**CP**

***Next off is CP***

***The United States Federal Government should require a legislative policy trial prior to introducing United States Armed Forces into missions beyond self-defense of the United States or a country the United States is obligated to defend via a bilateral mutual defense treaty, pursuant to the National Command Authority Rules of Engagement. The United States Federal Government should withdraw its armed forces from Mali.***

***Their plan text would devastate US alliances because it only allows an exception in the event of an attack on the United States but not our allies—only the CP allows us to maintain treaty obligations***

RICHARD **HANANIA**, University of Chicago Law School, HUMANITARIAN INTERVENTION AND THE WAR POWERS DEBATE, (20**12**) J.JURIS 47, <http://www.jurisprudence.com.au/juris13/Hanania.pdf>, jj

**The question of what shifting the war powers back to Congress would mean for a** ¶ **Wilsonian power can be explored from a variety of angles**. For example, future ¶ scholarship could investigate American commitments to preserve the world order ¶ and protect other developed democracies. **Under the North Atlantic Treaty, the** ¶ ***U*nited *S*tates is obligated to come to the defense of any other member nation** ¶ **under attack**.240 **Since its founding, NATO has expanded to include twenty-eight** ¶ **countries.**241 **The *U*nited *S*tates also has bilateral mutual defense treaties with the** ¶ **Philippines**,242 **South Korea,**243 **and Japan**.244 Finally, America is also arguably ¶ obliged to defend the four other members of the Southeast Asia Treaty ¶ Organization (SEATO) that are not in NATO and with which the United States ¶ does not have an independent mutual defense treaty.245 **The fact that there appears** ¶ **to be little appetite amongst the general public to live up to American defense commitments abroad**,246 **means that where the war powers are placed might be** ¶ ***very important* if an American ally suffered a classic state-on-state attack**.247

***Perception of non-commitment to intervention in defense of allies devastates our security guarantees***

**Anderson et. al, 13** [\*Justin V. Anderson is a Senior National Security Policy Analyst with SAIC in Arlington, VA, providing contract support to government clients on nuclear arms control, deterrence, and WMD proliferation issues. He is editor of the Headquarters Air Force, Strategic Plans and Policy (AF/A5XP) “emerging issues” report series and lead analyst for the portfolio’s nuclear arms control analyses. His past experience includes serving as Senior Editor of the DoD Law of War Manual and providing analysis to the DTRA, OSD AT&L Office of Treaty Compliance, and Missile Defense Agency. Dr. Anderson received his PhD in war studies from King’s College London. \*\*Jeffrey A. Larsen is a Senior Scientist with Science Applications International Corporation (SAIC) in Colorado Springs, CO. Dr. Larsen was the first Director of AF/INSS and continues to provide contract support to the Institute. He also works with Headquarters US Air Force, the Defense Threat Reduction Agency (DTRA), and US Strategic Command. He is widely published in the fields of national security, nuclear policy, arms control, NATO policy, and the role of airpower in recent conflicts. A retired Air Force Lt Colonel, Dr. Larsen earned his PhD in politics from Princeton University. \*\*\*Polly M. Holdorf (Annotated Bibliography) is a National Security Analyst with Toeroek Associates, Inc. at the US Air Force Academy where she provides on-site analysis, research and editorial support to INSS. Ms. Holdorf was a participant in the 2010 Project on Nuclear Issues (PONI) Nuclear Scholars Initiative program. Previously Ms. Holdorf worked as a Field Representative in Colorado’s 5th Congressional District. Ms. Holdorf received her M.A. in international security from the Josef Korbel School of International Studies, University of Denver. INSS Occasional Paper 69, September 2013, USAF Institute for National Security Studies, USAF Academy, Colorado, Extended Deterrence and Allied Assurance: Key Concepts and Current Challenges for U.S. Policy, <http://www.usafa.edu/df/inss/OCP/OCP69.pdf>, jj]

**The effectiveness of these strategies relies on** the **careful orchestration** of the full spectrum of geopolitical and military resources available to the United States. **Simultaneously assuring allies and deterring their enemies requires nimble diplomacy, strong relationships with allied political and military leaders**, well-equipped armed forces, **and *the consistent demonstration of the United States’ steadfast commitment to accept risks and, if necessary, bear costs, in order to protect its allies across the globe***. **Extended deterrence and assurance strategies** thus represent political-military frameworks whose maintenance **depends on** the **close coordination** of decision-makers, diplomats, intelligence officials, defense strategists, and military planners. **The scope of the task reflects the central importance of these strategies to international peace and security, and leads to constant scrutiny by foreign parties – both adversary and allied – of U.S. extended deterrence and assurance commitments in order to determine whether they show any signs of weakness or fatigue.**

Bedrock Security Commitments and Flexible Strategies

***Allies placing their trust in U.S. defense guarantees must believe the United States commitment to their security will not waver***; at the same time, **the strategies and plans that implement these commitments must flexibly adapt to geopolitical change and evolving regional security environments.**

***Credible security guarantees check global escalation and WMD conflict***

**Anderson et. al, 13** [\*Justin V. Anderson is a Senior National Security Policy Analyst with SAIC in Arlington, VA, providing contract support to government clients on nuclear arms control, deterrence, and WMD proliferation issues. He is editor of the Headquarters Air Force, Strategic Plans and Policy (AF/A5XP) “emerging issues” report series and lead analyst for the portfolio’s nuclear arms control analyses. His past experience includes serving as Senior Editor of the DoD Law of War Manual and providing analysis to the DTRA, OSD AT&L Office of Treaty Compliance, and Missile Defense Agency. Dr. Anderson received his PhD in war studies from King’s College London. \*\*Jeffrey A. Larsen is a Senior Scientist with Science Applications International Corporation (SAIC) in Colorado Springs, CO. Dr. Larsen was the first Director of AF/INSS and continues to provide contract support to the Institute. He also works with Headquarters US Air Force, the Defense Threat Reduction Agency (DTRA), and US Strategic Command. He is widely published in the fields of national security, nuclear policy, arms control, NATO policy, and the role of airpower in recent conflicts. A retired Air Force Lt Colonel, Dr. Larsen earned his PhD in politics from Princeton University. \*\*\*Polly M. Holdorf (Annotated Bibliography) is a National Security Analyst with Toeroek Associates, Inc. at the US Air Force Academy where she provides on-site analysis, research and editorial support to INSS. Ms. Holdorf was a participant in the 2010 Project on Nuclear Issues (PONI) Nuclear Scholars Initiative program. Previously Ms. Holdorf worked as a Field Representative in Colorado’s 5th Congressional District. Ms. Holdorf received her M.A. in international security from the Josef Korbel School of International Studies, University of Denver. INSS Occasional Paper 69, September 2013, USAF Institute for National Security Studies, USAF Academy, Colorado, Extended Deterrence and Allied Assurance: Key Concepts and Current Challenges for U.S. Policy, <http://www.usafa.edu/df/inss/OCP/OCP69.pdf>, jj]

**This paper** differentiated the concepts of deterrence, extended deterrence, and assurance (Part 2); provided an historical overview of U.S. deterrence, extended deterrence, and assurance strategies (Part 3); and assessed continuity and change with regard to these strategies over time (Part 4); discussed current U.S. extended deterrence and assurance strategies (Part 5); and **presented an overview of issues regarding extended deterrence and assurance in three regions of key importance to the United States: the Asia-Pacific, the Middle East, and Europe** (Part 6). Across these sections, **it has sought to communicate the enduring importance of U.S. allied assurance and extended deterrence strategies to allied security, *regional stability*, and, in turn, to U.S. peace and prosperity.** Despite significant geopolitical changes from the Cold War to the present day, **these strategies remain critical to U.S. allies across the globe**. **Many of those allies face potential adversaries fielding superior conventional capabilities, *WMD,* or both**. ***Global in scope***, **extended deterrence and allied assurance strategies require the *U*nited *S*tates to remain vigilant in protecting allies from a range of threats and flexible in fielding a variety of forces capable of conducting numerous (and often simultaneous) deterrence operations against a multiple potential adversaries.**

**Cp2**

***Next off is UN PIC***

***TEXT: The United States federal government should require a legislative policy trial prior to introducing United States armed forces into missions beyond self-defense that are not approved by the UN Security Council, pursuant to the National Command Authority rules of engagement. The United States Congress should not utilize the power of purse to limit U.S. contributions to United Nations missions or otherwise interfere with these missions. The United States Congress should fully fund all approved United Nations missions. The United States Federal Government should withdraw its armed forces from Mali.***

***Solves the case and boosts UN Cred***

**Biden & Ritch ’88**, SENATOR [now V.P.] JOSEPH R. BIDEN, JR. \* AND JOHN B. RITCH III \*\*, \* Joseph R. Biden, Jr., is a United States Senator representing the State of Delaware. He is Chairman of the Senate Judiciary Committee, the Senate Foreign Relations Subcommittee on European Affairs, and the NATO Assembly's Special Committee on Alliance Strategy and Arms Control. Recently, Senator Biden served as Chairman of the Senate's Special Subcommittee on War Powers.¶ \*\* John B. Ritch III is deputy staff director of the Senate Foreign Relations Committee and the Committee's senior advisor on European and Soviet affairs, and served as staff director of the Senate's Special Subcommittee on War Powers.¶ This commentary is based on a speech delivered by Senator Biden at the Georgetown University Law Center on October 3, 1988. Georgetown Law Journal¶ December, 1988¶ 77 Geo. L.J. 367, COMMENTARY: The War Power at a Constitutional Impasse: A "Joint Decision" Solution., Lexis, jj

[\*397] ENUMERATION OF PRESIDENTIAL AUTHORITIES

The key element of a new framework would be to move beyond the now sterile dispute over precisely what the Constitution, unembellished by legislation, allows and to accommodate practical reality by enumerating and affirming in law a broad range of soundly conceived presidential authorities. **Such authorities would be available to the President without incident-specific congressional action** -- but, except in emergencies, only for a limited period. This listing would include and subsume those emergency authorities to use force regarded as inherent presidential powers deriving from accepted constitutional practice. And **it would include additional authorities that Congress might wish, in the national interest, to grant**, such as a circumscribed authority to preempt or retaliate against clearly identified acts of terrorism.

It bears emphasis that Congress would not, through this technique, be conceding constitutional authority to the President, but rather exercising its own constitutional power to define and delegate authority. In the War Powers Resolution, enacted in an atmosphere of heated interbranch contention, Congress explicitly sought to confer no authority. Its intention was to rein the President in from assertions of unwarranted authority. In contrast, through a Use of Force Act, **Congress would affirmatively delegate authorities** that embrace and extend beyond those independently held by the President solely through the Constitution. In doing so, however, Congress would impose standards, limitations, and procedures pursuant to its own constitutional powers.

**One authority, clearly not inherent but which Congress might wish to provide, would empower the President to use force pursuant to a decision of the United Nations Security Council** n108 -- **as President Truman did in Korea,** with the difference that Truman acted unilaterally, asserting an inherent authority. n109 **It seems inconceivable that Congress would wish to thwart the United States' participation in any multilateral use of force on which the Security Council could unanimously agree, particularly if the President had consulted with the congressional leadership before participating in the United Nations' decision**. From the President's perspective, genuine consultation would be the essence of prudence, since an extended use of force would [\*398] eventually require congressional approval. **Such a pre-authorization to the President could**, in an international emergency such as the Korean intervention, ***prove useful and would serve, by its very existence, as a symbol of American support for multilateral, consensus-based U.N. action.***

A similar authority for multilateral action would empower the President to use force in cooperation with America's democratic allies under circumstances wherein military intervention could have decisive effect in protecting existing democratic institutions in a particular foreign country against a severe and immediate threat. As with the U.N.-related authority, **built-in constraints on the President would derive from the need to act multilaterally and the eventual need to obtain congressional authorization for a sustained use of force.**

In legislation creating a new framework, all such authorities would be placed under the conceptual heading of "confirming and conferring," so as to avoid an endless dispute over the exact location of the line between what the President already possesses independently and what Congress was bestowing upon him by this legislation. By way of example, this aggregation of authorities could take the following form:

AUTHORITY AND LIMITS

§ 1(a) **In the absence of a declaration of war or statutory authorization for a specific use of force, the President, through powers vested by the Constitution and by this law, is authorized to use force abroad --**

(1) to repel an armed attack upon the United States, its territories, or its armed forces;

(2) to respond to a foreign military threat that severely and directly jeopardizes the supreme national interests of the United States under extraordinary emergency conditions that do not permit sufficient time for Congress to consider statutory authorization;

(3) to protect and extricate citizens and nationals of the United States located abroad in situations involving a direct and imminent threat to their lives, provided they are being evacuated as rapidly as possible;

(4) to forestall an imminent act of international terrorism known to be directed at citizens or nationals of the United States, or to retaliate against the perpetrators of a specific act of international terrorism directed at such citizens or nationals;

(5) to protect, through defensive measures and with maximum emphasis on multilateral action, internationally recognized rights of innocent and free passage in the air and on the seas;

(6) **to participate in multilateral actions undertaken under urgent circumstances and pursuant to the approval of the United Nations Security Council**; and

[\*399] (7) to participate in multilateral actions undertaken in cooperation with democratic allies under urgent circumstances wherein the use of force could have decisive effect in protecting existing democratic institutions in a particular nation against a severe and immediate threat.

***Unilateral presidential war-making key to U.S. participation in the U.N.***

**Linn ‘2k**, Alexander C. Linn, William & Mary Bill of Rights Journal¶ April, 2000¶ 8 Wm. & Mary Bill of Rts. J. 725, NOTE: INTERNATIONAL SECURITY AND THE WAR POWERS RESOLUTION, Lexis, jj

**The Framers' desire to vest the war power in the Congress could not anticipate the collective security scheme delineated by the U.N. Charter and UNPA**. Notwithstanding that the President's modern control over war conflicts with the Framers' intent, the problem is not the increase in executive power. **There are compelling reasons for the Executive to hold a quantum of war power that contradicts the Framers' intent**. **Presidential authority to make troop commitments to U.N. operations is necessary because the viability of policies designed to enhance** [\*746] **international security and thwart aggression may depend on the ability of the President's U.N. delegate to make concrete commitments in Security Council negotiations**. n92 Rather, the problem remains that the historical increase in the Executive's war power has taken place without a viable framework for checking that power. n93 Most profoundly, the Resolution has not been construed to balance two contradictory demands of the post-Cold War world: **the Constitution demands that Congress have authority to initiate war, but American obligations under the U.N., as well as American foreign policy, both demand that the President must have authority to commit troops to military hostilities**. The War in the Persian Gulf against Iraq illustrates these points.¶ The Persian Gulf War was precipitated by Iraqi leader Saddam Hussein's 1990 invasion of Kuwait. n94 President Bush quickly deployed a force that grew to more than 500,000 troops to thwart the aggression; this initial deployment was made without consulting Congress as a whole; however, he did consult, from the outset of the deployment, with selected members of Congress. n95 After American troops had [\*747] been deployed, President Bush garnered support for military action in Kuwait from the Security Council. n96 As a consequence, the Security Council passed Resolution 678, which justified military action against Iraq to restore the security of Kuwait and the Middle East. n97 President Bush used Resolution 678 and the Security Council's support for a military offensive to justify the executive initiation of war. n98 After American troops were deployed, President Bush sought and received approval for his action from Congress. n99¶ [\*748] ¶ Some congressional representatives and military personnel felt President Bush's actions were an unconstitutional usurpation of the war power by the Executive and a violation of the War Powers Resolution. Problematically, the executive initiation of military force in the Gulf War left discontented representatives without legal redress. n100 It seems clear that **the Resolution must be interpreted to reconcile contradictory goals: securing legislative authority to initiate war and securing the efficacy of the Executive to implement international security schemes under a U.N. aegis.**

***U.S. participation in these missions solves escalation in multiple hot-spots***

**Fréchette 09** Distinguished fellow at the Centre for International Governance Innovation in Waterloo, Ont. [Louise Fréchette (former deputy secretary-general of the United Nations.) “A new America, a new UN?,” From Wednesday's Globe and Mail Last updated on Thursday, Apr. 09, 2009 11:02PM EDT, pg. <http://www.theglobeandmail.com/news/opinions/article968894.ece>

Ms. Rice is thus likely to encounter considerable goodwill when she takes up her post. This will not be sufficient, however, to guarantee easy agreement on the many issues that will require her urgent attention. **Early out of the gate will be Iraq and Afghanistan, where Washington wants an expanded role for the UN, as well as Darfur and Congo, where the UN missions are struggling to cope with very challenging problems, inadequate resources and insufficient diplomatic support. Add to this list the ongoing concerns with Iran's nuclear program, a fragile ceasefire in Gaza and the rapid disintegration of what is left of Somalia as a functioning state.** **The Security Council cannot be effective if its key members are at loggerheads. America's relations with China and Russia usually set the tone in the council. If bilateral relations are set on a positive course, mutually acceptable solutions will be more easily found,** even though the three countries clearly do not share the same values or priorities. It will also be important for Washington to build support among the UN membership at large. The ability of the world body to perform effectively depends to a large extent on the perceived legitimacy of its decisions. **So long as they are seen as the expression of the common will, the organization has a potential for effectiveness that no other can have**. This legitimacy is now put in doubt in many quarters. **The Security Council is no longer representative of the world's reality** at the beginning of the 21st century, **and the failure**, so far, **to reform it increasingly serves as an excuse to ignore its decisions and challenge its interventions.** More and more people in developing countries, particularly in the Muslim world, view the UN as a tool of the United States and of the West. They see an organization that is insufficiently supportive of the Palestinians and is ganging up on Muslim countries from Sudan to Afghanistan and from Iraq to Iran, at the behest of the American imperial power. Meanwhile, in the United States and elsewhere, the public has the impression that the UN is a hopeless mess, totally under the thumb of non-democratic states. **Trust in the UN's legitimacy can be restored if its member states can be brought together around a common vision for the organization. The most powerful among them must take the time to listen, explain and persuade. History shows that when the member states are united in their purpose, the UN can deliver - if it's given the means to do the job.** Mr. Obama has an opportunity to get the UN back on the rails. Canada should do all it can to help him in this enterprise.

**DA**

***Next off is the primaries DA***

***Moderate GOP candidates will win their primaries now—but it could flip***

**Reinhard 2/18/14** (Beth Reinhard is a political correspondent for National Journal, and was a lead writer for the 2012 presidential race, Prior to joining National Journal in 2010, Reinhard was the political writer at The Miami Herald. She covered local, statewide and national campaigns and wrote a weekly column on politics for 11 years. She previously worked at The Palm Beach Post, Education Week and The Home News. Born and raised in Miami, Reinhard received her bachelor’s degree from the University of Pennsylvania and a master’s degree in journalism from Columbia University, 2/18/14, National Journal, “The Establishment Holds Fire in the GOP Civil War” <http://www.nationaljournal.com/politics/the-establishment-holds-fire-in-the-gop-civil-war-20140218>, jj)

***While there's still time for more challengers to gain traction***, **the Republican establishment is mostly holding its fire**, a dramatic comedown from the brash, anti-tea-party rhetoric of last year. The Crossroads offshoot, the Conservative Victory Project, hasn't spent a nickel on a Republican primary in 2014. Neither has the Republican Main Street Partnership, the moderate GOP group led by former Rep. Steve LaTourette of Ohio. The chamber of commerce has intervened so far only in Republican primaries in Alabama, Idaho, and Kentucky, where Senate Minority Leader Mitch McConnell faces a bigger threat from Democrat Alison Lundergan Grimes than from Republican Matt Bevin. Indeed, even as spring and summer primaries loom, most of the Republican and conservative spending targets Democrats on the ballot in November. At the forefront of the general-election assault is Americans for Prosperity, the group bankrolled by the Koch industrialist family. Most of its $30 million in spending has attacked Democrats over Obamacare, an issue that has proved far more unifying for the Republican Party than any of the issues that divide it. "The narrative of a Republican civil war is always enticing for the media and as a fundraising angle for groups, but **if you look at the number of contested, hot primaries this year, it doesn't seem atypical**," said Tim Phillips, president of Americans for Prosperity. **Despite the commotion raised over seven of 12 Republican senators drawing opposition from the tea-party movement, most of those incumbents look secure**. **One challenger**, Liz **Cheney, already dropped her bid** against Sen. Michael Enzi of Wyoming.

***Plan’s a wedge issue that causes Tea Party success in the midterms as rank-and-file GOP voters rebel against establishment candidates***

**Silver, ’13** [Nathaniel Read "Nate" Silver is an American statistician and writer who analyzes in-game baseball activity and elections. He is currently the editor-in-chief of ESPN's FiveThirtyEight blog and a Special Correspondent for ABC News. June 11, 2013, 538 – NYT, Domestic Surveillance Could Create a Divide in the 2016 Primaries, <http://fivethirtyeight.blogs.nytimes.com/2013/06/11/domestic-surveillance-could-create-a-divide-in-the-2016-primaries/?_r=0>, jj]

**A poll** released on Monday by the Pew Research Center and The Washington Post **found a partisan shift in the way Americans view the** **N**ational **S**ecurity **A**gency’s domestic surveillance programs. In the survey, **slightly more Democrats than Republicans said they found it acceptable for the N.S.A. to track Americans’ phone records and e-mails if the goal is to prevent terrorism**. By comparison, when Pew Research asked a similar question in 2006, Republicans were about twice as likely as Democrats to support the N.S.A.’s activities. The poll is a reminder that **many Americans do not hold especially firm views on some issues and instead may adapt them depending on which party controls the executive branch**. When it comes to domestic surveillance, a considerable number of **Democrats seem willing to support actions under** President **Obama that they deemed unacceptable under** George W. **Bush, while some Republicans have shifted in the opposite direction**. **What may be just as significant is the way in which attitudes toward the *security state* could split voters and elected officials within each party — possibly creating a *wedge issue*** in both party primaries in 2016. **Politicians who are normally associated with being on the far left and the far right may find common cause with grass-roots voters** in their objection to domestic surveillance programs, ***fighting against a party establishment*** that is inclined to support them. Take, for example, the House’s vote in May 2011 to extend certain provisions of the Patriot Act — including the so-called library records provision that the government has used to defend the legality of sweeping searches of telephone and e-mail records. The bill passed with 250 yes votes in the House against 153 no votes, receiving more of its support from Republicans. (In the Senate, the bill passed, 72-23, winning majority support from both parties.) However, the House vote was not well described by a traditional left-right political spectrum. In the chart below, I’ve sorted the 403 members of the House who voted on the bill from left to right in order of their overall degree of liberalism or conservatism, as determined by the statistical system DW-Nominate. Members of the House who voted for the bill are represented with a yellow stripe in the chart, while those who voted against it are represented in black. The no votes are concentrated at the two ends of the spectrum. The 49 most liberal members of the House (all Democrats) who voted on the bill each voted against it. But so did 14 of the 21 Republicans deemed to be the most conservative by DW-Nominate. By contrast, 46 of the 50 most moderate Republicans voted for the Patriot Act extension, as did 38 of the 50 most moderate Democrats. Perhaps, you might object, a one-dimensional spectrum doesn’t do a very good job of capturing all the nuances of what it means to be liberal or conservative in America today. In considering the surveillance state, for example, ***Republicans must weigh their traditional support for aggressive antiterrorism policies against their distrust of government***, while Democrats must weigh their trust of Mr. Obama, who so far has been unapologetic for the N.S.A.’s actions, against their concern about civil liberties violations. Or more broadly, what about libertarians who take conservative views on economic policy but liberal views on social policy — or conservative Democrats who support the welfare state but not policies like gay marriage? Where are they represented on the spectrum? I am sympathetic toward these objections as a theoretical matter. Without making this too much of an editorial comment, I find the platforms of both parties to be lacking in philosophical cohesion — why, for example, should views on abortion have much to do with preferences on tax policy? But when it comes to American political parties and their representatives in Congress, partisanship tends to dominate all other considerations. National Journal has a different system for ranking members of Congress from liberal to conservative. It is somewhat less statistically rigorous than DW-Nominate’s system, but it does have the advantage of breaking votes down into three categories: those on economic, social and foreign policy. The correlations between the three policy areas are very high (specifically, they are about 0.9, where 1 would represent a perfect correlation). Members of Congress who take conservative views on economic policy tend almost always to take conservative views on social policy and foreign policy as well, while members who are liberal on one set of issues tend to cast liberal votes on almost all other issues. This does leave the question of how liberal and conservative policy stances are defined. (Support for gun rights, for example, is generally seen as socially conservative rather than socially liberal, even though socially liberal stances are often thought of as promoting the rights of individuals against communities or governments.) Nevertheless, for members of Congress today, a vote on any one issue is highly predictable based upon his votes on other issues. There are extremely few mavericks in Congress who vote on each issue on an independent and nonpartisan basis. DW-Nominate uses a different method to classify Congressional votes. Instead of assigning a subjective definition to each vote as liberal or conservative, it instead uses an automated process called optimal classification. The goal of this process is essentially to explain the highest number of Congressional votes based on a one-dimensional scale, regardless of the content of the legislation that comprises it. Whichever votes are not well explained by this first dimension are then explained by additional dimensions. The process is more intuitive than it might sound. For example, during the 1960s, Congressional votes on civil rights policy toward African-Americans were not very strongly correlated with votes on other types of political issues. (For instance, Southern Democrats were often staunchly opposed to civil rights for blacks while casting very liberal votes on the welfare state.) Thus, you needed at least two dimensions to describe Congressional voting patterns in a reasonably comprehensive way. In recent years, however, this has been much less of a problem: the one-dimensional spectrum explains about 95 percent of Congressional voting, and votes on economic, social and foreign policy are highly correlated. But a few votes still fall outside of the spectrum — the 2011 vote on the Patriot Act among them. If the second dimension no longer represents a distinction between economic and social policy, then what does it reflect? The authors of DW-Nominate are interpreting it to measure a distinction between what they call “establishment” members of Congress and “outsiders.” Here at FiveThirtyEight, I have sometimes used the same labels when describing the ideological space occupied by different candidates during the presidential primaries. Some candidates, like Mitt Romney, run as insider or establishment politicians, offering some iteration of what they say are tried-and-true solutions, while others run as insurgents or outsiders, submitting a more profound critique of politics as usual and claiming they will topple an unacceptable status quo. In general, those politicians who rate as insurgents or outsiders are on the wings of the liberal-conservative scale. The Tea Party, Occupy Wall Street and Ron Paul movements probably all fit into the outsider or insurgent category, for example, even though they inhabit vastly different spaces on the traditional left-right political spectrum. Conversely, moderates in both parties tend to score as establishment politicians. There aren’t very many “radical centrist” members of Congress who offer a pronounced critique of the status quo while also coming down somewhere in the middle on most policy issues. In the case of the Patriot Act vote, the establishment-outsider axis makes nearly as much difference as the liberal-conservative or Democratic-Republican scales. Among the so-called establishment members of the House who voted on the bill, 78 percent voted to extend the Patriot Act, while only 41 percent of the so-called outsiders did, according to DW-Nominate’s classifications. You can find similar patterns in certain votes on policy toward the financial sector — for example, during the various bailout votes that were cast toward the end of 2008. More recently, votes on the federal debt ceiling have taken on some of the same contours. What is the link between the financial votes and those on the surveillance state? In both cases, members of Congress were asked to trust the assertions of elites that significant harms would result if the bills were not enacted: terrorist acts in the event that the Patriot Act was not extended, or financial calamity in the event that the bailout was not passed or the debt ceiling was not raised. As a matter of practice (but not necessarily theory), convincing someone that a future crisis must be averted requires a higher level of persuasion than making the case for a policy that is claimed to ameliorate some extant problem. Members of Congress who are members of their party establishments might be more inclined to trust testimony from financial or national security elites, and therefore might have been easier to pitch on these bills. We should be careful about extrapolating the voting behavior of Congress to policy views among the general public. But as I have suggested, **the establishment-outsider divide can loom large** in presidential primaries. **Particularly within the Republican Party, rank-and-file voters have increasingly lukewarm views of the party leadership**. But Democrats will also face a primary after Mr. Obama’s tenure in office. Highly liberal, activist voters who might ordinarily be inclined to critique the status quo could face some awkward questions given that the status quo has featured a Democratic president. ***Debates on domestic surveillance could serve as proxy battles for these intraparty factions***. Senator Rand **Paul** of Kentucky, perhaps **along with other Republican candidates, could use his opposition to surveillance programs to help consolidate the support of libertarian and Tea Party voters**, at the risk of alienating national security conservatives. Democratic candidates who criticize the Patriot Act or the N.S.A.’s actions will be finding fault with policies that Mr. Obama has defended – and Mr. Obama will very likely remain quite popular among Democrats three years from now.

***This costs GOP moderates their seats and swings the election to the Tea Party***

**PDT 8/7-’13** [Pakistan Daily Times, Republican rift seeping into US foreign policy, <http://www.dailytimes.com.pk/default.asp?page=2013%5C08%5C07%5Cstory_7-8-2013_pg4_7>, jj]

**Old-guard Republicans like** Senator John **McCain hew to the traditional line that the exertion of American power is the primary force of good in a chaotic world**. They advocate supplying weapons to rebels in Syria, aiding Egypt despite the turmoil of the recent military coup, and using all tools at US disposal, including the surveillance of hundreds of millions of citizens, to keep America safe. **But insurgent conservatives, led by libertarian-leaning** Senators Rand **Paul and** Ted **Cruz, are challenging that orthodoxy, and their influence has become difficult to ignore**. A case in point came before the Senate late last week when Paul introduced a measure that would block $1.5 billion in aid to Egypt. His amendment was handily defeated, but not before heated debate between him and McCain over the role of the United States abroad. Notably voting with Paul and 11 other core conservatives was Mitch McConnell, the Senate’s top Republican. Together their vote bucked the position of AIPAC, the pro-Israel lobby that often finds Republican support in Washington. Earlier this year **McCain derisively called Cruz and Paul “wacko birds**” **on the Senate floor, citing their procedural opposition to virtually anything supported by** President Barack **Obama, including** the US budget, immigration reform, **drone use**, the national health law and foreign aid. “There may be more wacko birds in the Senate than is suspected,” Cruz, 42, sniped back at the 2008 Republican presidential nominee who is 34 years his senior. Cruz passed a big test last month in Iowa, where he was warmly received by several hundred evangelical pastors, a group that carries huge influence over the outcome of the first-in-the-nation primaries. **Paul became a hero** for many in March **when he launched a 13-hour filibuster in the Senate to demand the Obama administration clarify its position on** domestic use of **drones**. ***Political observers see a test brewing ahead of the*** presidential race in 2016 and even the ***mid-term elections in 2014***, **when voters will be confronted with what appears to be two divergent Republican strains**. Michael Steele, a former chairman of the Republican National Committee, said **recent ideological clashes have highlighted the “fracturing within the party.” “*The question is will the John McCain view prevail ultimately going into 2014, or will the Ted Cruz view prevail?”*** he told MSNBC. The establishment’s growing unease with the upstarts, Paul led the Republican field in a recent PPP poll on the 2016 race, is likely what fueled a very public war of words late last month between two likely Republican contenders for the White House. New Jersey Governor Chris Christie blasted Paul’s position on domestic surveillance, and House of Representatives lawmakers who nearly de-funded the intelligence program that scoops up telephone records on millions of Americans. “This strain of libertarianism that’s going through both parties right now and making big headlines, I think, is a very dangerous thought,” Christie said at a mayoral panel. Paul shot back that “spying without warrants is unconstitutional.” The two carried on their bickering for days until reaching an uneasy truce. Congressman Peter King, the New York Republican who has chaired the House Homeland Security Committee, warned that the ***Tea Party favorites could threaten GOP aspirations*** for taking back the White House, especially if they were running against former secretary of state Hillary Clinton. “I think she’s very strong on foreign policy, and I think that if we nominate someone from our isolationist wing of the party, she’ll destroy them,” King told ABC News, adding that their pushing of the national debate is “harmful to the country.” Conservative columnist Charles Krauthammer argued in his Friday column that the return of conservative isolationism “was utterly predictable.” **After years of war in Afghanistan and Iraq, debate over countless drone strikes and the revelations of mass surveillance by the National Security Agency, “the natural tension between isolationist and internationalist tendencies has resurfaced**,” he wrote. Thomas Mann, a veteran congressional expert at the Brookings Institution, told AFP that while the Republican Party has largely accommodated the “economic libertarianism” of the Tea Party faithful in Congress,” **true isolationists have little support among Republicans in office. “With Americans weary of war, this could begin to change but it would presage a real crackup of the GOP,**” he said. afp

***Continued tea party influence blocks Obama’s climate agenda—electing moderates is key***

**Huq, ’13** [Saleemul Huq, irector, International Centre for Climate Change and Development, Independent University, Bangladesh, Dhaka, Responding to Climate Change, Comment: the US looks like it’s getting serious on climate change, <http://www.rtcc.org/2013/08/07/comment-the-us-looks-like-its-getting-serious-on-climate-change/>, jj]

**It is very clear that President Obama and his team of senior advisers all accept the scale of the climate change problem and recognise the US’s responsibilities.** This is in stark contrast to his predecessor President Bush who refused to take any significant action for eight years. **During** President **Obama’s first term** of office **he tried to bring Congress on board towards a national response to tackling climate change, which proved to be unsuccessful**. So in his second term he has decided to take whatever action he can by executive order and without requiring Congressional approval. While I have criticised his Climate Action Plan as being too little too late (when compared to the scale of the problem that has to be tackled), I must acknowledge that it is indeed a significant step forward compared to the past. State leverage The second important personality that is involved is the new Secretary of State (and former Senator) John Kerry who has a long and honourable history of engagement on this issue both at national as well as international levels. Unlike his predecessor, Hilary Clinton, he is very interested in this topic and is determined that the US plays a more positive role at the international level. He has already taken personal charge of US international relations on this topic. **The most difficult element of the political landscape in the US on the topic of climate change has always been, and continues to be, the Republican Party, who control the House of Representatives in Congress (and thus can, and do, block any attempts to bring legislation to tackle climate change**). **Within the Republican Party *the climate change denying tendency is led by the Tea Party* wing of the party and a handful of Congressmen and Senators. However, even here *there is a growing awareness amongst more sensible Republicans that they cannot continue to deny the reality of climate change***. **An example is the recent article** in the New York Times, jointly **authored by three former Republican heads of the** US Environmental Protection Agency (**USEPA), arguing for the Party to take sensible actions to tackle climate change.**

***Obama action on climate solves extinction***

Ashok **Khosla 9**, IUCN President, International Union for Conservation of Nature, A new President for the United States: We have a dream, 1-29-09, http://cms.iucn.org/news\_events/?uNewsID=2595

**A rejuvenated America, with a renewed purpose, commitment and energy to make its contribution once again towards a better world could well be the turning point that can reverse the current decline in** the state of the global economy, **the health of its life support systems** and the morale of people everywhere. This extraordinary change in regime brings with it the promise of a deep change in attitudes and aspirations of Americans, a change that will lead, hopefully, to new directions in their nation’s policies and action. In particular, **we can hope that from being a very reluctant partner in global discussions**, especially **on issues relating to environment and sustainable development, the *U*nited *S*tates will become an active leader in international efforts to address the** Millennial **threats now confronting civilization and even the *survival* of the human species**. **For the conservation of biodiversity, so essential to maintaining *life on Earth*, this promise of change has come not a moment too soon**. It would be a mistake to put all of our hopes on the shoulder of one young man, however capable he might be. The environmental challenges the world is facing cannot be addressed by one country, let alone by one man. At the same time, **an inspired US President** guided by competent people, **who does not shy away from exercising the true responsibilities and leadership his country is capable of, could do a lot to spur the international community into action**. To paraphrase one of his illustrious predecessors, “the world asks for action and action now.” What was true in President Roosevelt’s America 77 years ago is even more appropriate today. From IUCN’s perspective, the first signals are encouraging. The US has seriously begun to discuss constructive engagement in climate change debates. With Copenhagen a mere 11 months away, this commitment is long overdue and certainly very welcome. Many governments still worry that if they set tough standards to control carbon emissions, their industry and agriculture will become uncompetitive, a fear that leads to a foot-dragging “you go first” attitude that is blocking progress**. A positive intervention by the *U*nited *S*tates could provide the vital catalyst that moves the basis of the present negotiations beyond the narrowly defined national interests that lie at the heart of the current impasse**. **The logjam in international negotiations on climate change should not be difficult to break if the US were to lead the industrialized countries to agree that much of their wealth has been acquired at the expense of the environment** (in this case greenhouse gases emitted over the past two hundred years) **and that with the some of the benefits that this wealth has brought, comes the obligation to deal with the problems that have resulted as side-effects**. With equitable entitlement to the common resources of the planet, an agreement that is fair and acceptable to all nations should be easy enough to achieve. Caps on emissions and sharing of energy efficient technologies are simply in the interest of everyone, rich or poor. And both rich and poor must now be ready to adopt less destructive technologies – based on renewables, efficiency and sustainability – both as a goal with intrinsic merit and also as an example to others. But climate is not the only critical global environmental issue that this new administration will have to deal with. **Conservation of biodiversity, a crucial prerequisite for the *wellbeing of all humanity*, no less America, needs as much attention, and just as urgently**. **The United States’ self-interest in conserving living natural resources strongly converges with the global common good in every sphere: in the oceans, by arresting the precipitate decline of fish stocks and the alarming rise of acidification; on land, by regenerating the health of our soils, forests and rivers; and in the atmosphere by reducing the massive emission of pollutants from our wasteful industries, construction, agriculture and transport systems.**

**1NC – solvency**

***Zero risk of solvency***

1. ***Obama will circumvent – the past 5 years prove.***

**Cohen**, Fellow at the Century Foundation, **12**

(Michael, 3-28-12, “Power Grab,” http://www.foreignpolicy.com/articles/2012/03/28/power\_grab?page=full)

This month marks the one-year anniversary of the onset of U.S. military engagement in **the Libyan civil war**. While the verdict is still out on the long-term effects of the conflict for U.S. interests in the region, it's closer to home where one can point to the war**'s** greater **lasting impact** -- namely **in further increasing the power of the executive branch to wage war without congressional authorization. But don't expect to hear much about that issue** on the campaign trail this election year. Rather **the erosion of congressional oversight of the executive branch's war-making responsibilities has been something of a *bipartisan endeavor* -- and one that is *unlikely to end any time soon*.¶** It might seem like a bit of ancient history now, but **one of the more creative arguments to come out of the U.S. military intervention in Libya was t**he **Obama** administration**'s** **assertion** **that the war did not actually represent "hostilities."** Indeed, according to the president's argument to Congress, U.S. operations in Libya "do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops" -- thus making them something less than war. On the surface this appears patently absurd. The United States was flying planes over Libyan air space and dropping bombs. Missiles were being fired from off-shore. An American military officer (Adm. James Stavridis) commanded the NATO effort. There were reports of forward air controllers on the ground spotting targets for U.S. bombers. In all, NATO planes flew more than 26,000 sorties in Libya, nearly 10,000 of which were strike missions. By what possible definition is this not considered "hostilities"?¶ As it turns out **the ambiguity over whether the war represented "hostilities" is one codified in U.S. law** -- namely **the** War Powers Resolution (**WPR**). Under the provisions of the WPR the President was required to notify Congress within 48 hours of the beginning of U.S. military involvement. He then had 60 days to receive authorization from Congress and if he failed to do he would have 30 days to end the fighting. (Of course, if U.S. military actions do not rise to the level of "hostilities," then the president does not have to go through this rigmarole and receive congressional approval.)¶ Now on the surface, **such an elastic view of what the word hostilities means is *hardly unusual*. Indeed, it is rather *par for the course* in discussions of the W**ar **P**owers **R**esolution. In 1975, the Ford administration claimed that "hostilities" only refers to a scenario in which U.S. forces are "actively engaged in exchanges of fire with opposing units." Similar efforts at defining down hostilities were attempted by the Carter, Reagan, and Clinton administrations when they sought to use military force. Still, these generally were in reference to peacekeeping missions like in Lebanon and Bosnia -- not offensive operations like those waged in Libya.¶ In a political vacuum, **Obama's stance on "hostilities" in Libya might represent the traditional push and pull of executive-legislative branch disagreements about presidential war-fighting prerogatives**.¶ But of course, on this issue we are far from being in a political vacuum. **Obama's broadening of executive power comes with the backdrop of** the George W. **Bush** administration**'s** **efforts** to expand the president's ability to wage war. Indeed, **the position taken by** the **Obama** administration **bears uncomfortable similarities to the one taken by** John **Yoo when he served at the Justice Department and argued** -- in the wake of 9/11 -- **that the Constitution granted the president practically unquestioned executive power to wage war**. Yet, **even Bush sought congressional approval for military actions in Afghanistan and Iraq; Obama didn't bother to do the same for Libya.** In addition, **Obama** also **overruled the opinion of his own** Office of Legal Counsel (**OLC) on the question of whether the president must abide by the War Powers Resolution in regard to the Libyan intervention.** The OLC said he did; the White House assembled legal opinions that said he didn't -- and the latter view won out. As Bruce Ackerman, a law professor at Yale University, noted at the time, "Mr. **Obama's** **decision** **to** **disregard** that office's opinion [**the OLC**] **and embrace the White House counsel's view is *undermining a key legal check* on arbitrary presidential power."¶** **So at a time when *the door has been opened rather wide on unaccountable war-waging* by the executive branch** -- **with minimal legislative checks and balances** -- the ***Obama*** administration has ***opened it even further.*** What is perhaps most surprising is that **it is being promulgated by a president who pledged as a candidate to put an end to such practices.¶** As Ackerman said to me, Obama came into office with a golden opportunity to reestablish some modicum of restraint over the actions of the executive branch in the pursuit of national security. Ironically, in a Boston Globe questionnaire in December 2007, Obama specifically rejected the argument that he used, in part, to justify going around Congress on Libya. "The President," wrote candidate Obama, "does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation ... History has shown us time and again, however, that military action is most successful when it is authorized and supported by the Legislative branch."¶ While **Obama** has hardly gone as far down the road on expanding executive power as Bush did, it is also true that he "**consolidated many of the principles of executive power that were first described in the Bush administration**," says Ackerman. In effect, "Obama has done nothing to stop the return of another John Yoo." Indeed, with his actions on Libya, ***Obama has done more than consolidate Bush* administration *positions -- he has expanded them*.¶** These are negative developments, but it gets worse. In the president's initial letter to Congress, the airstrikes in Libya, "will be limited in their nature, duration, and scope. Their purpose is to support an international coalition as it takes all necessary measures to enforce the terms of U.N. Security Council Resolution 1973." The U.N. resolution specifically did not call for regime change and yet in July 2011, Secretary of Defense Leon Panetta made clear that the U.S. "objective" in Libya "is to do what we can to bring down the regime of Qaddafi." Moreover, as Micah Zenko, a fellow at the Council on Foreign Relations, said to me, NATO forces looked the other way at flights by the French government, among others, that re-supplied the Libyan rebels (in violation of the arms embargo mandated under Section 9 of Resolution 1970); sought to kill Qaddafi via airstrikes (eventually indirectly succeeding); helped to plan the operations that allowed the insurgents to capture Tripoli, and provided sensitive and secret satellite imagery to the rebels. In short, the United States went far beyond the mandate established by the Security Council and in effect lied when claiming that the operations in Libya were simply about protecting civilians. Putting aside the international law implications, the administration adopted a position of regime change of a foreign leader without any approval from Congress.¶ What is most surprising about the Obama administration's position is that it likely would not have been a heavy lift to get congressional backing for the operations in Libya in the early stages of the air campaign. But **by disregarding Congress's role on Libya -**- and shifting the intent of the U.S. mission without any congressional input into the decision -- **the president has set a new and potentially troubling precedent**. In contrast, by seeking congressional authorization Obama would have, ironically, restored some of the balance between the legislative and executive branch on issues of use of American military force.¶ ***Running roughshod over Congress has becom*ing something of *a norm*** **with**in the **Obama** administration. As one foreign-policy analyst close to the White House said to me "**they** generally **don't do a good job of keeping people in the Hill in the loop on what they are doing. *They see congressional oversight as a nuisance*** -- even within their own party." **Another analyst** I spoke to **had a one-word response to the question of the administration's attitude toward Congress's role in foreign policy: "Dismissive." Whether the lack of** proper **consultation over** the closing of **the detainee facility at Guantanamo** Bay, the **refusal to share** with intelligence committees **the rationale for *t***argeted ***k***illing***s***, **or even** **brief** Hill **staffers on changes in missile defense deployment, this sort of *ignoring of congressional prerogatives has often been the rule, not the exception.****¶* ***What has been Congress's response*** to this disregarding of its role in foreign policy decision-making***?* The usual hemming and hawing, but little in the way of concrete action.** During the Bush years, Republicans were more than happy to let the president expand his executive powers when it came to Iraq, Afghanistan, and the global war on terrorism. When Democrats took back the House and Senate from Republicans in 2006, they placed greater scrutiny on the Bush administration's conduct of the war in Iraq -- but still continued to fund the **conflict. Even in Washington's highly partisan current environment, little has changed; it's mostly sound and fury signifying *nothing*.**¶ **Republicans eschewed a constitutional confrontation with the White House over Libya**, though the House GOP did make a rather partisan effort to defund the Libya operations (a measure that failed) and still today House and Senate members raise their frustrations in committee hearings over their heavy-handed treatment by the White House.¶ But the actions of some **Republicans point in a different direction**. Last year, **House Armed Services Committee Chairman** Buck **McKeon actually tried to expand the** original **A**uthorization for **U**se of **M**ilitary **F**orce that granted U.S. kinetic actions just three days after 9/11 -- **which would have actually increased executive war-making power. While some** on the Hill have long **suspected** **the constitutionality of the W**ar **P**owers **R**esolution, it was one of the few checks that Congress maintained over the president (aside from ability to defund operations, which in itself is a difficult tool to wield effectively). Now **they have been complicit in its further watering down**.¶ Aside from Ron Paul, **there's been little mention of the president's overreach** in Libya by the GOP's presidential aspirants. And **why should there be? If any of them become president they too would want to enjoy the expanded executive power that Obama has helped provide for them**. Quite simply, **in a closely divided country in which each party has a fair shot to win the White House every four years, *there is little political incentive* for either Democrats or Republicans to say enough is enough.¶ And with a former constitutional law professor punting on the issu**e (along with the much abused and maligned Congress), **we're now even further from chipping away at the vast power the executive branch has been husbanded on national security issues**. In the end, that may be the greatest legacy of the U.S. intervention in Libya.

1. ***Non-enforcement – the plan creates the illusion of constraint with no practical effect***

**Posner & Vermeule ’11**, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, The Executive Unbound [electronic resource] : After the Madisonian Republic, Oxford University Press, USA, 2011. 01/01/2011 1 online resource (256 p.) Language: English, pg 87-89, jj

**Why did these statutes prove less effective than their proponents hoped**¶ **or, in the extreme, become *dead letters?*** In all the cases, **the basic pattern is**¶ **similar. The statutes were enacted during a high-water mark of political**¶ **backlash against strong executive power, which supermajorities in Congress**¶ **attempted to translate into binding legal constraints**. However, **once**¶ **the wave of backlash receded and the supermajorities evaporated, there**¶ **was insufficient political backing for the laws to ensure their continued**¶ **vigor over time**. **Later Congresses have not possessed sufficient political**¶ **backing or willpower to employ the override mechanisms that the statutes**¶ **create**, such as the override of presidential declarations of emergency created¶ by the National Emergencies Act.¶ **Even where the statutes attempt to change the legal default rule, so that**¶ **the president cannot act without legislative permission—as in the case of**¶ **the *W*ar *P*owers *R*esolution, after the 60- or 90-day grace period has**¶ **passed—the president may simply ignore the statutory command, and will**¶ **succeed if he has correctly calculated that Congress will be unable to**¶ **engage in ex post retaliation and the courts will be unwilling to engage in**¶ **ex post review**. President **Clinton’s implicit decision to brush aside the resolution**¶ **during the Kosovo conflict** (albeit with the fig leaf of a compliant¶ legal opinion issued by the Justice Department’s Office of Legal Counsel) 16¶ ***shows that what matters is what Congress can do after the fact, not what it***¶ ***says before the fact***.¶ Here a major problem for framework statutes is the “presidential power¶ of unilateral action” 17 to which we referred in the introduction. **Statutory**¶ **drafters may think they have cleverly closed off the executive’s avenues of**¶ **escape when they set the legal status quo to require legislative permission**.¶ **Because the president can act in the real world beyond the law books**,¶ **however—the armed forces did not threaten to stand down from their**¶ **Kosovo mission until Congress gave its clear approval, but instead simply**¶ **obeyed the President’s orders—the actual status quo may change regardless**¶ **of whether the legal situation does.** **Once armed forces are in action**,¶ **the political calculus shift s and legislators will usually be unable to find**¶ **enough political support to retaliate—especially not on the basis of an**¶ **arcane framework statute passed years or decades before**.¶ To be sure, **if the framework statutes are very specific, then violating them**¶ **may itself create a political cost for the president**, whose political opponents¶ will denounce him for Caesarism**. This cost is real, but in the type of**¶ **high-stakes matters that are most likely to create showdowns between the**¶ **president and Congress in the first place, the benefits are likely to be greater**¶ **than the costs** so long as the president’s action is popular and credible—the¶ crucial constraints we will discuss in chapter 4 . Moreover, **if the president**¶ **can credibly claim to the public that the violation was necessary, then the**¶ **public will be unlikely to care too much about the legal niceties**. As legal¶ theorist Frederick Schauer argues for constitutional violations 18 (and, we¶ add, the argument holds a fortiori for statutory violations), there is an¶ interesting asymmetry surrounding illegality: if the underlying action is unpopular,¶ then citizens will treat its illegality as an aggravating circumstance,¶ but if the underlying action is popular, its illegality usually has little independent¶ weight. Finally, **if the president credibly threatens to violate the**¶ **statute, then Congress will have strong incentives to find some face-saving**¶ **compromise that allows the president to do what he wishes without forcing**¶ **a showdown that, legislators anticipate, may well end badly**.¶ **The upshot is that subject-specific framework statutes have a Potemkin**¶ **quality: they stand about in the landscape, providing an *impressive facade***¶ **of legal constraint on the executive, but actually blocking very little action**¶ **that presidents care about**. In some cases presidents will have strictly political¶ incentives to obtain congressional permission before acting, even in¶ the domain of foreign affairs and national security. Yet this is not a consequence¶ of the legal structures erected by Madisonian theory, either through¶ constitutional rules or framework statutes. Rather, as an important recent¶ model suggests, it actually implies a very different regime in which presidents¶ may, but need not, obtain congressional consent. 19 The intuition¶ behind this result is that a regime of optional separation of powers puts¶ presidents to a revealing choice between proceeding unilaterally or instead¶ through Congress, and thus gives imperfectly informed voters the maximum¶ possible information and the greatest possible scope for rewarding or punishing presidents and legislators for their actions. Needless to say,¶ however, this political mechanism gives cold comfort to Madisonian liberal¶ legalists, who would blanch at the idea that an optional version of the¶ separation of powers is superior to a mandatory version.¶ Political scientist Andrew Rudalevige is correct to describe the collapse¶ of the constrained post-Watergate executive as the most significant contributor¶ in the growth of a “New Imperial Executive.” 20 **Framework statutes**¶ **are one of liberal legalism’s principal instruments of executive constraint**,¶ **in a world of litt le constitutional constraint. But having been tried, they**¶ **have been found wanting.**

***Policy trials fail:***

1. ***They require a majority vote of the House to begin the process:***

**Buchanan, their author, 8** – Bruce Buchanan, Professor of Government at the University of Texas at Austin, "Presidential Accountability for Wars of Choice", Issues in Governance Studies, Number 22, December, http://www.brookings.edu/~~/media/research/files/papers/2008/12/3020war20buchanan/1230\_war\_buchanan.pdf

**The model for policy trials is the impeachment process**, as described in Article 1 sections 2 and 3 of the Constitution, **where the prospective war policy, and not the president, is examined**. The power to establish a policy trial process is in Article 1 Section 4, which grants each House the right to determine the rules of its own proceedings.

**The process, *triggered by a majority vote of the House*, would impose special rules of order designed to create a debate on the merits before any congressional resolution or declaration of war is possible.**

1. ***That won’t happen—Boehner squashes it***

**Hendrickson**, professor of Political Science at Eastern Illinois University, **13**

(Ryan, 4-3-13, “Libya and American war powers: warmaking decisions in the United States,” Global Change, Peace and Security: formerly Pacifica Review: Peace, Security and Global Change, Volume 25, Issue 2, 2013, http://www.tandfonline.com/doi/pdf/10.1080/14781158.2013.765397)

What makes the American military operation in Libya and the war powers interplay equally¶ interesting is that President Barack Obama and Vice President Joseph Biden entered office with¶ records in the Senate for advocating for Congress’s, and not the president’s, war powers.1 In¶ addition, in his effort to justify presidential insulation from congressional oversight during the¶ strikes, Obama advanced a legal argument on the War Powers Resolution, which proved to be¶ controversial to many members of Congress, constitutional law experts and even top legal advisors¶ in his own administration.2 Moreover, this use of force is especially intriguing given that **a**¶ **number of substantive political and legal congressional challenges were advanced against the**¶ **commander in chief**, though, as it has done so many times before, **Congress chose to follow¶ Obama’s lead and avoided questions surrounding the constitutionality of the president’s¶ conduct.** Obama later referred to congressional concerns over his asserted authority to use¶ force in Libya dismissively as ‘noise about the process’.3

**While Congress’s challenges were considerable, this opposition had little meaningful impact¶** on how American forces were used or on Obama’s foreign policy. **These legislative war powers¶ insurgencies were generally *discouraged, co-opted or* simply *opposed by* the *House* and Senate¶ *leadership*, which worked to keep Congress’s constitutional and political *authority* for the¶ strikes *limited* and tertiary**. Though much has been written about the exercise of congressional¶ war powers, and more generally, Congress’s role in foreign policy, this paper examines the¶ role of **Congress’s** **institutional and party leaders**, who in this case **were central in keeping Congress’s¶ *war powers authority* subdued and avoiding congressional interference in the president’s¶ military operation. Speaker of the House** John ***Boehner*** (R-OH) ***played a critical role* in this¶ process of curtailing significant constitutional challenges to the *commander in chief*, and¶ instead continued the practice of congressional deference** to the president during military conflicts**.¶ A bipartisan group consisting of House Democrats and freshmen ‘Tea-Party’ Republicans¶ were unable to overturn the standard practice of Congress’s deference to the commander in chief.¶** This case also speaks to the United States’ ability, and more importantly, the American president’s¶ role in determining if force will be used abroad.

***Military officials determine ROE---and it can change***

**Corn**, Associate Professor of Law at South Texas College of Law, **10**

(Geoffrey, Previously Lieutenant Colonel, U.S. Army and Special Assistant to the U.S. Army Judge Advocate General for Law of War Matters, Summer, “ARTICLE: TRIGGERING CONGRESSIONAL WAR POWERS NOTIFICATION: A PROPOSAL TO RECONCILE CONSTITUTIONAL PRACTICE WITH OPERATIONAL REALITY,” 14 Lewis and Clark L. Rev. 687, lexis)

Despite these and numerous other historical examples of soldiers applying what would today be characterized as SROE, the actual term “rules of engagement” was not used in the United States until 1958 by the military’s Joint Chiefs of Staff (JCS).149 In 1981, the JCS produced a document titled the “JCS Peacetime ROE for Seaborne Forces,” which was subsequently expanded in 1986 into the “JCS Peacetime ROE” for all U.S. forces.150 Then, at the end of the Cold War, the JCS reconsidered their peacetime ROE and determined that the document should be ***amended*** to apply to all situations, including war and military operations other than war.151 In 1994, they promulgated the “Chairman of the Joint Chiefs of Staff Standing Rules of Engagement,”152 which were subsequently updated in 2000 and again in 2005. As will be discussed below in detail, it is the 2005 edition that governs the actions of U.S. military members today.

SROE have become key legal and policy aspects of modern warfare153 and key components of mission planning for U.S. forces.154 In preparation for military operations, the President and/or Secretary of Defense must personally review and approve the SROE, ensuring they meet military and political objectives.155 Because of this SROE approval requirement, mission-specific SROE provide the ultimate insight into the President’s perception of the nature of the mission and the use of military force required to accomplish the mission.

***Plan text allows a self-defense exception --- that causes massive circumvention***

**Neack 7** (Laura, Professor of Political Science – Miami University (Ohio), *Security: States First, People Last*, p. 106)

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

**SOP**

**1NC**

***US separation of powers changes not modeled internationally***

**Krotoszynski, 10** (Ronald J. Krotoszynski, Jr. – John S. Stone Chair and Director of Faculty Research and Professor of Law at the University of Alabama School of Law, 1/1, “The Shot (Not) Heard 'Round the World: Reconsidering the Perplexing U.S. Preoccupation with the Separation of Executive and Legislative Powers”, Boston College Law Review 51.1, http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3103&context=bclr)

Clearly, then, the world’s rejection of the U.S. model of the proper separation of powers is far from total; instead, only the U.S. obsession with **prohibiting joint legislative and executive appointments has found** ***an indifferent audience***.138 Rather than resolving the question, however, it only makes the problem more confounding: even though U.S. concerns with separation of powers are widely shared in other democratic republics, **the specific U.S. concern with** the **conflation of legislative and executive power** has ***failed to gain any traction***, **not only in places like France or Germany, but** also **in neighboring** common law **jurisdictions** **like Canada**.139 It is difficult to offer any firm answers for the failure of separation of legislative and executive powers to catch the imagination of other polities. That said, I offer a few preliminary ob-servations about why the **separation of legislative and executive powers**, a concern with such salience in the United States, **represents a** kind of “***shot (not) heard ’round the world***.”

***No one cites the US for anything---there are too many other countries to look to---but the status quo solves their impacts because other countries reject excessive Presidentialism now***

Mila **Versteeg 13**, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, **if two constitutions are becoming increasingly dissimilar,** by definition, **one cannot be following the other**. That is, **neither is exerting influence on the other** (at least not in a positive way).

This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, **the U.S. has become less similar to the world since 1946 and**, with a current index of 0.30, **is less similar now than at any point** during the studied period. **This** phenomenon **has occurred even among** current **American allies**; among countries **in regions with** close cultural and **historic ties to the U.S. (namely, Latin America and Western Europe);** and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.

**Rights provisions are not the only** constitutional **elements that have lost favor with the rest of the world**; ***structural provisions*** **pioneered by American constitutionalism—such as federalism, *presidentialism*, and judicial review—have also been losing their global appeal.**

For instance, **in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.**

A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, **the *percentage of countries employing purely presidential systems has declined***, **mainly in favor of mixed systems,** which were a favorite of former Soviet bloc countries.

Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But **though the popularity of judicial review** in general **has exploded** over the past six decades, ***most countries have opted for the European style of review*** (**which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution**) ***over the American model*** (**in which all courts are empowered to strike unconstitutional laws**). **In 1946, over 80 percent of countries exercised American-style** constitutional **review;** **today, fewer than half do.**

Reasons for the Decline

It appears that **several factors are driving the U.S. Constitution’s increasing atypicality**. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.

Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, **the U.S. Constitution omits** some of **the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.**

These **peculiarities, together with the fact that the U.S. Constitution is** both **old and particularly hard to amend**, **have led some to characterize the Constitution as simply antiquated** or obsolete.

***The Bush doctrine is not modeled***

Victor Davis **Hanson**, editor, National Review Online, 9/20/**02**, <http://nationalreview.com/hanson/hanson092002.asp>

**But won't we set a bad precedent? Maybe India or Russia will do the same? This is the current conventional wisdom repeated ad nauseam**. ***But Russia went into Chechnya regardless of our wishes or example***. **And India will make a decision to act on the basis of its own self-interest, not whether they can cite "precedent" on the part of the United States**. **Strong nations evaluate** their **options from calculations of self-preservation and morality** — **choices not necessarily predicated on what the *U*nited *S*tates must do to ensure its own security**. The invasion of Iraq will have a deleterious effect on world peace only if it is seen as gratuitous or unnecessary — and neither presently happens to be true. So the danger is not preemption per se, but bellicosity for no good reason. **We must get away from stereotyped generalizations and look at specifics**. **Being inactive in the face of unprovoked attacks on Americans** — the Iranian embassy takeover and the Marine barracks bombing are good examples — **can establish precedents just as pernicious**. In that regard, President Carter's restraint in 1980, in combination with a failed raid, was a far more dangerous act than President Reagan's bombing of Libya — and makes his present moral objections to preempting Saddam as disturbing as they are hypocritical.

***No human rights impact---Authoritarian states don’t follow norms — their “US justifies others” arg is naive***

John O. **McGinnis 7**, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. **The costs and benefits of our norms will be visible for all to see.** n268 Particularly **in an era of increased empirical social science testing**, over time **we will be able to** analyze and **identify the effects of differences in norms between the U**nited **S**tates **and other nations**. n269 **Such diversity benefits foreigners as foreign nations can decide to *adopt our good norms and avoid our bad ones*.**

The only noteworthy counterargument is **the claim that U.S. norms will have more harmful effects than those of** raw **international law, yet other nations will still copy them.** But both parts of this proposition **seem doubtful**. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other **democratic nations can use their own political processes to screen out American norms that might cause harm if copied**.

**Of course,** **many nations remain authoritarian**. n270 **But our norms are not likely to have** much **influence on their choice of norms**. **Authoritarian states** are likely to **select norms that** **serve the interests of those in power, regardless of the norms we adopt**. It is true that ***sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover."*** ***They would have adopted the same rules, anyway.*** The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

**Warfighting**

**1NC – Warfighting**

***( ) Congressional authorization doesn’t improve war-fighting—if that were true, we would’ve decisively won Iraq and Vietnam***

**Nzelibe and Yoo 13** (Jide Nzelibe, Assistant Professor of Law, Northwestern University Law School, and John Yoo, Professor of Law, University of California at Berkeley School of Law, “Rational War and Constitutional Design,” The Yale Law Journal, Vol. 115, No. 9, 12/8/13)

**Empirically testing the assertion that greater institutional participation produces more accurate decisions** **would require us to determine whether** **congressional participation**, ex ante, **correlates with positive outcomes for war. While a systematic review is outside the scope of this Essay, a quick review of the record does not seem to suggest any connection between success in war -** which itself could be the product of good conflict selection or better performance - **and congressional ex ante approval.** Declarations of war generally have marked victories for the United States. The first and second World Wars and the Mexican- and Spanish-American Wars ended with the United States prevailing, and **the War of 1812 could be considered a draw**. But **other wars that ended on an unpopular note, such as Vietnam and perhaps the current Iraq occupation, do not suggest a clear relationship between ex ante statutory authorization and American success**. These examples are anecdotes, and it remains possible that ex ante legislative authorization could help select the appropriate conflicts; but ultimately this is an empirical question, and it cannot be answered definitively through theoretical models.

**1NC – Declarations Key**

***( ) Don’t let them get away with conflating congressional AUTHORIZATIONS of war and congressional DECLARATIONS of war. Nothing short of a declaration of war solves their advantage***

**Simons & McGraw ’11**, Anna Simons, Professor of Defense Analysis at the Naval Postgraduate School, Joe McGraw is a LTC in the US Army. He has served for nearly 18 years in the US Army after graduating from the United States Military Academy in 1994. ¶ Sovereignty Solution, Annapolis, MD, USA: Naval Institute Press, 2011. p 62-64.¶ http://site.ebrary.com/lib/wayne/Doc?id=10527986&ppg=71¶ Copyright © 2011. Naval Institute Press. All rights reserved. Ebook accessed via Wayne State, jj

Unfortunately today (and for the past six decades), rather than Congress arming the president with over 250 statutes under U.S. Code, our elected representatives have apparently preferred that the president conduct statecraft through executive fiat. Under the War Powers Act of 1973, Congress “permits” the president to pursue military objectives so long as Congress is informed of progress within a mandated timeframe. Ostensibly, Congress created the War Powers Act in order to curb executive power. Conveniently, however, what the Act has done is enable individual members of Congress to hedge their collective bets by taking no unequivocal position on military efforts until such time as either victory can be declared or defeat looks assured. Witness the run-up to both the 2004 and 2008 presidential campaigns— how else were candidates able to explain “yes” votes as “no” votes when it came to their support for (or, was it opposition to) the Iraq War?¶ **Meanwhile, in the ambiguous environment of no clearly declared war, the judiciary branch inherits all sorts of power**. 6 **The courts determine the extent to which the executive branch may prosecute a war, with what means, and to what degree. Consider all the recent and still pending court battles over the status and treatment of “unlawful” enemy combatants, detentions, surveillance, targeting, and so forth— and then reflect on how ill-served we are by this patchwork approach to strategy**. **Strategy needs to be clear and purposeful if commanders and diplomats are to execute it effectively.** **Strategy should not be left up to the courts to fitfully whittle away**. **The Sovereignty Solution calls for a return to Declarations of War. Rigorous debate about the merits of taking coercive action should have to occur before the first soldier is deployed or before the first “launch” button is pushed**. 7 **Is there an obvious reason the United States should go to war? Has war been declared against the United States? Was our sovereignty incontrovertibly violated? Has another government publicly refused to meet our public demands?** 8 **If the reasons for deploying force pass Americans’ commonsense test, the answers to these questions will be obvious, the debate will be short, and the decision quick. If not, then the standards for declaring war clearly will not have been met, and if they cannot be met the executive should not want, never mind press, to take action**. 9 **Another set of reasons for formal Declarations of War is that, without them, military pursuits remain just one among a series of ongoing activities that compete for government attention and tax dollars**. Where is the national urgency during a time of “executive decision”? Which government agency leads during an “authorization of force”? Who can compel all the various government bureaucracies to cooperate? Who holds whom accountable to ensure that priorities are met? With anything less than a formal Declaration of War these questions cannot be answered; **without accountability and a clear chain of command, the government becomes nothing more than a bunch of fingers and cannot act as a fist.** We Americans are an inordinately busy people. And while tens of millions of us contribute time and money to all sorts of local community-service activities, we do not openly pull together as a nation, except in a crisis. By definition, crises never last very long and, as discussed in chapter 2, few affect the entire country in the same way for any length of time; for example, 9/11 posed one kind of crisis. So did levee failure in New Orleans. War is a significantly different prospect, one difference being wars involve other actors who operate outside our legal system, beyond our borders, and beyond our control (at least initially). **Maybe the United States military can prevail with an air strike or two, but if not, what, other than a collective commitment to either win or to surrender, guarantees that “we the people” will persist— despite whatever setbacks our military forces might experience?**¶ **History demonstrates that Americans will expend a tremendous amount of blood and treasure in the pursuit of political and military objectives**. Scan any national cemetery. Multiply the number buried there by the family members they have left behind. **The widely held belief that Americans will not stomach casualties is patently false. What Americans do demand, however, is a legitimate reason for their sacrifice and an understanding that the successful outcome of a conflict can be achieved**. 11 ***Nothing short of a formal Declaration of War can deliver this because only the process of publicly declaring war ensures sufficient scrutiny and the careful determination beforehand that ends, ways, and means will be aligned*. Will politicians commit enough soldiers, armor, resources, or whatever it will take for the duration? With Declarations of War there is no room for nuance and little room for ex post facto equivocation**. **If the United States issues a declaration, what that declaration promises— its point, actually— is that this country will prosecute that war until our announced political objectives have been achieved, or until we openly accept defeat**. 12 Admittedly, the very nature of a formal Declaration of War— and its promise that the United States will relentlessly pursue a clearly defined objective— goes against the first rule of politics: never make a hard promise you can’t break. But **this is also exactly why, in an age of unrelenting media posturing, the United States absolutely must return to issuing Declarations of War**. 13 **Declarations of war preclude secret promises and cut down on shady political deals. They likewise prevent waffling in the face of unexpected, but inevitable difficulties**. Or as the late William F. Buckley put it, in a somewhat different context, “**To declare war is not necessarily to dispatch troops, let alone atom bombs. It is to recognize a juridically altered relationship and to license such action as is deemed appropriate. It is a wonderful demystifier . . . [leaving] your objective in very plain view.”**

***( ) The plan text doesn’t preclude declaration, but because it doesn’t MANDATE IT, no declarations will occur – Syria proves Congress will take the easy way out***

GARANCE **FRANKE-RUTA** is a senior editor covering national politics at The Atlantic, “All the Previous Declarations of War”. Aug 31st 20**13**, http://www.theatlantic.com/politics/archive/2013/08/all-the-previous-declarations-of-war/279246/

**As we head into a period of** vigorous congressional **debate over whether to authorize the use of force against Syria, it's instructive to look back at America's history of congressional war declarations**. The Congressional Research Service put together a great mini-history in 2011, "Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications," by Jennifer Elsea and Richard Grimmett, which is worth a read at this juncture. The obvious take-home is that ***America has done a better job of winning its declared wars*** in the last century than **achieving clear-cut victories in ventures authorized under legislative measures that fell short of a formal declaration of war. The United States Congress has not formally declared war since World War II. All of our wars in the Middle East have been authorized using other means**, which rather goes to the heart of the nature of those different conflicts. **U.S. entry into World War I and World War II took place through joint congressional resolutions stating "a state of war exists** between the Government of Country X and the Government and People of the United States," where country X was, variously, Germany, Japan, Italy, and so on. **It would be impossible to write such a sentence about Syria today. In what meaningful way does a state of war exist between the United States and Syria? None. That's why Congress, if it approves anything,** ***will approve an authorization for the use of force.*** **And if history is any guide, *that's going to be a rather open-ended commitment, as fuzzy on the back-end as on the front.***

**\*\*1NC – Heg Defense**

***Heg collapse doesn’t cause global nuclear war – conflicts would be small and managable***

Richard **Haas** (president of the Council on Foreign Relations, former director of policy planning for the Department of State, former vice president and director of foreign policy studies at the Brookings Institution, the Sol M. Linowitz visiting professor of international studies at Hamilton College, a senior associate at the Carnegie Endowment for International Peace, a lecturer in public policy at Harvard University’s John F. Kennedy School of Government, and a research associate at the International Institute for Strategic Studies) April **2008** “Ask the Expert: What Comes After Unipolarity?” http://www.cfr.org/publication/16063/ask\_the\_expert.html

Does a non polar world increase or reduce the chances of another world war? Will nuclear deterrence continue to prevent a large scale conflict? Sivananda Rajaram, UK Richard Haass: I believe the chance of a world war, i.e., one involving the major powers of the day, is remote and likely to stay that way. This reflects more than anything else the absence of disputes or goals that could lead to such a conflict. Nuclear deterrence might be a contributing factor in the sense that no conceivable dispute among the major powers would justify any use of nuclear weapons, but again, I believe the fundamental reason great power relations are relatively good is that all hold a stake in sustaining an international order that supports trade and financial flows and avoids large-scale conflict. The danger in a nonpolar world is not global conflict as we feared during the Cold War but smaller but still highly costly conflicts involving terrorist groups, militias, rogue states, etc.

***Liberal international order high, resilient, and increasing.***

**Arntzenius, 2011**

Linda Arntzenius, All Princeton, “Liberal Leviathan: The Case for Cooperation” April 14, http://allprinceton.com/content/liberal-leviathan-case-cooperation

“**Obama gets it,” says Ikenberry, who commends** the president **for reframing the relationship** of the United States **with the rest of the world**. America must pursue a more enlightened strategy than that of recent years in which, it could be argued, the American-led order has gone astray with the Bush administration’s war on terror and the invasion of Iraq. Asked about the role of the U.S. in supporting corrupt governments, and the debacle of Vietnam, Ikenberry admitted that he has long-struggled with the good side/dark side of U.S. history and the dilemma of intervention. His message, however, is that if we are mindful and engaged, keep the system open, make sure our institutions are honest and secure, and are actively involved in the rising structure, we can influence that structure. Interdependence will save us, the message seems to be. We must cooperate more fully and with deep commitment since the incentives to do so are overwhelming. Remember that Hobbesian nightmare. In Liberal Leviathan, Ikenberry sets out his case that the liberal international order is still a force to be reckoned with. Furthermore, he suggests that **the rise of non-Western states** such as China and the deepening of economic and security interdependence **are the result of the successful** functioning and expansion of the **postwar liberal order rather than a sign of its demise. The liberal international order has evolved in the face of past crises and will do so again**. Let’s hope he’s right.

**Mali**

**1NC**

***US will not intervene – no threat, too messy, and regional actors are taking the lead***

**Resnick 2/6/13** (Gideon Resnick, Medill News Service, 2/6/13, Navy Times, “U.S. troops in Mali unlikely, experts say” <http://www.navytimes.com/article/20130206/NEWS/302060311/U-S-troops-Mali-unlikely-experts-say>, jj)

Islamic radical groups in Mali do not pose enough of a threat to the U.S. to justify long-term American intervention, several African experts said Wednesday at the Brookings Institution. Groups like Ansar Dine, which are trying to impose Sharia law throughout Mali, threaten regional stability because of their ties to al-Qaida in the Islamic Maghreb, they said. Mali's interim president, Dioncounda Traore, took power after a coup last year led by the National Movement for the Liberation of Azawad. Since mid-January, French military intervention has led to the successful recapturing of Gao and Timbuktu. France is in the process of reclaiming Kidal, another major town in Northern Mali, and expects to start a troop withdrawal in a few weeks. Events in the region that put American lives at risk — like the hostage situation at the In Amenas gas field in Algeria last month — have prompted the U.S. to keep Mali in its sights. But Daniel Byman, Brookings' research director of the Saban Center for Middle East Policy, said that **Islamic radical groups in Mali are too divided to pose an imminent threat to the U.S.** Justin Vaisse, senior fellow and director of research at Brookings' Center on the United States and Europe, said **it is unlikely that radical Islamism will overwhelm Mali in the coming months because it does not have deep enough roots in the country and an Islamist group has little chance to win in the upcoming presidential election** in July. Political transition is key for the country, according to Mwangi Kimenyi, director of the Brookings Institution's Africa Growth Initiative. The French withdrawal will leave the defense of Mali against Islamic radical groups in the hands of its developing military. "The Malian army is not a fighting army," Vaisse said. However, its military is participating in training exercises led by U.S. special forces as part of Operation Enduring Freedom — Trans Sahara. The U.S. and France will rely on Malian military forces and other countries in the region to assist in Mali's governmental transition. "It's clear that **regional actors are going to take the lead**," said Todd Moss, senior fellow at the Center for Global Development. He suggested that **the U.S. might devote more intelligence to Western Africa in the coming months, but *sending a military presence is unlikely***. "**The White House has not been super engaged in Africa**," Moss said. Byman added that U.S. intelligence-gathering in the area is weak. "**This is a region where the U**nited **S**tates **doesn't have good political answers**," he said.

**No Impact – Mali**

***Mali won’t escalate***

Won’t escalate – Mailian army lacks ability to use force, African nations and France will stop escalation, Tuareg forces lack unity and weapons and AQIM wont find allies to escalate the crisis.

**IHS** Jane's Intelligence Weekly, **1/16/14**, “Full-scale resumption of civil war in northern Mali unlikely in 2014” <http://www.janes.com/article/32552/full-scale-resumption-of-civil-war-in-northern-mali-unlikely-in-2014>, jj

President Ibrahim Boubacar **Keita's declared intent to use force to retake control of northern Mali is *unlikely to lead to large-scale fighting***; however, risks of localised outbreaks of skirmishes and targeted attacks using improvised explosive devices are high. **Peace talks have stalled, but the Malian army lacks the capability needed to deliver on** President Ibrahim Boubacar **Keita's threat to use force** to break the impasse. President Keita announced on 14 January that he had given up on negotiations with armed groups and would opt for military action against armed Tuareg groups in the northern states of Gao, Kidal, and Timbuktu. However, IHS assesses that Malian forces' low capability and pressure from the African Union, France, and the United Nations mean Keita is unlikely to follow through on his threat. **In the unlikely event of a full-scale offensive, the Malian army is unlikely to receive military support from the French and African forces, as the UN mandate does not include fighting** against Tuareg groups with political demands. Therefore, if Keita does launch an offensive as a result of domestic pressure, it is unlikely to succeed. **The resumption of civil war would create the conditions for Islamist militants to regain some lost territories in the north**. According to media reporting, the oversight commission ensuring the implementation of the Ouagadougou Political Agreement has not met since November 2013. It is evident that the peace talks have stalled and Keita is under growing domestic pressure to demonstrate leadership and rein in the Tuareg, who are accused of holding the country at ransom. The Malian government cannot count on the army to do this. Despite recruiting over 4,000 soldiers in 2013, the army is poorly trained and lacks the capability to take and retain control of northern towns, particularly Kidal and towns in the Algerian, Mauritanian, and Nigerien border areas. Its capacity is further undermined by factional fighting between elite "red" and "green beret" units with rival affiliations. Keita, who took office in September 2013, aims to address these failings with the arrest of senior military officials and the restructuring of the armed forces. This process is unlikely to be completed in at least the 12-month outlook. Tuareg insurgency IHS assesses that the president's statement is aimed at appeasing domestic critics and other armed tribal groups such as the Gando Iso, as well as putting pressure on Tuareg leaders to return to the negotiating table and uphold the July 2013 ceasefire agreement. Although this agreement has not been formally abandoned by the Tuareg, it was severely undermined in November 2013, when the vice-president of the National Movement for the Liberation of Azawad (Mouvement National pour la Libération de l'Azawad: MNLA), Mahamadou Maiga, declared that the group would attack the Malian army in retaliation for the army opening fire on Tuareg protesters at Kidal airport. The president's attempt to use the threat of force to kick-start the peace talks is likely to be undermined by the growing internal dispute and power struggle within the Tuareg, resulting in the proliferation of autonomous self-defence militias. ***A reduction in Tuareg firepower makes a resumption of the insurgency unlikely***. **Since the French military intervention in** January **2013 and the subsequent ceasefire agreement** signed with the Bamako government in July 2013, **Tuareg groups** such as the MNLA, the High Council for the Unity of Azawad (HCUA), and the Arab Movement of Azawad (Mouvement Arabe de l'Azawad: MAA) **have failed to turn the aims and agendas of the different peoples they represent into a united front**. Within the Tuareg communities, there is a perception that their leaders were hastily ceding too much ground to the Malian government, giving rise to disputes and infighting. The November statement confirming the intention to renew attacks against the Malian army, for example, was in part a response to popular opposition to the peace initiative. **Given the disunity** of Tuareg actors **and their impaired capability following their loss of heavy weapons to Islamist militants, a renewed full-scale insurgency like that seen in** January **2012 is unlikely.** Moreover, **France still has some leverage over the Tuareg leadership**, in particular the MNLA. In spite of French forces drawing down their Operation Serval intervention operation, France will continue to mediate between the Malian state and MNLA representatives. Jihadist threat Disaffected Tuareg are unlikely to fight alongside Islamists, but will co-operate with them over smuggling and targeting Malians, exposing co-located French and UN forces to collateral harm. Mokhtar Belmokhtar's jihadist group Al-Mourabitoun reiterated its intention to attack French military units in northern Mali in retaliation for Operation Serval in January 2014. The group is likely to engage French special counter-terrorism units patrolling Mali's northern borders, particularly along the Algerian and Nigerien borders. **Although political, and some armed, Tuareg groups allied with Islamists in 2012 to effectuate a takeover of northern Mali, it is unlikely, particularly in the context of amenable French-Tuareg relations, that Tuareg leaders would recreate political alliances with Islamist groups** such as Al-Qaeda in the Islamic Maghreb (AQIM) or Al-Mourabitoun. However, this would not undermine the existing personal relationships between members of each organisation, especially concerning trafficking networks. On 13 January in Amboubar, west Tessalit, near Mali's northern border with Algeria, a Tuareg leader and representative of the MNLA, Abounehiya Ag Attayoub, was kidnapped by unidentified armed men. Media reported that the assailants were Islamists and that Attayoub had been threatened by AQIM. It is unlikely that AQIM carried out the kidnapping as part of a broader regional strategy; it is more likely that the men responsible for the kidnapping were affiliated with local AQIM cell Katiba Ansar, but carried out the attack for economic-related reasons. Tessalit is located on a key trafficking route to southern Algeria through Al-Khalil and Timaouine to Bordj Badji Mokhtar where crime risks, particularly hijacking, are high. The kidnap of Attayoub was probably a warning relating to local power struggles over trafficking convoys. Deep-seated grievances by Tuareg against the Malian army make opportunistic collaboration with Islamists to carry out large attacks on military barracks and checkpoints very likely, posing severe risk of collateral harm to UN forces and personnel. Small-arms, mortar, and rocket-propelled grenade (RPG) attacks on Malian army bases shared with UN and French forces by Tuareg militia are likely to continue. Malian military border patrols near Niger and Algeria are also at a high risk of attack. FORECAST **Risks of kidnap, targeted killing, and sporadic skirmishes will be high in northern Mali over the 12-month outlook**. Tuareg groups armed with small-arms, mortars, and RPGs will continue to launch hit-and-run attacks on Malian army bases, checkpoints, and patrols, particularly in Kidal province - in Kidal city, near Tessalit, and near the Algerian border. Checkpoints near Lere and Goundam in Timbuktu and near Ménaka in Gao are also at risk of mortar and small-arms attacks. Islamist groups, including AQIM and especially Al-Mourabitoun, are likely to launch retaliatory attacks against French-led counter-terrorism operations. French firms are at high risk, especially in Niger, where Islamists are likely to exploit a growing public outcry against French mining firm Areva. Exploration activities in northern Mali, suspended since 2012, are unlikely to resume in the coming 12 months, while expatriate and humanitarian workers in the northern provinces of Kidal, Gao, and Timbuktu face increasing collateral harm and kidnap risks. Although southwest Mali - particularly foreign embassies in Bamako and mining operations - remains an aspirational target for Islamist groups, the **threat they pose has dropped from elevated to moderate due to the ongoing counter-insurgency operations in the north.**

**1NC – No Impact – Africa War**

***No risk of great power conflict over Africa***

**Barrett, ’05** [Robert, PhD student Centre for Military and Strategic Studies, University of Calgary, June 1,

http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\_ID726162\_code327511.pdf?abstractid=726162&mirid=1]

Westerners eager to promote democracy must be wary of African politicians who promise democratic reform without sincere commitment to the process. Offering money to corrupt leaders in exchange for their taking small steps away from autocracy may in fact be a way of pushing countries into anocracy. As such, world financial lenders and interventionists who wield leverage and influence must take responsibility in considering the ramifications of African nations who adopt democracy in order to maintain elite political privileges. The obvious reason for this, aside from the potential costs in human life should conflict arise from hastily constructed democratic reforms, is the fact that Western donors, in the face of intrastate war would then be faced with channeling funds and resources away from democratization efforts and toward conflict intervention based on issues of human security. This is a problem, as Western nations may be increasingly wary of intervening in Africa hotspots after experiencing firsthand the unpredictable and unforgiving nature of societal warfare in both Somalia and Rwanda. On a costbenefit basis, **the West continues to be** somewhat **reluctant to get to get involved in Africa’s dirty wars**, evidenced by its political hesitation when discussing ongoing sanguinary grassroots conflicts in Africa. Even as the world apologizes for bearing witness to the Rwandan genocide without having intervened, **the United States, recently using the label ‘genocide’ in the context of the Sudanese conflict** (in September of 2004), **has** only **proclaimed sanctions** against Sudan, **while dismissing any suggestions at actual intervention** (Giry, 2005). Part of the problem is that **traditional military and diplomatic approaches** at separating combatants and enforcing ceasefires **have yielded little in Africa. No powerful nations want to get embroiled in conflicts they cannot win – especially those conflicts in which the intervening nation has very little interest.**

***No extinction from disease***

**Williams 4/25/13**, Florence Williams is a Contributing Editor at Outside Magazine. Her book Breasts: A Natural and Unnatural History was published last year.  (April 2013) How Animals May Cause the Next Big One, The New York Review of Books, <http://www.nybooks.com/articles/archives/2013/apr/25/how-animals-may-cause-next-big-one/?pagination=false>, jj

**The problem with many bio- apocalyptic scenarios is that they’re ahistorical and unscientific. Viruses that are effective killers, like Ebola, tend to burn out quickly because they annihilate their hosts before germs can spread too far**. **Viruses that are highly transmissible**, like the so-called Spanish flu of 1918, **tend to kill only a small percentage of those infected**. (**The Spanish flu infected 30 percent** of the world’s population. **It killed about 2 percent**.)

# 2NC

**Lol no aff**

**Alliances PIC – 2NC Trick**

***The plan allows for 2nd strikes to defend allies- that includes almost half of the world***

**Campbell 04,** VP & Direction International Security Program CSIS

(Kurt M.-, Spring, The Washington Quarterly, “The End of Alliances? Not So Fast”, Vol. 27 #2, Ebsco;)

The more relevant question then is not whether alliances are dead but rather how they are adapting to new exigencies and conditions. Many traditional alliances were created over the last 50 years or more as vehicles to provide a formal security guarantee by the United States and to facilitate rapid U.S. intervention in the face of foreign aggression, which at various times threatened to come from the Soviet Union and/or the People’s Republic of China.

During that time, the United States assembled important, formalized security relationships with virtually half of the world’s countries and pledged to defend nearly 50 treaty allies in the event of an attack, primarily to support a strategy of containing communism, which included assistance in major conflicts such as those in Korea and Vietnam. Some such alliances have been multilateral, most notably NATO, though others were attempted, such as the ill-fated Southeast Asia Treaty Organization (SEATO), but most were bilateral arrangements between the United States and countries in all regions throughout the globe.

**UN**

**2NC / 1NR --- NB Overview**

***Net benefit outweighs the case and the solvency deficit --- only humanitarian intervention stops regional violence from escalating to great power nuclear war***

**Bosco ’06**, David, Senior Editor, Foreign Policy, 7/23/06 (<http://www.latimes.com/news/opinion/sunday/commentary/la-op-bosco23jul23,0,6188365.story?coll=la-sunday-commentary>)

The understanding that **small but violent acts can spark global conflagration** is etched into the world's consciousness. **The reverberations from Princip's shots in the summer of 1914 ultimately took the lives of more than 10 million people, shattered four empires and dragged more than two dozen countries into war. This hot summer, as the world watches the violence in the Middle East, the awareness of peace's fragility is particularly acute**.   The bloodshed in Lebanon appears to be part of a broader upsurge in unrest.   Iraq is suffering through one of its bloodiest months since the US-led invasion in 2003.   Taliban militants are burning schools and attacking villages in southern Afghanistan as the United States and Nato struggle to defend that country's fragile government.   Nuclear-armed India is still cleaning up the wreckage from a large terrorist attack in which it suspects militants from rival Pakistan.   **The world is awash in weapons, North Korea and Iran are developing nuclear capabilities, and long-range missile technology is spreading like a virus. Some see the start of a global conflict. "We're in the early stages of** what I would describe as **the Third World War**,'' former House Speaker Newt Gingrich said recently.   Certain religious websites are abuzz with talk of Armageddon. There may be as much hyperbole as prophecy in the forecasts for world war. But **it's not hard to conjure ways that today's hot spots could ignite**. Consider the following scenarios: - Targeting Iran: As Israeli troops seek out and destroy Hezbollah forces in southern Lebanon, intelligence officials spot a shipment of longer-range Iranian missiles heading for Lebanon.   The Israeli government decides to strike the convoy and Iranian nuclear facilities simultaneously.   After Iran has recovered from the shock, Revolutionary Guards surge across the border into Iraq, bent on striking Israel's American allies.   Governments in Syria, Jordan, Egypt and Saudi Arabia face violent street protests demanding retribution against Israel and they eventually yield, triggering a major regional war. - Missiles away: With the world's eyes on the Middle East, North Korea's Kim Jong Il's brinksmanship pushes events over the brink.   A missile designed to fall into the sea goes astray and hits Tokyo, killing a dozen civilians.   Incensed, the United States, Japan's treaty ally, bombs North Korean missile and nuclear sites.   North Korean artillery batteries fire on Seoul, and South Korean and US troops respond.   Meanwhile, Chinese troops cross the border from the north to stem the flow of desperate refugees just as US troops advance from the south.   Suddenly, the world's superpower and the newest great power are nose to nose. - Loose nukes: Al Qaida has had Pakistani President Pervez Musharraf in its sights for years, and the organisation finally gets its man.   Pakistan descends into chaos as militants roam the streets and the army struggles to restore order.   India decides to exploit the vacuum and punish the Kashmir-based militants it blames for the recent Mumbai railway bombings.  Meanwhile, US special operations forces sent to secure Pakistani nuclear facilities face off against an angry mob. - The empire strikes back: Pressure for democratic reform erupts in autocratic Belarus. As protesters mass outside the parliament in Minsk, president Alexander Lukashenko requests Russian support.   After protesters are beaten and killed, they appeal for help, and neighbouring Poland a Nato member with bitter memories of Soviet repression launches a humanitarian mission to shelter the regime's opponents.   Polish and Russian troops clash, and a confrontation with Nato looms. **As in the run-up to other wars, there is today more than enough tinder lying around to spark a great power conflict.** The critical question is how effective the major powers have become at managing regional conflicts and preventing them from escalating. After two world wars and the decades-long Cold War, what has the world learned about managing conflict?

***Even if it fails, maintaining it as a viable last resort is key to plantary survival***

**Schlesinger 3** – Steven, Director of the World Policy Institute at New School University, The Record (Kitchener-Waterloo, Ontario), “UN is the World's Emergency Room; Its Survival Requires U.S. Commitment”, 10-4, Lexis

The ultimate outcome of the San Francisco Conference is still not known. However, what happened there that produced the last of these grand compacts, the United Nations, has already had an enormous impact over the last six decades. **Indeed, the founding of the *U***nited ***N***ations ***in the age of nuclear weaponry* -- far more sinister circumstances than any faced by those earlier meetings -- is *affecting the survival or demise of humanity*.** The United Nations and its labours have become the background noise of our global age. **It is truly ubiquitous. It has overseen** 40 years of **decolonization** around the planet; sent peacekeepers to places such as **Cambodia, Cyprus and Sinai; helped end apartheid** in South Africa via sanctions**. The** United **N**ations' World Health Organization **was critical in eradicating smallpox** and is on the verge of stamping out polio; its World Food Program feeds hungry people in Africa; its UN Development Program sends more multilateral aid dollars abroad than any nation. People forget that before the United Nations' founding, there was no truly functioning international organization (except for the creaky, faltering League of Nations). This meant that **for many decades, there was no place for nations to go in global crises**. Today, after half a century of the United Nations, few of us are unaware that **this aging experiment in global society exists and has given some modicum of hope to the world** -- despite a dearth of financial resources and the brickbats tossed at it by American politicians. **It has become the world's *geopolitical emergency room***. The question is whether it can survive.

**2NC / 1NR --- Solvency**

***CP prevents unilateral war better than the plan, but allows participation in vital UN operations—the Security Council is comparatively less likely to be circumvented and solves groupthink better***

**Franck & Patel, 91** [THOMAS M. FRANCK AND FAIZA PATEL \*, \* Professor Franck is Editor in Chief of this Journal. Faiza Patel is a Fellow of the Center for International Studies, New York University School of Law., American Journal of International Law, January, 1991, 85 A.J.I.L. 63, ARTICLE: THE GULF CRISIS IN INTERNATIONAL AND FOREIGN RELATIONS LAW: UN POLICE ACTION IN LIEU OF WAR: "THE OLD ORDER CHANGETH", Lexis, jj]

**The United Nations is the most ambitious organic entity ever created by states. Its central purpose is to replace the outmoded, dangerous national self-reliance on unilateral force with a workable global police system, capable of protecting the weak against the strong and of responding, quickly, with levels of force appropriate to a specific circumstance of lawlessness**. It was thought at one time that the [\*74] force to carry out this policing function would be dedicated to the system by agreements between member states and the Security Council. This avenue has not been pursued, although it still may be. Meanwhile, the system has evolved a viable alternative, within the terms of its Charter, that permits the Council to authorize states to join in a police force ad hoc, instance by instance. It did so in Korea and it has done so again in connection with Iraq's invasion of Kuwait.

That police force must continue to operate under the general guidance of the Security Council for as long as the Council is able to exercise its supervisory role. For U.S. **hawks**, this meant that they **had to await the Council's consent before the United States could take offensive military action in the gulf. It also limits the purposes to which force may be directed**.

Implementing the new police power, however, also curbs the power of the doves in Congress. While the President was no doubt politically well-advised to consult fully with Congress in this instance, time allowing, he is not obliged to secure what the new system was created to make unnecessary: the nation's unilateral decision to go to war.

If **this** is the correct **position** in international law, it also **comports with the intent of the drafters of the Constitution**. **The purpose of the war-declaring clause was to ensure that this fateful decision did not rest with a single person**. ***The new system vests that responsibility in the Security Council, a body where the most divergent interests and perspectives of humanity are represented and where five of fifteen members have a veto power. This Council is far less likely to be stampeded by combat fever than is Congress.***

**The UN system seems politically to be developing the capacity to substitute police enforcement for vigilante violence**. This opinion may be too optimistic; but when, in our lifetime, have realism and optimism looked so much alike? **Now, surely, is the time to embrace, to encourage, the new policing system before settling forever for sovereign wars of self-proclaimed self-defense. Both hawks and doves, for now, should fold their wings and quietly await the change of seasons.**

***The president empirically consults with Congress on UN interventions---solves Fisher ev which is about Congressional role***

Don **Pesci ‘11**, Works at various Connecticut newspapers, Attended Western Connecticut State University, 3-22-11, Connecticut Political Reporter, <http://connecticutpoliticalreporter.blogspot.com/2011/03/libya-connecticuts-congressional.html>, jj

Since its passage in 1973, **presidents have drafted reports to congress when appropriate stating that a commitment of troops to a live war theatre is “consistent with” the War Powers Act, thus satisfying the executive department position that the congressional resolution is unconstitutional**. **Since passage of the resolution, presidents have submitted 118 reports to congress**. However constitutionally defective The War Powers Act may be, **the congressional instrument has been fairly effective when invoked in requiring the president to keep congress in the loop whenever when troops are sent to various hot spots in the world to do the bidding of, say, the United Nations.**

**2NC A2: Lobel**

***Indicting Biden’s whole bill --- not the CP’s narrow exception***

Various administrations and **commentators have argued** that the **situations** in which the President requires independent authority to use American forces in an emergency **cannot be limited to repelling** or responding to an **armed attack**. The original Senate 1973 War Powers Legislation upon which Section 3 is modeled was criticized as being unduly restrictive of the President’s power to use American armed forces abroad. The various **attempts** by Senators Biden and others in the late 1980s and early 1990s **to reform** the War Powers Resolution **ran into difficulties in attempting to *define exceptions* to deal with a broad range of emergency situations. For example**, Senator Biden’s proposed 1988 Use of Force **Act would have authorized** the President to use U.S. troops “**to respond to a** foreign military **threat that severely** and **directly jeopardizes** the supreme **national interests** of the United States **under** extraordinary emergency **conditions that do not permit sufficient time for Congress to consider statutory authorization,” and “to participate in emergency actions undertaken pursuant to the approval of the United Nations Security Council.”20** **These exceptions would constitute *enormous, and*** in my opinion ***unwarranted loopholes* in the legislation that would *essentially eviscerate* the prohibition on unilateral Executive use of force**. In my opinion, H.R. Res. 53’s **approach is *fundamentally sound*** in ***only* allowing the Executive to use force without congressional approval to respond to attacks on U.S. territories, troops or citizens**.

**2NC / 1NR --- NB Link**

***Centralized war powers key --- president need to be able to act quickly and decisively through the U.S. delegate to the U.N.***

**Linn ‘2k**, Alexander C. Linn, William & Mary Bill of Rights Journal¶ April, 2000¶ 8 Wm. & Mary Bill of Rts. J. 725, NOTE: INTERNATIONAL SECURITY AND THE WAR POWERS RESOLUTION, Lexis, jj

**In recent history, the authority to commit U.S. troops to theaters of conflict has shifted from Congress to the President**. After the Vietnam War, the War Powers Resolution was written to reestablish balanced authority over war between the political branches of government. **In the post-Cold War era, forces frequently are deployed as part of multilateral U.N. operations. This trend creates two contradictory needs: first, the need for the Executive to be able to act swiftly and decisively in formulating military commitments to the United Nations, and second, the need for Congress to authorize potentially long-term military deployments.** To reconcile these contradictory needs, the President should be required to consult with a small group of key congressional actors before committing U.S. troops to multilateral U.N. military operations. There are both legal and security rationales for this. Centrally, Executive-congressional consultation re-solidifies the constitutional allocation of war powers and may bolster U.S. credibility in multilateral operations.¶ Introduction¶ The disintegration of Cold War bipolarity fundamentally has altered the dynamics of international security. As centrifugal political forces unleash new threats to international politics, policymakers devise new solutions from existing paradigms of diplomatic and strategic thought. **The end of the Cold War and the construction of the** United Nations ("**U.N.") as a framework for bolstering world security through multilateral military initiatives have each contributed to a new debate about the constitutionality of the American Executive's ability to deploy military force independent of congressional authorization**. n1¶ **American military deployments are increasingly part of a multilateral U.N. Security Council** ("Security Council") **effort to counter threats to international security and human rights**. n2 Arguably, ***this creates a mandate for a greater centralization of the war power*** n3 ***in the Executive, with authority to act swiftly and*** [\*726] ***decisively through the American delegate to the U.N***. n4 Such an argument seeks to expand executive authority in military affairs by relying on the President's constitutional role as "Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual Service of the United States." n5 Alternatively, the trend towards multilateral U.N. military actions may bolster the mandate for Congress to assert a stronger role in the use of the U.S. military to pursue U.N. objectives. If American military involvement is challenged by congressional discontent or even by congressional approval when approval comes too slowly to give certainty to American commitments, the commitment to protect international security may prove unenforceable when the Security Council decides to counter a belligerent state,. This argument seeks to expand legislative authority in military affairs by relying on the legislature's constitutional power to declare war and maintain military forces. n6 Arguably, a swift framework for assessing legislative approval would enhance international security by allowing for a more rapid deployment.

***Congressional control prevents US participation in humanitarian interventions --- history and psychological research prove***

RICHARD **HANANIA**, University of Chicago Law School, HUMANITARIAN INTERVENTION AND THE WAR POWERS DEBATE, (20**12**)J.JURIS 47, <http://www.jurisprudence.com.au/juris13/Hanania.pdf>, jj

IV.UPDATING THE WAR POWERS ANALYSIS

Any discussion on whether a system of war powers works on a functional level has ¶ to begin by specifying what the goals the system should seek are. With the ¶ exception of Schlesinger, all war powers scholars have assumed that the United ¶ States government acts as a realist power, simply trying to maximize its own power ¶ and the well-being of its citizens.306 As this is, at most, only partly true, **this Part** ¶ **clarifies what the results of giving the war powers back to Congress would mean** ¶ **for humanitarian intervention**. I begin by laying out the theoretical model in Part ¶ IV.A. Part IV.B spells out what the model would predict regarding humanitarian ¶ intervention. Finally, Part IV.C investigates public opinion and congressional and ¶ presidential action in the three humanitarian interventions reviewed in Part III. We ¶ find that in each case the president was more willing to use force to stop atrocities ¶ than Congress was, and this was generally true for the reasons predicted by the ¶ model.

A. Theoretical Model

**Recent history has shown that presidents have been more willing to engage in** ¶ **humanitarian intervention than Congress**. Here, I present a model that explains ¶ why, in the form of the five empirical claims on which it is based. **First of all, we** ¶ **see that the public weakly supports humanitarian intervention**. **Thus, in a system** ¶ **where intensity of preferences to a great extent determines the political pressure** ¶ **leaders face to act in certain ways, there will be little pressure for these kinds of** ¶ **wars. On the other hand, the second premise of the model assumes that political** ¶ **leaders seek approbation for their actions. This fact, when combined with the** ¶ **weak public preference for humanitarian intervention, indicates that American** ¶ **leaders will occasionally face sufficient incentives to engage in humanitarian wars**. ¶ **The final three premises explain why the executive is more inclined than the** ¶ **legislature to engage in humanitarian interventions. Individual congressmen face a** ¶ **collective action problem in receiving approbation for intervening in the affairs of** ¶ **other states in order to save lives**.307 **Any accolades and honors that Congress can** ¶ **be expected to receive for acting humanely would be shared with the institution as** ¶ **a whole, while any legislature who began championing humanitarian intervention** ¶ **would bear a disproportionate amount of the costs**. **A legislature’s opportunity** ¶ **cost of advocating humanitarian intervention might be delivering on a local** ¶ **project, the kind of legislative act for which constituents are more likely to give a** ¶ **congressman credit**.308

**Fourth**, we may believe that leaders genuinely care about foreigners killed by their ¶ own governments. **An executive will feel stronger psychological pressures to act** ¶ **when facing these kinds of tragedies, since individual legislatures are able to engage** ¶ **in a sort of psychological buck passing.** **There is historical evidence suggesting that** ¶ **presidents and others in the executive branch feel psychological pressure to act to** ¶ **stop atrocities overseas**,309 as **well as psychological literature indicating that** ¶ **individuals are less inclined to help others when they see bystanders in the same** ¶ **position to act behaving passively**. **Finally, even if a majority of Congress wants to** ¶ **undertake a humanitarian intervention and overcomes all the issues already** ¶ **mentioned, it may not be able to come to an agreement about the proper course to** ¶ **take**. This is different from the situation in a war fought in self-defense, where ¶ such issues are thought of as tactical and within the proper domain of executive ¶ power.

***1. The Public Weakly Supports Humanitarian Intervention***

**As foreign events generally have less of an influence on the public than domestic** ¶ **events, we would expect Americans to have less knowledge about what goes on** ¶ **overseas, as well as relatively weaker opinions on foreign policy**. This is indeed ¶ what we find.310 Those who oppose humanitarian intervention should not do so ¶ strongly, because the financial costs are distributed across society, rather than paid ¶ by a concentrated group with much to lose.311 At the same time, **Americans who** ¶ **support humanitarian intervention may not lobby all that effectively for their** ¶ **preferences because they do not financially gain from such wars**. How strong their¶ preferences are, however, is an empirical question.

It is possible that some foreigners would be able to make effective lobbyists, since ¶ they would be seeking concentrated benefits and the costs of military action are ¶ widely distributed across society.312 Indeed, scholars have made arguments that ¶ certain foreign lobbies have too much influence on the issues they care about.313¶ Yet these lobbies tend to be from groups that are relatively well-off by ¶ international standards, rather than being composed of groups that are subject to ¶ humanitarian atrocities in areas with little strategic interest to the United States. ¶ **There is no known “Somali lobby” or “Tutsi lobby**.” So while there may be groups ¶ who would have much to gain by lobbying Congress for the concentrated benefit ¶ of not being murdered, **the fact that they are in the position of being killed en masse**¶ **in the first place—even setting aside issues of language and cultural difficulties and** ¶ **distance—indicates that they would be in no position to make effective lobbyists.**

Humanitarian intervention is extremely popular among the American public. ¶ Polling has shown that between just under two-thirds to 83 percent of the ¶ American population believes that the United States should act to prevent ¶ atrocities committed by governments against their own people, at least as a general ¶ proposition.314 However, there are good reasons to believe that that **popularity** ¶ **does not translate into Congress taking steps to enact these preferences**, and much ¶ depends on the way the question is framed. In 2005, Eichenberg reviewed polling ¶ data on American attitudes towards foreign intervention. He found a difference in ¶ political support for humanitarian and peacekeeping missions, even when ¶ pertaining to the same conflict.315 For example, a survey question that asks whether ¶ the United States should participate in “stopping the fighting” in Rwanda is ¶ classified as a peacekeeping question, while one that asks whether the United ¶ States should simply deliver food aid is classified as gauging the public’s attitude ¶ on a humanitarian intervention.316 He finds that “support for almost any question ¶ that mentions peacekeeping is generally low and very stable”317 and “[o]verall ¶ public support does indeed vary with the purpose of the mission: support for ¶ traditional ‘realpolitik’ missions is generally higher than for ‘interventionist,’ ¶ humanitarian missions.”318 Surveyors have taken the humanitarian ¶ intervention/peacekeeping distinction into account and now often mention that ¶ Americans might become involved in the fighting when soliciting opinions on ¶ potential humanitarian interventions.

Western shows that public support for humanitarian intervention is a “permissive” ¶ condition; the American people support humanitarian interventions, but will not ¶ “demand” that their government carry them out. Nor will they penalize leaders for ¶ refusing to act.319 For example, the pressure to intervene in Somalia came from ¶ government bureaucrats and NGOs rather than the general public, and **the** ¶ **Clinton administration suffered no discernable political costs for ignoring the mass** ¶ **killings in Rwanda**.320 Jentleson and Britten note that “[**t]here is no standing** ¶ **constituency for using military force**, but there is also not an overwhelming ¶ blocking group.”321 **This argument is consistent with the finding that the public is** ¶ **relatively indifferent towards foreign policy**.322 **Another caveat that must be added** ¶ **is that the public will prefer just about any alternative to military force to deal with** ¶ **a problem**.323

**Thus, we can predict that American leaders will be passive in the face of** ¶ **humanitarian tragedies**. **This is indeed what we find**, and it is precisely this ¶ criticism of selectivity that critics of American policy point to.324 Still, there is a ¶ countervailing force pushing policy makers in the opposite direction. This is the ¶ second assumption of the model, and it explains the fact that we do actually see ¶ some humanitarian interventions in practice.

***2. Politicians Seek Approbation, Especially from the Elite***

Cowen and Sutter have constructed a model in which **presidents seek fame**, ¶ defined as “approbation at a national or global level.”325 The **Founders understood** ¶ **this motivation**, believing that war brings glory to the executive, making it the ¶ branch too eager to initiate hostilities.326 Jay reflected on the reasons that absolute ¶ monarchs made war, among them “purposes and objects merely personal, such as ¶ a thirst for military glory, revenge for personal affronts, [or] ambition.”327 Madison ¶ argued that in war, “laurels are to be gathered; and it is the executive brow they are ¶ to encircle.”328 In modern terms, **one manifestation of the executive desire for** ¶ **glory takes the form of presidents being concerned about their legacies**.329 Today, ¶ of course, glory does not come from being a great conqueror, but acting in ways ¶ that win approbation in the modern world.330

A corollary of this assumption is that **leaders will be especially concerned about** ¶ **how they are viewed by other elites, both during their term and after they retire**. ¶ Members of the elite will write the history books, decide whether future ¶ catastrophes are blamed on this administration or the next, and collectively decide ¶ what a leader’s legacy will be. **Humanitarian intervention in particular has wide** ¶ **acceptance among the modern Western establishment**.331 This reflects the fact that ¶ the contemporary elite culture of the West reinforces internationalist, humanitarian ¶ norms. Huntington has demonstrated that American elites, consistently and across ¶ a variety of issues, tend to be more internationalist than the general population.332¶ He coined the term “Davos man,” to refer to those who have more culturally and ¶ morally in common with other elites than they do with their own countrymen.333¶ Huntington writes that, within nations, “[s]omeone whose loyalties, identities and ¶ involvements are purely national is less likely to rise to the top in business, ¶ academia, the media and the professions than someone who transcends these ¶ limits.”334

Thus, despite the fact that there is no domestic American constituency that has a ¶ direct economic interest in humanitarian intervention, the existence of such ¶ undertakings is explained by cultural and ideological factors. The American people ¶ are generally indifferent to supportive of humanitarian intervention and the idea ¶ has wide acceptance among policy elites. These two assumptions, however, tells us ¶ nothing about whether the legislature or executive is more likely to support these ¶ kinds of wars.

***3. Congress Has a Collective Action Problem in Claiming Credit for***

***Humanitarian Interventions***

**Of course, legislatures are members of the elite, just as presidents are. But there** ¶ **are reasons why we may expect them to care less about approbation in the field of** ¶ **foreign affairs than the executive does**. **The most important reason is that there is** ¶ **a collective action problem in Congress, in that any individual Congressman would** ¶ **share the praise or blame for preventing or failing to prevent a humanitarian** ¶ **atrocity with the institution as a whole**. **This is implicit in the Founders’ arguments** ¶ **that the executive is more prone to war because of the “glory” it entails**. Indeed, ¶ the public judges the president on national issues, while evaluating members of¶ Congress based on their records on domestic and local concerns.335 **Legislatures** ¶ **are better to able to take credit for local, narrow accomplishments than** ¶ **achievements on the national and international plane**.336 Thus, **the president has** ¶ **more motivation to act to stop humanitarian atrocities**, whether he is seeking ¶ reelection, to be well liked generally, or both. This logic applies to claiming credit ¶ among the elite class as much as it does to gaining approbation among the general ¶ public.

**There is historical evidence for this assumption**. After leaving office, President ¶ **Clinton said that his biggest regret was not intervening in Rwanda**.337 In his final ¶ days in office, he had been frantically working on a solution to the PalestinianIsraeli problem, and commentators consider this use of time to have been ¶ motivated by legacy concerns.338 Clinton may very well have genuinely desired ¶ peace in the Middle East and regretted not stopping the Rwanda slaughter, but to ¶ the extent to which he sought approbation for his actions as president **he had an** ¶ **extra motivation to intervene in foreign states that would have had much less of an** ¶ **influence on individual legislatures.**

***4.The Psychology of Buck Passing***

Even if executives are completely altruistic, it makes sense that **an individual** ¶ **president will feel more psychological pressure to stop a humanitarian atrocity than** ¶ **a member of a large institution who can share in the guilt of remaining passive** ¶ **with others**. ***Psychological research*** **shows that individuals are less likely to act to** ¶ **help others when there are other bystanders around**.339 For example, when a ¶ person sees an individual stealing, he is less likely to report him when he sees other ¶ individuals witnessing the theft and remaining silent.340 **Further, as the number of** ¶ **passive individuals present increases, the less likely an individual is to behave** ¶ **altruistically**.341 This leads to the hypothesis that **a single executive might be more** ¶ **willing than any individual legislature to take action to stop a humanitarian** ¶ **catastrophe for psychological reasons unrelated to considerations of fame**. Of ¶ course, this is not meant to morally equate leaders who do not support¶ humanitarian interventions with bystanders who decline to help a stranger in ¶ distress; obviously, the moral questions surrounding humanitarian intervention are ¶ much more complex than those involved in day-to-day personal decision making. ¶ But to the extent that leaders genuinely believe in humanitarian intervention, **those** ¶ **who make up part of a collective body may feel less psychological pressure than a** ¶ **single executive to commit forces when they believe it is morally necessary.**

***5. The Nature of Humanitarian Interventions***

In a war of national defense, after Congress declares war, the Commander-inChief and the military determine the best way to defeat the enemy. **In a** ¶ **humanitarian intervention, however, the goals are usually less clear**.342 **Congress** ¶ **may therefore be less willing to explicitly delegate power in such situations**. For ¶ example, just days after the nation was attacked on 9/11, Congress passed a joint ¶ authorizing the president to go after the perpetrators.343 Similarly, after Congress ¶ became convinced that Saddam Hussein had weapons of mass destruction, it ¶ authorized the president to use force to enforce UN resolutions against his ¶ regime.344 In the case of Kosovo, however, the Clinton administration was placed ¶ in a difficult situation, being criticized by Congress before and after the war began ¶ both for doing too much and doing too little.345 **In a humanitarian intervention**, ¶ **questions arise over how victory is to be defined, whether ground troops should** ¶ **be used, how much the United States is to take responsibility for what goes on in** ¶ **the country, and how much risk members of the armed services are to take for the** ¶ **sake of civilians**. Saddam Hussein, the Taliban, or even Al Qaida may be defeated, ¶ but a nation can never be sure that it has permanently accomplished the mission of ¶ stopping the people of another country from killing one another.

**We can imagine a Congress divided into three camps of equal size. One faction** ¶ **wants to send ground troops** into a country to stop a government from ¶ committing humanitarian atrocities against its citizens, **another wants to simply** ¶ **conduct airstrikes, and the last wants to stay out of the conflict**. **While a majority** ¶ (two-thirds) of Congress **may want to intervene, nothing happens** **because no** ¶ **single position has majority support**. This could be the case even if all the ¶ interventionists would rather have some kind of action instead of none at all, ¶ because neither of the first two factions wants to give up on its first choice.

B. The Implications of the Model

What we see is a public that is generally indifferent to foreign affairs, but that ¶ weakly supports humanitarian intervention by large margins. **Congress will be** ¶ **unlikely to feel much pressure to act when facing such tragedies. The President**, on ¶ the other hand, **deals with the same public but has a few reasons why he would be** ¶ **more likely to intervene**. First of all, he is more likely to be judged by the public ¶ based on his performance in foreign affairs. Second, as the Founders wrote, ¶ presidents seek fame and the executive has more of a legacy interest in acting in ¶ ways that bring approbation in foreign affairs. Both these reasons for relative ¶ presidential initiative and congressional passivity are explained by the collective ¶ action problem Congress faces: individual members are less likely to receive praise ¶ or blame for any action, or inaction, they take. While the model also explains why ¶ the president is more likely to be willing to fight wars in the national interest, ¶ whether just or unjust, any gap in war-proneness between the president and ¶ Congress should be magnified in the case of humanitarian intervention for two ¶ reasons. First, there is the internationalist-nationalist division between the ¶ American elite and the masses.346 Second, in humanitarian intervention the goals ¶ are not as clear as they are in wars fought in self-defense, and Congress may have ¶ more difficulty agreeing on a proper course of action in the former.

Just as the model predicts that the president is more likely to take action to engage ¶ the United States in foreign wars in which the country has little national interest, it ¶ predicts that Congress will be relatively passive after the fact. The empirical data ¶ shows that the public weekly supports humanitarian intervention, and even when ¶ it does not the costs of such operations are widely distributed, indicating that there ¶ will not be any effective lobbies present to force Congress to take meaningful ¶ steps to stop the president once he commits the nation to these unwanted wars. ¶ The upshot of the analysis is that **when it comes to humanitarian intervention, the** ¶ **default rule for who gets to declare war is very important. Presidents will generally** ¶ **be much more willing to use military force than Congress is. If it was possible to** ¶ **construct a “war powers act that worked**,”347 **humanitarian interventions would** ¶ **become much less common, *if not nonexistent***.

**Partisans of the R2P may seek to harness the presidential desire for glory**, ¶ discussed by the Founders, towards humanitarian goals. **While this is certainly not** ¶ **the kind of glory or fame that the framers had in mind, we may believe that the** ¶ **change in values since their time makes executive thirst for glory a reason to put** ¶ **the wars powers in the hands of the president, instead of keeping it away from** ¶ **him. Those skeptical of humanitarian intervention, whether on moral**348¶ **or** ¶ **practical grounds,**349 **may argue that the growth of the concept makes it more** ¶ **necessary than ever to have Congress decide when the nation commits to war**.

**A2: No Link – Congress Say Yes**

***Congress won’t approve US participation in the UN intervention***

Jane E. **Stromseth 95** \*, Associate Professor of Law, Georgetown University Law Center, University of Miami, October, 1995, 50 U. Miami L. Rev. 145, WAR AND RESPONSIBILITY: A SYMPOSIUM ON CONGRESS, THE PRESIDENT, AND THE AUTHORITY TO INITIATE HOSTILITIES: Collective Force and Constitutional Responsibility: War Powers in the Post-Cold War Era, Lexis, jj

For three interrelated reasons, **Congress may play a more significant war powers role in the future, especially in the U.N. context**. First and foremost, the dissolution of the Soviet Union and the demise of the Cold War rivalry have ushered in a new era in American foreign policy in which there is no one overarching threat. Containing communism is no longer the unifying theme of American foreign relations. **In the absense of a foreign policy consensus and in the face of more ambiguous security threats, members of Congress generally will face fewer electoral risks in opposing the President's foreign policy decisions**. n97 **Accusations of being** "soft on communism" or "**weak on defense" will no longer constrain legislators from challenging presidential choices on defense policy or the use of force abroad**.

Second, in a world no longer dominated by Cold War tensions, **considerable uncertainty and disagreement exists among policy makers and among the American public at large about the nature of American interests in the world**. While traditional concerns about the physical and economic security of the United States will continue at the heart of American foreign policy, as will concerns about the security of our key allies, **questions about America's role in response to more indirect threats to our long-term well-being will be controversial and potentially divisive**. **Whether threats to core American values, such as democracy and basic human rights, merit committing American military forces in particular cases will be a question on which reasonable people will often disagree**. Moreover, **in cases that touch less directly on traditional American security concerns, the public will be less willing to tolerate American casualties**. **Congress, as a result, is likely to scrutinize such involvements closely and stand willing to challenge the President.**

Third, **in the face of more ambiguous and less immediate security** [\*168] **threats, Congress and the American public are likely to focus their attention on domestic economic priorities and to be cautious about expensive military commitments abroad that compete for scarce resources**. As a result, **Congress**'s power of the purse **will give it a major role in determining U.S. involvement in costly U.N. peacekeeping and peace enforcement operations.**

***Empirically Congress will block UN peacekeeping efforts—takes out their link turn***

**Holbrooke 05**

Richard Holbrooke was a professor at the Watson Institute for International Studies at Brown University and was a diplomat under four Presidents, Was Bosnia Worth It? <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/18/AR2005071801329.html>

From 1991 to 1995 the United States had been reluctant to act in Bosnia. But after Srebrenica, President Bill **Clinton knew that although the American people would not like it, the United States could no longer avoid involvement there**. Thus began the diplomatic and military policy that led to the Dayton accords, to peace in Bosnia and, four years later, to the liberation of the Albanian people in Kosovo from Slobodan Milosevic's oppression. Sending 20,000 American troops to Bosnia as part of a NATO-led peacekeeping contingent to enforce Dayton took real political courage. There were widespread predictions that it would fail, and **there was opposition from most of Congres**s and the foreign policy elite. In a poll at the time, **Clinton's decision was supported by only 36 percent of the American public, who expected heavy U.S. casualties**. As it turned out, **that expectation was misplaced; in the 10 years since Dayton, no -- repeat, no -- American** or NATO military **personnel have been killed by hostile action in Bosnia**. It is a mark of the respect in which NATO -- that is, the United States -- is held. This was Clinton's most important action in regard to Europe -- an action opposed, incidentally, by most of his political advisers. **It was a classic commander-in-chief decision, made alone, without congressional support** and with only reluctant backing from the Pentagon. But it worked: Without those 20,000 troops, Bosnia would not have survived, 2 million refugees would still be wandering the face of Western Europe, a criminal state would be in power in Bosnia itself -- and we would probably have had to pursue Operation Enduring Freedom not only in Afghanistan but also in the deep ravines and dangerous hills of central Bosnia, where a shadowy organization we now know as al Qaeda was putting down roots that were removed by NATO after Dayton. Was Bosnia worth it? As we approach the 10th anniversary of Dayton, there should no longer be any debate. **Had we not intervened -- belatedly but decisively -- a disaster would have taken place with serious consequences for our national security and the war on terrorism**. **Dayton reasserted an American leadership role** in Europe after a period of drift and confusion. But the job is not yet finished, and it is encouraging to see President Bush and the new team at State recommit the nation, as they did last week at Srebrenica.

**A2: Link Turn – Plan Checks Congress Backlash**

***Counterplan solves the link turn—the president will still consult with Congress to quell blowback—that’s above***

***Congress won’t cut-and-run --- Libya proves***

Tim **Fernholz**, March 22, 20**11**, National Journal, Congress Not Eager to Assert Power of Purse in Libya Operations, <http://www.nationaljournal.com/congress-not-eager-to-assert-power-of-purse-in-libya-operations-20110322>, jj

When President Obama proposed his 2012 budget, congressional Republicans were quick to criticize the spending increases included, even as they were busy hunting for cuts in 2011. But **when the president ordered the U.S. military to intervene in Libya’s civil war**, a decision that could end up costing billions, **the congressional leadership from both parties had little to say about the expense, preferring to let Obama make the decisions**. While a recess week and fast-moving events are partially to blame for Hill inactivity, **it’s a glaring example of the double standard between spending on defense and spending on anything else**. Though legislators from both parties have complained about the administration’s process in reaching decisions and lack of a clear endgame, **there is no clear consensus on what, if anything, Congress will do to use its power of the purse to limit the Libya campaign**. **The challenge is made especially difficult by the tensions, familiar to anti-war Democrats, between supporting troops in the field while disagreeing with policy decisions made in Washington.**

***No Congress has ever invoked the power of the purse mid-conflict—means funding for unilateral presidential operations through the UN are safe***

DOUG **MATACONIS** · FRIDAY, AUGUST 30, 20**13**, Outside The Beltway, Obama Won’t Go To Congress, Because History Has Taught Him He Doesn’t Have To, <http://www.outsidethebeltway.com/obama-wont-go-to-congress-because-history-has-taught-him-he-doesnt-have-to/>

During the Cold War, **Presidents became even more willing to engage in military action without prior Congressional approval in matters ranging from major conflicts like Korea and Vietnam1 to minor actions such as the deployment of Marines to Beirut, the invasions of Panama and Grenada.** The First Gulf War, meanwhile, was technically authorized by Congress but given that the vote occurred mere days before the air campaign began at a time when American and allied forces were literally waiting in the desert of Saudi Arabia to engage the enemy, it can hardly be said to have been deliberative in any way. Under President Clinton, we saw the U.S. military deployed to Somalia and the Balkans to engage in what might fairly be called the first “humanitarian” wars as well as military action against targets in Iraq, Afghanistan, and Somalia related to what we would soon come to call the “War On Terror.” Indeed, the seriousness of the September 11th attacks was made clear when President Bush formally asked Congress for authorization to pursue those responsible for the attack, as well as any nation giving them safe harbor. That Authorization for Use of Military Force Against Terrorists was passed overwhelmingly just three days after the attacks, remains in effect to this day, and has served as the justification for everything ranging the Afghanistan War itself to U.S. drone programs that have operated in nations such as Pakistan and Yemen as well as in the Horn of Africa. Finally, just two years ago, President **Obama sent American forces to aid the U.N./NATO mission in Libya without seeking authorization from Congress and, as Larison noted, did not suffer politically for it.**

For the most part, **these assertions of power by Presidents of both political parties have been acceded to by Congress, which has over the years acted more as a rubber stamp than a real check on Presidential power.** There was some effort to reign in Presidential war powers in the wake of the Vietnam War and President Nixon’s decision to spread that war into Cambodia with the passage of the War Powers Act. However, every President since Nixon has taken the position that the act is essentially a nullity even when they act in manners that are required under the law. More importantly, some scholars have suggested that **the War Powers Act** actually **expanded Presidential war powers because it created a number of circumstances under which Presidents could commit American forces to a hostile area for as long as 60 days, or longer under some circumstances, and then essentially dare Congress to utilize its power of the purse to deny funding for those troops once they were already in theater*. Even in cases of controversial actions where Congress has been controlled by the party opposing the President, no Congress has ever taken a President up on that particular dare***. Additionally**, numerous Congresses have failed to seriously question the wisdom of continuing ongoing military actions.**

# 1NR

### Offense

#### And, this is offense for us:

#### Obama won’t let Congress restrict his power without a fight – the plan passes over his veto

Howard Fineman 9/14-13, is editorial director of the Huffington Post Media Group. Huffington Post, Tim Kaine's Bold New War Proposal For Obama, <http://www.huffingtonpost.com/2013/09/14/tim-kaine-obama_n_3923450.html>, jj

Conventional wisdom and history hold that presidents never willingly cede an angstrom of their power to wage war, which is grounded in their role as commander in chief. The corollary is that they'll veto any efforts to limit such power -- which is what even the embattled Richard Nixon did in 1973.

#### This triggers a constitutional showdown, independently collapses heg and military effectiveness, and causes intractable interbranch conflict

Posner and Vermeule, 8

Eric A. Posner + & Adrian Vermeule, Professor of Law, University of Chicago, Professor of Law, Harvard Law School, U Penn LR, April, lexis

The cost of a showdown is simply that the government does not act - or, more precisely, that the energy of government officials is diverted from the problem at hand to the problem of asserting authority (in the case of top officials) or the problem of ascertaining the lines of authority (in the case of subordinate officials). Top officials stop arguing about whether the war should be terminated - a question involving difficult judgments about troop strength, home-front morale, and so forth - and start arguing about who should have the authority to terminate the war - a question involving difficult judgments about relative institutional advantage in conducting wars. Subordinate officials, like generals and soldiers, must make predictions about how the argument between top officials will be resolved. If they guess wrong, they could find themselves in trouble for disobeying the institution that ends up winning the showdown, or, if they temporize, failing to be prepared when the decision is made. Subordinate officials might end up acting excessively cautiously, so as to avoid offending the different authorities, or allowing policy and military judgments to be influenced by their implications for the resolution of the conflict about [\*1012] authority, to the extent that subordinate officials have preferences regarding such resolution. And a showdown over one issue, like executive privilege, might metastasize, as each side refuses to cooperate in other policy dimensions (appointments, budgets, and other areas of substantive legislation) until the other side backs down with respect to the original source of dispute.

#### Heg solves extinction

Barnett, Professor, Warfare Analysis and Research Dept – U.S. Naval War College, 3/7/’11

(Thomas, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” )

Let me be more blunt: **As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended.** Indeed, **it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding down that path of perpetual war. Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace.** We introduced the international liberal trade order known as globalization and played loyal Leviathan over its spread. What resulted was the collapse of empires, an explosion of democracy, the persistent spread of human rights, the liberation of women, the doubling of life expectancy, a roughly 10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts.

#### IBC causes extinction

Linda S. **Jamison**, Deputy Director of Governmental Relations @ CSIS, Spring 19**93**, Executive-Legislative Relations after the Cold War, Washington Quarterly, v.16, n.2, p. 189

Indeed there are very few domestic issues that do not have strong international implications, and likewise there are numerous transnational issues in which all nations have a stake. **Environmental degradation**, the **proliferation** of weapons of mass destruction, population control, migration, international narcotics trafficking, **the spread of AIDS, and** the deterioration of the human condition in the less developed world **are circumstances affecting all corners of the globe**. Neither political isolation nor policy bifurcation is an option for the United States. Global circumstances have drastically changed with the end of the Cold War and the political and policy conditions that sustained bipartisan consensus are not applicable to the post-war era. The formulation of a new foreign policy must be grounded in broad-based principles that reflect domestic economic, political and social concerns while providing practical solutions to new situations. Toward a cooperative US Foreign Policy for the 1990s: **If the federal government is to meet the new international policy challenges** of the post-cold war era, institutional dissension caused by partisan competition and **executive-legislative friction must give way to a new way of business. Policy flexibility must be the watchwor**d of the 1990s in the foreign policy domain **if the United States is to have any hope of securing its interests in the uncertain years ahead.** One former policymaker, noting the historical tendency of the United States to make fixed “attachments,” has argued that a changing world dictates policy flexibility, where practical solutions can be developed on principles of broad-based policy objectives (Fulbright 1979). **Flexibility**, however, **will not be possible without interbranch cooperation.**  The end of the Cold War and the new single-party control of the White House and Congress provide a unique opportunity to reestablish foreign policy cooperation. Reconfiguring post cold war objectives requires comprehension of the remarkable transformations in world affairs and demands an intense political dialogue that goes beyond the executive branch (Mann 1990, 28-29).

### 2NC – Policy Trials Fail

#### House leaders empirically block accountability over war powers—they’ll stonewall the policy trial

Nichols, 13 (John Nichols is the associated editor of The Capital Times. He is the co-author, with Robert W. McChesney, of "Dollarocracy: How the Money and Media Election Complex Is Destroying America" (The Nation), 7-30-13, The Cap Times, John Nichols: Boehner blocks real action to limit Syria entanglement, <http://host.madison.com/ct/news/opinion/column/john_nichols/john-nichols-boehner-blocks-real-action-to-limit-syria-entanglement/article_66530c3d-03d0-5175-980d-ab71cba7ceab.html>, jj)

President Obama and House Speaker John Boehner are agreed on one thing: They both want to get the United States more actively engaged in the fighting in Syria. Obama announced last month that he hopes to ship arms to the Syrian opposition forces that are fighting to oust President Bashar al-Assad. Boehner said last week that the president’s Syrian gambit “is in our nation’s best interest.” Boehner’s endorsement of the move came as House Intelligence Committee Chairman Mike Rogers, R-Mich., announced, “After much discussion and review, we got a consensus that we could move forward with what the administration’s plans and intentions are in Syria consistent with committee reservations.” But, make no mistake, an “in our nation’s best interest” quote from Boehner and an Intelligence Committee “consensus” ought not be read as congressional approval for a project that threatens to involve the United States in another war in another Middle Eastern country. That’s a point made by a key Intelligence Committee member, California Democrat Adam Schiff, who announced last week, “I do not share that consensus, however, and wish to make my dissent clear. In my view, the modest chance for success of these plans does not warrant the risk of becoming entangled in yet another civil war.” Schiff’s concerns are well-founded. And he is not alone. Polling shows that only 11 percent of Americans favor U.S. moves to aid the rebels. And there are many in Congress — Republicans and Democrats, Obama critics and frequent Obama allies — who express profound reservations about the course chosen by the administration. That ought to create a checking-and-balancing moment. After all, the Constitution clearly affords Congress the power to declare wars — and to define the scope and character of military interventions. But, as Vermont Congressman Peter Welch asked this week, “Does Congress play a role?” The answer, because of manipulations of the process by Boehner and his allies, is basically “no.” Welch, a Democrat who recently visited the Syrian border region, has emerged as an outspoken critic of moves to involve the United States in the conflict. He warns that “this is a significant military action. We are taking sides in a civil war.” It is this concern that led Welch and a number of Republican representatives to try to force Congress to engage in a serious debate about whether to get entangled in the Syria fight. Unfortunately, Boehner has manipulated the rules to aid Obama’s quest. As part of last week's debate over the 2014 Pentagon spending bill, Welch and a bipartisan coalition he helped to assemble had hoped to get a vote on an amendment that would have barred the use of Department of Defense money to arm the rebels — or to otherwise pull the United States into the Syrian conflict. But House leaders blocked consideration of the proposal. Boehner’s allies on the Rules Committee wanted to allow debate on only four narrowly drawn amendments to the broader spending bill. In addition to amendments that discuss limiting National Security Agency spying and aid to Egypt, a watered-down amendment on Syria was considered. Sponsored by Republican Congressman Trey Radel, of Florida, the Syria amendment passed on a voice vote July 24. But it only prohibits the use of Pentagon funds for Syrian projects that are defined as “inconsistent” with the War Powers Resolution. The wording of Radel’s amendment makes it essentially symbolic, as it does little more than restate existing law. It is important to remind the White House of the rules. Indeed, as Robert Naiman, the policy director for the group Just Foreign Policy, notes, “the Radel amendment can help achieve two things: It can be cited as congressional opposition to deeper U.S. military involvement, and it specifically can be used to argue against continuation of the recent deployment of U.S. troops to Jordan, widely perceived as related to the threat of U.S. military intervention in Syria.” But the Radel amendment does not achieve the sort of meaningful congressional action that the Founders imagined as a necessary tool to check and balance military adventurism. It’s a facade of oversight rather than the real thing. Just as when Russian officials were accused of erecting fake “Potemkin villages” to fool foreign ambassadors into thinking impoverished regions were thriving, Boehner and his team are erecting Potemkin checks and balances. “The Republican leadership ducked a real important debate when it comes to Syria,” complained Congressman James McGovern, D-Mass.

### 2NC – Rules of Engagement Trigger Fails

#### Their “rules of engagement” trigger doesn’t check—the ROE are highly fluid and constantly modified for political reasons

Addicott 1/8/14 (JEFFREY F. ADDICOTT∗, \*Lt. Colonel (U.S. Army, JAGC, ret.), Professor of Law & Director, Center for Terrorism Law, St. Mary’s University School of Law, B.A. (with honors), University of Maryland; J.D., University of Alabama School of Law; L.L.M., The Judge Advocate General’s Legal Center and School; L.L.M. and S.J.D., University of Virginia School of Law, 1/8/2014, ST. MARY’S LAW JOURNAL, THE STRANGE CASE OF LIEUTENANT WADDELL: HOW OVERLY RESTRICTIVE RULES OF ENGAGEMENT ADVERSELY IMPACT THE AMERICAN WAR FIGHTER AND UNDERMINE MILITARY VICTORY, <http://www.stmaryslawjournal.org/pdfs/Addicott_Step13.pdf>, jj)

A student of history cannot fail to address the issue of how the United States failed so miserably in Afghanistan. While there are many facets to this question, one that directly contributed to the failure was the selfimposed so-called “Rules of Engagement” (ROE).

In tandem with the strict mandates associated with the law of war, all Western democracies, including the United States, self-impose ROE as restrictive additions to the law of war.10 These ROE are designed to further limit the application of the use of force in combat apart from the law of war.11 In both Iraq and Afghanistan, the United States promulgated numerous ROE to further limit the use of force associated with combat operations.12 Furthermore, ROE have been changed many times over the years as dictated by political considerations.13 Indeed, as the fighting in Afghanistan continues, ROE are still subject to constant revision.14 While the efficacy of ROE can be argued as a matter of premise, it appears certain that some of the ROE promulgated are simply patronizing in nature, and their overbroad restrictions on the use of force have directly contributed to large numbers of American causalities.15 For the sake of distinction, this paper will refer to this category of ROE as “overly restrictive.”16

Unlike the law of war, which is static in nature until revised by international treaty or customary practice, ROE can be changed at any time based on political or policy objectives.17 While the rule of law provisions related to the law of war reflect fundamental concepts of human behavior that comport with universal moral values—do not kill civilians, do not kill enemies who surrender, do not destroy civilian property, etc.—ROE address restrictions on behavior that are not necessarily common sense.18 In many instances, the behavior prohibited by a rule of engagement is extremely subtle and invariably produces random outcomes.19 Micromanaging the otherwise lawful use of force under the law of war, as ROE require, can result in confusion on the one hand and inaction on the other.20 Consequently, service members are often unsure what the ROE entail and may simply choose to do nothing for fear of violating them.21 Ultimately, ROE should not exceed, and must comport with, the restrictions of the law of war.22

#### ROE will be politically manipulated by the executive and the military to avoid triggering the consultation provision

Corn & Jensen, 8 (Geoffrey S. Corn∗, Eric Talbot Jensen∗∗, ∗ Associate Professor of Law, South Texas College of Law, Prior to joining the faculty at South Texas, Professor Corn served as the U.S. Army Special Assistant for Law of War Matters. Professor Corn also served as an officer in the U.S. Army from 1984 to 2004, including assignments as a supervisory defense counsel for the Western United States, Chief of International Law for U.S. Army Europe, Professor of International and National Security Law at the U.S. Army Judge Advocate General’s School, Chief Prosecutor for the 101st Airborne Division, and as a Tactical Intelligence Officer in Panama. Professor Corn has been an expert consultant and witness for defendants before the Military Commission and for other Guantanamo detainees challenging the legality of their detention. He has published numerous articles in the field of national security law and is a co-author of a forthcoming book titled The Law of War and the War on Terror. He is a graduate of Hartwick College and the U.S. Army Command and General Staff College, and earned his J.D., highest honors, at George Washington University and his LL.M., distinguished graduate, at the Judge Advocate General’s School. He frequently lectures on law of war and national security law topics. \*\* Lieutenant Colonel, Chief, International Law Branch, Office of the Judge Advocate General, U.S. Army. B.A., Brigham Young University, 1989; J.D., University of Notre Dame, 1994; LL.M., The Judge Advocate General’s Legal Center and School, 2001; LL.M., Yale Law School, 2006. Operational Law Attorney, Task Force Eagle, Bosnia, 1996, Command Judge Advocate, Task Force Able Sentry, Macedonia, 1997, Chief Military Law, Task Force Eagle, Bosnia, 1998. Professor, International and Operational Law Department, the Judge Advocate General’s Legal Center and School, 2001 to 2004, Deputy Staff Judge Advocate, 1st Cavalry Division, Baghdad, Iraq, 2004 to 2005, Member of the Bars of Indiana and the United States Supreme Court. The views expressed in this Article are those of the Authors and not the Judge Advocate General’s Corps, the United States Army, or the Department of Defense. TEMPLE LAW REVIEW, “UNTYING THE GORDIAN KNOT: A PROPOSAL FOR DETERMINING APPLICABILITY OF THE LAWS OF WAR TO THE WAR ON TERROR”, online pdf, jj)

This new triggering paradigm is not without its risks. As described earlier in the diagram, one of the inputs into ROE is national policy. Policy is by definition a political input. That means that, by definition, ROE are already subject to political inputs. Naturally, in a nation such as the United States, which strongly believes that its military must be subject to civilian control, the inputs are not only important, but necessary. However, it is equally important that ROE remain a functional tool that the military can apply to achieve the end state desired by the political leadership.

History has already provided at least one occasion where military leaders felt the ROE were too constrained to allow military victory. In the midst of the Vietnam War, President Johnson proudly proclaimed that the military could not “bomb an outhouse without my approval.”198 Many military leaders chafed under such controls and argued that this level of review and approval prevented the military from successfully carrying out its mission.199 Some of this may be the military leaders not recognizing that the political end state may not always include a complete military victory and the total destruction of the enemy. However, there is certainly a valid concern that the ROE can be overpoliticized at the expense of blood and treasure.

Given that ROE are already a policy issue, this new paradigm could result in the overpoliticization of the ROE, placing military forces in grave danger. It is easy to envision a situation where the executive branch might not want to be seen as going to “war” or taking actions that might trigger the War Powers Act, regardless of the realities on the ground. In an effort to avoid such a trigger, the military could be given only self-defense ROE, making the claim that, based on the ROE, this was less than war and therefore there was no requirement to report to Congress. The military would then be sent to a hostile environment with ROE that would not provide sufficient authority to adequately accomplish the mission, nor possibly provide adequate protections in the face of an armed enemy. As mentioned above, while this situation is unlikely under current circumstances due to the short-lived patience of the American people to the inevitably mounting U.S. casualties that would result, it is still a risk that must be recognized with the adoption of the new paradigm.

### National command authority

#### Now – their “National Command Authority” jive doesn’t help them

#### NCA LITERALLY includes the president --- makes it EASIER for him to change RoE

Section 3.1, DoD Directive Number 5100.30, 1971

—*Section 3.1, Department of Defense Directive Number 5100.30 December 2, 1971*

The NCA consists only of the President and the Secretary of Defense or their duly deputized alternates or successors. The [chain of command](http://en.wikipedia.org/wiki/Chain_of_command) runs from the President to the Secretary of Defense (SecDef) and through the Joint Chiefs of Staff to the Commanders of the Unified and Specified Commands. The channel of communication for execution of the [Single Integrated Operational Plan](http://en.wikipedia.org/wiki/Single_Integrated_Operational_Plan) (SIOP) and other time-sensitive operations shall be from the NCA through the [Chairman of the Joint Chiefs of Staff](http://en.wikipedia.org/wiki/Chairman_of_the_Joint_Chiefs_of_Staff), representing the Joint Chiefs of Staff, to the executing commanders.

### 2NC – A – Circumvention

#### And, the plan text is extremely vague – plantext does not inclue a def of rules of engagement, policy trial, or mission – that guarantees circumvention

Mitchell, Assistant Professor of Law, George Mason University School of Law, 9

(Jonathan, Jan, “Legislating Clear-Statement Regimes in National- Security Law,” http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jonathan\_mitchell)

The challenge for these efforts to strengthen the War Powers Resolution and FISA¶ is that any future ambiguous statute will provide rope for executive-branch lawyers to¶ concoct congressional “authorization” for the President’s actions, no matter what¶ restrictions or interpretive instructions Congress provides in framework legislation. None¶ of these proposed reforms will disable the executive from using its expansive theories of¶ constitutional avoidance and implied repeal to provide a veneer of legality for the¶ President’s actions, and to minimize the prospect of future criminal sanctions and¶ political reprisals against executive-branch employees.

### 2NC – B – Non-Enforcement

#### Their restriction is a smokescreen and won’t be enforced—prefer ev which accounts for institutional incentives

Nzelibe 7—Professor of Law @ Northwestern University [Jide Nzelibe, “Are Congressionally Authorized Wars Perverse?” Stanford Law Review, Vol. 59, 2007]

These assumptions are all questionable. As a preliminary matter, there is not much causal evidence that supports the institutional constraints logic. As various commentators have noted, Congress's bark with respect to war powers is often much greater than its bite. Significantly, skeptics like Barbara Hinckley suggest that any notion of an activist Congress in war powers is a myth and members of Congress will often use the smokescreen of "symbolic resolutions, increase in roll calls and lengthy hearings, [and] addition of reporting requirements" to create the illusion of congressional participation in foreign policy.' 0 Indeed, even those commentators who support a more aggressive role for Congress in initiating conflicts acknowledge this problem," but suggest that it could be fixed by having Congress enact more specific legislation about conflict objectives and implement new tools for monitoring executive behavior during wartime. 12

Yet, even if Congress were equipped with better institutional tools to constrain and monitor the President's military initiatives, it is not clear that it would significantly alter the current war powers landscape. As Horn and Shepsle have argued elsewhere: "[N]either specificity in enabling legislation ... nor participation by interested parties is necessarily optimal or self-fulfilling; therefore, they do not ensure agent compliance. Ultimately, there must be some enforcement feature-a credible commitment to punish ....Thus, no matter how much well-intentioned and specific legislation Congress passes to increase congressional oversight of the President's military initiatives, it will come to naught if members of Congress lack institutional incentives to monitor and constrain the President's behavior in an international crisis.

Various congressional observers have highlighted electoral disincentives that members of Congress might face in constraining the President's military initiatives. 14 Others have pointed to more institutional obstacles to congressional assertiveness in foreign relations, such as collective action problems. 15 Generally, lawmaking is a demanding and grueling exercise. If one assumes that members of Congress are often obsessed with the prospect of reelection, 16 then such members will tend to focus their scarce resources on district-level concerns and hesitate to second-guess the President's response in an international crisis. 17 Even if members of Congress could marshal the resources to challenge the President's agenda on national issues, the payoff in electoral terms might be trivial or non-existent. Indeed, in the case of the President's military initiatives where the median voter is likely to defer to the executive branch's judgment, the electoral payoff for members of Congress of constraining such initiatives might actually be negative. In other words, regardless of how explicit the grant of a constitutional role to Congress in foreign affairs might be, few members of Congress are willing to make the personal sacrifice for the greater institutional goal. Thus, unless a grand reformer is able to tweak the system and make congressional assertiveness an electorally palatable option in war powers, calls for greater congressional participation in war powers are likely to fall on deaf ears. Pg. 912-913

### 2NC A2: Political Costs / Deterrence

#### Political costs are exaggerated – this card will smoke them

Schauer, Distinguished Professor of Law, University of Virginia, 12

(Frederick, “ARTICLE: THE POLITICAL RISKS (IF ANY) OF BREAKING THE LAW,” 4 J. of Legal Analysis 83, lexis)

Consider, for example, the legality of American involvement in Libya. Factually, the issue arises from the situation in which the Obama Administration directed strikes against Libyan air defenses, some by aircraft and some by remotely operated drones, in conjunction with NATO, but without prior consultation with Congress and without approval by Congress, either in advance or to this day (Morrison 2011). In defending its refusal to consult with Congress or secure its approval, the Administration relied, in part, on now-routine presidential claims to have independent constitutional authority, under the explicit commander-in-chief and executive powers and under the implicit war-making and national defense and foreign policy and emergency powers, to engage in such actions. But in seeking to explain its disregard of the plain mandates of the War Powers Resolution, the Administration also claimed, in the face of a clear Office of Legal Counsel opinion to the contrary, that the military actions in Libya did not constitute "hostilities", as that term is used in the Resolution, because no American ground troops were placed in Libya and also because the likelihood of American casualties was essentially nonexistent.¶ The claim that the War Powers Resolution is in some or all dimensions an unconstitutional infringement on the President's independent powers is seriously debatable, and in fact this is the position that has been taken, in one form or another, by every President, regardless of party, since the Resolution was first enacted in 1973 (Posner & Vermeule 2011). The claim that the Resolution did not even apply to this situation because of the absence of hostilities, however, was widely mocked as legally implausible (Ackerman 2011; Ackerman & Hathaway 2011; Fisher 2012; Morrison 2011), especially in the several days after the Administration's written statement to this effect was issued, and after the claim was defended before the Senate Foreign Relations Committee by Harold H. Koh, Legal Advisor to the State Department.¶ For purposes of this article, it seems more than plausible to treat the legal defense of the actions over and against Libyan forces as so weak as to permit the claim that the actions simply violated the law in a straightforward way. Yet although the actions violated the law, they were plainly preferred by the Administration on policy and, presumably, political grounds. And as events have ensued, it is clear that the Administration's policy and political positions have largely been borne out. The air attacks were successful, the forces of a very [\*91] bad person were defeated, the regime seems to have changed, at least for now, for the better, and there were no American casualties. The entire scenario, therefore, seems a good example of one in which, faced with a choice between the law-independent policy preferences and the clear constraints of the law, the Administration chose the former.¶ What makes the example especially interesting, however, is not just the favorable policy outcome, but the fact that the policy and political success, even in the face of relatively plain illegality, has produced virtually no negative political consequences. Public and press attention to the illegality has disappeared (Wang 2011), and the political evaluation of the action has been largely positive. As the events have played out, the illegality has played essentially no role in the larger politics of the situation. To put it differently, not only has the illegality produced no formal legal sanctions, as it could not (short of impeachment), but it also seems to have produced virtually no political or reputational sanctions for the Administration. As of this writing, it remains logically possible that the Administration's violation of the law will be a campaign issue in 2012, but the likelihood of such an eventuality seems vanishingly small.¶ ¶ As I have discussed in previous writings (Schauer 2007, 2010c, 2011b), there are many other examples of illegal policy actions or positions that have seemingly produced no or few negative political consequences. One such example is the decision by the mayors of San Francisco and of New Paltz, New York, to marry same-sex couples in violation of the then-applicable state law. With sympathies in both States in the direction of legalizing same-sex marriage, however, the illegality was taken then, and is taken now, as being somewhere between inconsequential and courageous. And on the same issue, when Governor Deval Patrick of Massachusetts explicitly urged members of the legislature to disregard a decision by the Massachusetts Supreme Judicial Court mandating that they vote on a referendum proposal to amend the state constitution to prohibit same-sex marriage, his actions have produced no negative political fallout. In numerous other instances, from New Orleans Mayor Ray Nagin's public call for immediate federal military assistance in the wake of Hurricane Katrina, to Mayor (now Senator) Ray Menendez's support for Americans who would have illegally launched military actions against the Cuban regime, to the violation of New York's Taylor Law by leaders of the Transit Workers Union and other public employee unions, the fact of illegality in the face of popular policy initiatives or positions has yielded few or no negative political or reputational consequences. Less saliently, the frequent willingness of Congress to ignore the law of law-making seems a matter of virtually no political consequence and thus a practice that has produced no negative political consequences for anyone (Bar-Simon-Tov 2010).

#### No political costs – public will always side with the president, and Congress will try to save face

Posner & Vermeule ’11, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, The Executive Unbound [electronic resource] : After the Madisonian Republic, Oxford University Press, USA, 2011. 01/01/2011 1 online resource (256 p.) Language: English, pg 88, jj

To be sure, if the framework statutes are very specific, then violating them¶ may itself create a political cost for the president, whose political opponents¶ will denounce him for Caesarism. This cost is real, but in the type of¶ high-stakes matters that are most likely to create showdowns between the¶ president and Congress in the first place, the benefits are likely to be greater¶ than the costs so long as the president’s action is popular and credible—the¶ crucial constraints we will discuss in chapter 4 . Moreover, if the president¶ can credibly claim to the public that the violation was necessary, then the¶ public will be unlikely to care too much about the legal niceties. As legal¶ theorist Frederick Schauer argues for constitutional violations 18 (and, we¶ add, the argument holds a fortiori for statutory violations), there is an¶ interesting asymmetry surrounding illegality: if the underlying action is unpopular,¶ then citizens will treat its illegality as an aggravating circumstance,¶ but if the underlying action is popular, its illegality usually has little independent¶ weight. Finally, if the president credibly threatens to violate the¶ statute, then Congress will have strong incentives to find some face-saving¶ compromise that allows the president to do what he wishes without forcing¶ a showdown that, legislators anticipate, may well end badly.

### A2: Barron

#### They conlude neg—trends, institutional incentives, public sentiment and weak congressional checks make non-compliance inevitable

Barron and Lederman, 2008 (David, Professor of Law at Harvard Law School; Martin, Visiting Professor of Law at Georgetown University Law Center; “The Commander in Chief at the Lowest Ebb – A Constitutional History”, Harvard Law Review, 121 Harv. L. Rev. 941, Lexis)

VII. CONCLUSION

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the “conduct of campaigns” is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed.

But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily selfdefeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress’s capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

The prior practice we describe, therefore, could over time become a faint memory, recalled only for the proposition that it is anachronistic, unsuited for what are thought to be the unique perils of the contemporary world. Were this to happen it would represent an unfortunate development in the constitutional law of war powers. Thus, it is incumbent upon legislators to challenge efforts to bring about such a change. Moreover, executive branch actors, particularly those attorneys helping to assure that the President takes care the law is faithfully executed, should not abandon two hundred years of historical practice too hastily. At the very least, they should resist the urge to continue to press the new and troubling claim that the President is entitled to unfettered discretion in the conduct of war.

**A2: court enforcement**

***Vagueness takes out the aff—they don’t define what the current rules of engagement are, or what a mission is, or even what an armed force includes***

**Patera ’12**, John Patera, J.D., May 2012, Hamline University School of Law, Spring, 2012¶ Hamline Journal of Public Law & Policy¶ 33 Hamline J. Pub. L. & Pol'y 387, CURRENT PUBLIC LAW AND POLICY ISSUE: War Powers Resolution in the Age of Drone Warfare: How Drone Technology has Dramatically Reduced the Resolution's Effectiveness as a Curb on Executive Power, Lexis, jj

The vague term "hostilities" is **undefined** by the statute, and therefore **subject to debate**. n50 As will be discussed infra, the Resolution's **loose language** gives presidents largely unfettered discretion in defining its terms of art and deciding when to comply with its strictures.

***means they don’t access Court Enforcement***

**Quint, 84** (Peter E. Quint \*, \* Professor of Law, University of Maryland School of Law, A.B. 1961, LL.B. 1964, Harvard University; Dipl. in Law 1965, Oxford University, Texas Law Review, February, 1984, ARTICLE: The Separation of Powers Under Carter, 62 Tex. L. Rev. 785, Lexis, jj)

In Haig v. Agee, n329 the Supreme Court agreed and reversed the judgment below. The Court adopted the government's view that **ambiguous or vague statutes** relating to foreign policy and national security **should be construed to favor executive authority**. n330 The Court quoted from earlier cases that endorsed broad presidential power in foreign affairs, n331 and emphasized that "'Congress -- in giving the Executive authority over matters of foreign affairs -- must of necessity paint with a brush broader than that it customarily wields in domestic areas.'" n332 The Court also noted that the judiciary has a minimal role in reviewing foreign policy and national security matters. n333 After this prologue, the Court found that Congress had tacitly adopted the Executive's administrative construction of the statute to allow passport withholding for reasons of foreign policy and national security. Therefore, [\*850] the regulation was authorized by the Passport Act. n334

#### The courts aren’t an effective check – circumvention’s likely.

Wheeler, associate professor of political science at Ball State University, 9

**(**Darren A., “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly 39.4 (Dec 2009): 677-700, ebsco)

This article argues that there are four specific reasons why those expecting the Supreme Court to be a significant check on presidential detention power in the war on terror are likely to be disappointed. The first reason is that the judiciary makes decisions in what can be referred to as "judicial time." In short, the courts are slow. The judicial decision-making process is often one that takes years to complete (Rehnquist 1998). Few political actors conceptualize the decision-making process in such an extended manner. If the president can respond more quickly to matters of policy than the courts, it might be difficult for the judiciary to act as a check on the president. The second factor that limits the judiciary's ability to check presidential detention power is the fact that courts usually answer specific narrow legal questions as opposed to larger, "big picture" policy questions (Baum 2007; Rehnquist 1998; Rosenberg 1991). As a result, even when the Court makes a decision on a matter, it is often a narrow one that addresses only a small part of the overall policy picture. This can limit the impact that the courts have on the policymaking process, as other policy makers often find different means to accomplish their desired goals regardless of the roadblocks presented by the courts on particular details. The third factor that potentially limits judicial impact on the president's desired detention policies is the fact that the judicial implementation process is fraught with uncertainty (Baum 2007; Canon and Johnson 1999; Carp, Stidham, and Manning 2004; Stumpf 1998). Even when the courts make a decision, it is possible for other political actors (including the president) to shape the implementation process in such a way as to minimize the impact that the particular decision might have on the president's preferred policies. Finally, the judiciary, especially since the second half of the twentieth century, has adopted a general posture of deference to the executive in matters of war powers and foreign affairs (Fisher 2005; Howell 2003; Rossiter and Longaker 1976). This deference might lead the Court to refuse to even hear challenges to presidential detention power. Even when the Court does hear cases, it may dispose of them in ways that illustrate this historical pattern of deference. Any combination of these factors **may limit the ability of the judiciary to check presidential initiatives**, **especially in** a policy area - **the war on terror** - in which the Bush administration clearly demonstrated an intense willingness and desire to exert unilateral control over matters (Fisher 2004; Goldsmith 2007; Kassop 2007; Savage 2007; Wheeler 2008).