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#### Using the law to restrain its own war power authority only re-centralizes power --- Voting neg to reject the 1AC’s institutional war power narrative is the most productive political act

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.

#### 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.

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#### 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.

#### 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

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#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority on offensive cyber operations. The President should issue findings over its offensive cyber operations and notify the House and Senate Intelligence Committees over its operations. The president should unify Cyber Command under an expedited approval process over cyber operations and categorize offensive operations under a new Title 60 policy that governs a transparent cyber operations regime. The President should offer to increase support for Global Threat Reduction programs, increase surveillance and laboratory diagnostic capabilities for bioterrorism threats, repeal the death penalty, and adopt a three-tiered system for sanctioning terrorist financiers with a National Security Sanctions Court.

#### CTR is key to preventing nuclear material spread

Allison and Blackwill 2011, Graham, director of the Belfer Center for Science and International Affairs at Harvard’s Kennedy School and a former assistant secretary of defense in the Clinton administration, Robert, Henry A. Kissinger senior fellow for U.S. foreign policy at the Council on Foreign Relations and served as U.S. ambassador to India and as deputy national security adviser for strategic planning in the Bush administration [“10 Reasons Why Russia Still Matters,” <http://www.politico.com/news/stories/1011/67178_Page2.html>]

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups.

#### Increasing surveillance and lab diagnosis for bioterrorism threats solves

Detrick et. al 2000

Fort, Dr. And a bunch of other military officials, “Surveillance at US Military installations for bioterrorist and emerging infectious disease threats” Military Medicine, August, http://findarticles.com/p/articles/mi\_qa3912/is\_200008/ai\_n8926277/pg\_2/

Surveillance and laboratory diagnostic capabilities for BT and EID events that may occur at U.S. military installations worldwide must be assessed and improved. We propose the following in this regard: Provide resources for electronic surveillance systems that can capture and analyze data in real-time; provide resources to augment DoD laboratory systems for BT and EID surveillance that do not divert funding away from clinical or research laboratories; and ensure all BT and EID surveillance and laboratory initiatives are coordinated within DoD and with appropriate civilian counterparts.

#### Solves cooperation

**McDONNELL 2004** (Thomas, Professor of Law, Pace University School of Law, 37 Vand. J. Transnat'l L. 353)

September 11 changed the political and strategic landscape in countless ways, but one of the most significant is the recognition that the United States needs the help of other countries to fight the war against terrorism. Al Qaeda reportedly has cells in over sixty countries.278 To gather intelligence on such a diffused enemy requires cooperation from many states.279 To apprehend those individuals requires states that are willing to arrest and either prosecute or, in some cases, extradite members of the al Qaeda conspiracy to the United States. Furthermore given the decentralized nature of al Qaeda, it requires that individual citizens of these states come forward with information about suspected members and activities of a1 Qaeda: "The more useful anti-insurgency [and anti-terror] tactic is to compete, literally door to door, for people's loyalty (with the coinage of loyalty being willingness to inform on one side or the other)." The Bush Administration at least initially recognized the necessity of international cooperation by immediately ordering the payment of back dues owed to the United Nations.281 Forming a coalition rather than unilaterally attacking Afghanistan likewise is consistent with the need to cooperate with other nations of the world to stop the menace of terrorism.282 With the invasion of Iraq, the Bush Administration seemed intent, however, on reverting to the pre-September 11 unilateralist approach to foreign affairs. "In the international realm, we seem to believe that our claim to national sovereignty allows us to operate unilaterally-America first and foremost, not together or in conformity with a global contract [comparable to the domestic social contract]."283 Such an approach could prove, at the very least, counter-productive in the war against a1 Qaeda.284 At a time when we need help from other countries the most, retaining the death penalty alienates a growing number of countries that have abolished the death penalty or are taking steps to abolish or limit it. As of this writing, 112 countries have abolished the death penalty in law or in practice, while only eighty-three countries retain the death penalty.285 Virtually all of Europe, including many of the Soviet Union's former satellite states, have abolished the death penalty.2s6 All our NATO allies, with the exception of Turkey, have done Neither Canada nor Mexico has the death penalty. Of the other thirty-three nations in the Western hemisphere, only the United States, Guyana, Guatemala, and Belize permit capital punishment.288 European countries strongly oppose the death penalty.289 As leading proponents of the four currently operating international criminal tribunals, the Europeans successfully argued for banning capital punishment from the sentencing authority of the International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Special Court for Sierra Leone.290 Many abolitionist countries refuse to extradite fugitives to death penalty states absent an absolute assurance that the death penalty will not be carried out. For example, the Home Secretary of staunch ally Great Britain has told U.S. officials that he "would approve extradition [of suspected terrorists] only if the Unites States waived the right to impose the death penalty."292 The Supreme Court of Canada has taken the unusual step of requiring the Minister of Justice of Canada to demand assurances from the United States that it will not impose capital punishment on Canadian citizens whose extradition is sought. Insisting on executing members of al Qaeda could thus deprive us of necessary evidence and, in some cases, of the fugitives themselves.294 In short, our closest allies are abolitionist states. To the extent that we use the death penalty in the war on terror we may find those allies reluctant to cooperate fully with us: The threat of an eventual death sentence for Mr. Moussaoui makes it difficult for any European country to determine how far to cooperate with the American investigation. Outlawing the death penalty is a condition of membership to the 15-nation European Union, and the Council of Europe, which embraces more than 40 countries, not only forbids the death penalty but also recently decided that it should not apply even in wartime.296

#### we’d shut down terrorist funding with the help of our allies

**O’leary 10** – Candidate, New York University School of Law (10 March 10, Law Review(Robert, )International Law and Politics: Improving the Terrorist Finance Sanctions Process., http://www.law.nyu.edu/ecm\_dlv1/groups/public/@nyu\_law\_website\_\_journals\_\_journal\_of\_international\_law\_and\_politics/documents/documents/ecm\_pro\_065797.pdf)

I. INTRODUCTION

As part of the global effort to combat terrorism, the United States Department of Treasury’s Office of Foreign Assets Control (OFAC) administers an economic sanctions program targeting terrorists. This sanctions regime gives OFAC the power to indefinitely freeze all of a legal person’s assets and publicly list it as a financier of terrorism. OFAC uses this tool broadly, sanctioning numerous individuals, banks, companies, and charitable organizations worldwide.1 OFAC terrorist sanctions are a relatively new phenomenon,2 and the effectiveness and accuracy of their use are debatable. Yet, they are extremely important on an international scale. The United States leads the global front in this important area of national security: its sanction decisions are largely adopted by the United Nations, which in turn makes them binding upon all signatory nations. Under the current regime, OFAC exercises unilateral discretion in its designation and asset-blocking actions and affords designated entities minimal due process.

This Note proposes two measures designed to increase institutional flexibility and enhance the legitimacy and effectiveness of the Department of Treasury’s OFAC sanctions. First, OFAC should adopt a three-tiered system for sanctioning terrorist financiers. Currently, OFAC offers no institutional flexibility, using only one all-or-nothing sanction tool regardless of the nature of the violation. Indeed, it offers a cliff: entities that OFAC investigates are either labeled “Specially Designated Global Terrorists,” with all of their assets indefinitely frozen, or they are not listed at all and no action is taken whatsoever. This Note proposes the creation of three tiers of designation—”Specially Designated Global Terrorist” (SDGT),“Out-of-Compliance,” and “Questionable Activity”—in order both to give OFAC enhanced flexibility and to better protect the due process interests of alleged terrorism financiers. Second, this Note proposes the creation of a National Security Sanctions Court (NSSC). OFAC would apply to the NSSC, composed of Article III judges, for permission to list an entity under one of the three designation categories depending upon the sufficiency of the administrative evidence. The NSSC would allow OFAC to assume a more traditional administrative regulatory role, working in conjunction with entities listed as “Out-of-Compliance” and “Questionable Activity” to remedy their alleged issues. The NSSC would relieve OFAC of its unilateral burden of blacklisting entities and freezing all of their assets, providing an important outside check on this prosecution-like power. The NSSC would also safeguard national security interests by encouraging the development of judicial expertise and by providing for the protection of classified evidence and sources. Finally, the NSSC would enhance the credibility and legitimacy of the OFAC sanctions program and thereby improve U.S. foreign relations.

#### plan would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies through cyber arms --- Makes terrorism and global nuclear war more likely --- INDEPENDENTLY prevents ability to negotiate north Korean miscalc

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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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.

#### Korean war goes nuclear

STRATFOR ‘10 (International Think Tank, “North Korea, South Korea: The Military Balance on the Peninsula,” http://www.stratfor.com/analysis/20100526\_north\_korea\_south\_korea\_military\_balance\_peninsula, May 26, 2010)

So the real issue is the potential for escalation — or an accident that could precipitate escalation — that would be beyond the control of Pyongyang or Seoul. With both sides on high alert, both adhering to their own national (and contradictory) definitions of where disputed boundaries lie and with rules of engagement loosened, the potential for sudden and rapid escalation is quite real. Indeed, North Korea’s navy, though sizable on paper, is largely a hollow shell of old, laid-up vessels. What remains are small fast attack craft and submarines — mostly Sang-O “Shark” class boats and midget submersibles. These vessels are best employed in the cluttered littoral environment to bring asymmetric tactics to bear — not unlike those Iran has prepared for use in the Strait of Hormuz. These kinds of vessels and tactics — including, especially, the deployment of naval mines — are poorly controlled when dispersed in a crisis and are often impossible to recall. For nearly 40 years, tensions on the Korean Peninsula were managed within the context of the wider Cold War. During that time it was feared that a second Korean War could all too easily escalate into and a thermonuclear World War III, so both Pyongyang and Seoul were being heavily managed from their respective corners. In fact, USFK was long designed to ensure that South Korea could not independently provoke that war and drag the Americans into it, which for much of the Cold War period was of far greater concern to Washington than North Korea attacking southward. Today, those constraints no longer exist. There are certainly still constraints — neither the United States nor China wants war on the peninsula. But current tensions are quickly escalating to a level unprecedented in the post-Cold War period, and the constraints that do exist have never been tested in the way they might be if the situation escalates much further.

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#### Unemployment will pass pass – will get the votes

**Mimms 2/7** <Sarah. “Why Democrats Will Win on Unemployment Insurance” February 7, 2014. <http://www.nationaljournal.com/congress/why-democrats-will-win-on-unemployment-insurance-20140207>>

For the fifth time this year, Senate Majority Leader Harry Reid brought an unemployment-insurance extension to the floor on Thursday, even though several members of his party admitted that they didn't have the votes to pass it.¶ They came close. But more important for Democratic campaign operatives across the country, they once again got Republicans on the record opposing assistance for the long-term unemployed.¶ Although Democrats have been crowing about the importance of passing an extension since the benefits expired on Dec. 28, the party has been hesitant to make concessions to Republicans to acquire more of their votes.¶ That is not to say that Democrats hope the legislation fails. Passing an unemployment-insurance extension would be great news for their party—and the 1.6 million Americans now living without support. Think of it as a win-win situation.¶ The party is facing little pressure to cave to Republicans, who are asking Democrats to pay for the extension for only the second time in the program's history. Instead, as each week passes, Democrats seem to be getting closer to the 60 votes they'll need to pass the extension—they reached 59 (not counting Reid's procedural switch) for the first time during a vote on Thursday—and Democrats are hopeful that if they hold out a little longer, they'll get the votes.¶ But more significant, as they prepare for an election in which they plan to run on income inequality and improving the middle class, the more times Republicans vote against an extension of popular benefits for unemployed individuals, or the House refuses to take up the issue, the better.¶ The Democratic Congressional Campaign Committee on Wednesday blasted out a CBS News polls showing that 65 percent of Americans—and, importantly, an equal number of independents—support extending unemployment insurance benefits.¶ With Republicans voting against the issue or avoiding it altogether, while simultaneously "spending a full day debating new restrictions to women's health," one national Democratic operative said, that fits in well with the party's broader electoral message.¶ National Democratic strategists are already messaging on the unemployment issue in key races across the country, setting up an even larger fight over what the operative termed "middle-class security"—that will include raising the minimum wage and other issues—in the fall.¶ Reid offered a preview of the Democratic messaging on the issue Thursday, telling the story of a 57-year-old woman from Nevada who has been forced to couch-surf while she looks for a job.¶ "[She has] worked from the time she was 18 years old. She's lost her job; she can't find a job. She's a long-term unemployed [person].… She sold everything she has except her clunker of a car, all her personal things. She did that so, madam president, she could buy gas in case she gets an interview. People are just like this in every state. Our job is to do right by them. All we need is one more Republican vote to step up, do the right thing, and cross the aisle," Reid said on the Senate floor.¶ He told that same story three separate times on Thursday, an indication of just how heavily Democrats plan to push that personal messaging this year.¶ Republicans argue that they don't oppose unemployment insurance in general and are trying to find a path forward. They blame Reid for refusing to compromise. Their objections are twofold. First, it must be paid for. But, second, Senate Republicans want to have a chance at an open amendment process.

#### Obama’s capital is key to votes

The Hill 2/3/14 (Justin Sink Amie arnes and Mike Lillis, "High Anxiety for Obama and Democrats")

A House Democratic leadership aide said in their meeting with the president, lawmakers will emphasize how they can coordinate their policy agendas.¶ “It’s not a political meeting,” the aide said.¶ Still, the aide acknowledged that the Democrats will need to apply intense public pressure on Speaker John Boehner (R-Ohio) and other GOP leaders if they want the Republicans to move on the minimum wage, unemployment benefits, immigration reform and other Democratic priorities this year. Leaders hope those issues won’t just motivate their base to come out during an off-year, but could woo independent voters, too. ¶ Part of that push will come from Obama using the bully pulpit — “The president’s doing a good job of that already,” the aide said — and Senate Democrats will also play a role by staging votes on unemployment insurance, the minimum wage and likely taking the lead on legislation to raise the debt ceiling this month.¶ House Democrats were pleased with the tone and content of Obama’s speech, the aide added, and will be looking for a continuation of the same themes Tuesday during their meeting.

#### **Plan destroys Obama**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### Unemployment legislation key to economic recovery

**Harkin 2/5** <Tim. “Extending unemployment benefits will help many” January 5, 2014. <http://www.press-citizen.com/article/D5/20140206/OPINION02/302060012/Extending-unemployment-benefits-will-help-many>>

For too many workers, that is the reality in our country today. The economy is improving, yet long-term unemployment continues to threaten that recovery. For every available job, there are currently three job seekers. About 4 million workers have been looking for a new job for at least six months.¶ Unemployment insurance helps struggling families and provides a major, immediate boost to the economy. Unemployed households spend these dollars on immediate needs such as paying the rent, buying groceries and school supplies, or repairing the family car — all economic activities that quickly inject dollars into our communities, helping businesses to keep up sales as the economy continues to recover.

#### nuclear war

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[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.

## Case

### Solvency – 1nc

#### Secrecy means Congress would be ineffective—no solvency

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

The National Security Act of 1947 23 showed Congress’s determination to exert some control over this nation’s intelligence apparatus. That determination was strengthened after the disclosure of widespread intelligence abuses by the CIA and other agencies.24¶ In 1991, in response to the Iran-Contra Affair, Congress adopted a measure directing the President to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity.”25 The term “intelligence activity” expressly includes “covert actions,”26 which additionally require a written finding by the President that they are “necessary to support identifiable foreign policy objectives of the United States and [are] important to the national security of the United States.”27 Intelligence activities are also understood to include “all activities that elements of the Intelligence Community are authorized to conduct pursuant to [Executive Order No. 12,333],” the executive charter for such activities.28 The “intelligence community” includes the Office of the Director of National Intelligence, CIA, NSA, other Defense Department intelligence components, and other federal intelligence elements,29 which are authorized to engage in, inter alia, intelligence collection and analysis and “activities to protect against international terrorism . . . and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents.”30 This broad mandate certainly encompasses many U.S. efforts to defend against cyber attack and to employ cyber weapons offensively. By this definition, most preparations for and conduct of cyber warfare should be reported to the intelligence committees as “intelligence activities.” It is significant that the reporting requirement in the 1991 law is not limited to agencies within the intelligence community. ¶ Yet this legislation provides no guarantee that Congress will receive the information it needs to play a meaningful role in the development or execution of cyber warfare policy. It is not known, for example, precisely what it means for the intelligence committees to be “fully and currently” informed, what kinds of intelligence activities are regarded as “significant” enough to report, or who decides.31 Other sections of the 1991 law call on all agencies involved in intelligence activities, not just the President, to keep the intelligence committees informed about those activities, but only “[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.”32 The “due regard for” language might be invoked to keep Congress in the dark. ¶ Under the 1991 law, “covert actions,” those with respect to which “it is intended that the role of the United States Government will not be apparent or acknowledged publicly,”33 need only be reported to a small group of legislators known as the “Gang of Eight,”34 and then only in a “timely fashion,” a term not defined by statute.35 Characterization of U.S. planning and execution of electronic warfare as “covert” could enable reporting to the smaller group, making it more difficult for Congress to play a significant role.36 Moreover, any reporting might be delayed indefinitely.37

#### Military procedures means cyber operations wouldn’t be reported—kills solvency

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

Another potential obstacle to congressional involvement is the reportedly common but statutorily unauthorized practice of informal reporting to an even smaller “Gang of Four” – the leaders of the intelligence committees – generally for sensitive non-covert intelligence activities.38¶ The Defense Department is heavily engaged in preparations for cyber warfare, having recently announced the establishment of a new U.S. Cyber Command.39 But congressional oversight of the work of this command could be hampered by the military’s reported practice of labeling its clandestine activities – those that are intended to be secret, but that can be publicly acknowledged if discovered or inadvertently revealed – as “operational preparation of the environment,” rather than intelligence activities, even though they may pose the same diplomatic and national security risks.40 As thus characterized, these activities might not be reported to the intelligence committees.41 Any oversight that occurred would be conducted instead by the House and Senate Armed Services Committees.42 Such a division of responsibilities might create dangerous confusion. ¶ Congressional involvement also might be frustrated by the statutory exclusion of “traditional . . . military activities or routine support to such activities” from the definition of “covert action.”43 If secret military preparations for cyber war are regarded as “traditional military activities,” under the rationale outlined above they might escape both the presidential findings requirement for covert actions and any reporting to the intelligence committees.44

### Solvency – nsa 1nc

#### The aff increases bad OCO operations- Alexander being the head of command means the affirmative is a concession to him

Grubbs ’13 (Larry Grubbs, Senior Lecturer in the Department of History at Georgia State University. In U.S. history, he studies foreign relations, the Cold War, and the cultural history of the five human senses. His work has appeared in the journals Diplomatic History and Peace and Change, among other publications. His book, Secular Missionaries: Americans and African Development in the 1960s, was published by the University of Massachusetts Press in 2010, “I’d Tap That,” or Whither General Keith Alexander?”, <http://tropicsofmeta.wordpress.com/2013/09/09/id-tap-that-or-whither-general-keith-alexander/>, September 9, 2013)

On August 23 the Wall Street Journal reported that National Security Agency (NSA) analysts abused their extraordinary power to conduct surveillance on love interests – “LOVEINT,” as intelligence analysts call it. This had Twitter sizzling with such hashtags as #NSAPickuplines and #NSALovePoems and the popular parody @PRISM\_NSA (a reference to the PRISM surveillance program disclosed by Edward Snowden earlier this summer) where citizens poke a little fun at the shadowy officials who spy on them in the name of national security (with such suggestive adaptations of spy-speak as “I’d tap that,” “I’d like to violate your privacy,” “After all that metadata, I’m looking forward to some content”). Meantime, Snowden, the erstwhile hacker nerd for hire employed as a contractor for the NSA, has now become a global icon, complete with his own Wikileaks line of merchandise and the essential Che Guevara-inspired t-shirts. Though hounded by Washington for his leaking of classified secrets, Snowden is justly admired by most of the world for his disclosure of the extraordinary and deeply disturbing surveillance programs the NSA has pursued without any public debate or meaningful congressional oversight. It’s hard not to enjoy these expressions of a robust humor and commitment to transparency that have remained unscathed in this age of ultra-surveillance. Perhaps, however, we can agree that it is, ultimately, no laughing matter that Americans and citizens of the world now live under a high-tech NSA Leviathan with a fetish for hyper secrecy. If, as recent reports suggest, “the NSA has secretly worked to gain access to virtually all communications entering, leaving, or going through the country,” scrutiny is overdue. When the last drop of ribald fun has been wrung from our tweets and we’ve bought as many Snowden mugs as we can afford, it might be time to put into perspective the man whom Snowden has forced out of the shadows and who is singularly responsible for some of the most disturbing tendencies of our age. Have Snowden adorn the merchandise, but let it be four-star General Keith Alexander who endures the heat of the public glare. Despite his public obscurity (until Snowden’s leaks), Alexander is a stealthy but shrewd bureaucratic operator who has reshaped the national security state to serve his agenda. As head of NSA, Cyber Command and even more shadowy parts of the surveillance state, he has built an empire that threatens the basic privacy and civil liberties of all Americans and much of the population of the world, and threatens the peace of the world with the development and proliferation of dangerous cyberweapons. The NSA under Alexander has, in the words of one expert, “transformed itself into the largest, most covert, and most potentially intrusive intelligence agency ever created.” Alexander’s Cyber-Industrial Complex Snowden blew the whistle heard round the world before embarking on his own global tour, which currently has him marooned in Moscow. Snowden’s revelations came as a bombshell to many citizens in this country and abroad, but perhaps they should not have. For one thing, Snowden only disclosed a portion of the iceberg. There are more – and possibly more dangerous – NSA programs than those he has revealed. Second and more importantly, there is, in a certain sense, nothing completely new about the recent abuse of power emanating from Fort Meade, Maryland. Though government classification of documents, and the inherently arcane nature of espionage – and especially signals intelligence, the NSA’s specialty – limits how much of the terrain we can see, enough is known about the history of the U.S. intelligence community to feel a sense of expectation. In a way, the current mania of the NSA is a fitting conclusion to generations of paranoia, power hunger, incompetence and abuse by the entire U.S. intelligence community (and their foreign partners). Nevertheless, like many others, I found the steady outpouring of new details about the NSA’s surveillance and cyberwar programs – and the absurd secrecy and hypocrisy surrounding them – left me increasingly anxious and angry about the apotheosis of the surveillance state. It’s hard to keep up: from the Bush-era revelations about warrantless wiretapping to the Obama-era disclosures from Wikileaks and Snowden, the sheer range and scope of the intelligence community’s eavesdropping makes the subject daunting and, perhaps, has induced fatalism in many Americans. To make sense of it all, it is helpful to revisit the work of the most reliable guide to all things NSA, James Bamford, and to read his latest contributions. Bamford, author of four finely researched volumes on the history of the NSA and its pre-1952 signals intelligence predecessors dating back to the First World War, is THE expert on the agency. Since 1982, when he published The Puzzle Palace, Bamford has doggedly pursued as much information as possible about what the secretive agency – often referred to as No Such Agency – does, how, and why. Through Freedom of Information Act requests and interviews with current and former NSA officials, he follows the trail of an agency dedicated to concealment. The cover of The Puzzle Palace depicts an ear, the symbol of eavesdropping, and he often writes there and in subsequent books about the NSA turning its “ear” this way and that as it seeks to listen in on international – and, increasingly, domestic – communications. A thoughtful profile of Bamford earlier this summer by Alexander Nazaryan for The New Yorker notes that even his earliest writings warned of the NSA’s indifference to legal restraints and its voracious appetite for as much information as it could possibly get, even if it meant violating its charter by spying on Americans. By 2008, Bamford had published a scathing takedown of the agency’s exploitation of 9/11, The Shadow Factory. Written shortly after Alexander had succeeded General Michael Hayden, the book makes only a few brief references to the new director of the agency. However, in three articles published in 2012-13 – two for Wired and one for The New York Review of Books – Bamford has zeroed in on Alexander and the behemoth that his agency has become. Bamford, though described by Nazaryan as “a slightly mischievous character,” is ideally suited to offer this introduction to Alexander in his June 2013 contribution to Wired: …. Never before has anyone in America’s intelligence sphere come close to his degree of power, the number of people under his command, the expanse of his rule, the length of his reign, or the depth of his secrecy. A four-star Army general, his authority extends across three domains: He is director of the world’s largest intelligence service, the National Security Agency; chief of the Central Security Service; and commander of US Cyber Command. As such, he has his own secret military, presiding over the Navy’s 10th Fleet, the 24th Air Force, and the Second Army. The massive expansion of Alexander’s cyber warfare resources has been illustrated by one of Snowden’s latest revelations. At the end of August, we learned that in 2011 alone, the United States “carried out 231 offensive cyber-operations,” mostly aimed at such adversaries as Russia, China, Iran, and North Korea. Despite American claims that China is threatening the stability of the world with its hacking, the United States remains the most prolific in cyber warfare. Alexander has used the specter of a devastating cyberattack – what former CIA Director and Secretary of Defense Leon Panetta calls “a cyber Pearl Harbor” – on the United States as principal justification for amassing control over so much data and erecting such a formidable institutional edifice. One can only sigh, perhaps, at the inevitability that someone like Alexander would respond to the drop off of actual global terrorism against American interests by invoking a new, frightening-sounding if vague bogeyman. As a bureaucratic strategy, the use of cyber threats to justify ever-growing “cyberspace operations” budgets for both the NSA and the Department of Defense has been a signature success. At a time when sequestration has hit other intelligence agencies, Alexander has been able to spend more and more. The NSA’s massive expansion of the headquarters at Fort Meade and several facilities across the country and its enlistment of “cyberattack teams” has, in turn, been very good for certain businesses. “What’s good for Alexander,” writes Bamford, “is good for the fortunes of the cyber-industrial complex, a burgeoning sector made up of many of the same defense contractors who grew rich supplying the wars in Iraq and Afghanistan.” With $30 billion being spent annually on cybersecurity the bonanza shows no signs of slowing down, as companies build or expand vast facilities and hire armies of “attack and penetration consultants.” Snowdens abound. What Alexander has done is to persuade Washington that the best defense against this threat is a great offense. Established in 2009 by the Pentagon, US Cyber Command has become a key part of Alexander’s realm. As he explained recently during congressional testimony, “I would like to be clear that this team, this defend-the-nation team, is not a defensive team.” Cyber Command has over 14,000 personnel. The goal has been to “dominate cyberspace” the same way the United States armed forces “dominate air and space.” That dominance, of course, comes at the expense not only of other countries, but of American citizens who value even a modicum of privacy. For all his personal blandness (he “more closely resembles a head librarian than George Patton. His face is anemic, his lips a neutral horizontal line… Some combat types had a derisive nickname for him: Alexander the Geek”), Alexander embodies and is responsible for a number of disturbing tendencies that make apathy no longer an option. Bamford quotes a “senior intelligence official” familiar with the NSA’s recent success at code-breaking: “Everybody’s a target; everybody with communication is a target.” The NSA is getting better and better at reading even the encrypted information of both governments and individual citizens in the United States and abroad. To store all of the data the NSA is swiping, it has erected the Utah Data Center at a staggering cost of $2 billion. This heavily protected facility “will become, in effect, the NSA’s cloud.” It will take in data from American spy satellites, overseas listening posts and a series of perhaps ten to twenty NSA domestic listening posts, “secret monitoring rooms in telecom facilities throughout the US.” (Bamford notes that these secret rooms, called “switches,” have not been a secret for some time, as the practice dates back to the immediate aftermath of 9/11, but the NSA refuses to acknowledge their existence.) The data then becomes fodder for “NSA code breakers, data-miners, China analysts, counterterrorism specialists, and others” at Fort Meade and beyond. As ever, Bamford captures the drama: Flowing through its servers and routers and stored in near-bottomless databases will be all forms of communication, including the complete contents of private emails, cell phone calls, and Google searches, as well as all sorts of personal data trails – parking receipts, travel itineraries, bookstore purchases, and other digital “pocket litter.” It is, in some measure, the realization of the “total information awareness” program created during the first term of the Bush administration – an effort that was killed by Congress in 2003 after it caused an outcry over its potential for invading Americans’ privacy. From James Bamford, “The NSA Is Building the Country’s Biggest Spy Center (Watch What You Say)” Menacing, all-encompassing systems of information gathering are unsettling, to be sure, but so, too, is the human failure. Bamford strongly doubts Alexander’s ambitious programs are protecting Americans. If the NSA is so much better as a result of its recent buildup, why did it fail to catch “the near-disastrous attempted attacks by the underwear bomber on a flight to Detroit in 2009 and by the car bomber in Times Square in 2010?” Congressional critics have argued the agency gives misleading statements that exaggerate the impact the programs have had in counterterrorism. Those who are familiar with the basics of how, historically, espionage works find it difficult to take NSA claims at face value. As Kenneth Roth, director of Human Rights Watch and a former prosecutor has argued, when U.S. intelligence has disrupted specific plots, the success has been “not because of the mass collection of our metadata but through more traditional surveillance of particular phone numbers or e-mail addresses – the kinds of targeted inquiries that easily would have justified a judicial order allowing review of records kept by communications companies.” Endgame? Fittingly, I’m writing this in downtown Atlanta, Georgia. Bamford has pointed to this city as the corporate home of “one of the most secretive” of the defense contractors to rise alongside Alexander’s empire. His Wired essay on Alexander singles out, as an extreme example of the “cyber-industrial complex,” Endgame Systems, which is located in Midtown at 817 West Peachtree Street. Such defense contractors, according to Bamford, sell the services Alexander’s conception of cyberwar requires, recruiting “cyberwarriors [who] play offense and defense,” “computer network attack specialists,” “attack and penetration consultants.” Endgame, a startup created in 2008, “is transparently antitransparent.” Wikileaks disclosed an internal email quoting the company’s desire to stay that way: “We don’t ever want to see our name in a press release.” Endgame is, however, too flush with capital and too important a player to go wholly unnoticed. Why? Endgame is developing ways to break into internet-connected devices through chinks in their antivirus armor. Like safecrackers listening to the click of tumblers through a stethoscope, the “vulnerability researchers” use an extensive array of digital tools to search for hidden weaknesses in commonly used programs and systems, such as Windows and Internet Explorer. And since no one else has ever discovered these unseen cracks, the manufacturers have never developed patches for them. Endgame also serves to NSA, Cyber Command, the CIA and British intelligence “a unique map showing them exactly where their targets are located. Dubbed Bonesaw, the map displays the geolocation and digital address of basically every device connected to the Internet around the world, providing what’s called network situational awareness.” For millions of dollars, Endgame can give its clients the capability of pinpointing seemingly complete information on foreign targets – such as government agencies in China – and to find in their defenses “the equivalent of a back door left open.” The high stakes this represents worries even intelligence officials, who debate the extent to which “the buying and selling of such a subscription by nation-states could be seen as an act of war.” Bamford quotes Mike Jacobs, a former top NSA official who thinks it is, indeed: “In my opinion, these activities constitute acts of war, or at least a prelude to future acts of war.” Jacobs, noting the complete lack of regulation or oversight of this development and sale of cyberweapons, says “It should be illegal. I knew about Endgame when I was in intelligence. The intelligence community didn’t like it, but they’re the largest consumer of that business.” Bamford concludes that by buying the services of a firm like Endgame, “the spy agencies are helping drive a lucrative, dangerous, and unregulated cyber arms race, one that has developed its own gray and black markets.” Endgame and its competitors could choose to sell their cyberweapons to anyone, including adversarial nations like Iran or to terrorists, a prospect Alexander himself has called his “greatest worry.” I would add that even if Endgame and others remain committed to selling only to the Americans and to American allies, the danger remains that the manic drive for offensive cyberweapons might well provoke a real war. That it would have begun shrouded in such secrecy and as a result of a corporate profit strategy would make the disaster all the greater. Endgame’s website (http://www.endgamesystems.com/) implores potential clients to “Visualize Risk, Create Opportunity.” It doesn’t offer much detail on what, exactly, Endgame does, or how to interact with its personnel. It does give us cyberwarfare with a human face on the “Meet the Team” page, which cutely mingles personal details (“Telvis is a lover of hard problems and loud music”) with a fairly conventional rundown of the executive management, albeit one stuffed with national security connections, capped by the membership on the Board of Directors, which includes former NSA Director Lt. General Kenneth A. Minihan. The retired Lt. General seems to have been swayed by the gusher of capital pouring into Endgame in the last several months. Chris Rouland, “co-founder and founding CEO,” is a Georgia Tech grad whose previous experience includes, reassuringly, a stint as Vice President at Lehman Brothers.[15] America’s economic recovery remains sluggish, the nation might yet default on its debt, but the times they are a-booming for firms such as Endgame that make themselves indispensable within the cyberwar complex. With a report this week listing sixteen firms (including Endgame) among those reaping “eight-figure venture capital deals directed at tech security firms in the past 20 months,” we seem to have a self-reinforcing mechanism at work. It is said that Snowden’s revelations have, ironically, increased the value of the services of these shadowy firms that offer “solutions” to corporate and national security planners worried about their cyber vulnerabilities. While it’s nice to see a bull market for at least one sector of the American economy, one might fail, however, to accept the Panglossian assurance from the chief marketing officer at one of these cash-rich security start-ups: “The cybersecurity market is in a renaissance period that should enable the good guys to leapfrog the bad guys in prevention and detection capabilities.” Such a claim belies not only the improbability that cash or technology alone will best “the bad guys” overseas, but also the enormous risks to American civil liberties posed by the wild west, anything goes lack of regulation and oversight that has created countless Snowdens, snooping on citizens without scrutiny at the behest of the NSA.

### A2 norms

#### Uncontrollability of cyber-war is a neg warrant --- means countries won’t use them

Thomas P.M. Barnett 13, special assistant for strategic futures in the U.S. Defense Department's Office of Force Transformation from 2001 to 2003, is chief analyst for Wikistrat, March/April 2013, “Think Again: The Pentagon,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/03/04/the\_pentagon?page=full

As for cyber serving as a stand-alone war-fifighting domain, there you'll find the debates no less theological in their intensity. After serving as senior managing director for half a dozen years at a software firm that specializes in securing supply chains, I'm deeply skeptical. Given the uncontrollable nature of cyberweapons (see: Stuxnet's many permutations), I view them as the 21st century's version of chemical weapons -- nice to have, but hard to use. Another way to look at it is to simply call a spade a spade: Cyberwarfare is nothing more than espionage and sabotage updated for the digital era. Whatever cyberwar turns out to be in the national security realm, it will always be dwarfed by the industrial variants -- think cyberthieves, not cyberwarriors. But you wouldn't know it from the panicky warnings from former Defense Secretary Leon Panetta and the generals about the imminent threat of a "cyber Pearl Harbor."¶ Please remember amid all this frenetic scaremongering that the Pentagon is never more frightened about our collective future than when it's desperately uncertain about its own. Given the rising health-care costs associated with America's aging population and the never-ending dysfunction in Washington, we should expect to be bombarded with frightening scenarios of planetary doom for the next decade or two. None of this bureaucratic chattering will bear any resemblance to global trends, which demonstrate that wars have grown increasingly infrequent, shorter in duration, and diminished in lethality. But you won't hear that from the next-warriors on the Potomac.

#### Zero impact to cyber arms race --- overwhelming consensus of qualified authors goes neg

- No motivation---can’t be used for coercive leverage

- Defenses solve---benefits of offense are overstated

- Too difficult to execute/mistakes in code are inevitable

- AT: Infrastructure attacks

- Military networks are air-gapped/difficult to access

- Overwhelming consensus goes neg

Colin S. Gray 13, Prof. of International Politics and Strategic Studies @ the University of Reading and External Researcher @ the Strategic Studies Institute @ the U.S. Army War College, April, “Making Strategic Sense of Cyber Power: Why the Sky Is Not Falling,” U.S. Army War College Press, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1147.pdf>

CONCLUSIONS AND RECOMMENDATIONS: THE SKY IS NOT FALLING¶ This analysis has sought to explore, identify, and explain the strategic meaning of cyber power. The organizing and thematic question that has shaped and driven the inquiry has been “So what?” Today we all do cyber, but this behavior usually has not been much informed by an understanding that reaches beyond the tactical and technical. I have endeavored to analyze in strategic terms what is on offer from the largely technical and tactical literature on cyber. What can or might be done and how to go about doing it are vitally important bodies of knowledge. But at least as important is understanding what cyber, as a fifth domain of warfare, brings to national security when it is considered strategically. Military history is stocked abundantly with examples of tactical behavior un - guided by any credible semblance of strategy. This inquiry has not been a campaign to reveal what cy ber can and might do; a large literature already exists that claims fairly convincingly to explain “how to . . .” But what does cyber power mean, and how does it fit strategically, if it does? These Conclusions and Rec ommendations offer some understanding of this fifth geography of war in terms that make sense to this strategist, at least. ¶ 1. Cyber can only be an enabler of physical effort. Stand-alone (popularly misnamed as “strategic”) cyber action is inherently grossly limited by its immateriality. The physicality of conflict with cyber’s human participants and mechanical artifacts has not been a passing phase in our species’ strategic history. Cyber action, quite independent of action on land, at sea, in the air, and in orbital space, certainly is possible. But the strategic logic of such behavior, keyed to anticipated success in tactical achievement, is not promising. To date, “What if . . .” speculation about strategic cyber attack usually is either contextually too light, or, more often, contextually unpersuasive. 49 However, this is not a great strategic truth, though it is a judgment advanced with considerable confidence. Although societies could, of course, be hurt by cyber action, it is important not to lose touch with the fact, in Libicki’s apposite words, that “[i]n the absence of physical combat, cyber war cannot lead to the occupation of territory. It is almost inconceivable that a sufficiently vigorous cyber war can overthrow the adversary’s government and replace it with a more pliable one.” 50 In the same way that the concepts of sea war, air war, and space war are fundamentally unsound, so also the idea of cyber war is unpersuasive. ¶ It is not impossible, but then, neither is war conducted only at sea, or in the air, or in space. On the one hand, cyber war may seem more probable than like environmentally independent action at sea or in the air. After all, cyber warfare would be very unlikely to harm human beings directly, let alone damage physically the machines on which they depend. These near-facts (cyber attack might cause socially critical machines to behave in a rogue manner with damaging physical consequences) might seem to ren - der cyber a safer zone of belligerent engagement than would physically violent action in other domains. But most likely there would be serious uncertainties pertaining to the consequences of cyber action, which must include the possibility of escalation into other domains of conflict. Despite popular assertions to the contrary, cyber is not likely to prove a precision weapon anytime soon. 51 In addition, assuming that the political and strategic contexts for cyber war were as serious as surely they would need to be to trigger events warranting plausible labeling as cyber war, the distinctly limited harm likely to follow from cyber assault would hardly appeal as prospectively effective coercive moves. On balance, it is most probable that cyber’s strategic future in war will be as a contribut - ing enabler of effectiveness of physical efforts in the other four geographies of conflict. Speculation about cyber war, defined strictly as hostile action by net - worked computers against networked computers, is hugely unconvincing.¶ 2. Cyber defense is difficult, but should be sufficiently effective. The structural advantages of the offense in cyber conflict are as obvious as they are easy to overstate. Penetration and exploitation, or even attack, would need to be by surprise. It can be swift almost beyond the imagination of those encultured by the traditional demands of physical combat. Cyber attack may be so stealthy that it escapes notice for a long while, or it might wreak digital havoc by com - plete surprise. And need one emphasize, that at least for a while, hostile cyber action is likely to be hard (though not quite impossible) to attribute with a cy - berized equivalent to a “smoking gun.” Once one is in the realm of the catastrophic “What if . . . ,” the world is indeed a frightening place. On a personal note, this defense analyst was for some years exposed to highly speculative briefings that hypothesized how unques - tionably cunning plans for nuclear attack could so promptly disable the United States as a functioning state that our nuclear retaliation would likely be still - born. I should hardly need to add that the briefers of these Scary Scenarios were obliged to make a series of Heroic Assumptions. ¶ The literature of cyber scare is more than mildly reminiscent of the nuclear attack stories with which I was assailed in the 1970s and 1980s. As one may observe regarding what Winston Churchill wrote of the disaster that was the Gallipoli campaign of 1915, “[t]he terrible ‘Ifs’ accumulate.” 52 Of course, there are dangers in the cyber domain. Not only are there cyber-competent competitors and enemies abroad; there are also Americans who make mistakes in cyber operation. Furthermore, there are the manufacturers and constructors of the physical artifacts behind (or in, depending upon the preferred definition) cyber - space who assuredly err in this and that detail. The more sophisticated—usually meaning complex—the code for cyber, the more certain must it be that mistakes both lurk in the program and will be made in digital communication.¶ What I have just outlined minimally is not a reluc - tant admission of the fallibility of cyber, but rather a statement of what is obvious and should be anticipat - ed about people and material in a domain of war. All human activities are more or less harassed by friction and carry with them some risk of failure, great or small. A strategist who has read Clausewitz, especially Book One of On War , 53 will know this. Alternatively, anyone who skims my summary version of the general theory of strategy will note that Dictum 14 states explicitly that “Strategy is more difficult to devise and execute than are policy, operations, and tactics: friction of all kinds comprise phenomena inseparable from the mak - ing and execution of strategies.” 54 Because of its often widely distributed character, the physical infrastruc - ture of an enemy’s cyber power is typically, though not invariably, an impracticable target set for physical assault. Happily, this probable fact should have only annoying consequences. The discretionary nature and therefore the variable possible characters feasible for friendly cyberspace(s), mean that the more danger - ous potential vulnerabilities that in theory could be the condition of our cyber-dependency ought to be avoidable at best, or bearable and survivable at worst. Libicki offers forthright advice on this aspect of the subject that deserves to be taken at face value: ¶ [T]here is no inherent reason that improving informa - tion technologies should lead to a rise in the amount of critical information in existence (for example, the names of every secret agent). Really critical information should never see a computer; if it sees a computer, it should not be one that is networked; and if the computer is networked, it should be air-gapped.¶ Cyber defense admittedly is difficult to do, but so is cyber offense. To quote Libicki yet again, “[i]n this medium [cyberspace] the best defense is not necessarily a good offense; it is usually a good defense.” 56 Unlike the geostrategic context for nuclear-framed competition in U.S.–Soviet/Russian rivalry, the geographical domain of cyberspace definitely is defensible. Even when the enemy is both clever and lucky, it will be our own design and operating fault if he is able to do more than disrupt and irritate us temporarily.¶ When cyber is contextually regarded properly— which means first, in particular, when it is viewed as but the latest military domain for defense planning—it should be plain to see that cyber performance needs to be good enough rather than perfect. 57 Our Landpower, sea power, air power, and prospectively our space systems also will have to be capable of accepting combat damage and loss, then recovering and carrying on. There is no fundamental reason that less should be demanded of our cyber power. Second, given that cyber is not of a nature or potential character at all likely to parallel nuclear dangers in the menace it could con - tain, we should anticipate international cyber rivalry to follow the competitive dynamic path already fol - lowed in the other domains in the past. Because the digital age is so young, the pace of technical change and tactical invention can be startling. However, the mechanization RMA of the 1920s and 1930s recorded reaction to the new science and technology of the time that is reminiscent of the cyber alarmism that has flour - ished of recent years. 58 We can be confident that cyber defense should be able to function well enough, given the strength of political, military, and commercial motivation for it to do so. The technical context here is a medium that is a constructed one, which provides air-gapping options for choice regarding the extent of networking. Naturally, a price is paid in convenience for some closing off of possible cyberspace(s), but all important defense decisions involve choice, so what is novel about that? There is nothing new about accepting some limitations on utility as a price worth paying for security.¶ 3. Intelligence is critically important, but informa - tion should not be overvalued. The strategic history of cyber over the past decade confirms what we could know already from the science and technology of this new domain for conflict. Specifically, cyber power is not technically forgiving of user error. Cyber warriors seeking criminal or military benefit require precise information if their intended exploits are to succeed. Lucky guesses should not stumble upon passwords, while efforts to disrupt electronic Supervisory Con - trol and Data Acquisition (SCADA) systems ought to be unable to achieve widespread harmful effects. But obviously there are practical limits to the air-gap op - tion, given that control (and command) systems need to be networks for communication. However, Internet connection needs to be treated as a potential source of serious danger.¶ It is one thing to be able to be an electronic nuisance, to annoy, disrupt, and perhaps delay. But it is quite another to be capable of inflicting real persisting harm on the fighting power of an enemy. Critically important military computer networks are, of course, accessible neither to the inspired amateur outsider, nor to the malignant political enemy. Easy passing reference to a hypothetical “cyber Pearl Harbor” reflects both poor history and ignorance of contemporary military common sense. Critical potential military (and other) targets for cyber attack are extremely hard to access and influence (I believe and certainly hope), and the technical knowledge, skills, and effort required to do serious harm to national security is forbiddingly high. This is not to claim, foolishly, that cyber means absolutely could not secure near-catastrophic results. However, it is to say that such a scenario is extremely improbable. Cyber defense is advancing all the time, as is cyber offense, of course. But so discretionary in vital detail can one be in the making of cyberspace, that confidence—real confidence—in cyber attack could not plausibly be high. It should be noted that I am confining this particular discussion to what rather idly tends to be called cyber war. In political and strategic practice, it is unlikely that war would or, more importantly, ever could be restricted to the EMS. Somewhat rhetorically, one should pose the question: Is it likely (almost anything, strictly, is possible) that cyber war with the potential to inflict catastrophic damage would be allowed to stand unsupported in and by action in the other four geographical domains of war? I believe not.¶ Because we have told ourselves that ours uniquely is the Information Age, we have become unduly respectful of the potency of this rather slippery catch-all term. As usual, it is helpful to contextualize the al - legedly magical ingredient, information, by locating it properly in strategic history as just one important element contributing to net strategic effectiveness. This mild caveat is supported usefully by recognizing the general contemporary rule that information per se harms nothing and nobody. The electrons in cyber - ized conflict have to be interpreted and acted upon by physical forces (including agency by physical human beings). As one might say, intelligence (alone) sinks no ship; only men and machines can sink ships! That said, there is no doubt that if friendly cyber action can infiltrate and misinform the electronic informa - tion on which advisory weaponry and other machines depend, considerable warfighting advantage could be gained. I do not intend to join Clausewitz in his dis - dain for intelligence, but I will argue that in strategic affairs, intelligence usually is somewhat uncertain. 59 Detailed up-to-date intelligence literally is essential for successful cyber offense, but it can be healthily sobering to appreciate that the strategic rewards of intelligence often are considerably exaggerated. The basic reason is not hard to recognize. Strategic success is a complex endeavor that requires adequate perfor - mances by many necessary contributors at every level of conflict (from the political to the tactical). ¶ When thoroughly reliable intelligence on the en - emy is in short supply, which usually is the case, the strategist finds ways to compensate as best he or she can. The IT-led RMA of the past 2 decades was fueled in part by the prospect of a quality of military effec - tiveness that was believed to flow from “dominant battle space knowledge,” to deploy a familiar con - cept. 60 While there is much to be said in praise of this idea, it is not unreasonable to ask why it has been that our ever-improving battle space knowledge has been compatible with so troubled a course of events in the 2000s in Iraq and Afghanistan. What we might have misunderstood is not the value of knowledge, or of the information from which knowledge is quarried, or even the merit in the IT that passed information and knowledge around. Instead, we may well have failed to grasp and grip understanding of the whole context of war and strategy for which battle space knowledge unquestionably is vital. One must say “vital” rather than strictly essential, because relatively ignorant armies can and have fought and won despite their ig - norance. History requires only that one’s net strategic performance is superior to that of the enemy. One is not required to be deeply well informed about the en - emy. It is historically quite commonplace for armies to fight in a condition of more-than-marginal reciprocal and strategic cultural ignorance. Intelligence is king in electronic warfare, but such warfare is unlikely to be solely, or even close to solely, sovereign in war and its warfare, considered overall as they should be.¶ 4. Why the sky will not fall. More accurately, one should say that the sky will not fall because of hostile action against us in cyberspace unless we are improb - ably careless and foolish. David J. Betz and Tim Ste vens strike the right note when they conclude that “[i]f cyberspace is not quite the hoped-for Garden of Eden, it is also not quite the pestilential swamp of the imagination of the cyber-alarmists.” 61 Our understanding of cyber is high at the technical and tactical level, but re - mains distinctly rudimentary as one ascends through operations to the more rarified altitudes of strategy and policy. Nonetheless, our scientific, technological, and tactical knowledge and understanding clearly indicates that the sky is not falling and is unlikely to fall in the future as a result of hostile cyber action. This analysis has weighed the more technical and tactical literature on cyber and concludes, not simply on balance, that cyber alarmism has little basis save in the imagination of the alarmists. There is military and civil peril in the hostile use of cyber, which is why we must take cyber security seriously, even to the point of buying redundant capabilities for a range of command and control systems. 62 So seriously should we regard cyber danger that it is only prudent to as - sume that we will be the target for hostile cyber action in future conflicts, and that some of that action will promote disruption and uncertainty in the damage it will cause.¶ That granted, this analysis recommends strongly that the U.S. Army, and indeed the whole of the U.S. Government, should strive to comprehend cyber in context. Approached in isolation as a new technol - ogy, it is not unduly hard to be over impressed with its potential both for good and harm. But if we see networked computing as just the latest RMA in an episodic succession of revolutionary changes in the way information is packaged and communicated, the computer-led IT revolution is set where it belongs, in historical context. In modern strategic history, there has been only one truly game-changing basket of tech - nologies, those pertaining to the creation and deliv - ery of nuclear weapons. Everything else has altered the tools with which conflict has been supported and waged, but has not changed the game. The nuclear revolution alone raised still-unanswered questions about the viability of interstate armed conflict. How - ever, it would be accurate to claim that since 1945, methods have been found to pursue fairly traditional political ends in ways that accommodate nonuse of nuclear means, notwithstanding the permanent pres - ence of those means.¶ The light cast by general strategic theory reveals what requires revealing strategically about networked computers. Once one sheds some of the sheer wonder at the seeming miracle of cyber’s ubiquity, instanta - neity, and (near) anonymity, one realizes that cyber is just another operational domain, though certainly one very different from the others in its nonphysi - cality in direct agency. Having placed cyber where it belongs, as a domain of war, next it is essential to recognize that its nonphysicality compels that cyber should be treated as an enabler of joint action, rather than as an agent of military action capable of behav - ing independently for useful coercive strategic effect. There are stand-alone possibilities for cyber action, but they are not convincing as attractive options either for or in opposition to a great power, let alone a superpower. No matter how intriguing the scenario design for cyber war strictly or for cyber warfare, the logic of grand and military strategy and a common sense fueled by understanding of the course of strategic history, require one so to contextualize cyber war that its independence is seen as too close to absurd to merit much concern.

#### The warrant to their china war scenario is because we can’t defend ourselves against A2AD --- military doctrine means no A2AD threat

Jonathan Greenert 12, Chief of Naval Operations, 5/10/12, “Projecting Power, Assuring Access,” http://cno.navylive.dodlive.mil/2012/05/10/projecting-power-assuring-access/

There’s been attention recently about closing an international strait using, among other means, mines, fast boats, cruise missiles and mini-subs. These weapons are all elements of what we call an “Anti-Access /Area Denial (A2AD)” strategy. Keeping with my tenet of “Warfighting First,” I want to highlight for you how the Navy and Air Force have been planning to deal with A2AD threats like this today and into the future.¶ A goal of an A2AD strategy is to make others believe it can close off international airspace or waterways and that U.S. military forces will not be able (or willing to pay the cost) to reopen those areas or come to the aid of our allies and partners. In peacetime, this gives the country with the A2AD weapons leverage over their neighbors and reduces U.S. influence. In wartime, A2AD capabilities can make U.S. power projection more difficult. The areas where A2AD threats are most consequential are what I call “strategic maritime crossroads.” These include areas around the Straits of Hormuz and Gibraltar, Suez Canal, Panama Canal or Malacca Strait – but strategic crossroads can also exist in the air, on land, and in cyberspace.¶ To counter these strategies and assure U.S. freedom of action, Navy and Air Force spearheaded a comprehensive study, which included Army and Marine Corps participation, to bring forward a concept called Air Sea Battle (ASB). This concept identifies how we will defeat A2AD capabilities such as cyber attack, mines, submarines, cruise and ballistic missiles, and air defense systems and, where applicable, “natural access denial” such as weather, pollution, natural disaster, etc. The concept also describes what we will need to do these operations, especially as the threats improve due to technological advancements.¶ Air-Sea Battle relies on tightly coordinated operations across domains (air, land, maritime, undersea, space and cyberspace) to defeat A2AD capabilities, such as a submarine striking air defenses in support of Air Force bombers, Air Force stealth fighters destroying a radar site to prevent cruise missile attacks on Navy ships, or a Navy cryptologic technician (CT) confusing a radar system to allow an Air Force UAV to attack an enemy command center. This level of real-time coordination requires new approaches to developing systems, planning operations, and conducting command and control.¶ By working across domains, Air-Sea Battle takes advantage of unique U.S. advantages in global reach (long-range tankers, nuclear-powered carriers), and stealth above (F-22 and B-2) and below (SSN, SSGN) the sea. Putting Air Force and Navy capabilities together also creates new combinations of systems, or “kill-chains”, for warfighting operations that can add redundancy or make us more efficient. For example, a threat cruise missile could be detected by an Air Force E-3 AWACS or Navy E-2D Hawkeye, and if we invest in the right data links, either of them could cue an Air Force F-22, Aegis ship or Navy F/A-18 to engage the missile. This provides more “paths” we can follow to destroy the missile.¶ Using these integrated air and naval forces, the Air Sea Battle concept executes three main lines of effort:¶ Disrupt an adversary’s command, control, communications, computers and intelligence, surveillance and reconnaissance (C4ISR) – this reduces the adversary’s ability to find or target us with large raids; they will have to spread out their attacks to all our potential locations.¶ Destroy adversary weapons launch systems – To have sustained access to international seas and skies, we will eventually need to destroy the launchers on land, sea and in the air.¶ Defeat adversary weapons – until we destroy the launchers, our forces will kinetically or non-kinetically prevent the weapons launched at us from getting a hit.¶ We are using the Air Sea Battle concept to guide decisions in procurement, doctrine, organization, training, leadership, personnel and facilities. Our budgets for FY11, FY12 and now FY13 reflect hard choices that support Air-Sea Battle. In some cases we accepted reductions in capacity to ensure the needed capabilities were retained.

### A2 norms - china

#### (blue) Chinese can effectively use soft power now, which is uniquely effective- US model fails

**Hölkemeyer 12-6**-13 [Patricia Rodríguez Hölkemeyer, research professor and deputy director of the School of Political Science at the University of Costa Rica, Honorary Member of the Academy Research Center of Central Private, “China's forthcoming soft power as a natural result of international events,” <http://www.china.org.cn/china/Chinese_dream_dialogue/2013-12/06/content_30822607.htm>]

On the other side, Deng'saphorism that China should never strive to attain global hegemony has been widely respected by its leaders and reformers. Nevertheless, today circumstances have changed. China's ancient thinkers rejected the idea of searching for hegemony through stratagems, and favored instead the accomplishment of what Mencius and Xuzi called humane authority. Nevertheless, at the present moment China does not need to strive for the attainment of a leading role because the present world circumstances are catapulting her to become a world superpower. What are the present world circumstances that have put China in the position to have a say in international affairs without having to strive for hegemony? Why is the Western 'presumptive paradigm' (Rodrik)for development failing contrastingly to the pragmatic and experimental learning paradigm of the Chinese reformers that Joshua Cooper Ramo dubbed the Beijing Consensus? The ex-ante presumption of knowledge, a characteristic of the Western countries and global institutions, very probably will be ceding its place to a Deweyian pragmatic change of paradigm, according to which, even the mere conception of what is the best form of democracy is fallible and contextual. ¶ Very probably, the paradigm of 'arrogance' will be giving place to a paradigm based on what the political scientist, Karl Deutsch, once called 'humility'. Deutsch defined its opposite "arrogance" as the posture of permitting oneself the luxury of not to learn (because it is supposed that one has already learned everything), while he defines 'humility' as the attitude of the political leader who is always open to learning from others. The West has forgotten that the concept of feedback (learning form the other) is the biggest bite to the tree of knowledge that humanity has undertaken in the last two thousand years (Bateson). A new concept of democracy has to take into consideration this advancement as the Chinese reform process has done. Western countries' presumptive frame of mind has been slowly losing momentum. The present circumstances provide a clear indication that one of the most cared institutions, the Western multiparty democracy system, has been losing its ability to learn, and thus, its capacity to offer creative solutions to its own and the world's problems. As a former US Ambassador to China said two years ago, the willingness of Chinese leaders to learn from their errors and adapt to new circumstances "differs sharply from what one encounters in Washington, where there's such concern over our inability to correct the problems that are making our political system — in the eyes of many Americans — increasingly dysfunctional."¶ The US has to enhance its learning capacity if it wants to lead in world affairs in cooperation with the newly emerging superpower. The West has to acknowledge that the so called American values are not universal, that harmony implies unity in diversity, that the concept of democracy is fallible and mutable, and that hegemony has to cede to a well gained humane authority, not only abroad but domestically.¶ Since W. W. II, the US attained the soft power that China lacked. Nevertheless, the US insistence in the maintenance of an hegemonic international order applying the smart power (a new concept of Joseph Nye) stratagems, has culminated in the observed failure of the misnamed Arab Spring, even if the application of smart power (instigation through political activism, and the posterior use of military power if necessary) was partially successful in the so called Color Revolutions (Rodríguez-Hölkemeyer, 2013).¶ Given the present circumstances (as the effects of 9/11, the global financial crisis, the formation of the G20, the global rejection of US espionage stratagems, the failure of the Pivot to the East policy due to the attention the US had to devote to the failed Arab Spring, to an ailing Europe, and to its own domestic financial and political problems) China's possibilities to acquire soft power and to exert its positive influence way the international governing institutions and in international relations, are now real. The world needs a new international relations paradigm, other than the Western style democracy promotion policy through political activism (see the book of the present US Ambassador to Russia, Michael McFaul, Advancing Democracy Abroad)orchestrated by organized minorities (NGOs) who want to impose the so called 'American values' in countries with different historical paths, culture and aspirations. The new paradigm will have to be founded in ethics, wisdom, cooperation, confidence-building, and on the recognition that knowledge is fallible and hypothetical, and that with globalization world circumstances and interactions are prone to change. This new paradigm has already been successfully tested in the 35 years of China's own economic and institutional reform process and diplomatic practice. This adaptive and learning-prone attitude of the Chinese leaders, even to the point of adapting (not adopting) western suggestions and institutions when necessary, is the underlying cause of the success of the admirable and unique Chinese development path. As Mencius and Xuzi's observations suggest that a country cannot exert international influence if its own house is not in order.¶ In sum, the present article states that now China possesses a substantive experiential wisdom to start a very productive dialogue with the World. Especially in a moment when it is beginning to be clear to many in the World, that to strive for maintaining a hegemonic world order (Mearsheimer) by means of dubious stratagemsis --according to Lao Tzu thought—the kind of response when intentions are going against the natural course of events.

#### US influence trades off with China’s- competing narratives

**Dynon ’13** [Nicholas, PhD candidate at Macquarie University and is coordinator of the Line 21 project, an online resource on Chinese public diplomacy, has served diplomatic postings in Shanghai, Beijing and the Fiji Islands, worked in Australia’s Parliament House as a departmental liaison officer to the Immigration Minister, holds postgraduate degrees from the ANU and the University of Sydney, “Soft Power: A U.S.-China Battleground?” June 19, <http://thediplomat.com/2013/06/soft-power-a-u-s-china-battleground/>]

Strip away the ostensibly benign surface of public diplomacy, cultural exchanges and language instruction, and it becomes clear that the U.S. and China are engaged in a soft power conflagration – a protracted cultural cold war. On one side bristles incumbent Western values hegemon, the U.S. On the other is China, one of the non-Western civilizations that Samuel Huntington noted back in 1993 “increasingly have the desire, the will and the resources to shape the world in non-Western ways.”¶ But to shape the world in non-Western ways means engaging in a soft power battlespace against an incumbent who already holds the high ground. Liu comments that in regions deeply influenced by Western cultures, political systems and values, the “latecomer” China is considered a “dissident force." Under such circumstances, “it is rather difficult for China to attract Western countries with its own political and cultural charisma, let alone to replace their positions.”¶ According to this and similar viewpoints, China’s difficulty in projecting soft power across the world is in part due to the way the U.S. leverages its own soft power. Wu Jianmin, the former president of China’s Foreign Affairs University, puts the point well when explaining that U.S. soft power is driven by the imperative of “maintaining US hegemony in changing the world, of letting the world listen to the United States.”¶ Thus, the state of global post-colonial, post-communist ideational hegemony is such that large swathes of the earth’s population see the world through lenses supplied by the West. Through these lenses, perceptions of China are dominated by such concepts as the “China threat theory,” which portrays China as a malevolent superpower upstart.¶ But it’s actually inside China’s borders where the soft power struggle between China and the U.S. is most prominent.¶ Official pronouncements from Chinese leaders have long played up the notion that Western culture is an aggressive threat to China’s own cultural sovereignty. It has thus taken myriad internal measures to ensure the country’s post-Mao reforms remain an exercise in modernization without “westernization.” Since the 1990s, for example, ideological doctrine has been increasingly infused with a new cultural nationalism, and the Party’s previously archaic propaganda system has been massively overhauled and working harder than ever.¶ Especially after the June 4th crackdown and the collapse of the Soviet Union, China’s leaders under Jiang Zemin began addressing the cultural battlespace with renewed vigor. Resolutions launched in 1996 called for the Party to “carry forward the cream of our traditional culture, prevent and eliminate the spread of cultural garbage, [and] resist the conspiracy by hostile forces to ‘Westernize’ and ‘split’ our country….” Hu Jintao trumpeted the same theme in early 2012 when he warned that international hostile forces are intensifying the strategic plot of Westernising and dividing China … Ideological and cultural fields are the focal areas of their long-term infiltration.”

#### Chinese soft power restrains aggression- solves regional stability

**Huang ’13** [Chin-Hao Huang, Ph.D. Candidate and a Russell Endowed Fellow in the Political Science and International Relations (POIR) Program at the University of Southern California (USC). Until 2009, he was a researcher at the Stockholm International Peace Research Institute (SIPRI) in Sweden. He specializes in international security and comparative politics, especially with regard to China and Asia, and he has testified before the Congressional U.S.-China Economic and Security Review Commission on Chinese foreign and security policy, “China’s Soft Power in East Asia,” <http://dornsife.usc.edu/assets/sites/451/docs/Huang_FINAL_China_Soft_Power_and_Status.pdf>]

China’s authoritarian regime is thus the biggest obstacle to its efforts to construct and project soft ¶ power. At the same time, if the government decides to take a different tack—a more constructive ¶ approach that embraces multilateralism—**Chinese soft power could be a positive force multiplier that contributes to peace and stability in the region**. A widely read and cited article published in ¶ Liaowang, a leading CCP publication on foreign affairs, reveals that there are prospects for China being socialized into a less disruptive power that complies with regional and global norms: ¶ Compared with past practices, China’s diplomacy has indeed displayed a new face. If China’s diplomacy before the 1980s stressed safeguarding of national ¶ security, and its emphasis from the 1980s to early this century is on the creation ¶ of an excellent environment for economic development, then the focus at ¶ present is to take a more active part in international affairs and play the role that a responsible power should on the basis of satisfying the security and ¶ development interests.47 The newly minted leadership in Beijing provides China with an opportunity to reset its soft-power approach and the direction of its foreign policy more generally. If the new leadership pursues a ¶ different course, Washington should seize on this opportunity to craft an effective response to ¶ better manage U.S.-China relations and provide for greater stability in the Asia-Pacific region. For example, strengthening regional alliances and existing security and economic architectures could help restrain China’s more bellicose tendencies. At the same time, Washington should be cognizant of the frustrations that are bound to occur in bilateral relations if Beijing continues to define national interest in narrow, self-interested terms. The U.S. should engage more deeply with regional partners to persuade and incentivize China to take on a responsible great-power role commensurate with regional expectations.¶ • The U.S. pivot to the region could be further complemented with an increase in soft-power promotion, including increasing the level of support for Fulbright and other educational exchanges that forge closer professional and interpersonal ties between the U.S. and the Asia-Pacific. Washington should also encourage philanthropy, development assistance, and intellectual engagement by think tanks and civil society organizations that address issues such as public health and facilitate capacity-building projects. China’s rising economic, political, and military power is the most geopolitically significant¶ development of this century. Yet while the breadth of China’s growing power is widely¶ understood, a fulsome understanding of the dynamics of this rise requires a more¶ systematic assessment of the depth of China’s power. Specifically, the strategic, economic,¶ and political implications of China’s soft-power efforts in the region require in-depth analysis.¶ The concept of “soft power” was originally developed by Harvard University professor Joseph Nye¶ to describe the ability of a state to attract and co-opt rather than to coerce, use force, or give money¶ as a means of persuasion.1 The term is now widely used by analysts and statesmen. As originally¶ defined by Nye, soft power involves the ability of an actor to set agendas and attract support on the¶ basis of its values, culture, policies, and institutions. In this sense, he considers soft power to often¶ be beyond the control of the state, and generally includes nonmilitary tools of national power—such¶ as diplomacy and state-led economic development programs—as examples of hard power.¶ Partially due to the obvious pull of China’s economic might, several analysts have broadened Nye’s¶ original definition of soft power to include, as Joshua Kurlantzick observes, “anything outside the¶ military and security realm, including not only popular culture and public diplomacy but also more¶ coercive economic and diplomatic levers like aid and investment and participation in multilateral¶ organizations.”2 This broader definition of soft power has been exhaustively discussed in China¶ as an element of a nation’s “comprehensive national power” (zonghe guoli), and some Chinese¶ commentators argue that it is an area where the People’s Republic of China (PRC) may enjoy some¶ advantages vis-à-vis the United States. These strategists advocate spreading appreciation of Chinese¶ culture and values through educational and exchange programs such as the Confucius Institutes.¶ This approach would draw on the attractiveness of China’s developmental model and assistance¶ programs (including economic aid and investment) in order to assuage neighboring countries’¶ concerns about China’s growing hard power.3 China’s soft-power efforts in East Asia—enabled by its active use of coercive economic and social¶ levers such as aid, investment, and public diplomacy—have already accrued numerous benefits for the PRC. Some view the failure of the United States to provide immediate assistance to East and¶ Southeast Asian states during the 1997 Asian financial crisis and China’s widely publicized refusal¶ to devalue its currency at the time (which would have forced other Asian states to follow suit) as a turning point, causing some in Asia to question which great power was more reliable.4 China also uses economic aid, and the withdrawal thereof, as a tool of national power, as seen in China’s considerable aid efforts in Southeast Asia, as well as in its suspension of $200 million in aid to¶ Vietnam in 2006 after Hanoi invited Taiwan to attend that year’s Asia-Pacific Economic Cooperation¶ (APEC) summit.5

#### This is an external nuclear war impact from the 1AC- draws in the US

**Eland 12-10**-13 [Ivan Eland,PhD in Public Policy from George Washington University, Senior Fellow and Director of the Center on Peace & Liberty at The Independent Institute, has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including Principal Defense Analyst at the Congressional Budget Office, has served as Evaluator-in-Charge for the U.S. General Accounting Office, “Stay Out of Petty Island Disputes in East Asia,” <http://www.huffingtonpost.com/ivan-eland/stay-out-of-petty-island-_b_4414811.html>]

One of the most dangerous international disputes that the United States could get dragged into has little importance to U.S. security -- the disputes nations have over small islands (some really rocks rising out of the sea) in East Asia. Although any war over these islands would rank right up there with the absurd Falkland Islands war of 1982 between Britain and Argentina over remote, windswept sheep pastures near Antarctica, any conflict in East Asia always has the potential to escalate to nuclear war. And unlike the Falklands war, the United States might be right in the atomic crosshairs.¶ Of the two antagonists in the Falklands War, only Britain had nuclear weapons, thus limiting the possibility of nuclear escalation. And although it is true that of the more numerous East Asian contenders, only China has such weapons, the United States has formal alliance commitments to defend three of the countries in competition with China over the islands -- the Philippines, Japan, and South Korea -- and an informal alliance with Taiwan. Unbeknownst to most Americans, those outdated alliances left over from the Cold War implicitly still commit the United States to sacrifice Seattle or Los Angeles to save Manila, Tokyo, Seoul, or Taipei, should one of these countries get into a shooting war with China. Though a questionable tradeoff even during the Cold War, it is even less so today. The "security" for America in this implicit pledge has always rested on avoiding a faraway war in the first place using a tenuous nuclear deterrent against China or any other potentially aggressive power. The deterrent is tenuous, because friends and foes alike might wonder what rational set of U.S. leaders would make this ridiculously bad tradeoff if all else failed. ¶ Of course these East Asian nations are not quarreling because the islands or stone outcroppings are intrinsically valuable, but because primarily they, depending on the particular dispute involved, are in waters that have natural riches -- fisheries or oil or gas resources. ¶ In one dispute, the Senkaku or Diaoyu dispute -- depending on whether the Japanese or Chinese are describing it, respectively -- the United States just interjected itself, in response to the Chinese expansion of its air defense zone over the islands, by flying B-52 bombers through this air space to support its ally Japan. The United States is now taking the nonsensical position that it is neutral in the island kerfuffle, even though it took this bold action and pledged to defend Japan if a war ensues. Predictably and understandably, China believes that the United States has chosen sides in the quarrel.¶ Then to match China, South Korea extended its own air defense zone -- so that it now overlaps that of both China and Japan. But that said, as a legacy of World War II, South Korea seems to get along better with China, its largest trading partner, than it does with Japan. Also, South Korea and Japan have a dispute over the Dokdo or Takeshima Islands, depending on who is describing them, in the Sea of Japan. Because the United States has a formal defense alliance with each of those nations and stations forces in both, which would it support if Japan and South Korea went to war over the dispute? It's anyone's guess.

#### Strong Chinese soft power solves failed states

**Hsiung ’13** [James C. Hsiung, Ph.D. from Columbia University, is Professor of Politics at New York University, where he teaches comparative politics of China and Japan, international relations of Asia, international law, and international governance, “Soft Power, Geoeconomics, & Empathy In China’s New Diplomacy,” <http://aacs.ccny.cuny.edu/2013conference/Papers/Hsiung%20James%20Chieh%202.pdf>]

Most U.S. observers, including the media, usually gloat over the strategic rivalry between the ¶ two countries in the developing world. But, Mitchell maintains that U.S. and Chinese interests ¶ “overlap substantially.” Both countries share a realization that poverty and poor governance ¶ breed instability, crime, and terrorism in the developing countries. Both have an interest in ¶ “empowering developing nations to meet their domestic challenges and in forestalling the ¶ emergence of failed or failing states,” which could be the breeding grounds for terrorism, ¶ infectious diseases, and international crime.57 In full agreement with Mitchell’s assessment, I ¶ would add two comments of my own. One, I know for a fact that China, as Mitchell suggests, ¶ does show a keen awareness of the danger posed by failed states to international peace and security, and, moreover, to human rights. A case in point is in regard to Somalia, where for two ¶ decades there has been no central government. Under conditions of this domestic anarchy, ¶ warlords have taken over; and the ceaseless in-fights have created chaos, misery, and ¶ massacres of helpless civilians. In U.N. discussions of the right of the world community to ¶ intervene in failed states like Somalia, China is known generally in support of the right of ¶ humanitarian intervention, known as the R2P (for “right to protect”), but at the same time it ¶ has urged that the state’s capability of protecting the people (and human rights) be ¶ strengthened, by installing, in the Somalia case, an effective central government.58 Conceivably, ¶ China could have done more to help the developing nations, especially in failing states, if its ¶ attention were not distracted by what it perceives as a soft-power denial problem that it must ¶ contend with.

#### Failed states cause extinction- triggers every impact

**Brown ‘09** [Lester R, President of the Earth Policy Institute, MA in agricultural economics from the University of Maryland, founder of the Worldwatch Institute, former international analyst at the USDA Foreign Agricultural Service, was appointed Administrator of the department's International Agricultural Development Service, “Could Food Shortages Bring Down Civilization?” May, http://biomass.age.uiuc.edu/images/c/cd/FoodShortageBrown.pdf]

The Problem of Failed States¶ Even a cursory look at the vital signs of our current world order lends unwelcome support to my conclusion. And those of us in the environmental field are well into our third de­­cade of charting trends of environmental decline without seeing any significant effort to reverse a single one.¶ In six of the past nine years world grain production has fallen short of consumption, forcing a steady drawdown in stocks. When the 2008 harvest began, world carryover stocks of grain (the amount in the bin when the new harvest begins) were at 62 days of consumption, a near record low. In response, world grain prices in the spring and summer of last year climbed to the highest level ever.¶ As demand for food rises faster than supplies are growing, the resulting food-price inflation puts severe stress on the governments of countries already teetering on the edge of chaos. Unable to buy grain or grow their own, hungry people take to the streets. Indeed, even before the steep climb in grain prices in 2008, the number of failing states was expanding [Purchase the digital edition to see related sidebar]. Many of their problems stem from a failure to slow the growth of their populations. But if the food situation continues to deteriorate, entire nations will break down at an ever increasing rate. We have entered a new era in geopolitics. In the 20th century the main threat to international security was superpower conflict; today it is failing states. It is not the concentration of power but its absence that puts us at risk.¶ States fail when national governments can no longer provide personal security, food security and basic social services such as education and health care. They often lose control of part or all of their territory. When governments lose their monopoly on power, law and order begin to disintegrate. After a point, countries can become so dangerous that food relief workers are no longer safe and their programs are halted; in Somalia and Afghanistan, deteriorating conditions have already put such programs in jeopardy.¶ Failing states are of international concern because they are a source of terrorists, drugs, weapons and refugees, threatening political stability everywhere. Somalia, number one on the 2008 list of failing states, has become a base for piracy. Iraq, number five, is a hotbed for terrorist training. Afghanistan, number seven, is the world's leading supplier of heroin. Following the massive genocide of 1994 in Rwanda, refugees from that troubled state, thousands of armed soldiers among them, helped to destabilize neighboring Democratic Republic of the Congo (number six).¶ Our global civilization depends on a functioning network of politically healthy nation-states to control the spread of infectious disease, to manage the international monetary system, to control international terrorism and to reach scores of other common goals. If the system for controlling infectious diseases - such as polio, SARS or avian flu - breaks down, humanity will be in trouble. Once states fail, no one assumes responsibility for their debt to outside lenders. If enough states disintegrate, their fall will threaten the stability of global civilization itself.¶ A New Kind of Food Shortage¶ The surge in world grain prices in 2007 and 2008 - and the threat they pose to food security - has a different, more troubling quality than the increases of the past. During the second half of the 20th century, grain prices rose dramatically several times. In 1972, for instance, the Soviets, recognizing their poor harvest early, quietly cornered the world wheat market. As a result, wheat prices elsewhere more than doubled, pulling rice and corn prices up with them. But this and other price shocks were event-driven - drought in the Soviet Union, a monsoon failure in India, crop-shrinking heat in the U.S. Corn Belt. And the rises were short-lived: prices typically returned to normal with the next harvest.¶ In contrast, the recent surge in world grain prices is trend-driven, making it unlikely to reverse without a reversal in the trends themselves. On the demand side, those trends include the ongoing addition of more than 70 million people a year; a growing number of people wanting to move up the food chain to consume highly grain-intensive livestock products [see "The Greenhouse Hamburger," by Nathan Fiala; Scientific American, February 2009]; and the massive diversion of U.S. grain to ethanol-fuel distilleries.

## A2 Terror

### Drones huge alt cause to this adv – it’s all about title 10-50 confusion which is dumb

#### Trades off w other things

**Keller 13**, Bill, Op-Ed columnist for The New York Times, “Cowboys and Eggheads,” April 14th, http://www.nytimes.com/2013/04/15/opinion/keller-cowboys-and-eggheads.html?partner=rssnyt&emc=rss&utm\_source=feedly&\_r=1&&pagewanted=all

But Mazzetti’s important thought is not that war is a dirty business; it is that by turning our premier intelligence agency into a killing machine, we may have paid a price in national vigilance. Alone among the many U.S. intelligence outfits (the number has grown to 16 or 17 depending on how you count) the C.I.A. has the job of supplying the president with the deep strategic intelligence that anticipates dangers and shapes American policy. The agency has always housed both covert operations and the more traditional gathering and analysis of information — “cowboys and eggheads,” as one agency-watcher put it. The worry is that the eggheads have become so caught up in serving the cowboys tactical intelligence about high-profile assassination targets that **they have less bandwidth to devote to longer-term threats.** “The C.I.A.’s raison d’être is preventing big strategic surprises,” said Amy Zegart, an intelligence specialist at the Hoover Institution. “**They do not exist to kill third-rate terrorists** running around failed states.” Gregory Treverton, a RAND Corporation expert who is a former vice chairman of the National Intelligence Council, said that as hundreds of analysts flood into the subject of the moment, they are assigned to narrower and narrower slices of the problem. There is less standing back and figuring out how it adds up, what might happen next. “All the creativity is going to, can we identify, locate and take out the bad guys,” Treverton said. But unless somebody is asking where the bad guys came from and what drives them, we are fighting **the symptom rather than the disease**. We have learned, to our peril, how much it matters when intelligence lets us down. The C.I.A., having been hollowed out in the ’90s after the end of the cold war, failed to see the signs of what would be 9/11. Then the C.I.A. got the ostensible Iraqi weapons threat terribly wrong, drowning out more skeptical voices in the intelligence units of the State Department and Energy Department, and paving the way to a colossal blunder of a war. At least twice before in recent memory the C.I.A. has been consumed by secret warfare that had unhappy endings. In the 1980s the agency joined forces with mujahedeen fighters in Afghanistan against Soviet occupiers; the Soviets were routed, the Americans moved on, and the mujahedeen turned their jihad on us. At the same time, the agency was secretly, illegally backing the Nicaraguan contra rebels; that venture ended in defeat, indictments and embarrassment. Jeffrey Smith, who has worked on intelligence issues as a Senate staffer, a State Department lawyer and the general counsel of the C.I.A., points out that it’s not just the spy agencies that have their attention monopolized by these ventures, but their clients in the Pentagon, the State Department and the White House. “The problem with these big covert action programs,” a senior official once told Smith, “is that they become the policy of the United States.” “When you start these programs, everybody is enthusiastic about them,” Smith said. “But to run them right takes a huge focus of senior leadership.” And other things get neglected. By most accounts, including the assessment of intelligence insiders, academics and journalists who cover the subject, the conglomerate of intelligence agencies is in much better shape than it was before 9/11. That’s a low bar, but credit where credit is due. The agencies are better staffed and better at sharing information. It’s hard for an outsider to tell until something goes wrong, but high-priority topics like Iran’s nuclear program and China’s development of cyberweapons seem to be getting the emphasis they deserve. Gary Samore, who worked in the Clinton Administration and then returned to oversee nuclear weapons-related intelligence for President Obama until January, said he felt well served by the agency’s collection and analysis. “Of course the C.I.A. missed all the revolutions in the Arab world,” he said. “But we always miss the revolutions. We missed the collapse of the Soviet Union, we missed the revolution in Iran, we missed the overthrow in the Philippines. ... It’s a normal human condition. We all expect continuity — until there’s change.” He’s right, but when change does happen you hope the agency will be quick to catch up with unfolding events and provide the president with cleareyed reporting that will help position the U.S. to its best advantage. That requires the difficult, patient cultivation of sources on the ground, including the opposition. In the Muslim world, Mazzetti and some experts suspect, the C.I.A. had not acquired a wealth of sources in the opposition, and that may be partly because in places like Egypt and Libya the agency was focused on cozying up to the official spy agencies, hoping to tap into their information about Qaeda operatives. The concern that essential intelligence has suffered from the paramilitary preoccupation is shared by some of the president’s own advisers. According to a Washington Post report last month, the President’s Intelligence Advisory Board warned in a secret report last year that spy agencies were paying insufficient attention to China and the Middle East and other potential trouble spots and should shift emphasis back toward traditional intelligence work. The panel included Chuck Hagel, who has since become secretary of defense. “Who knows what you’re missing?” said Lee Hamilton, former chairman of the House Intelligence Committee and another member of the advisory board (he emphasized he was speaking only for himself). Hamilton supports the president’s power to authorize targeted killing, but he worries that “the tail is wagging the dog.” He points out that traditional intelligence analysis has become more urgent because in our digitized world the profusion of data is overwhelming.

### A2 terror risk

#### No risk of terrorism

Mearsheimer 1/2 (John J. Mearsheimer, Does he need quals?, “America Unhinged”, <http://nationalinterest.org/article/america-unhinged-9639>, January-February 2014)

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled. What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency. Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

### A2 bioterror

#### The worst case bio-scenario happened – no extinction

**Dove 12** [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so **this** release over the world’s largest city really **represented a worst-case scenario**.¶ **Nobody got sick** or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

# Block

## T

#### Their 1AC ev literally says the they allow the executive to act however they want to

Chen 12 – this is their author (Julia – JD Candidate @ Boston College (2013) specializing in National Security, MEM in Engineering Management from Old Dominion, BA – Rice University, “NOTE: RESTORING CONSTITUTIONAL BALANCE: ACCOMMODATING THE EVOLUTION OF WAR” November, 2012, 53 B.C. L. Rev 1767)

[\*1802] The scope of conflicts that fall within the War Powers Consultation proposal should also be broadened. n350 The proposed legislation currently applies to "any conflict expressly authorized by Congress, or . . . combat operations lasting more than a week or expected by the President to last more than a week." n351 On the one hand, this proposal would encompass the 2011 action in Libya. n352 On the other hand, it would not encompass short-duration, high-impact strikes, such as the cyber-attack launched against Estonia in 2007. n353 Although an action may be of short duration, it may have long-term effects, and it may have sufficient force to profoundly affect the United States in the form of money, personnel, or foreign relations. n354 Thus, language should be added to the proposed legislation to make it applicable to all offensive strikes. n355 This expansion would add scenarios that are likely to instigate reprisal against America. n356 Therefore, this modification would force the President to explain to Congress why a fight is worth starting and why it is in the national interest. n357 Furthermore, this change would still allow the executive to act unilaterally to defend the country against attacks, and would ensure the balance between the political branches intended by the Framers. n358

#### Contextual definitions bad – intent to define outweighs

Eric Kupferbreg 87, University of Kentucky, Senior Assistant Dean, Academic & Faculty Affairs at Northeastern University, College of Professional Studies Associate Director, Trust Initiative at Harvard School of Public Health 1987 “Limits - The Essence of Topicality” http://groups.wfu.edu/debate/MiscSites/DRGArticles/Kupferberg1987LatAmer.htm

Often, field contextual definitions are too broad or too narrow for debate purposes. Definitions derived from the agricultural sector necessarily incorporated financial and bureaucratic factors which are less relevant in considering a 'should' proposition. Often subject experts' definitions reflected administrative or political motives to expand or limit the relevant jurisdiction of certain actors. Moreover, field context is an insufficient criteria for choosing between competing definitions. A particularly broad field might have several subsets that invite restrictive and even exclusive definitions. (e.g., What is considered 'long-term' for the swine farmer might be significantly different than for the grain farmer.) Why would debaters accept definitions that are inappropriate for debate? If we admit that debate is a unique context, then additional considerations enter into our definitional analysis.

#### Authority is the exercise of power over others

OED 13 (http://www.oed.com/viewdictionaryentry/Entry/13349)

authority, n.

I. Power to enforce obedience.

a. Power or right to enforce obedience; moral or legal supremacy; the right to command, or give an ultimate decision.

b. in authority: in a position of power; in possession of power over others.

Their aff is about commander in chief power

Dycus 10 (Stephen – Professor @ Vermont Law School, “Cybersecurity Symposium: National Leadership, Individual Responsibility: Congress's Role in Cyber Warfare” 2010, 4 J. Nat'l Security L. & Pol'y 155)

I. Congress's Role in Deciding When and How To Go to War

There is broad agreement that congressional authorization is needed to start a war. n9 On the other hand, the President may act without Congress's approval to repel an attack on the United States. n10 Between these two extremes, the scope of the President's unilateral authority to use military [\*157] force is less well understood. n11 Once hostilities are under way, there is a consensus that the President has the tactical powers of a Commander in Chief, although it may not always be clear which of the President's actions are tactical and which are strategic. n12

Before an attack can be launched, of course, Congress must have supplied the President with personnel and weapons. n13 Moreover, Congress may regulate the President's actions as Commander in Chief, except when the nation comes under sudden attack or the President exercises her tactical powers (and perhaps even then). In the Supreme Court's 1800 decision in Bas v. Tingy, Justice Paterson, one of the Framers, echoed the other Justices in declaring that "as far as congress authorized and tolerated the war on our part, so far may we proceed in hostile operations." n14 Four years later, in Little v. Barreme, the Court reiterated that the President must not exceed limits set forth in Congress's authorization of hostilities. n15 Since then, no court has ruled otherwise. n16

In the intervening two centuries, Congress has adopted a number of measures to control the initiation or conduct of warfare. At the end of the Vietnam War, for example, Congress passed the War Powers Resolution (WPR), n17 which requires the President to report to Congress within 48 hours [\*158] the introduction of U.S. armed forces into hostilities or imminent hostilities, and to withdraw those forces within 60 days if Congress does not expressly approve of their continued deployment. n18 Lambasted by some as an unconstitutional encroachment on presidential powers, the WPR has been followed (or at least lip service has been paid to it) by each President since the Nixon administration, n19 and Congress has repeatedly referred to the WPR approvingly in subsequent legislation. n20

If Congress now fails to enact guidelines for cyber warfare, it might be perceived as inviting "measures on independent presidential responsibility." n21 Chief Justice Marshall suggested in Little v. Barreme that if Congress had remained silent, the President might have been free to conduct the Quasi-War with France as he saw fit. n22 But the national interest in electronic warfare, just as in that early maritime conflict, is so great that the planning and conduct of such a war should not be left entirely to the Executive. And because a cyber war might be fought under circumstances that make it impossible for Congress to play a meaningful contemporaneous role, Congress ought to get out in front of events now in order to be able to participate in the formulation of national policy.

#### Commander in Chief powers like are inherent to the prez and war powers are not --- means this is a voting issue for limits and ground

Robert Reinstein 09, Professor of Law, Temple University Beasley School of Law, “The Limits of Executive Power,” 59 Am. U.L. Rev. 259, December 2009

Six other prerogatives were delegated to the President, but in substantially limited ways. The Commander-in-Chief power was limited by vesting the war powers and substantial control over the military in Congress. The treaty and appointments powers (including the appointment of ambassadors and other public ministers) were made subject to the prior approval of the Senate, while the veto power was subject to congressional override. The pardoning power could be applied only to a relatively small percentage of criminal cases. Only the power to receive foreign ambassadors and ministers was left intact in the Executive, and no presidential power is greater than its royal counterpart.

#### Their ev only defines "restrictions," not "restrictions on authority" - that kills predictability

J.A.D. Haneman 59, justice of the Superior Court of New Jersey, Appellate Division. “Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.¶ HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

#### And, substantial requires an objective, absolute measurement--- there's no way to quantify the impact oversight has on War Powers which means that their interpretation has no coherent way to account for an entire word in the topic

Words & Phrases 64, 40 W&P 759

The words "outward, open, actual, risible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not bidden; exposed to view; free from concealment dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 111. App. 308, 31R

#### Increase means from a baseline – that’s an independent voter because you can’t make nothing from something

Rogers 5 Judge, STATE OF NEW YORK, ET AL., PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT, NSR MANUFACTURERS ROUNDTABLE, ET AL., INTERVENORS, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, lexis

 [\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See [Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=104&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b541%20U.S.%20246%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=48f016ea3eabfdb898b67b348b11662c); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

## Terror

#### Terrorists strategy has shifted- new attacks will be small scale and local

**Schofield ’12** (McClatchy Washington Bureau Print This Article Posted on Thu, Apr. 26, 2012 After Osama bin Laden, al Qaida still a many-headed threat By Matthew Schofield | McClatchy Newspapers last updated: April 29, 2012 08:55:55 AM WASHINGTON -- ]

“What we’re facing today is a much, much larger global threat,” said Seth Jones, an expert at the RAND Corp. who’s advised the Pentagon on Afghanistan and Pakistan. “It’s a more dispersed threat. **The threat is decentralizing** to a broad network of groups. Al Qaida inspires, but doesn’t control, and they work with locals.” The meaning of that threat: **Massive attacks such as those on 9/11 are unlikely to be repeated.** But **expect smaller-scale attacks — the “strategy of a thousand cuts,”** it was called in AQAP’s slick online propaganda magazine Inspire. A deadly example came in 2009 with the rampage at Fort Hood, Texas, where Army psychiatrist Maj. Nidal Malik Hasan, allegedly radicalized online by AQAP, is accused of shooting dead 13 soldiers. His trial is scheduled to begin in August. **Experts note that these groups have largely localized agendas.** Generally, they’re looking to impose Islamic Sharia law and, if not overthrow a local government, carve out a space in which to operate in their home country.

## Cyber

#### overwhelming consensus of qualified authors goes neg that cyber isn’t a threat

- No motivation---can’t be used for coercive leverage

- Defenses solve---benefits of offense are overstated

- Too difficult to execute/mistakes in code are inevitable

- AT: Infrastructure attacks

- Military networks are air-gapped/difficult to access

- Overwhelming consensus goes neg

Colin S. Gray 13, Prof. of International Politics and Strategic Studies @ the University of Reading and External Researcher @ the Strategic Studies Institute @ the U.S. Army War College, April, “Making Strategic Sense of Cyber Power: Why the Sky Is Not Falling,” U.S. Army War College Press, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1147.pdf>

CONCLUSIONS AND RECOMMENDATIONS: THE SKY IS NOT FALLING¶ This analysis has sought to explore, identify, and explain the strategic meaning of cyber power. The organizing and thematic question that has shaped and driven the inquiry has been “So what?” Today we all do cyber, but this behavior usually has not been much informed by an understanding that reaches beyond the tactical and technical. I have endeavored to analyze in strategic terms what is on offer from the largely technical and tactical literature on cyber. What can or might be done and how to go about doing it are vitally important bodies of knowledge. But at least as important is understanding what cyber, as a fifth domain of warfare, brings to national security when it is considered strategically. Military history is stocked abundantly with examples of tactical behavior un - guided by any credible semblance of strategy. This inquiry has not been a campaign to reveal what cy ber can and might do; a large literature already exists that claims fairly convincingly to explain “how to . . .” But what does cyber power mean, and how does it fit strategically, if it does? These Conclusions and Rec ommendations offer some understanding of this fifth geography of war in terms that make sense to this strategist, at least. ¶ 1. Cyber can only be an enabler of physical effort. Stand-alone (popularly misnamed as “strategic”) cyber action is inherently grossly limited by its immateriality. The physicality of conflict with cyber’s human participants and mechanical artifacts has not been a passing phase in our species’ strategic history. Cyber action, quite independent of action on land, at sea, in the air, and in orbital space, certainly is possible. But the strategic logic of such behavior, keyed to anticipated success in tactical achievement, is not promising. To date, “What if . . .” speculation about strategic cyber attack usually is either contextually too light, or, more often, contextually unpersuasive. 49 However, this is not a great strategic truth, though it is a judgment advanced with considerable confidence. Although societies could, of course, be hurt by cyber action, it is important not to lose touch with the fact, in Libicki’s apposite words, that “[i]n the absence of physical combat, cyber war cannot lead to the occupation of territory. It is almost inconceivable that a sufficiently vigorous cyber war can overthrow the adversary’s government and replace it with a more pliable one.” 50 In the same way that the concepts of sea war, air war, and space war are fundamentally unsound, so also the idea of cyber war is unpersuasive. ¶ It is not impossible, but then, neither is war conducted only at sea, or in the air, or in space. On the one hand, cyber war may seem more probable than like environmentally independent action at sea or in the air. After all, cyber warfare would be very unlikely to harm human beings directly, let alone damage physically the machines on which they depend. These near-facts (cyber attack might cause socially critical machines to behave in a rogue manner with damaging physical consequences) might seem to ren - der cyber a safer zone of belligerent engagement than would physically violent action in other domains. But most likely there would be serious uncertainties pertaining to the consequences of cyber action, which must include the possibility of escalation into other domains of conflict. Despite popular assertions to the contrary, cyber is not likely to prove a precision weapon anytime soon. 51 In addition, assuming that the political and strategic contexts for cyber war were as serious as surely they would need to be to trigger events warranting plausible labeling as cyber war, the distinctly limited harm likely to follow from cyber assault would hardly appeal as prospectively effective coercive moves. On balance, it is most probable that cyber’s strategic future in war will be as a contribut - ing enabler of effectiveness of physical efforts in the other four geographies of conflict. Speculation about cyber war, defined strictly as hostile action by net - worked computers against networked computers, is hugely unconvincing.¶ 2. Cyber defense is difficult, but should be sufficiently effective. The structural advantages of the offense in cyber conflict are as obvious as they are easy to overstate. Penetration and exploitation, or even attack, would need to be by surprise. It can be swift almost beyond the imagination of those encultured by the traditional demands of physical combat. Cyber attack may be so stealthy that it escapes notice for a long while, or it might wreak digital havoc by com - plete surprise. And need one emphasize, that at least for a while, hostile cyber action is likely to be hard (though not quite impossible) to attribute with a cy - berized equivalent to a “smoking gun.” Once one is in the realm of the catastrophic “What if . . . ,” the world is indeed a frightening place. On a personal note, this defense analyst was for some years exposed to highly speculative briefings that hypothesized how unques - tionably cunning plans for nuclear attack could so promptly disable the United States as a functioning state that our nuclear retaliation would likely be still - born. I should hardly need to add that the briefers of these Scary Scenarios were obliged to make a series of Heroic Assumptions. ¶ The literature of cyber scare is more than mildly reminiscent of the nuclear attack stories with which I was assailed in the 1970s and 1980s. As one may observe regarding what Winston Churchill wrote of the disaster that was the Gallipoli campaign of 1915, “[t]he terrible ‘Ifs’ accumulate.” 52 Of course, there are dangers in the cyber domain. Not only are there cyber-competent competitors and enemies abroad; there are also Americans who make mistakes in cyber operation. Furthermore, there are the manufacturers and constructors of the physical artifacts behind (or in, depending upon the preferred definition) cyber - space who assuredly err in this and that detail. The more sophisticated—usually meaning complex—the code for cyber, the more certain must it be that mistakes both lurk in the program and will be made in digital communication.¶ What I have just outlined minimally is not a reluc - tant admission of the fallibility of cyber, but rather a statement of what is obvious and should be anticipat - ed about people and material in a domain of war. All human activities are more or less harassed by friction and carry with them some risk of failure, great or small. A strategist who has read Clausewitz, especially Book One of On War , 53 will know this. Alternatively, anyone who skims my summary version of the general theory of strategy will note that Dictum 14 states explicitly that “Strategy is more difficult to devise and execute than are policy, operations, and tactics: friction of all kinds comprise phenomena inseparable from the mak - ing and execution of strategies.” 54 Because of its often widely distributed character, the physical infrastruc - ture of an enemy’s cyber power is typically, though not invariably, an impracticable target set for physical assault. Happily, this probable fact should have only annoying consequences. The discretionary nature and therefore the variable possible characters feasible for friendly cyberspace(s), mean that the more danger - ous potential vulnerabilities that in theory could be the condition of our cyber-dependency ought to be avoidable at best, or bearable and survivable at worst. Libicki offers forthright advice on this aspect of the subject that deserves to be taken at face value: ¶ [T]here is no inherent reason that improving informa - tion technologies should lead to a rise in the amount of critical information in existence (for example, the names of every secret agent). Really critical information should never see a computer; if it sees a computer, it should not be one that is networked; and if the computer is networked, it should be air-gapped.¶ Cyber defense admittedly is difficult to do, but so is cyber offense. To quote Libicki yet again, “[i]n this medium [cyberspace] the best defense is not necessarily a good offense; it is usually a good defense.” 56 Unlike the geostrategic context for nuclear-framed competition in U.S.–Soviet/Russian rivalry, the geographical domain of cyberspace definitely is defensible. Even when the enemy is both clever and lucky, it will be our own design and operating fault if he is able to do more than disrupt and irritate us temporarily.¶ When cyber is contextually regarded properly— which means first, in particular, when it is viewed as but the latest military domain for defense planning—it should be plain to see that cyber performance needs to be good enough rather than perfect. 57 Our Landpower, sea power, air power, and prospectively our space systems also will have to be capable of accepting combat damage and loss, then recovering and carrying on. There is no fundamental reason that less should be demanded of our cyber power. Second, given that cyber is not of a nature or potential character at all likely to parallel nuclear dangers in the menace it could con - tain, we should anticipate international cyber rivalry to follow the competitive dynamic path already fol - lowed in the other domains in the past. Because the digital age is so young, the pace of technical change and tactical invention can be startling. However, the mechanization RMA of the 1920s and 1930s recorded reaction to the new science and technology of the time that is reminiscent of the cyber alarmism that has flour - ished of recent years. 58 We can be confident that cyber defense should be able to function well enough, given the strength of political, military, and commercial motivation for it to do so. The technical context here is a medium that is a constructed one, which provides air-gapping options for choice regarding the extent of networking. Naturally, a price is paid in convenience for some closing off of possible cyberspace(s), but all important defense decisions involve choice, so what is novel about that? There is nothing new about accepting some limitations on utility as a price worth paying for security.¶ 3. Intelligence is critically important, but informa - tion should not be overvalued. The strategic history of cyber over the past decade confirms what we could know already from the science and technology of this new domain for conflict. Specifically, cyber power is not technically forgiving of user error. Cyber warriors seeking criminal or military benefit require precise information if their intended exploits are to succeed. Lucky guesses should not stumble upon passwords, while efforts to disrupt electronic Supervisory Con - trol and Data Acquisition (SCADA) systems ought to be unable to achieve widespread harmful effects. But obviously there are practical limits to the air-gap op - tion, given that control (and command) systems need to be networks for communication. However, Internet connection needs to be treated as a potential source of serious danger.¶ It is one thing to be able to be an electronic nuisance, to annoy, disrupt, and perhaps delay. But it is quite another to be capable of inflicting real persisting harm on the fighting power of an enemy. Critically important military computer networks are, of course, accessible neither to the inspired amateur outsider, nor to the malignant political enemy. Easy passing reference to a hypothetical “cyber Pearl Harbor” reflects both poor history and ignorance of contemporary military common sense. Critical potential military (and other) targets for cyber attack are extremely hard to access and influence (I believe and certainly hope), and the technical knowledge, skills, and effort required to do serious harm to national security is forbiddingly high. This is not to claim, foolishly, that cyber means absolutely could not secure near-catastrophic results. However, it is to say that such a scenario is extremely improbable. Cyber defense is advancing all the time, as is cyber offense, of course. But so discretionary in vital detail can one be in the making of cyberspace, that confidence—real confidence—in cyber attack could not plausibly be high. It should be noted that I am confining this particular discussion to what rather idly tends to be called cyber war. In political and strategic practice, it is unlikely that war would or, more importantly, ever could be restricted to the EMS. Somewhat rhetorically, one should pose the question: Is it likely (almost anything, strictly, is possible) that cyber war with the potential to inflict catastrophic damage would be allowed to stand unsupported in and by action in the other four geographical domains of war? I believe not.¶ Because we have told ourselves that ours uniquely is the Information Age, we have become unduly respectful of the potency of this rather slippery catch-all term. As usual, it is helpful to contextualize the al - legedly magical ingredient, information, by locating it properly in strategic history as just one important element contributing to net strategic effectiveness. This mild caveat is supported usefully by recognizing the general contemporary rule that information per se harms nothing and nobody. The electrons in cyber - ized conflict have to be interpreted and acted upon by physical forces (including agency by physical human beings). As one might say, intelligence (alone) sinks no ship; only men and machines can sink ships! That said, there is no doubt that if friendly cyber action can infiltrate and misinform the electronic informa - tion on which advisory weaponry and other machines depend, considerable warfighting advantage could be gained. I do not intend to join Clausewitz in his dis - dain for intelligence, but I will argue that in strategic affairs, intelligence usually is somewhat uncertain. 59 Detailed up-to-date intelligence literally is essential for successful cyber offense, but it can be healthily sobering to appreciate that the strategic rewards of intelligence often are considerably exaggerated. The basic reason is not hard to recognize. Strategic success is a complex endeavor that requires adequate perfor - mances by many necessary contributors at every level of conflict (from the political to the tactical). ¶ When thoroughly reliable intelligence on the en - emy is in short supply, which usually is the case, the strategist finds ways to compensate as best he or she can. The IT-led RMA of the past 2 decades was fueled in part by the prospect of a quality of military effec - tiveness that was believed to flow from “dominant battle space knowledge,” to deploy a familiar con - cept. 60 While there is much to be said in praise of this idea, it is not unreasonable to ask why it has been that our ever-improving battle space knowledge has been compatible with so troubled a course of events in the 2000s in Iraq and Afghanistan. What we might have misunderstood is not the value of knowledge, or of the information from which knowledge is quarried, or even the merit in the IT that passed information and knowledge around. Instead, we may well have failed to grasp and grip understanding of the whole context of war and strategy for which battle space knowledge unquestionably is vital. One must say “vital” rather than strictly essential, because relatively ignorant armies can and have fought and won despite their ig - norance. History requires only that one’s net strategic performance is superior to that of the enemy. One is not required to be deeply well informed about the en - emy. It is historically quite commonplace for armies to fight in a condition of more-than-marginal reciprocal and strategic cultural ignorance. Intelligence is king in electronic warfare, but such warfare is unlikely to be solely, or even close to solely, sovereign in war and its warfare, considered overall as they should be.¶ 4. Why the sky will not fall. More accurately, one should say that the sky will not fall because of hostile action against us in cyberspace unless we are improb - ably careless and foolish. David J. Betz and Tim Ste vens strike the right note when they conclude that “[i]f cyberspace is not quite the hoped-for Garden of Eden, it is also not quite the pestilential swamp of the imagination of the cyber-alarmists.” 61 Our understanding of cyber is high at the technical and tactical level, but re - mains distinctly rudimentary as one ascends through operations to the more rarified altitudes of strategy and policy. Nonetheless, our scientific, technological, and tactical knowledge and understanding clearly indicates that the sky is not falling and is unlikely to fall in the future as a result of hostile cyber action. This analysis has weighed the more technical and tactical literature on cyber and concludes, not simply on balance, that cyber alarmism has little basis save in the imagination of the alarmists. There is military and civil peril in the hostile use of cyber, which is why we must take cyber security seriously, even to the point of buying redundant capabilities for a range of command and control systems. 62 So seriously should we regard cyber danger that it is only prudent to as - sume that we will be the target for hostile cyber action in future conflicts, and that some of that action will promote disruption and uncertainty in the damage it will cause.¶ That granted, this analysis recommends strongly that the U.S. Army, and indeed the whole of the U.S. Government, should strive to comprehend cyber in context. Approached in isolation as a new technol - ogy, it is not unduly hard to be over impressed with its potential both for good and harm. But if we see networked computing as just the latest RMA in an episodic succession of revolutionary changes in the way information is packaged and communicated, the computer-led IT revolution is set where it belongs, in historical context. In modern strategic history, there has been only one truly game-changing basket of tech - nologies, those pertaining to the creation and deliv - ery of nuclear weapons. Everything else has altered the tools with which conflict has been supported and waged, but has not changed the game. The nuclear revolution alone raised still-unanswered questions about the viability of interstate armed conflict. How - ever, it would be accurate to claim that since 1945, methods have been found to pursue fairly traditional political ends in ways that accommodate nonuse of nuclear means, notwithstanding the permanent pres - ence of those means.¶ The light cast by general strategic theory reveals what requires revealing strategically about networked computers. Once one sheds some of the sheer wonder at the seeming miracle of cyber’s ubiquity, instanta - neity, and (near) anonymity, one realizes that cyber is just another operational domain, though certainly one very different from the others in its nonphysi - cality in direct agency. Having placed cyber where it belongs, as a domain of war, next it is essential to recognize that its nonphysicality compels that cyber should be treated as an enabler of joint action, rather than as an agent of military action capable of behav - ing independently for useful coercive strategic effect. There are stand-alone possibilities for cyber action, but they are not convincing as attractive options either for or in opposition to a great power, let alone a superpower. No matter how intriguing the scenario design for cyber war strictly or for cyber warfare, the logic of grand and military strategy and a common sense fueled by understanding of the course of strategic history, require one so to contextualize cyber war that its independence is seen as too close to absurd to merit much concern.

## CP

### Signaling

#### 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 informa**

**l**. 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. 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.

### 1AC Wall

#### And the 1AC Wall card says that we just need to notify the intelligence committees because we’re not doing that in the squo

Wall 11 (Andru, Senior Associate with Alston & Bird LLP; former senior legal advisor for U.S. Special Operations Command Central from 2007 to 2009, “Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action” 2011, Harvard National Security Journal, Vol. 3, p. 85 – 142)

8 . Congressional Oversight Confusion over Title 10 and Title 50 authorities has more to do with congressional oversight and its attendant internecine power struggles than with operational or statutory authorities. Operators, be they special operations forces (SOF) operating under Title 10, CIA agents operating under Title 50, or NSA personnel operating under both Title 10 and Title 50, know from whence their authorities are derived. The operators recognize dual lines of authority and are primarily concerned with coordination and deconfliction. To outsiders looking in. such as a Senator in Washington. DC, the activities performed by SOF and CIA operatives, especially during periods preceding possible or anticipated conflict, may appear virtually indistinguishable. Yet similarity in no way vitiates their dual lines of authority, nor does it create great challenges for operators. A former general counsel of the CIA. Jeffrey H. Smith, spoke of what he perceived as a "dichotomy between Title 10 and Title 50" that gives "executive branch lawyers and members of Congress . . . headaches."54 These headaches arise, Smith stated, during debates over military activities called "preparation of the battlefield." which are activities typically carried out by military personnel "in close collaboration with the U.S. intelligence community."55 We will examine these activities more closely in Parts III and IV. Smith, however, summarizes the issue as such: if the activity is defined as a military activity "Title 10") there is no requirement to notify Congress, while intelligence community activities ("Title 50"; require presidential findings and notice to Congress.56 The natural inclination for executive branch lawyers, according to Smith, is to prefer the Title 10 paradigm to obviate congressional notification requirements.57 This perception—that the Executive Branch is deliberately Irving to avoid congressional oversight—naturally riles the intelligence committees. In its report accompanying the Intelligence Authorization Act for Fiscal Year 2010, the House Permanent Select Committee on Intelligence noted "with concern the blurred distinction between the intelligence-gathering activities carried out by the Central Intelligence Agency (CIA) and the clandestine operations of the Department of Defense."58 The Committee accused DoD of labeling its clandestine activities as operational preparation of the environment OPE in order to justify them under Title 10 and avoid oversight by the intelligence committees "and the congressional defense committees cannot be expected to exercise oversight ovitside of their jurisdiction."59 The Intelligence Committee apparently perceives an oversight lacuna, yet no such lacuna exists. Rather, all activities condvicted under Title 10 authorities are subject to oversight by the armed services committees and. for example, commanders of special operations forces regularly brief the armed services committees on their clandestine activities. As illustrated by Figure 1, the congressional intelligence committees exercise oversight of intelligence activities, while the armed services committees exercise oversight jurisdiction over military operations.60 The congressional oversight is not coterminous with statutory authorities, as Title 10 includes authority for the Secretary of Defense to engage in both intelligence activities and military operations. Congressional oversight overlaps when non-DoD elements of the intelligence community provide support to military operations and in the unlikely or at least rare instance where the President directs elements of DoD to conduct covert action.61 Oversight would also overlap with respect to intelligence activities carried out by an element of the intelligence community in support of a military operation authorized under Title 10. Congressional oversight of the military is straightforward: both the Senate and House Armed Services Committees exercise jurisdiction over all aspects of DoD and matters relating to “the common defense.”62 Defense authorization bills originate in the armed services committees, where they must be approved before consideration by the full Senate or House. Problems arose in the wake of 9/11 as DoD expanded its intelligence capabilities in order to support ongoing military operations, and the intelligence committees correspondingly sought to expand their jurisdiction in an attempt to bring all military intelligence collection efforts within their purview, which created clashes with the armed services committees and the Executive Branch and generated debates over appropriate congressional oversight. Congressional oversight of intelligence activities is considerably more complex. The National Security Act of 1947, which created the CIA, did not include statutory congressional oversight provisions. For nearly thirty years, Congress exercised little oversight of intelligence activities. This changed dramatically, however, following revelations in 1974 by then New York Times reporter Seymour Hersh that U.S. intelligence agencies engaged in domestic spying.63 The Church Committee’s subsequent investigation “did nothing less than revolutionize America’s attitudes toward intelligence supervision.”64 The Senate established its Select Committee on Intelligence (SSCI) in 1976 and the House followed suit a year later with its Permanent Select Committee on Intelligence (HPSCI). The era of benign neglect was over, replaced instead by dynamic if often dysfunctional congressional oversight. In 1980 Congress mandated for the first time that the Director of Central Intelligence and the heads of all other U.S. departments and agencies “involved in intelligence activities” keep the intelligence committees “fully and currently informed of all intelligence activities.”65 This provision was repealed in 1991 and responsibility for informing the congressional intelligence committees of all intelligence activities, including anticipated activities, was placed directly on the President.66 The intelligence committees exercise broad oversight of the intelligence community. They exercise exclusive authorizing powers for the CIA, the Director of National Intelligence, and the National Intelligence Program.67 They share jurisdiction of DoD intelligence components with the Senate and House armed services committees. While the jurisdictions of the Senate and House intelligence committees are nearly identical, HPSCI exercises broader jurisdiction in two significant respects: HPSCI uses a much broader definition of intelligence activities and adds oversight of “sources and methods.”68 SSCI exercises jurisdiction over “intelligence activities,” while HPSCI exercises jurisdiction more broadly over “intelligence and intelligence-related activities . . . including the tactical intelligence and intelligence-related activities of the Department of Defense.”69 The House gives “intelligence and intelligence-related activities” this all-encompassing definition: [The] collection, analysis, production, dissemination, or use of information that relates to a foreign country', or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of svich information.70 Thus, the House of Representatives via a rule change gave HPSCI oversight of "intelligence-related activities" including "tactical intelligence" and other military information collection activities for which congressional notification is not statutorily mandated. This would be understandable if HPSCI controlled authorizations for those military activities, but it does not. All authorizations for these military activities originate in the House Armed Services Committee and House rules do not provide for their review by the intelligence committee. In fact, just the opposite occurs as all intelligence authorization bills passed by the intelligence committees must then clear the armed services committees before being considered by the full House. Intelligence committee oversight is weakened by the bifurcated authorization and appropriations processes. Because most appropriations for intelligence activities are included as a classified section of the annual defense appropriations bill, "the real control over the intelligence purse lies with the defense subcommittees of the House and Senate Appropriations Committees."71 The 9/11 Commission recognized how "dysfunctional" this arrangement is in practice and recommended the establishment of a single joint intelligence committee with authorizing and appropriating authorities.72 Congress, to its detriment, has not adopted this recommendation. Intelligence committee oversight is further weakened by the failure to enact an intelligence authorization bill for five of the past six years. Title 50 prohibits the expenditure or obligation of appropriated funds on intelligence or intelligence-related activities unless "these funds were specifically authorized by Congress for such activities."71 Congress meets this "specifically authorized" provision through the vise of a catch-all provision inserted into the defense appropriations acts.74 Over the past 30 years. Congress enacted an intelligence authorization bill prior to the start of the fiscal year on just two occasions—1983 and 1989. Congress could end the Title 10-Title 50 debate by simply reforming its oversight of military and intelligence activities and align oversight with the statutory authorities. Rather than focus on what the activity in question looks like what is being done). Congress should simply ask who is funding the activity and who is exercising direction and control; oversight should be aligned in the House and Senate and should correspond to funding. direction and control. Congress should adopt the recommendations of the 9/11 Commission—align congressional oversight with statutory avithorities and reform its bifurcated intelligence authorization and appropriations functions—and thereby eliminate most real and perceived Title 10-Title 50 issues. With the crux of the Title 10-Title 50 debate exposed as dysfunctional congressional oversight, this article now turns to explaining why some military and intelligence activities look alike, yet remain distinguishable.

### 1AC Segal

#### Transparency is all we need to solve the risk of escalation, but at the same time it means we don’t have to increase norms

Segal et al 13 (Adam Segal – Project Director of CFR Task Force and Maurice R. Greenberg Senior Fellow for China Studies, and CFR Independent Task Force, “Defending an Open, Global, Secure, and Resilient Internet” Independent Task Force Report No. 70, June 2013, Council on Foreign Relations Press)

Adopt a Greater Degree of Transparency

Although public officials have warned about the threat of a “cyber Pearl Harbor” or “digital 9/11,” the Task Force sees widespread cyber economic, political, and military espionage against defense, government, and privatesector networks as the most immediate threat to economic and national security interests. The capacity to launch a sudden strike that destroys or disrupts a large swath of critical infrastructure is most likely limited to a few nation-states. These actors should be deterred by the expectation that the United States could respond to a cyberattack through a combination of retaliatory cyber and kinetic attacks, as well as diplomatic and other measures.46

The U.S. government is more likely to be able to attribute a devastating attack to a specific state actor, especially if it comes during a geopolitical crisis, but the genesis of attacks at a lower threshold may remain unknown and will continue. These low-intensity attacks can have a long-term corrosive effect on the trust and integrity of the networks that are the foundation of the banking, transport, and communications systems. Furthermore, over time, the capability to conduct more damaging attacks will spread to states that may be harder to deter, as well as to extremists, lone wolves, criminal entities, and other nonstate actors.

It is widely assumed that offense has—and will continue to have in the foreseeable future—the advantage over defense in cyberspace. Improved defense and greater resiliency are necessary but not sufficient. The defense has to secure tens of millions of lines of code and billions of items of data across hundreds of networks and thousands of devices, which are often maintained by private actors and individuals. As a result, offensive capabilities are required to deter attacks, and, if deterrence fails, to impose costs on the attackers.

This offensive dominance, along with the problem of attribution and low barriers to entry, make cyberspace a highly unstable strategic environment. Given the speed of potential strikes, nation-states have strong incentive to strike first, to take out an adversary’s communication, electric, and transportation grids before it strikes. Former secretary of defense Leon Panetta recently said that the United States may also consider preemptive strikes if it detects “an imminent threat of attack that will cause significant physical destruction in the United States or kill American citizens.”47 The concept of imminence in the cyber realm, however, remains legally and doctrinally nebulous.48 This ambiguity makes coordination with allies more difficult since they may have a different legal interpretation of what is permissible. It increases the chances for miscalculation since legal boundaries can be useful for signaling and unclear ones can contribute to miscommunication, in addition to making it more difficult to predict international reactions to moves and countermoves in cyberspace.

After a long period in which U.S. officials hesitated to speak about offensive capabilities, over the last two years there have been a series of leaks to the press and public pronouncements on the development of cyber weapons. Reports in the New York Times and Washington Post have credited the United States and Israel with being behind Stuxnet, the malware designed to slow Iran’s nuclear program as part of a secret operation code-named Olympic Games.49

Arguments in support of Stuxnet or other covert operations are based in part on the alternatives. That is, an attempt to slow Iran’s nuclear program with malware that killed no one is politically and strategically preferable to commando raids, air strikes, or missile strikes that are likely to cause much greater physical damage and a number of deaths. Given the United States’ high degree of vulnerability to cyberattacks, there is concern that an operation like Stuxnet may create blowback or provide cover for an adversary to conduct a similar attack. Iran appears to have accelerated its cyber programs after the attack. There is also a negative impact on the United States’ ability to convince other states of the need for norms of peaceful conduct in cyberspace if they believe Washington has already used cyber weapons. But it is also true that many potential adversaries have been thinking about and developing offensive capabilities long before Stuxnet was ever developed, and the United States was no more vulnerable after Olympic Games was revealed than it was before. The public, however, is unable to fully participate in the debate on the merits of these types of uses of cyber weapons because of a high degree of secrecy. The Task Force calls for a more open public discussion and, where appropriate, the declassification of information.

Despite severe constraints in almost every other part of the defense budget, funding for computer network warfare is growing; the 2014 budget request includes $4.7 billion for cyberspace operations, a 20 percent increase from this year.50 U.S. Cyber Command is reportedly expanding by more than fivefold, from nine hundred to forty-nine hundred personnel, and creating three types of forces: national mission forces, to protect critical infrastructure and defend against nationallevel threats; combat mission forces, assigned to the operational control of individual combatant commanders, to plan and execute attacks; and cyber protection forces, to defend the Defense Department’s network. 51 Within the national mission forces, the Pentagon will reportedly create thirteen offensive teams by 2015 and twenty-seven within the combat mission forces to support the Pacific, Central, and other combatant commands as they plan offensive cyber operations.52

According to press reports, the Pentagon has developed classified rules of engagement for battle in cyberspace, which would guide commanders on when they could leave government networks to conduct offensive and defensive operations. In November 2012, President Obama reportedly signed Presidential Policy Directive 20, which “established principles and processes for the use of cyber operations,” including the offensive use of computer attacks.53 Offensive cyber operations outside a war zone are said to require presidential permission; even self-defense involving cyber operations outside military networks that could be construed as a use of force require presidential authorization. In addition, a legal review purportedly concluded that President Obama has the broad power to order a preemptive strike if the United States detects credible evidence of an imminent major cyberattack.54

This is progress compared with past reticence about offense, but U.S. government officials still publicly frame offensive military operations as defensive.55 The Task Force supports the U.S. government’s right to develop offensive capabilities, but calls for greater transparency about how and when such capabilities might be used. As the Defense Science Board argues, the United States needs to “clearly indicate that offensive cyber capabilities will be utilized (preemptively or in reaction, covertly or overtly), in combination with other instruments of national power, whenever the National Command Authority decides that it is appropriate.”56

These statements should be linked to and reinforced by the United States’ argument that the laws of war apply to cyberspace. State Department officials have said that that international humanitarian law can be extended to this new cyber domain, addressing the legal requirement of necessity in using force, what constitutes an act of force—“cyber activities that proximately result in death, injury, or significant destruction would likely be viewed as a use of force”—as well as the principles of proportionality, neutrality, and distinction.57 But states like China question whether existing international laws apply to cyber and believe that cyberspace requires a new set of laws and treaties.

It is essential for the leading nations to agree on a set of norms for activity and engagement in cyberspace; a failure to agree will be destabilizing, increasing the chances of misperception, misunderstanding, and escalation. Perhaps even more disruptive to stability, nonstate actors frequently operate under the cover of a sovereign state. One country may see its action as permissible, the other as an act of war.

### 1AC Brennan

#### Their brennan ev says we just need to clarify and expedite approval policies

Brennan 12 (Lt Colonel John – US Army, “United States Counter Terrorism Cyber Law and Policy, Enabling or Disabling?” 15 March 2012, Civilian Research Project; U.S. Army War College)

Although indentifying international terrorists in cyberspace is critical to successful counterterrorism operations, it is only half of the battle in bringing them to justice. Monitoring terrorists’ electronic communications is extremely important, but further work is required by the CT community to isolate, and eventually kill or capture the terrorists overseas. Manipulation or disruption of a terrorist organization’s computer networks is a potential means to this end, and it is also a possible tactic that is employed to preempt a cyber or kinetic terrorist attack.37 The laws that govern the actual manipulation of terrorists’ electronic accounts and devices in order to make them more targetable, are not explicit or simply do not exist. The primary document that gives the President of the United States the authority to conduct offensive CT cyber operations overseas is the 2001 Authorization of the Use of Military Force, which gives the president the authority to “use all necessary and appropriate force” to protect the country for further attacks.38 The extrapolation of this authority which permits the targeting of al-Qa’ida and its adherents, was employed in order to legally kill Anwar al Awlaki (an American citizen) in Yemen, and was invoked in permitting the planned (but not executed) computer network attack against his online magazine, Inspire.39

Regardless of these authorities, General Keith B. Alexander, the Commander of U. S. Cyber Command, has expressed similar misgivings as Mr. O’Connell in response to Congressional inquiries concerning the efficacy of cyber laws. During his confirmation hearings that resulted in his appointment to the post of the commander of U. S. Cyber Command in 2010, General Alexander stated that there is a, “mismatch between our technical capabilities to conduct operations and the governing laws and policies.”40

When he assumed the mantle of command of this first-ever joint and interagency cyber unit, General Alexander retained his title and position as the Director of the National Security Agency (DIRNSA). This dual command role placed him in the unique position to not only locate and intercept enemy internet communications, but to also conduct computer network attacks on the terrorists’ networks as well.41 The essence of this new command permits a more efficient cyber warfare capability which can theoretically operate seamlessly under both Titles 10 and 50 of the U. S. Code.42

With over 1.8 billion Internet users and 4.6 billion cellular phone subscribers who generate approximately 90 trillion emails per annum, the establishment of U. S. Cyber Command from within the NSA was an extremely useful beginning.43 A subordinate command to the United States Strategic Command (USSTRATCOM), Cyber Command was delegated Title 10 authority over military operations in cyberspace.44 On the other hand, Cyber Command also possesses the ability to conduct covert actions within cyber space under Title 50.45 This duplicitous legal framework is a result of current cyber policies and can create confusion over who is permitted to actually authorize a cyber operation.46 In the end, this policy friction can translate into delays while the required approvals are garnered, and could result in missing a fleeting opportunity to kill or capture a terrorist.

U. S. Computer Network Operations Policy

As a matter of current U. S. policy, the decision to label a computer network operation (CNO) as a traditional military activity (TMA), thereby falling under the purview of Title 10 of the United States Code (USC), or as a covert action under Title 50 of the USC, has spurred a great deal of discussion at the highest levels of the U. S. Government.47 Although cyber warfare is only one aspect of the overall current Title 10/50 debate that is raging within Congress and the various departments within the executive branch, one cannot legitimately discuss the policies that govern the approvals to conduct CNOs without touching upon this current source of friction.48 Much of the policy concerning the details of computer network operations is classified, but is gaining in importance such that many policy experts are speaking about it, some albeit from under the cloak of anonymity.49 As Andru E. Wall suggests, the confusion over Title 10 and Title 50 authorities appears to have, “…more to do with congressional oversight and its attendant internecine power struggles than with operational or statutory authorities,” despite the fact that by design, Title 10 and 50 authorities are mutually supporting and were not intended to be competing.50 Retired Admiral Dennis C. Blair (former ODNI) proclaimed that, “This infuriating business about who’s in charge and who gets to call the shots is just making us look muscle-bound.” ADM Blair went on to bemoan the “over-legalistic” approach to CT cyber--despite the fact that current cyber laws are woefully inadequate to address the, …”complexity of the global information network.”51(Wall 2011101)

Current media reports indicate that the use of specially-designed cyber tools in order to target states or non-state actors requires presidential approval. An example of this approval policy was seen last year when media reports indicated that the Stuxnet cyber-worm was allegedly implanted in an Iranian nuclear facility, an act that American military cyber warriors will not publicly confirm.52 This computer virus subtly attacked the computers that controlled the enormous Iranian nuclear centrifuges and caused them to self-destruct. Although the Stuxnet infestation in Natanz was a major attack with immense international political consequences, media reporting suggests that less contentious operations against terrorists’ computer networks have taken on a similarly hierarchical approval process, even though these computer network operations support the local war fighters in Afghanistan or Iraq.53 For instance, in the early years of the Iraq war, numerous attempts to hack into terrorists’ email accounts and send erroneous information from them, in order to expose other members of AQI or cause potential organizational rifts was strictly forbidden without the approval of the CENTCOM Commander.54

The reasoning behind this elevated approval policy centers upon the fact that terrorists frequently use American or allied internet service providers (ISPs) to access and manipulate the internet during the conduct of their own cyber operations.55 The consequences of this arrangement, which could ultimately involve the U. S. Government manipulating an American or allied server network in order affect a terrorist organization, makes many national leaders leery of employing the capability in the first place.56

The ongoing debate between elements of the DoD, who feel that certain cyber operations are a traditional military activity and should be governed by the laws of armed conflict and Title 10 of the U.S. Code, and leaders within the Intelligence Community (IC) who contend that any and all cyber operations are inherently covert and should be under the purview of Title 50, shows no signs of abating. An example of this conundrum occurred in June, 2010 when the U. S. was allegedly contemplating a cyber attack on Insipire Magazine.57 The U. K.’s GCHQ Intelligence Service actually conducted an attack, dubbed “Operation Cupcake” while the CIA and Cyber Command were reportedly still haggling over whether attacking the site was a traditional military activity (TMA), thereby considered a Title 10 action, or a covert action under Title 50.58 Although this operation had little kinetic effect, it was disruptive as GCHQ managed to effectively replace the bomb-making recipes on the Inspire site with actual cupcake baking recipes.59 The delay caused by the policy debate within the executive branch ultimately led to a missed opportunity. The effect of a potential delay could have been much more significant had the stakes been higher, particularly if the purpose of the proposed CT cyber operation was to thwart an impending attack.60

Another potential genesis for the policy debate is the inconsistent verbiage used between the Military and the IC when categorizing operations in cyberspace. For example, if any data within an enemy computer network is modified, then the operation is labeled a Computer Network Attack (CNA) by the military.61 The IC considers data manipulation as an Offensive Cyber Operation (OCO), a title which is much more palatable to CT lawyers than the term Computer Network Attack, even though the intent and outcome of the operations are identical.62 The differences between these labels are frequently referenced in policy debates, which ultimately slow down the process of finding and interdicting terrorists.

### 1AC Stevenson

#### The president issuing a finding and notifying that to Congress solves --- also says title 60 fixes it all

Stevenson 13 (Charles, PhD in Government from Harvard, Professor of American foreign policy at the Nitze School of Advanced International Studies @ Johns Hopkins, former professor at the National War College --- director of the core course on the interagency process for national security policy, worked in the executive branch including service on the Secretary of State’s Policy Planning Staff, and served for 22 years as a Senate staffer on defense and foreign policy, and member of the Project on National Security Reform and headed its working group on Congress, “Overseeing the New Ways of War” March 6, 2013, Roll Call)

There’s a lot of confusion and disagreement over how the government should manage two increasingly important techniques of waging war: drones and cyber-activities. President Barack Obama’s current counter-terrorism adviser and nominee to head the CIA, John Brennan, says the drone operations should be largely shifted from the CIA to the Pentagon. Some lawmakers want to create a special new court to review targeted killing operations. Meanwhile, Congress has repeatedly failed to agree on how to build cybersecurity domestically, and there is no consensus on what laws should control offensive cyber-operations. Let me suggest one overarching principle that could help us bring these new ways of war under better control. Congress should write a new law putting both drone operations and offensive cyber-operations under the same rules that now govern covert operations by the CIA. That law has two key features: a formal decision by the President, called a “finding,” and notification of a small group of members of Congress. That law has worked pretty well since it was first enacted in 1974. Presidents have to be persuaded that the operation is well-designed and important to carry out, and Congress is informed so that it can exercise oversight on behalf of the American people. On occasion, covert actions have been modified or cancelled in response to congressional concerns. This kind of oversight is better than what a court could do, because courts judge only issues like due process, not the strategic and political factors that routinely confront the executive and legislative branches. Right now, drone operations are conducted in a crazy bifurcated system. Those done by the CIA are regularly reviewed by the intelligence committees. Those done by the Pentagon are reportedly eventually briefed to the congressional defense committees, but there is no regular and required process as there is for the CIA operations. The situation becomes especially murky when both the CIA and the Pentagon are conducting drone operations in the same area, as in Yemen, or when the CIA and the Joint Special Operations Command work together, as in the bin Laden raid. The Pentagon operates under laws called Title 10 of the U.S. Code, while the CIA is controlled by the war powers provisions of Title 50. What we need is a “Title 60” to bridge the gaps. Otherwise, a devious executive could assign tasks to the Pentagon precisely to escape notification and oversight. Or the compartmentalization that necessarily surrounds sensitive operations could lead to conflicts in the field. There are always risks of leaks when the circle of knowledgeable officials widens. But even in the case of the bin Laden raid, where the secrecy held, CIA Director Leon E. Panetta notified the intelligence committees in a general way months in advance. The case for a “Title 60” process for drone operations is even stronger if the administration adopts Mr. Brennan’s suggestion to move most CIA drone operations to Pentagon control. Offensive cyber-operations would also be best handled under a similar legal process. CIA-run operations are already covered, but the Pentagon has created a new Cyber Command that could carry out large-scale cyber operations. And the administration has reportedly concluded that the President has broad power even to launch a pre-emptive cyber-strike to thwart an impending digital attack from abroad. If the circumstances are that dire, I suppose most Americans would support such an action. But the way to limit abuses, and be sure that there is careful consideration beforehand and accountability afterward, is for the President himself to make the final decision and for a designated group in Congress to be notified as soon as possible. If Congress ever resolves its disagreements over domestic cybersecurity and passes some kind of law, I hope it also would include a provision requiring congressional notification and oversight if the President ever chooses to use special authorities to compel compliance with security directives. Do drone and cyber-operations have to be reported to Congress every time? Will a reporting requirement prevent timely action? The concerns are overblown because the experience with CIA covert operations has worked in practice, despite occasional complaints. And the frequency issue can easily be solved by a simple rule: if the President has to decide under the executive branch’s own rules, then the matter is important enough that the Congress should be notified.

### Exec Power DA – 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**.**

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

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#### (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.

### Spillover – 2NC

#### Err neg—the more options, the better

Yoo ’11 John, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, “Assassination or Targeted Killings After 9/11,” 56 N.Y. L. Sch. L. Rev. 57 (2011)

In addition to imminence, the United States needs to account for the degree of expected harm, a function of the probability of attack times, the estimated casualties, and damage. There is ample justification for factoring this in, just as it ought to be a factor in ordinary acts of self-defense, as when one is attacked with a gun, as opposed to a set of fists. At the time of the Caroline decision in the early nineteenth century, the main weapons of war were single-shot weapons and artillery, cavalry, and infantry. There was an inherent technological limit on the destructiveness of armed conflict. The speed and severity possible today mean that the right to preempt today should be greater than in the past. Weapons of mass destruction have increased the potential harm caused by a single terrorist attack from hundreds or thousands of innocent lives to hundreds of thousands, or even millions. This is not even counting the profound, long-term destruction of cities or contamination of the environment and the resulting long-term death or disease for large segments of the civilian population. **WMDs can today be delivered with ease**-a suicide bomber could detonate a "dirty bomb" using a truck or spread a biological agent with a small airplane. These threats are difficult to detect, as no broad mobilization and deployment of regular armed forces will be visible. Probability, magnitude, and timing are relevant factors that must be considered in determining when to use force against the enemy.

#### Plan triggers dangerous uncertainty on cyber policy --- makes conflict more likely

BRADBURY 2011 - attorney at the Washington, D.C office of Dechert LLP; head of the Office of Legal Counsel (Steven G. Bradbury, “The Developing Legal Framework for Defensive and Offensive Cyber Operations”, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2011/02/Vol.-2\_Bradbury\_Final1.pdf)

Conclusion. So here’s my thesis: To my view, the lack of clarity on certain of these issues under international law means that with respect to those issues, the President is free to decide, as a policy matter, where and how the lines should be drawn on the limits of traditional military power in the sphere of cyberspace. For example, that means that within certain parameters, the President could decide when and to what extent military cyber operations may targetcomputers located outside areas of hot fighting that the enemy is using for military advantage. And when a cyber attack is directed at us, the President can decide, as a matter of national policy, whether and when to treat it as an act of war. The corollary to all this is that in situations where the customs of war, in fact, are not crystallized, the lawyers at the State Department and the Justice Department shouldn’t make up new red lines — out of some aspirational sense of what they think international law ought to be — that end up putting dangerous limitations on the options available to the United States. Certainly, the advice of lawyers is always important, especially so where the legal lines are established or firmly suggested. No one would contend that the laws of war have no application to cyber operations or that cyberspace is a law-free zone. But it’s not the role of the lawyers to make up new lines that don’t yet exist in a way that preempts the development of policy. 14 In the face of this lack of clarity on key questions, some advocate for the negotiation of a new international convention on cyberwarfare — perhaps a kind of arms control agreement for cyber weapons. I believe there is no foreseeable prospect that that will happen. Instead, the outlines of accepted norms and limitations in this area will develop through the practice of leading nations. And the policy decisions made by the United States in response to particular events will have great influence in shaping those international norms. I think that’s the way we should want it to work.

## China

### Link Wall- Cyber aff

#### Cred boosts our soft power- hurts other countries’ influence

**Nye ’13** [Joseph S. Nye Jr. is University Distinguished Service Professor at Harvard University and former Dean of the Kennedy School of Government. He served as U.S. Assistant Secretary of Defense for International Security Affairs from 1994 to 1995, “Hard, Soft, and Smart Power,” March, <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199588862.001.0001/oxfordhb-9780199588862-e-31>]

Soft power depends upon credibility and when governments are perceived as manipulative and information is seen as propaganda, credibility is destroyed. One critic argues that if governments eschew imposition or manipulation they are not really exercising soft power, but mere dialogue.25 While governments face a difficult task in maintaining credibility, this criticism underestimates the importance of pull rather than push in soft power interactions.¶ Of course, it is important not to exaggerate the impact of soft (or any other form of) power. There are some situations where soft power provides very little leverage. It is difficult, for example, to see how soft power would solve the dispute over North Korea's nuclear weapons. Some critics make the mistake of assuming that because soft power is often insufficient, it is not a form of power. But that problem is true of all forms of power. On the other hand, when a government is concerned about structural milieu goals or general value objectives, such as promotion of democracy, human rights, and freedom, it is often the case that soft power turns out to be superior to hard power.¶ Soft power is difficult for governments to wield. Sustained attraction—being a ‘city on a hill’—requires consistency of practice with values. Going further to project attraction, frame agendas, and persuade others is even more difficult. The causal paths are often indirect, the effects often take time to ripen, some of the general goals to which it is directed are diffuse, and governments are rarely in full control of all the instruments. To be credible, efforts to project soft power will have to avoid the dangers of an over-militarized and state-centric approach. Power becomes less hierarchical in an information age and social networks become more important. To succeed in a networked world requires leaders to think in terms of attraction and co-option rather than command. Leaders need to think of themselves as being in a circle rather than atop a mountain. That means that two-way communications are more effective than commands. As a young Czech participant at a Salzberg Seminar observed ‘this is the best propaganda because it's not propaganda’.26 Interactive discourse fits with empowering choices. It involves recognition that the sharing of values can be interactive and binding on the home state as well as others.¶ One of the major ways that governments attempt to wield soft power is through public diplomacy. Classical diplomacy, sometimes called cabinet diplomacy, involved messages sent from one ruler to another, often in confidential communications. But governments also found it useful to communicate with the publics of other countries in an effort to influence other governments indirectly. That indirect form of diplomacy became known as public diplomacy. The diffusion of power away from states has made public diplomacy more complex. The lines of communication are no longer a straight bar between two governments, but more like a star that includes lines between governments, publics, society to society, and non-governmental organizations (NGOs).¶ In such a world, actors other than governments are well placed to use soft power. Government A will try to influence the public in society B, but transnational organizations in society B will also wage information campaigns to influence government A as well as government B. They use campaigns of naming and shaming to influence other governments as well as to put pressure on other non-governmental actors such as large corporations. Sometimes they will also work through intergovernmental organizations. The result is a new set of mixed coalitions of governmental, intergovernmental, and non-governmental actors, each using public diplomacy for its own goals. For example, the International Campaign to Ban Landmines allied smaller governments like Canada and Norway, along with networks created by an activist in Vermont, and the public fame of Princes Diana to defeat the strongest bureaucracy (the Pentagon) in the world's only superpower.¶ Governments trying to utilize public diplomacy to wield soft power face new problems in the cyber age. Promoting attractive images of one's country is not new, but the conditions for trying to create soft power have changed dramatically in recent years. For one thing, nearly half the countries in the world are now democracies. In such circumstances, diplomacy aimed at public opinion can become as important to outcomes as the traditional classified diplomatic communications among leaders. Information creates power and today a much larger part of the world's population has access to that power. Technological advances have led to dramatic reduction in the cost of processing and transmitting information. The result is an explosion of information, and that has produced a ‘paradox of plenty’.27 Plentiful information leads to scarcity of attention. When people are overwhelmed with the volume of information confronting them, it is hard to know what to focus on. Attention rather than information becomes the scarce resource and those who can distinguish valuable information from background clutter gain power. Cue-givers become more in demand, and this is a source of power for those who can tell us where to focus our attention.¶ Among editors and cue-givers, credibility is the crucial resource and an important source of soft power. Reputation becomes even more important than in the past and political struggles occur over the creation and destruction of credibility. Governments compete for credibility not only with other governments, but with a broad range of alternatives including news media, corporations, NGOs, intergovernmental organizations, and networks of scientific communities. Politics has become a contest of competitive credibility. The world of traditional power politics is typically about whose military or economy wins. As we noted earlier, politics in an information age ‘may ultimately be about whose story wins’. 28 Narratives become the currency of soft power. Governments compete with each other and with other organizations to enhance their own credibility and weaken that of their opponents. Witness the struggle between Serbia and NATO to frame the interpretation of events in 1999 in which broadcasts and the Internet played a key role, or the contest between the government and protesters after the Iranian elections in 2009 in which the Internet and Twitter played important roles in transnational communication. Sceptics who treat the term ‘public diplomacy’ as a mere euphemism for propaganda miss this point. Simple propaganda is counterproductive as public diplomacy. Nor is public diplomacy merely public relations campaigns. Conveying information and selling a positive image is part of it, but public diplomacy also involves building long-term relationships that create an enabling environment for government policies.29

#### Cyber reform is key to US soft power

**Belk and Noyes ‘12** [Robert Belk, Naval aviator and Politico-Military Fellow, studying international and global affairs at the Harvard Kennedy School, and Matthew Noyes, studies international security policy and is a senior associate with the cybersecurity practice at Good Harbor Consulting, “On the Use of Offensive Cyber Capabilities: A Policy Analysis on Offensive US Cyber Policy”, 3-20-12, <http://ecir.mit.edu/images/stories/cybersecurity-pae-belk-noyes%202012.pdf>]

The U.S. must be able to project the second and third order effects of ¶ conducting external operations in cyberspace. One critical example would be the soft power implications for such operations. Specifically, most civilian global ¶ perceptions of the Internet (especially in light of the Arab Awakening) focus on peaceful uses. External cyber operations or other actions that may affect normal cyber activities, therefore, can adversely affect America’s soft power. ¶ A recent example of this is the Egyptian protesters’ reaction to the Bay ¶ Area Transit Authority’s (BART) shut down of cell service in one of their stations ¶ in August 2011. In anticipation of a protest at one of its stations, BART officials ¶ halted cell service in order to minimize the gathering. Many Bay Area citizens ¶ viewed this as a limit on their right to peaceful assembly. Egyptian activists from ¶ the Tahrir Square demonstrations seemed to agree. They began voicing their ¶ disapproval by referencing BART in tweets as “MuBARTak.”62 Likening BART’s ¶ actions to those of the deposed president reflects a certain loss of prestige abroad, ¶ signifying an erosion of soft power. ¶ In that vein, the U.S. must consider the implications for external cyber operations in affecting perceptions of the U.S. abroad. A cyber action that is Executionally or Strategically expedient may have second or third order effects that diminish American soft power.

### AT: Aggressive now/

#### Newest expert consensus --- China is restrained in key hotspots-

**Friedman 12-24**-13 [Uri, senior associate editor at The Atlantic, where he oversees the Global Channel, “The Global Conflicts to Watch in 2014,” <http://www.theatlantic.com/international/archive/2013/12/the-global-conflicts-to-watch-in-2014/282624/>]

The survey, which asked more than 1,200 U.S. government officials, academics, and experts to assess the impact and likelihood of 30 scenarios, divides the results into three tiers of risk. And some of the findings are alarming. Beyond the familiar flashpoints—military intervention in Syria's civil war, strikes against Iran's nuclear facilities—the report raises concerns about overlooked threats ranging from turmoil in Jordan to civil war in Iraq to a border clash between China and India. The study is also notable for the risks it downplays, including armed confrontation between China and its neighbors over territorial disputes in the East and South China Seas.¶ The most threatening and most likely conflicts (in red) include some you might expect: limited military intervention in Syria's deteriorating civil war; a cyberattack on critical infrastructure in the U.S.; military strikes against Iran if nuclear talks fail or Tehran advances its nuclear program; a North Korean crisis sparked by military provocation or internal political instability; a major terrorist attack on the U.S. or an ally; and greater turmoil in Afghanistan and Pakistan as U.S. troops withdraw from the region and Afghanistan holds elections.¶ But other potential crises in this category have received less attention and were deemed less threatening in last year's survey, including the "strengthening of al-Qaeda in the Arabian Peninsula resulting from continued political instability in Yemen and/or backlash from U.S. counterterrorism operations" (in the latest example of those operations, a drone strike hit a Yemeni wedding); "civil war in Iraq due to rising Sunni-Shia sectarian violence" (the civilian death toll in the country more than doubled this year); and "growing political instability and civil violence in Jordan triggered by spillover from the Syrian civil war" (according to the experts polled, there is less of a risk of a similar phenomenon occurring in Lebanon, where a bombing near the Iranian embassy in Beirut recently killed 23 people). Second-tier risks (orange), according to the report, include a "severe Indo-Pakistani military confrontation triggered by a major terrorist attack or heightened violence in Kashmir" and "escalating violence and risk of mass atrocities in the Central African Republic," where a wave of sectarian killings has raised fears of a coming genocide.¶ In what may be the most striking finding, military conflict between China and neighbors like Japan and the Philippines in the East and South China Seas is judged to be less of a threat than it was in 2013, even after a tense year capped most recently by Beijing's creation of an Air Defense Identification Zone in the East China Sea. The thinking, perhaps, is that China's has tested the limits of its assertiveness in the region and will show more restraint in the coming year, or that the countries involved have now established mechanisms to resolve disputes before they devolve into armed confrontation. Some of the least likely and threatening conflicts (yellow) have never before been included in the study, including China and India butting heads over disputed territory, Venezuela succumbing to political crisis in the wake of Hugo Chavez's death, and Buddhists and Muslim Rohingyas clashing in Myanmar. South Sudan is mentioned, but only in the context of possible military conflict with Sudan—not in terms of South Sudan itself imploding (the survey was conducted in November, before internal fighting erupted in the country).

#### Those independently MITIGATES AGGRESSION

**Zhang ’12** [Wanfa Zhang is assistant professor in the Department of Humanities and Communication at Florida Institute of Technology and previously was a lecturer at China Foreign Affairs University. He is the author of several articles¶ published in the China Journal of American History and the Journal of Foreign Affairs College. His research interests include militarized interstate disputes, contemporary Chinese politics and diplomacy, and security issues¶ in the Asia Pacific region, “Has Beijing Started to Bare Its Teeth? China’s Tapping of Soft Power Revisited,” Asian Perspective 36 (2012), 615–639, <https://www.rienner.com/uploads/524065e4c7af8.pdf>]

The historical record since the end of the 1990s shows that Beijing’s choice of soft-power tapping and projection has created a positive interactive process. Its continuous efforts to play the good-guy role by choosing cooperation and compromise with the international community have been reciprocated most of the time. The approval of a major realignment of quota shares by the International¶ Monetary Fund in November 2010, making China the¶ third-largest IMF shareholder, is a very positive and encouraging¶ international response to the need of a rising power to have its¶ newly acquired capability and status recognized (International¶ Monetary Fund 2010).¶ What about the international behavior of China in the future¶ when it becomes even more powerful? The answer lies in the¶ acute observation of a scholar who discussed and criticized the¶ two dominant predictions about a future China—Chinese revisionism¶ and Chinese satisfaction. Jeffrey Legro pointed out that¶ China’s future behavior is contingent, among other things, on the interaction of foreign-policy ideas and events (Legro 2007). Following¶ this line of thinking, I argue that if China’s commitment to peaceful development and soft-power tapping receives a positive response from the international community, Beijing will more likely be encouraged to stick to the course of integrating into the international system as a cooperative and responsible player. Luckily, the current liberal international system created by the¶ West has the capacity to accommodate rising powers, and China is¶ a direct beneficiary of this system (Ikenberry 2008).¶ From one perspective, a great power such as China that is obsessed with a charm offensive and intends to win the hearts and¶ minds of other countries is much more manageable than a rogue or revisionist state. From another perspective, when China perceives that the benefits of peaceful integration outweigh the risks and costs of revisionist behavior, it will choose to hold on to its soft-power tapping policy and continue on the course of a peaceful rise. Benign reciprocal interactions between China and the world are bound to perpetuate a win-win situation for all parties.

### China Cyber Answers

#### No military threat- self-interest

Lewis, 13 -- CSIS technology and public policy senior fellow

[James Andrew, "Five myths about Chinese hackers," 3-22-13, www.washingtonpost.com/opinions/five-myths-about-chinese-hackers/2013/03/22/4aa07a7e-7f95-11e2-8074-b26a871b165a\_story.html, accessed 2-8-14]

If you work in Washington — on the Hill or on K Street, at a law firm or at a think tank — you’ve probably been hacked. If you work at a major American company, you’ve probably been hacked, too. The penetration of U.S. computer networks by Chinese hackers has been going on for more than three decades. It’s good that it is finally getting attention, but with that spotlight have come exaggeration and **myths** that **need to be discarded**. 1. We are in a cyber cold war with China. We are not in a war — cold, cool or hot — with China in cyberspace. There have been none of the threats, denouncements or proxy conflicts that characterize a cold war. In fact, the administration appears to have omitted any mention of the Chinese military in recent high-profile speeches on Chinese hacking. After Treasury Secretary Jack Lew met recently with top Chinese officials in Beijing, he told reporters there that cyberattacks and cyber-espionage are a “very serious threat to our economic interests.” “Cyberattack” is one of the most misused terms in the discussion of Chinese hackers. With very few exceptions, China has not used force against the United States in cyberspace. What it has been doing is spying. And spying, cyber or otherwise, is not an attack or grounds for war, even if military units are the spies. Spying isn’t even a crime under international law, and it wouldn’t be in Washington’s interest to make it so. Trying to cram Chinese hackers into antiquated cold war formulas doesn’t help, either. America’s relationship with China is very different from the one it had with the Soviet Union, in which contacts were extremely limited and there was no economic interdependence. The idea of “containment” for China is inane. How would you “contain” a major economic partner? 2. China’s hackers are unstoppable cyberwarriors. The problem isn’t that the Chinese are so skilled; it’s that U.S. companies are so inept. A survey I published last monthfound that more than 90 percent of corporate-network penetrations required only the most basic techniques, such as sending a bogus e-mail with an infected attachment, and that 85 percent went undetected for months — another sign of lax security. (One more sign: They were usually discovered by an outsider rather than the victimized company.) There is debate within the U.S. intelligence community about whether the Chinese have more sophisticated cyberattackers waiting in the wings or whether we’ve seen the best they can do. But it’s clear that so far, they haven’t had to bring their A-game to break into our networks. 3. China is poised to launch crippling attacks on critical U.S. infrastructure. Obama’s State of the Union address included a line about how “our enemies are also seeking the ability to sabotage our power grid, our financial institutions and our air-traffic-control systems.” Similarly, a recent report by the security firm Mandiant suggested that China’s hackers are increasingly focused on companies with ties to U.S. critical infrastructure. In peacetime, however, China is no more likely to launch a cyberattack on American infrastructure than it is to launch a missile at us. It has no interest in provoking a war it couldn’t win or in harming an economy it depends on. Even in wartime, China would want to avoid escalation and would be more apt to launch cyberattacks on the Pacific Command or other deployed U.S. forces than on domestic American targets. China would attack civilian infrastructure only in extremis — if the survival of its regime were threatened. 4. Cyber-espionage is causing the greatest transfer of wealth in history. This claim has been repeated by the likes of the head of U.S. Cyber Command. It’s a dramatic way to describe the theft, mainly by China, of American intellectual property, but it doesn’t make economic sense. Putting a dollar value on the loss from cyber-espionage is very difficult, and many estimates are wild guesses. A reasonable assessment would be that it costs the United States no more than $100 billion a year and perhaps much less — what some economists would describe as a rounding error in our $15 trillion economy. This is not death by a thousand cuts. It probably isn’t even slowing the U.S. economy. Even when China steals intellectual property, it can take years to turn it into a competitive advantage. The right technical skills and manufacturing base are needed to turn advanced designs into high-end competitive products. China is still lagging in many high-tech arenas, such as semiconductors. The one area where this is not true is military technology. Chinese espionage has led to rapid improvements in that country’s stealth, submarine-quieting, nuclear weapons and sensor technologies. While the economic risk from cyber-espionage is generally overstated, the United States has probably underestimated the damage to its lead in military technology. 5. America spies on China, too, so what can we complain about? Chinese officials portray their country as a victim of hacking. Meanwhile, some American scholars question whether the United States is in a position to criticize, since it also engages in cyber-espionage. “Perhaps the complaint is that the Chinese are doing better against our government networks than we are against theirs,” law professor Jack Goldsmith wrote. That misstates the issue. The Internet, poorly secured and poorly governed, has been a tremendous boon for spying. Every major power has taken advantage of this, but there are unwritten rules that govern espionage, and China’s behavior is out of bounds. Where Beijing crosses the line is in economic espionage: stealing secrets from foreign companies to help its own. China also outmatches all other countries in the immense scale of its spying effort, and the United States is far from the only nation to have suffered. The United States, by contrast, does not engage in economic espionage. As one Chinese official put it in recent talks at the Center for Strategic and International Studies: “In America, military espionage is heroic and economic espionage is a crime, but in China the line is not so clear.” The United States and other countries need to make that line clearer and discourage China from crossing it.

#### Chinese soft power is key to solve global problems- war, terrorism, environment, poverty

**Zhang ‘12** [Wei-Wei, PhD in International Relations, professor of international relations at the Geneva School of Diplomacy, senior research fellow at the Centre for Asian Studies, former visiting fellow at Oxford, has worked as a senior English interpreter for Deng Xiaoping and other Chinese leaders, concurrently a senior fellow at the Equinox (Chunqiu) Institute and guest professor at Fudan University, China, “The rise of China's political soft power,” <http://www.china.org.cn/opinion/2012-09/04/content_26421330.htm>]

As China plays an increasingly significant role in the world, its soft power must be attractive both domestically as well as internationally. The world faces many difficulties, including widespread poverty, international conflict, the clash of civilizations and environmental protection. Thus far, the Western model has not been able to decisively address these issues; the China model therefore brings hope that we can make progress in conquering these dilemmas.¶ Poverty and development¶ The Western-dominated global economic order has worsened poverty in developing countries. Per-capita consumption of resources in developed countries is 32 times as large as that in developing countries. Almost half of the population in the world still lives in poverty. Western countries nevertheless still are striving to consolidate their wealth using any and all necessary means. In contrast, China forged a new path of development for its citizens in spite of this unfair international order which enabled it to virtually eliminate extreme poverty at home. This extensive experience would indeed be helpful in the fight against global poverty.¶ War and peace¶ In the past few years, the American model of "exporting democracy'" has produced a more turbulent world, as the increased risk of terrorism threatens global security. In contrast, China insists that "harmony is most precious". It is more practical, the Chinese system argues, to strengthen international cooperation while addressing both the symptoms and root causes of terrorism.¶ The clash of civilizations¶ Conflict between Western countries and the Islamic world is intensifying. "In a world, which is diversified and where multiple civilizations coexist, the obligation of Western countries is to protect their own benefits yet promote benefits of other nations," wrote Harvard University professor Samuel P. Huntington in his seminal 1993 essay "The Clash of Civilizations?". China strives for "being harmonious yet remaining different", which means to respect other nations, and learn from each other. This philosophy is, in fact, wiser than that of Huntington, and it's also the reason why few religious conflicts have broken out in China. China's stance in regards to reconciling cultural conflicts, therefore, is more preferable than its "self-centered" Western counterargument.¶ Environmental protection ¶ Poorer countries and their people are the most obvious victims of global warming, yet they are the least responsible for the emission of greenhouse gases. Although Europeans and Americans have a strong awareness of environmental protection, it is still hard to change their extravagant lifestyles. Chinese environmental protection standards are not yet ideal, but some effective environmental ideas can be extracted from the China model.¶ Perfecting the China model¶ The China model is still being perfected, but its unique influence in dealing with the above four issues grows as China becomes stronger. China's experiences in eliminating poverty, prioritizing modernization while maintaining traditional values, and creating core values for its citizens demonstrate our insight and sense of human consciousness.¶ Indeed, the success of the China model has not only brought about China's rise, but also a new trend that can't be explained by Western theory. In essence, the rise of China is the rise of China's political soft power, which has significantly helped China deal with challenges, assist developing countries in reducing poverty, and manage global issues. As the China model improves, it will continue to surprise the world.

### 2NC- Korea module

#### Only Chinese influence solves Korean nuclear war- US approach fails

**Hoffman ’13** [Elizabeth Cobbs Hoffman, Ph.D. from Stanford, holds an endowed chair at San Diego State University, her books have won four literary prizes, two for American history, has been a Fulbright scholar in Ireland and a Fellow at the Woodrow Wilson International Center for Scholars in Washington, D.C, and is currently a National Fellow at Stanford University's Hoover Institution, served on the Historical Advisory Committee of the U.S. State Department, “China as peacemaker,” March 27, http://blogs.reuters.com/great-debate/2013/03/27/china-as-peacemaker/]

Nuclear escalation on the Korean Peninsula demands creative solutions. With a 2,200-year history of non-aggression, China is in the best position to take the lead — and relieve the United States of a burden it has shouldered for too long.¶ In fact, no other nation has had as stable a pattern of world citizenship. Over two millennia, China has not attempted to conquer its neighbors or spread its system of government on any scale remotely comparable to the Romans, Mongols, British, Germans, French, Spanish, Russians, Japanese or even Americans. China does brutally resist the secession of Tibet, which it considers part of its ancient patrimony. But it has not grasped for lands beyond its historical borders.¶ There is no reason to think the Middle Kingdom has merely been biding its time. Indeed, if any nation can be said to have a long-term strategy, it is China. Premier Zhou Enlai, when asked what he thought of the French Revolution of 1789, allegedly replied, “It’s too soon to tell.”¶ China also has a 2,200-year record of authoritarian rule. Even so, it has become steadily more open — at its own glacial pace. China’s government is more responsive to its people now than it was under the Han, Ming or Qing dynasties, ending in 1911. After a long period of civil war in the first half of the 20th century, worsened by a brutal Japanese occupation, the dictator Mao Zedong restored order.¶ Since 1979, the repressive government has slowly provided more freedoms to its 1.3 billion citizens — beginning with what President Franklin D. Roosevelt called “freedom from want.” Today, the Chinese people are freer to save, accumulate, conduct business and travel abroad than perhaps at any other time in China’s 2,200-year history as a coherent state.¶ Pundits and professional worriers tend to paint China as a burgeoning military threat. This is a serious misinterpretation of a very long track record that includes the peaceful re-annexation of British Hong Kong and continuing restraint toward Taiwan (lost first to the Japanese, and then as a result of civil war). Unjustified suspicions blind policymakers to important security options at a volatile time in Northeast Asia.¶ Like pioneers of yore, we need to read the trail to understand where China is headed and how we might ease its path. For centuries, China was the economic powerhouse of the globe. As Adam Smith, author of The Wealth of Nations, commented in 1776, “China is a much richer country than any part of Europe.” Today, more than anything else, the ancient nation wants to be rich again — though in ways that do not leave commoners mired in squalor, as before. Its commercial policies are aggressive, but it is not territorially expansive. China understands that physical conquest — as Japan’s World War II experience proved — can undermine economic success in the modern world.¶ Instead, to achieve its goals, China needs regional peace and stability. It has a far greater stake in capitalist South Korea’s health and happiness than even the United States, which has guaranteed Seoul’s safety for the past 60 years as part of its campaign to stop the worldwide spread of communism — a task now completed.¶ South Korean companies such as Samsung are among the world’s largest producers of semiconductors, the electronic chips that nourish everything in the electronic food chain from toys to automobiles. Semiconductors are key to economic growth around the globe.¶ Though China’s manufacturing base has gone viral, it does not make these precious chips in any significant amount — partly because foreign investors won’t set up shop, given the lax enforcement of intellectual-property rights. China depends heavily on imported semiconductors, for which its best and closest suppliers are South Korea and Taiwan.¶ Semiconductor plants require enormous investment; a single factory costs $6 billion or more. They are geese, laying golden eggs. The last thing China wants is a nuclear or conventional war between its immediate neighbors that might destroy this industrial infrastructure. Li Baodong, China’s envoy to the United Nations, said as much in early March, after the last round of sanctions against North Korea to discourage Kim Jong-Un’s nuclear ambitions. “We are formally committed,” Li insisted, “to safeguarding peace and stability on the Korean Peninsula.”¶ This statement is of critical importance to Washington, which should do everything possible to encourage China to take on the role of peacemaker and enforcer. The United States has played bad cop in relation to North Korea for six decades. We still have 28,500 troops on the ground in a war without end.¶ An armistice brought the three-year civil war between North and South to a temporary halt in 1953. The peace treaty, however, never followed.¶ Modern world history shows that Band-Aids need to come off for healing to happen — despite the sting. Japan’s recovery after World War II was delayed for six years, until the allied countries finally agreed to sign a peace treaty in 1951. Thirty years after the surrender of Nazi Germany, the Helsinki Accords of 1975 formally established peace in Europe. The accords reduced tensions across the continent and eventually led to the end of the Cold War.¶ The 60-year delay in formally ending the Korean War has had costly repercussions. No blue-helmeted U.N. troops patrol the demilitarized zone, as in other post-conflict areas, to keep peace once it’s been established. Instead, the United States has borne the expensive military burden of enforcing another country’s day-to-day defense for six decades — enabling South Korea to democratize and flourish.¶ In addition to straining our national budget, this commitment has bought us animosity on both sides of the 38th parallel. A survey of South Korean military cadets in 2004 found that more ranked the United States as the “country’s main enemy” than ranked North Korea as the primary threat. Young Americans who teach English in Seoul find signs at some restaurants saying, “No Foreigners Allowed.”¶ If not an example of the axiom “No good deed goes unpunished,” these reactions may belong in the category of nationalist responses to the long-term presence of foreigners — regardless of how helpful they may be.¶ A former graduate student at San Diego State University, where I teach, recalls liking the cookies that friendly U.S. soldiers brought to the South Korean orphanage where he was raised in the 1980s. But he also remembers being mystified as to why the “white men” were there. It’s a question the majority of Americans might have a hard time answering, given that the U.S. commitment predates their birth.¶ The United States has given South Korea more in the way of shelter than any competitive nation-state has given another in perhaps all world history. But this effort has hit a point of diminishing returns for everyone involved.¶ More of the same promises little in the way of progress. **It’s time for China to become umpire and peacemaker of the region**, consistent with its historical record and modern aspirations.

#### Goes nuclear and containment fails- assumes their impact d

**Lieber and Press ’13** [Keir A. Lieber, PhD in Political Science from the University of Chicago, Associate Professor in the Edmund A. Walsh School of Foreign Service and the Department of Government, has been awarded fellowships from the Brookings Institution, Council on Foreign Relations, Earhart Foundation, MacArthur Foundation, Mellon Foundation, and Smith Richardson Foundation, Daryl G. Press, PhD in Political Science from the Massachusetts Institute of Technology, Associate Professor in the Department of Government, Dartmouth College, has worked as a consultant for the RAND Corporation and the U.S. Department of Defense, and is a research affiliate at the Security Studies Program at MIT, serves as an Associate Editor at the journal International Security, “The Next Korean War,” April 1, <http://www.foreignaffairs.com/articles/139091/keir-a-lieber-and-daryl-g-press/the-next-korean-war>]

Despite those assurances, however, the risk of nuclear war with North Korea is far from remote. Although Pyongyang’s tired threats are probably bluster, the current crisis has substantially increased the risk of a conventional conflict -- and any conventional war with North Korea is likely to go nuclear. Washington should continue its efforts to prevent war on the Korean Peninsula. But equally important, it must rapidly take steps -- including re-evaluating U.S. war plans -- to dampen the risks of nuclear escalation if conventional war erupts. ¶ Ironically, the risk of North Korean nuclear war stems not from weakness on the part of the United States and South Korea but from their strength. If war erupted, the North Korean army, short on training and armed with decrepit equipment, would prove no match for the U.S.–South Korean Combined Forces Command. Make no mistake, Seoul would suffer some damage, but a conventional war would be a rout, and CFC forces would quickly cross the border and head north.¶ At that point, North Korea’s inner circle would face a grave decision: how to avoid the terrible fates of such defeated leaders as Saddam Hussein and Muammar al-Qaddafi. Kim, his family, and his cronies could try to escape to China and plead for a comfortable, lifelong sanctuary there -- an increasingly dim prospect given Beijing’s growing frustration with Kim’s regime. Pyongyang’s only other option would be to try to force a cease-fire by playing its only trump card: nuclear escalation.¶ It’s impossible to know how exactly Kim might employ his nuclear arsenal to stop the CFC from marching to Pyongyang. But the effectiveness of his strategy would not depend on what North Korea initially destroyed, such as a South Korean port or a U.S. airbase in Japan. The key to coercion is the hostage that is still alive: half a dozen South Korean or Japanese cities, which Kim could threaten to attack unless the CFC accepted a cease-fire.¶ This strategy, planning to use nuclear escalation to stalemate a militarily superior foe, is not far-fetched. In fact, it was NATO’s strategy for most of the Cold War. Back then, when the alliance felt outgunned by the massive conventional forces of the Warsaw Pact, NATO planned to use nuclear weapons coercively to thwart a major conventional attack. Today, both Pakistan and Russia rely on that same strategy to deal with the overwhelming conventional threats that they face. Experts too easily dismiss the notion that North Korea’s rulers might deliberately escalate a conventional conflict, but if their choice is between escalation and a noose, it is unclear why they would be less ruthless than those who once devised plans to defend NATO.¶ Even if the United States and South Korea anticipated the danger of marching to Pyongyang and adopted limited objectives in a war, nuclear escalation would still be likely. That’s because the style of conventional war that the United States has mastered over the past two decades is highly escalatory.¶ The core of U.S. conventional military strategy, refined during recent wars, is to incapacitate the enemy by disabling its central nervous system -- its ability to understand what is happening on the battlefield, make decisions, and control its forces. Against Serbia, Libya, and Iraq (twice), the key targets in the first days of conflict were not enemy tanks, ships, or planes but leadership bunkers, military command sites, and means of communication. This new American way of war has been enormously effective. But if directed against a nuclear-armed opponent, it would pressure the enemy to escalate a conflict. Preventing escalation in the midst of a war would require convincing North Korea’s leaders that they would survive, and so attacks designed to isolate and blind the regime would be counterproductive. Once airstrikes began pummeling leadership bunkers and severing communication links, the Kim regime would have no way of discerning how minimalist or maximalist the CFC’s objectives were. It would face powerful incentives to make the CFC attacks stop immediately -- a job for which nuclear weapons are well suited.

### 2NC Afghanistan module

#### Chinese soft power is key to stabilize Afghanistan post-drawdown- the US won’t

**Konsky 12-15**-13 [James, Brown Political Review, focus on International Relations in East Asia, “Exit America, Enter China: The Promise of Chinese Development in Afghanistan,” <http://www.brownpoliticalreview.org/2013/12/exit-america-enter-china-the-promise-of-chinese-development-in-afghanistan/>]

As U.S. troops withdraw from Afghanistan in 2014, China is poised to act as a stabilizing force in the region, reaping the benefits of American military efforts. Though the Chinese are not significantly or directly contributing to Afghan security by means of military involvement or aid, economic potential in the country is too attractive to ignore, resulting in quite substantial investment. A number of state-owned enterprises (SEO’s) are pursuing resource development projects in Afghanistan. The Afghan government views Chinese development of their abundant natural resources and construction of infrastructure as integral to future peace and prosperity in the country. The Chinese are eager to play a more influential role in Afghanistan, which could prove immensely profitable and enhance their security interests. Someone must fill the vacuum created in Afghanistan when American forces pull out lest the government collapses due to civil conflict. The best candidate for this job is China. China has long recognized the importance of a stable Central Asia to its own stability and security. The Shanghai Cooperation Organization (SCO), founded in 1996 as the Shanghai Five, was created as a regional organization focused on Central Asian security. Since 2001, the group has been paying close attention to the conflict in Afghanistan. For China, the lead party to the SCO, instability in Afghanistan threatens the fragile peace in its western regions. Xinjiang, a province in the far northwest of China and home to a Muslim minority group (Uighurs), has seen unrest of late. The East Turkestan Islamic Movement (ETIM), the most prominent dissenting political group active in the province, calls for an Islamic state in Xinjiang and has direct ties to terrorist activities. Following the September 11 attacks, China’s mission to the UN authored a document outlining ETIM terrorist activities and the inner workings of the organization. Uighur terrorists have attempted multiple hijackings in the past and are responsible for other acts of violence in the region, including a recent attack on a police station that left eleven dead. The Afghan Taliban has noted ties to these Muslim terrorist and separatist groups. The 2001 document concluded that “Osama bin Laden and the Taliban in Afghanistan have provided the Eastern Turkistan terrorist organizations with equipment and financial resources and trained their personnel.” The connection between the Taliban and terrorist groups within China is cause for alarm. If the Taliban regain control over Afghanistan, it is China’s fear that they will facilitate a sanctuary for such groups. The SCO is an institution created for the purpose of collective security, but with its policy of non-intervention, this is a difficult task. Beyond military cooperation and intelligence sharing, the scope of SCO capabilities is limited. SCO policies mirror those of China: in it’s ancient history, foreign military intervention is essentially nonexistent. China’s leaders prefer to utilize soft power to influence regional politics. Economic means have proved most successful to these ends.¶ The preferred Chinese strategy pursuant to state security is economic development. This policy has been enacted in Xinjiang and is being extended to Afghanistan. Afghanistan is a country with vast natural resources, including oil, silver, copper, gold and other precious metals. A U.S. task force headed by the Pentagon described the country as the “Saudi Arabia of lithium.” Valuations of Afghan mineral reserves estimate a figure of $1 trillion. Add oil and natural gas to the collection of resources and the figure becomes much higher. The Chinese government, through state-owned enterprises (SEO’s), has set in motion plans to develop these resources. China Metallurgical Group Corp. along with two other Chinese firms won a $3.5 billion bid to develop the Aynak copper fields, the largest undeveloped copper reserves in the world. It is estimated that these fields contain up to $88 billion worth of copper ore. This is just one of multiple enormous development projects driven by Chinese investment. Although these projects have seen setbacks recently due to security threats, Aynak alone was attacked 17 times in 2012, the long-term prospect of Chinese interests in Afghanistan remain encouraging. When Chinese-driven development comes to fruition in Afghanistan, it will bolster the Afghan government’s ability to train, equip, and sustain domestic security forces while putting ease to civil unrest due to increased prosperity.¶ Afghanistan and China are natural partners in strengthening the post-conflict Afghan economy. Within President Hamid Karzai’s cabinet are numerous Maoists, remnants of the Cold War communist encroachment on Afghanistan. The cooperation between Beijing and Kabul is grounded in much sturdier foundation than that between Kabul and Washington. In addition, the benefits of Chinese investment in Afghanistan are mutual. Both states will see progress in their security interests. For Afghanistan, economic development will promote internal stability. As NATO forces begin to leave and foreign aid becomes less robust, developing domestic mineral deposits will act as the impetus for post-war reconstruction of the Afghan economy. A stable economy is paramount for the government to gain legitimacy and fend off a resurgence of the Taliban. Economic security is an effective protection against civil unrest. ¶ Beyond profitability, Chinese investment in Afghanistan provides both economic and territorial security. With the economic downturn impacting China’s two largest trading partners — America and Europe — diversifying into new markets is necessary. Afghanistan will act as a hedge against diminished growth in the West. China’s real security concern is domestic, though. The government has and will continue to be hyper vigilant in snuffing out civil unrest. Its far western regions have historically been a hotbed for resistance to the state, particularly in the province of Xinjiang. Foreign parties, especially the Taliban, aid disruptive activities in the region. A strengthened Afghanistan with the ability to manage internal affairs and combat insurgencies is intertwined with Chinese security interests.¶ After a decade-long war in Afghanistan, the United States is resigned to the ambiguous results of the conflict and ready to relinquish primary responsibility of the country, as a post-2014 Afghanistan without U.S. military presence is a legitimate possibility. China’s increasing influence in the country is becoming an uneasy reality for U.S. policymakers, but Washington should have no qualms about China’s interest in Afghanistan. First, America seems both unwilling and unable to finance Afghan reconstruction and maintenance of domestic security. With China offering to foot the bill, the U.S. should accept Chinese influence in Afghanistan. Both China and the U.S. share a mutual interest in enabling Afghanistan to police its own territory and effectively combat terrorist organizations. The manner in which China is going about attaining these goals should ease the concerns of expansionist ambitions. A concern of the U.S. is that Afghanistan will once again be a satellite state of a communist power. Historically, China has shown essentially no ambition to create an empire. Even the semi-autonomous regions of Tibet and Xinjiang have been part of the Chinese umbrella of power since the thirteenth century at the latest. The prevailing Chinese identity throughout time has been that China is the “Middle Kingdom” and those outside of its realm are barbaric, not worthy of being drawn into its territory. This is why Chinese policymakers have become so adept at utilizing soft power to exert their influence beyond their borders. China’s investment in Afghanistan most definitely influences Afghan political decisions and actions while maintaining its sovereignty. In addition, China’s presence in Afghanistan will positively impact other regional powers. China is well positioned to pressure Pakistan to stop turning a blind eye to terrorist organizations within their borders. The long history of cooperation and friendship between Beijing and Islamabad will cause Pakistan to take seriously China’s calls to eradicate these groups. Also, China will act as a more legitimate counterbalance to Russia in Central Asia.¶ The future of Afghanistan is uncertain at best. America and NATO are scheduled to withdraw most or quite possibly all of their troops in 2014. Without foreign military presence and dramatically reduced foreign aid, post-2014 Afghanistan is desperate to ensure that the past twelve years will not be for naught. Chinese investment will develop the Afghan economy, allowing Afghanistan to avoid becoming the world’s next failed state. Economic growth and prosperity will allow the government to support its own security forces and discourage civil unrest. The benefits of Chinese interest in Afghanistan are twofold. The Afghan economy has great potential and the country’s vast natural resources offer an opportunity for tremendous profits. Also, a stable Afghanistan would contribute to a more secure China. Terrorist groups in Afghanistan threaten the peace in China’s western territories. While Chinese influence in the region intensifies, it should not be cause for concern to policymakers in Washington. Anti-terrorist security concerns run parallel between the two countries and the burden of Afghan reconstruction will not rely as heavily on U.S. support. Chinese activity in Afghanistan may seem surprising at first, but is actually wholly logical. Central Asia has long been underdeveloped and underprivileged, time and again consumed in a superpower’s expansion of control. Chinese exertion of power in the region is refreshing and encouraging as it does not aim to remove autonomy, but rather pursue congruent economic and security interests. At the hands of western military intervention, the past twelve years have devastated the region, especially Afghanistan. Now that the war is ending, China is stepping in to rebuild not only a country, but also the lives of millions.

#### Impact is nuclear war

**Cronin ’13** [Audrey Kurth Cronin, Professor of Public Policy at George Mason University, “Thinking Long on Afghanistan: Could it be Neutralized?” Winter, The Washington Quarterly 36:1, <http://csis.org/files/publication/TWQ_13Winter_Cronin.pdf>]

Well into preparations for post-/ISAF Afghanistan, Pakistan poses the greatest¶ obstacle to neutralization, and yet would benefit most from it. Afghanistan would severely undermine Pakistan’s government if it again became a safe haven for the ISI’s Islamist¶ project. ISI-/trained or ISI-/supported Taliban who¶ currently attack American troops might turn¶ their attention toward assassinating Pakistani¶ government officials, security personnel, and¶ moderate reformers, or worse, toward triggering a large-scale, potentially nuclear war with India over Kashmir. Pakistan needs a stable government in Kabul that is not antagonistic to Pakistan and does not allow Afghan territory to be used against it; Pakistan also wants a settlement that does not spread Pashtun nationalism and¶ instability in Pakistan. On the first point, the Pakistanis fear that India will gain¶ strategic access and force them into a two-/front war. The best way to reassure Pakistan is to neutralize Afghanistan in such a way that no military assistance or¶ alliance with India is possible. On the second, Pakistan’s government worries¶ about the future of the Pashtuns, especially considering pressure for the secession¶ of ‘‘Pashtunistan’’ on both sides of the Durand line between Afghanistan and¶ Pakistan. A guarantee of territorial integrity would mean that any efforts to¶ break up Afghanistan would be met with a multilateral response. For Pakistan,¶ the best buffer is a territorially secure, independent state that is proxy to no one.¶ With the present condition of U.S.—/Iranian relations, it is hard to remember¶ that Tehran helped Washington to overthrow the Taliban after the 9/11 attacks.¶ Tehran wants a stable, moderate, and secure state along its eastern border, as well¶ as the protection of Afghan tribes of Persian origin, especially the Hazaras. It does not want another radical Sunni regime on its borders, particularly one with¶ close ties to Saudi Arabia. Iran has also engaged in an ambitious campaign¶ against drug smuggling, including building a large concrete barrier across the¶ border with Nimruz, the southwestern-/most province Afghanistan.15 But the¶ relationship with the United States is a serious problem, prompting¶ troublemaking in Afghanistan and sanctuary for members of al-/Qaeda in Iran.¶ Nevertheless, the best outcome for Iran would be an independent, stable,¶ non-/radicalized neighbor, which is what a neutralization agreement could encourage/especially as Tehran claims it opposes additional military measures¶ and wants the region to solve its own problems.¶ Broadening the geographical circle, China and India, as well as the Central¶ Asian states (Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, and Kazakhstan),¶ all have interests that neutralization could meet. While the Chinese have been¶ wary of the large Western military presence on their border, they also worry¶ about instability and the threat to Chinese economic interests after withdrawal.¶ Beijing has a great deal to lose if the Uighur population of China’s Xinxiang¶ region radicalizes further. In July 2009, for example, major unrest broke out in¶ the Xinxiang capital Urumqi, killing 200 people. More recently, Islamist radicals¶ in Kashgar, who were apparently trained in Pakistan, knifed a dozen Han¶ Chinese. The tight friendship between China and Pakistan has been strained as¶ a result, with the Chinese government more willing to press for a regional deal¶ that calms tensions in its Western province. Vigorous efforts to negotiate through the Shanghai Cooperation Organization (SCO) demonstrate that China understands its long-/term interests in Afghanistan.16¶ India is probably least happy about the imminent troop withdrawals, because¶ it may bear the brunt of any Islamist violence emanating from post-/ISAF¶ Afghanistan. It is keenly interested in regional economic cooperation which¶ might help bring energy from Central Asia to the subcontinent. New Delhi¶ strongly favors a regional political solution and continued involvement of other¶ major powers, particularly since the most likely alternative is a Pakistan-/¶ controlled proxy state in Afghanistan.¶ The Central Asian states should be observers, not signatories, to a¶ neutralization agreement, as its purpose is to balance the interests of¶ competing major powers against each other. All five Central Asian states¶ suffer from drug trafficking and fear resurgent Islamist radicalism in a post-/ISAF¶ Afghanistan. All are strongly interested in the kinds of regionally-/based¶ economic initiatives, especially gas and electricity projects, that a neutralized¶ Afghanistan could support. A stable, independent Afghanistan that is focused¶ on policing its own borders would serve all of their interests.¶ Finally, in the largest sphere, a well-/crafted agreement could also serve Russia,¶ Saudi Arabia, and the United States. Although Russia has drawn satisfaction in¶ seeing Americans suffer at the hands of the insurgency, resurgent Islamist¶ radicalism would be deeply against their interests, in the Caucasus as well as¶ Central Asia. Like Beijing, Moscow is already using its role within the Shanghai¶ Cooperation Organization to reach out to Afghanistan and Pakistan. Of all the¶ major powers, Russia, with a long history of bilateral neutrality agreements¶ beginning in 1931 as well as a well-/established preference for Afghanistan as a¶ buffer state, should be the most interested in Afghanistan’s neutralization now¶ that ISAF drawdown is inevitable. Saudi Arabia might be tempted to resurrect its close ties to Sunni insurgent¶ movements in Afghanistan to offset Iranian influence, but the blowback of its¶ mujahideen project toward Saudi targets has convinced the Royal family that¶ the experiment of the 1990s must not be repeated.17 Government and private¶ financiers send a great deal of money to Afghanistan and Pakistan, so Saudi¶ involvement is essential. Riyadh has been deeply involved in efforts to achieve¶ internal reconciliation among Taliban factions and the Afghan government, and¶ would like to see a more conservative unified government in Kabul. Giving the¶ Afghans the space to find their own way should appeal to the Saudis, particularly¶ if the United States supports it.¶ As for the United States, Afghanistan has little strategic value except in¶ negative terms. Afghanistan must not destabilize the region or become a haven¶ for radical non-/state actors that would attack the United States. This undesirable¶ outcome is more likely if Afghanistan becomes aligned with Pakistan, especially¶ as it would set Afghanistan back toward the medieval brutality that the United¶ States and NATO have been working hard to forestall. The United States does¶ not need a strong central government in Kabul. It needs a stable, autonomous¶ state that will not project power externally or become a proxy to another power,¶ as it maintains autonomy and pursues its own path.¶ How it Might Work¶ To achieve the best possible long-/term outcome in the Afghanistan campaign,¶ the seven key militarily-/capable states that would be threatened by a destabilized¶ Afghanistan (Pakistan, China, Iran, India, Saudi Arabia, Russia, and the United¶ States) might enter into a common agreement to neutralize the state. The¶ chances for neutralization of Afghanistan today are better than they were during¶ the Cold War, when the relationship between the¶ United States and the Soviet Union was zero-/sum.¶ The interests of relevant powers are now¶ adequately aligned to remove Afghanistan as a¶ catalyst of instability among them.¶ The mechanics of neutralization/verification¶ and enforcement/are important, however,¶ because precipitous action could itself destabilize¶ the state. In August 2010, Selig Harrison put¶ forward one proposal: a UN diplomatic initiative¶ to achieve military neutralization of Afghanistan,¶ including a three-/year timetable for complete¶ withdrawal of U.S. and NATO forces, with¶ termination of U.S. access to bases.18 Afghanistan could not achieve full¶ neutrality with foreign forces on its soil, so their complete removal must happen eventually. But such a short timetable is counterproductive. Regional neighbors¶ are not uniformly against a U.S./ISAF presence in Afghanistan; indeed, some¶ (such as China, India, Russia, all the Central Asian republics) see benefit in it,¶ and Kabul likewise appreciates having the United States train Afghan forces for¶ a while. In the May 1, 2012, U.S.—/Afghan Strategic Partnership agreement,¶ which sets the broad outline of the relationship between those two countries¶ from 2012—/2024, the U.S. commits to support the ‘‘training, equipping, advising¶ and sustaining of the Afghan National Security Forces (ANSF), so that¶ Afghanistan can independently secure and defend itself against internal and¶ external threats’’ beyond 2014. While Afghanistan is designated a Major Non-/¶ Nato Ally, the partnership framework also commits the United States to ‘‘the¶ sovereignty, independence, territorial integrity and national unity of¶ Afghanistan’’ with no permanent U.S. military bases in Afghanistan.19¶ It would not be a great leap from this partnership arrangement to restoring¶ Afghanistan’s neutrality; but the transition should occur in phases. With the¶ Afghan government gradually taking on the internal stabilization role, the¶ mission of U.S. and NATO forces could shift to helping protect Afghanistan’s¶ frontiers. No control machinery aided the neutralizations of Belgium,¶ Luxembourg, or Switzerland, but today a range of proven technical means¶ could be employed to secure the borders of Afghanistan, including infrared¶ sensors and cameras.20 These would differ depending on the local situation, but¶ even more important would be complementary measures put in place by¶ countries on the other side. Iran, Uzbekistan, and China already protect their¶ borders reasonably well; Turkmenistan and Tajikistan do not. Pakistan and¶ Afghanistan cannot even agree on what their border is, but Afghanistan would¶ be more likely to recognize the Durand line if a neutralization agreement¶ guaranteed its territorial integrity and lessened the likelihood that Pakistan¶ would try to control its future.¶ To address the more difficult frontiers, the United States should sponsor a¶ multilateral program of verification through the use of unmanned aerial vehicles¶ (UAVs) and radar. The purpose would be to involve the neighbors in efforts to¶ track and prevent the movement of arms or troops. Violations would be reported¶ in real time to a UN monitoring commission and also shared with the Afghan¶ National Security Forces (ANSF). According to the commander of Iran’s¶ National Border Police, Iran already employs UAVs along its borders.¶ International investment in border control management should gradually¶ increase as ISAF draws down. Community policing in remote border areas¶ would also be essential, with the central priority being to prevent foreign fighters¶ or arms from entering Afghanistan. Obviously, a border patrol in Afghanistan¶ would be far from perfect, but even partial success would deter outsiders,¶ strengthen Afghan national identity, and have beneficial effects for the region. ¶ The Logic of Neutralizing Afghanistan¶ With ISAF withdrawal inevitable, a sea change is already underway: the¶ question is whether the United States will be ahead of the curve or behind it.¶ Under current circumstances, key actions within Afghanistan by any one state¶ are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in¶ a neutralized state. As the United States draws down over the next two years,¶ yielding to regional anarchy would be irresponsible. Allowing neighbors to rely¶ on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty¶ years/except this time the outcome could be not just terrorism but nuclear war.