing for the national defense** or funding entitlements such as Medicare or Social Security. Under normal circumstances, the government is able to auction off new debt (typically in the form of U.S. Treasury securities) in order to finance annual deficits. However, the debt limit places an absolute cap on this borrowing, requiring congressional approval for any increase (or decrease) from this statutory level.

#### Cutting military spending jacks hegemony – signals perception of weakness

Kagan ‘09 (Robert, senior associate at the Carnegie Endowment for International Peace, 2/3/09, “No Time To Cut Defense,”)

A reduction in defense spending this year would unnerve American allies and undercut efforts to gain greater cooperation. There is already a sense around the world, fed by irresponsible pundits here at home, that the United States is in terminal decline. Many fear that the economic crisis will cause the United States to pull back from overseas commitments. The announcement of a defense cutback would be taken by the world as evidence that the **American retreat has begun.**

### SOP

#### Turns our entire democratic model

**Tilford 2008** – PhD in history from George Washington University, served for 32 years as a military officer and analyst with the Air Force and Army (Earl, “Critical mass: economic leadership or dictatorship”, Cedartown Standard, lexis)

Could it happen again? Bourgeois democracy requires a vibrant capitalist system. Without it, the role of the individual shrinks as government expands. At the very least, the dimensions of the U.S. government economic intervention will foster a growth in bureaucracy to administer the multi-faceted programs necessary for implementation. Bureaucracies, once established, inevitably become self-serving and self-perpetuating. Will this lead to “socialism” as some conservative economic prognosticators suggest? Perhaps. But so is the possibility of dictatorship. If the American economy collapses, especially in wartime, there remains that possibility. And if that happens the American democratic era may be over. If the world economies collapse, totalitarianism will almost certainly return to Russia, which already is well along that path in any event. Fragile democracies in South America and Eastern Europe could crumble. A global economic collapse will also increase the chance of global conflict. As economic systems shut down, so will the distribution systems for resources like petroleum and food. It is certainly within the realm of possibility that nations perceiving themselves in peril will, if they have the military capability, use force, just as Japan and Nazi Germany did in the mid-to-late 1930s. Every nation in the world needs access to food and water. Industrial nations—the world powers of North America, Europe, and Asia—need access to energy. When the world economy runs smoothly, reciprocal trade meets these needs. If the world economy collapses, the use of military force becomes a more likely alternative. And given the increasingly rapid rate at which world affairs move; the world could devolve to that point very quickly.

### AT: Resil

#### Even if a deal is eventually reached to prevent hitting the ceiling a protracted fight is economic sabotage – collapse growth, markets and confidence.

Johnson, 9/4/13 - Campaign for America's Future (Dave, “Fresh Hell When Congress Returns”, <http://truth-out.org/opinion/item/18597-fresh-hell-when-congress-returns>

There are two different levels of economic damage from a debt-ceiling fight. First there is the cost of the fight itself, as the world worries over whether Republicans would actually pull the trigger. The fact that they would talk about this at all causes considerable damage to growth and confidence. But the other level of damage – far more serious – comes if they actually do it. If the U.S. defaulted, the consequences to the country’s and world’s economic system are literally unimaginable. In January, The Washington Post looked at reports of the economic damage caused by the last debt-ceiling fight – the one that led to the economic damage of the “sequester.” The Post report summarized: The protracted, unsettling nature of the negotiations between the White House and Republicans dramatically slowed the recovery, economists conclude, looking back at the episode. Consumer confidence collapsed, reaching its worst level since the depths of the financial crisis. Hiring stalled, with the private sector creating jobs at its slowest pace since the economy exited the recession. The stock market plunged, sending the Standard & Poor’s 500-stock index down more than 10 percent. In the last debt-ceiling hostage battle, the government spent an extra $1.3 billion to borrow because of lender uncertainty over whether they would be paid back, according to the Government Accounting Office (GAO). Following the battle the Standard & Poor’s credit agency “downgraded” the U.S. credit rating, saying that any country that would even discuss default does not deserve the top rating. On top of that, the 10-year cost of higher interest rates from that fight is $18.9 billion. The unemployment rate increased as job growth was cut in half by the fight. Consumer confidence plunged “more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008.” The consequences of actually letting the country default would begin with a panic in the stock market. And there would likely be a “run” on money markets, because the safety of the U.S. dollar is the foundation of the entire financial system. Next, many of the things the U.S. government must pay for would not be paid for. Because raising the debt ceiling is about allowing the government to get the money to pay for the things Congress has already spent money on, existing invoices would not be paid. So the government would default on paying for contracts, hospitals and doctors who had already performed services, fuel purchases, everything right up to payments to Social Security recipients and people trying to redeem their government bonds. The government would have to prioritize who to pay based on what is coming in from tax receipts, fees and market transactions, which would all drop dramatically as the world’s economy exploded. In any event, the government doesn’t have the computer systems in place to prioritize payments, and wouldn’t have the time or funds to get those running. There would be a dramatic rise in interest rates for borrowing. The United States would no longer be a “safe” borrower, so the price of loans – the interest rate – would go up. That would ripple out to the price of a loan to a business, a mortgage, a car loan and everything else that Americans finance. No matter how fast a default of the country was resolved, the shock to the confidence of the entire economic system would not go away. If the United States was no longer a “safe haven,” then a restructuring of the world’s core understanding of debt and repayment would follow. With the effect of the last fight now understood, any new fight has to be seen for what it is: “economic sabotage.”

#### Delay risks economic collapse

**Puzzanghera, 9/18/13** (Jim, “Delay in raising debt limit risky, Lew says” Los Angeles Times, lexis)

As the nation fast approaches its debt limit, Treasury Secretary Jacob J. Lew issued his strongest warning yet to Congress about the economic consequences of waiting until just before the deadline to pass an increase.

"Trying to time a debt-limit increase to the last minute could be very dangerous," Lew told the Economic Club of Washington on Tuesday. "We cannot afford for Congress to gamble with the full faith and credit of the United States of America."

Republicans are balking at raising the $16.7-trillion debt limit, which Congress must do by as early as mid-October, unless the Obama administration agrees to major concessions including deep spending cuts and a delay in implementing the healthcare reform law.

During a meeting last week, House Speaker John A. Boehner (R-Ohio) gave Lew a list of times in the past when the White House and Congress used the need to raise the debt limit as a way to find bipartisan solutions on fiscal issues, Boehner's office said.

Boehner has said that any increase in the debt limit must be offset by budget cuts or spending reforms at least as large as the increase.

But Lew reiterated Tuesday that President Obama would not negotiate over raising the debt limit because it involves paying for bills already authorized by Congress and because the notion of a federal government default should not be a bargaining chip.

Lew specifically ruled out a delay in the healthcare law, the Affordable Care Act, a move being pushed by some House conservatives.

"That's just not reality, and they're going to have to start dealing in reality," he said.

But as the Treasury runs out of the accounting maneuvers it has used since the spring to continue borrowing to pay the nation's bills, Lew said lawmakers needed to act.

Since the U.S. technically reached its debt limit in the spring, the Treasury has been using so-called extraordinary measures, such as suspending investments in some federal pension funds, to juggle the nation's finances to pay bills. Those measures will be exhausted by the middle of October.

Lew noted that Washington politicians like to wait until they are up against a deadline to act, as they often do with spending bills and did last year with the so-called fiscal cliff, the combination of automatic tax increases and government spending cuts.

But the debt limit is different, Lew said, because of the complexity of identifying an exact date when the nation would run out of borrowing authority -- and because of the consequences of a first-ever federal government default.

Lew said a default would be "a self-inflicted wound that can do harm to our economy right at a moment when the recovery is strengthening."

A bitter battle over the debt limit in 2011, resolved at the last minute, raised fears of a first-ever U.S. government default. The lengthy standoff led Standard & Poor's to downgrade the nation's credit rating for the first time and triggered financial market turmoil along with a deep drop in consumer confidence.

"Some in Congress seem to think they can keep us from failing to pay our nation's bills by simply raising the debt ceiling right before the moment our cash balance is depleted," Lew said. Such a view is misguided, he said.

The Treasury Department doesn't know with precision the exact day that it won't have enough incoming cash to make all the required outgoing payments once it runs out of borrowing authority.

Lew formally told Congress last month that the Treasury would run out of borrowing authority in mid-October. At that point, the government would be able to pay bills only with cash on hand of about $50 billion on any given day.

An analysis released last week by the Bipartisan Policy Center, which also cited the difficulty of pegging an exact date, estimated that the U.S. would run out of borrowing authority between Oct. 18 and Nov. 5.

The vagaries of the debt-limit issue mean that Congress must act sooner rather than later, Lew said.

"I'm nervous about the desire to drive this to the last minute when the last minute is inherently unknowable and the risk of making a mistake could be catastrophic," he said.

#### PC key to quick debt ceiling resolution

PACE, 9/12/13 — AP White House Correspondent (Julie, “Syria debate on hold, Obama refocuses on agenda” <http://www.myrtlebeachonline.com/2013/09/12/3704721/obama-seeks-to-focus-on-domestic.html#storylink=cpy>)

WASHINGTON — With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis. "It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach. "The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said. The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1. Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities. Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support. Obama already is grappling with some of the lowest approval ratings of his presidency. A Pew Research Center/USA Today poll out this week put his approval at 44 percent. That's down from 55 percent at the end of 2012. Potential military intervention in Syria also is deeply unpopular with many Americans, with a Pew survey finding that 63 percent opposing the idea. And the president's publicly shifting positions on how to respond to a deadly chemical weapons attack in Syria also have confused many Americans and congressional lawmakers. "In times of crisis, the more clarity the better," said Sen. Lindsey Graham, R-S.C., a strong supporter of U.S. intervention in Syria. "This has been confusing. For those who are inclined to support the president, it's been pretty hard to nail down what the purpose of a military strike is." For a time, the Obama administration appeared to be barreling toward an imminent strike in retaliation for the Aug. 21 chemical weapons attack. But Obama made a sudden reversal and instead decided to seek congressional approval for military action. Even after administration officials briefed hundreds of lawmakers on classified intelligence, there appeared to be limited backing for a use-of-force resolution on Capitol Hill. Rather than face defeat, Obama asked lawmakers this week to postpone any votes while the U.S. explores the viability of a deal to secure Syria's chemical weapons stockpiles. That pause comes as a relief to Obama and many Democrats eager to return to issues more in line with the public's concerns. The most pressing matters are a Sept. 30 deadline to approve funding to keep the government open — the new fiscal year begins Oct. 1 — and the start of sign-ups for health care exchanges, a crucial element of the health care overhaul. On Wednesday, a revolt by tea party conservatives forced House Republican leaders to delay a vote on a temporary spending bill written to head off a government shutdown. Several dozen staunch conservatives are seeking to couple the spending bill with a provision to derail implementation of the health care law. The White House also may face a fight with Republicans over raising the nation's debt ceiling this fall. While Obama has insisted he won't negotiate over the debt limit, House Speaker John Boehner on Thursday said the GOP will insist on curbing spending. "You can't talk about increasing the debt limit unless you're willing to make changes and reforms that begin to solve the spending problem that Washington has," the Ohio Republican said.

### Will Pass – 2NC Wall

#### -- Detroit News evidence says that Republicans will fold on the debt ceiling but Obama’s leadership is necessary to ensure a deal

#### -- Democrats are confident that the House will raise the debt ceiling now – high level statements prove

Bolton 9/14/13 (Alexander, Writer for the Hill, "Confident Democrats Want Separate Showdowns on Shutdown and Debt Limit")

¶ Senate Democrats want to have separate fights with the House GOP over a potential government shutdown and raising the nation’s debt limit, confident they will win showdowns on both issues. [[WATCH VIDEO](http://thehill.com/video/senate/322259-house-gop-prepares-for-last-fight-against-obamacare)]  Some House Republicans want to bundle the question of setting federal funding levels and raising the debt limit into one vote but a senior Senate Democrat has rejected that possibility. ¶ Senate Democratic Whip Dick Durbin (D-Ill.) said repeatedly raising the debt limit in small increments wreaks havoc on government operations.¶ “The longer you extend the debt limit, the more thoughtless it is,” he said.¶ Durbin predicted Congress would tackle the debt limit question in mid October instead of pushing the debate until shortly before Christmas.¶ “October 15, mark your calendar,” he said. “I’m told that come October 15 we better start getting serious about it.”¶ Durbin said he wants extend the nation’s borrowing limit for as long as possible in one increment. He cited a year as a reasonable extension.¶ “We’re not going to be in the situation where you’re lurching from crisis to crisis and putting the full faith and credit [of the government] at the hands of a Republican caucus that can’t get it’s act together,” said a senior Senate Democratic aide. “Doing a longer term clean debt-limit extension will prevent that from happening.” Some House Republicans want to maximize their leverage by bundling the debt limit and stopgap measure funding government. They could accomplish this by extending government funding until mid-December and bumping up the debt limit just enough to delay a medium-term solution until year’s end.¶ Democrats, however, want to force the GOP to debate these issues successively.¶ “We’re not negotiating on the debt ceiling. We think we have the high ground in both of those fights,” said a senior Senate Democratic aide.¶ The Senate Democratic strategy over the next several weeks will be to stand pat and refuse to make any significant concessions in exchange for funding the government or raising the debt ceiling.  “If push comes to shove on debt ceiling, I’m virtually certain they’ll blink,” said Sen. Charles Schumer (N.Y.), the third-ranking member of the Senate Democratic leadership. “They know they shouldn’t be playing havoc with the markets.”¶

#### -- Obama is pushing

Blake 9/18/13 (Aaron, Covers National Politics for the Washington Post, The Washington Post, Post Politics, Carney Assures That Obama 'Has Twisted Arms')

White House press secretary Jay Carney on Wednesday fought back against criticism that President Obama has been disengaged from legislative battles on Capitol Hill.¶ "He has twisted arms," Carney said. "He has used the powers that are available to him to try to convince, persuade, cajole Republicans into doing the sensible thing...."¶ Pressed on Obama's role in the current budget debate and his refusal to negotiate over the debt ceiling, Carney rebuffed the idea that the president isn't involved.¶ “You’re assuming he’s above the fray," Carney said. "He’s not. He’s in the fray. And he was in the fray today, and he'll be in the fray until Congress does the right thing.”

### AT: Thumper – Top of Docket

#### Budget issues are at the top of the docket – Obama is pushing

Pace 9/12/13 (Julie, AP White House Correspondent, "Syria Debate On Hold, Obama Refocuses on Agenda")

With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis.¶ "It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach.¶ "The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said.¶ The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama expects to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1.¶ Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support.

### AT: Winner Win - Can’t Regenerate Fast Enough

#### Big fights don't regenerate capital fast enough - health care proves.

Cohn 10. [Jonathan, senior editor, "How They Did It" The New Republic -- June 10 -- lexis]

After the meeting broke up, a few of his advisers milled in the hallways outside the Oval Office, pondering the prospect of taking up such a high-risk strategy because the president "felt lucky." As one of them later told me, "It was like, holy shit." OF COURSE, we know how this narrative concludes, with Obama sitting in the East Room, inscribing his signature onto the Patient Protection and Affordable Care Act of 2010--completing a quest that eluded Harry Truman and a trio of his successors. But the question that the president posed in that August meeting still lingers: How did the U.S. system, and its leadership, truly perform in the face of this test? In the immediate aftermath of his legislative triumph, Barack Obama has barely received credit. Polls show the public doesn't particularly like the new law. Conservatives are livid over the expansion of government. Liberals are ambivalent, disappointed as much with their leaders as with the legislation. There are, in short, widespread questions about whether the ordeal was worth it--and whether the president and Democratic leaders could have charted a better, alternative course.