## Off

### 1st Off

**Interpretation “restriction” is a method of prohibiting authority**

P.A. **Mohammed**, J. Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997¶ Equivalent citations: AIR 1997 Ker 121¶ Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, **1997**. http://www.indiankanoon.org/doc/255504/?type=print

10. **Microlight aircrafts or hang gliders shall not be flown over an assembly of persons or over congested areas or restricted areas including cantonment areas, defence installations etc**. unless prior permission in writing is obtained from appropriate authorities. **These provisions do not create any restrictions. There is no total prohibition of operation of microlight aircraft or hang gliders. The distinction between 'regulation' and 'restriction' must be clearly perceived. The 'regulation' is a process which aids main function within the legal precinct whereas 'restriction' is a process which prevents the function without legal sanction**. Regulation is allowable but restriction is objectionable. What is contained in the impugned clauses is, only **regulations and not restrictions**, complete or partial. They **are issued with authority conferred on the first respondent**, under Rule 133A of the Aircraft Rules consistent with the provisions contained in the Aircraft Act 1934 relating to the operation, use etc. of aircrafts flying in India. Microlight aircrafts, hang gliders and powered hang gliders are all coming within the definition of 'aircraft' contained in Section 2( 1) of the Act. Section 5 of **the Act authorises** the Central Government to make rules regulating among other things use and operation of aircraft and lor securing the safety of aircraft operation. Rule 133A authorises the first respondent to issue directions relating to the operation and use of the aircraft. Thus the analysis of the above provisions would sufficiently indicate that **the** impugned **clauses** contained in Exts. P4 and P5 **are** purely **measures regulating** the use and **operation** of aircrafts.

**Increase means to become greater**

Increase:

in·crease verb \in-ˈkrēs, ˈin-ˌ\

intransitive verb

**1: to become progressively greater (as in size, amount, number, or intensity)**

2: to multiply by the production of young

**That’s Merriam-Webster 12**, http://www.merriam-webster.com/dictionary/increase?show=0&t=1348112715

**Executive authority stems from the constitution or statutory delegation.**

**Gaziano**, **2001**

(Todd, senior fellow in Legal Studies and Director of the Center for Legal Judicial Studies at the Heritage Foundation, 5 Texas Review of Law & Politics 267, Spring, lexis)

Although President Washington's Thanksgiving Proclamation was hortatory, other proclamations or orders that communicate presidential decisions may be legally binding. n31 Ultimately **the authority for all presidential orders or directives must come from either the Constitution or from statutory delegations**. **The source of authority (constitutional versus statutory) carries important implications for the extent to which that authority may be legitimately exercised or circumscribed**. Regardless of the source of substantive power, however, the authority to use written directives in the exercise of that power need not be set forth in express terms in the Constitution or federal statutes. As is explained further below, the authority to issue directives may be express, implied, or inherent in the substantive power granted to the President. The Constitution expressly mentions certain functions that are to be performed by the President. Congress has augmented the President's power by delegating additional authority within these areas of responsibility. The following are among the more important grants of authority under which the President may issue at least some directives in the exercise of his constitutional and statutorily delegated powers: Commander in Chief, Head of State, Chief Law Enforcement Officer, and Head of the Executive Branch.

**Violation – The Aff increases presidents war powers authority – It doesn’t prohibit the president from doing anything**

**Coronogue 12** – **1AC Author** (Graham, JD at duke, “A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR”, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil, zzx)

This **congressional authorization gave the president the authority to use force against those involved in the 9/11 attacks and their allies**, but the war on terror has moved beyond this mandate. **In 2001, al-Qaeda, the Taliban, and Osama bin Laden were clearly the “enemy.**”3 **The AUMF addressed this threat by providing domestic authorization for the use of force against all entities closely tied to 9/11.** However, ten years after the attacks, bin Laden is dead and the Taliban is a shadow of its former self.4 Yet the United States still uses the AUMF to justify the use of force against new terrorist and extremist groups, many of which were not closely involved in 9/11 and may not have even existed in 2001. Given this disconnect, politicians have advocated amending, scrapping, or reaffirming the AUMF to have it reflect the present reality of the conflict. The Obama administration argues that the AUMF should remain the same and has taken pains to expand the authorization to cover new terrorist threats from organizations unrelated to al-Qaeda.5 However, this ten-year-old authorization must be revised. **The United States is facing a new and still evolving enemy; our law on conflict must evolve with it.** We should not expect the President to simply reinterpret or stretch statutory language when considering such fundamentally important issues as national security, deadly force, and indefinite detention. This "stretching" out of the statute will create significant questions of legality and authorization in times when we cannot afford to hesitate or second-guess. **The President and the armed forces need an updated, clear, and explicit authorization to execute this war effectively** and know the limits of their power. In short. Congress must amend or update the AUMF to reflect the current reality of conflict and guide the President's prosecution of this war.

**Vote Neg**

**Limits – Their aff justifies any aff that has the judiciary or Congress clarify in ways that expand war powers - 1000s of ways to do that**

**Ground – Increasing restrictions is key to stable neg link and cp ground – clarifications to authority make all DA links non-unique – bidirectional affs are especially bad because they are reading neg ground on the aff**

**The aff is extra-topical – AUMF applies to things outside the resolution -**

**Justice.gov 2006** (January 27, “THE NSA PROGRAM TO DETECT AND PREVENT TERRORIST ATTACKS

MYTH V. REALITY” <http://www.justice.gov/opa/documents/nsa_myth_v_reality.pdf>)

**Myth: The NSA program is illegal. Reality: The President’s authority** to authorize the terrorist surveillance program is **firmly based both in** his constitutional authority as Commander-in-Chief, and in **the** Authorization for Use of Military Force (**AUMF**) passed by Congress after the September 11 attacks. • As Commander-in-Chief and Chief Executive, the President has legal authority under the Constitution to authorize the NSA terrorist surveillance program. ¾ The Constitution makes protecting our Nation from foreign attack the President’s most solemn duty and provides him with the legal authority to keep America safe. ¾ It has long been recognized that the President has inherent authority to conduct warrantless surveillance to gather foreign intelligence even in peacetime. Every federal appellate court to rule on the question has concluded that the President has this authority and that it is consistent with the Constitution. ¾ Since the Civil War, wiretaps aimed at collecting foreign intelligence have been authorized by Presidents, and the authority to conduct warrantless surveillance for foreign intelligence purposes has been consistently cited and used when necessary. • **Congress confirmed and supplemented the President's constitutional authority to authorize this program when it passed the AUMF**. ¾ **The AUMF authorized the President to use “all necessary and appropriate military force against those** nations, **organizations**, or persons **he determines planned**, authorized, committed, or aided in the terrorist attacks that occurred on **September 11**, 2001.” **¾ In its Hamdi decision, the Supreme Court ruled that the AUMF also authorizes the “fundamental incident[s] of waging war.”** **The history of warfare makes clear that electronic surveillance** of the enemy **is** a **fundamental** incident to the use of military force.

**Extra T is a voter for limits – surveillance was rejected from the topic and is a whole new set of advantage ground and disads – it has to be a voting issue or it becomes a no risk issue for the Aff**

### 2nd Off

#### Text: The Executive Branch of the United States should limit his or her targeted killing and indefinite detention war powers authority granted to the President of the United States by Public Law 107-40 and modified by the 2012 National Defense Authorization Act by limiting the targets of those authorities to al-Qaeda, the Taliban, or those nations, organizations, or persons who enjoy close and well-establish collaboration with al-Qaeda or the Taliban. The President of the United States should publicly announce and adhere to this policy.

#### De Facto and De Jure self-binding create accountability from the courts and risk political alienation for going back on promises

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 138-139//wyo-sc]

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.59 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is "yes, at least to the same extent that a legislature can." Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.60 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of selfbinding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

### 3rd Off

#### Executive war power primacy now—the plan flips that

Posner 13

[Eric Posner, 9/3/13, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html]

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President **Obama has reaffirmed the primacy of the executive** in matters of war and peace. **The war powers of the presidency remain as mighty as ever**.

It would have been different if the president had announced that **only Congress can authorize** the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. **That would have been** worthy of notice, **a reversal of the ascendance of executive power over Congress**. **But the president said no such thing**. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.”

Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him.

The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.)

People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### Congressional restraints spill over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or **limit a war** in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it **would strip the President of his Commander in Chief authority** to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### That goes nuclear

Li ‘9

[Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

1. The Emergence of Non-State Actors]

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the **institution** of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that **conventional wars** remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight **as a life-and-death struggle**, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, **was not designed** to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of **rogue states**, and the potentially wide proliferation of easily deployable **w**eapons of **m**ass **d**estruction, **nuclear and otherwise.** B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"**then clearly [the modem state] does not have a future in front of it**.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' **That era is now over**. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" **is a struggle for survival** and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, **quick reactions**, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a **faster tempo** or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a **fatal hindrance** to achieving the initiative **necessary** for victory. As a **slow-acting**, deliberative **body**, Congress does not have the ability to adequately deal with **fast-emerging situations** in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch **must** have the ability to operate by taking offensive military action even without congressional authorization, because **only the executive branch** is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### 4th Off

#### Immigration reform will pass – PC is key

Lopez 1/1/14 (Oscar, Latin Times, "New Year 2014: 4 Reasons Immigration Reform Will Pass In 2014," http://www.latintimes.com/new-year-2014-4-reasons-immigration-reform-will-pass-2014-141778)

Immigration reform is set to be the key issue of 2014. Following Mitt Romney's dismal performance among Latino voters in the 2012 election, both sides of the Government woke up to the necessity for comprehensive reform on immigration. Indeed, in his State of the Union address in February, President Obama declared that “the time has come to pass comprehensive immigration reform.” Yet with the House divided over Obamacare and the budget crisis, the Government Shutdown let immigration reform die. 2014 will change that: and here are 4 Reasons Why.¶ 1. Republican Support: A fundamental lack of support from the GOP has always been one of the major obstacles for passing comprehensive reform legislation, and indeed this seemed to be the case this year after the Bill passed by the Senate was struck down by Congress. However, more and more GOP members are realizing the significance of the Latino vote and understanding that passing comprehensive immigration reform is the most significant way of securing support from Latino voters. ¶ A July poll from Latino Decisions found that immigration reform was the most important issue facing the Latino community for 60 percent of those surveyed. The poll also found that 70 percent of those questioned were dissatisfied with the job Republicans were doing on the issue. The survey also found the 39 percent would be more likely to support a Republican congressional candidate if immigration reform was passed with Republican leadership. ¶ Republican candidates have become aware of the significance of immigration reform for the party. Even in traditionally conservative Republican strongholds like Texas, candidates are turning towards immigration reform. According to Republican strategist and CNN en Español commentator Juan Hernandez, "it also wouldn’t surprise me if after the primary, the candidates move to the center and support reform. For Republicans to stay in leadership in Texas, we must properly address immigration.”¶ The March 2014 primaries will be a key moment in determining how reform progresses: Republican Strategist John Feehery suggests, “The timing on this is very important. What was stupid to do becomes smart to do a little bit later in the year.” Once the primaries are over, GOP members will have the chance to implement reform legislation without fear of challenges from the right. ¶ 2. Legalization Over Citizenship: While the Senate’s 2013 immigration reform bill was struck down by Congress, GOP party members have indicated that they will support legislation which favors legalization of undocumented immigrants over a path to citizenship.¶ Meanwhile, a recent survey from Pew Research Hispanic Trends Project demonstrated that 55 percent of Hispanic adults believe that legalizing immigrants and removing the fear of deportation is more important than a pathway to citizenship (although citizenship is still important to 89 percent of Latinos surveyed.)¶ As CBS suggests, “Numbers like these could give leverage to lawmakers who are interested in making some reforms to the legal immigration system, but not necessarily offering any kind of citizenship.”¶ If House Republicans offered legalization legislation for the undocumented community, this could put pressure on the President to compromise. And while this kind of reform would not be as comprehensive as the Senate’s bill, a bipartisan agreement would be a significant achievement towards accomplishing reform.¶ 3. Activism Steps Up: 2013 saw one of the biggest surges in grassroots activism from immigration supporters, and political leaders started to listen. The hunger strike outside the White House was a particularly significant demonstration and drew visits of solidarity from a number of leaders from both sides of Congress, including the President and First Lady.¶ Immigration reform activists have promised "we will be back in 2014." Indeed, 2014 promises to be a year of even greater activism. Activist Eliseo Medina has pledged that immigrant advocacy groups would visit “as many congressional districts as possible” in 2014 to ensure further support.¶ Protests, rallies and marchers are likely to increase in 2014, putting greater pressure on Congress to pass legislation. Such visual, vocal protests will be key in ensuring comprehensive reform.¶ 4. Leadership: As immigration reform comes to the fore, party leaders will step up in 2014 to ensure change is achieved. While President Obama has made clear his support for comprehensive reform, House Speaker John Boehner previously stated that he had “no intention” of negotiating with the Senate on their comprehensive immigration bill. ¶ However, towards the end of 2013, it seemed that Representative Boehner was changing his tune. In November, President Obama revealed that “the good news is, just this past week Speaker Boehner said that he is “hopeful we can make progress” on immigration reform.” As if to prove the point, Boehner has recently hired top aide Rebecca Tallent to work on immigration reform.¶ With bipartisan leadership firmly focused on immigration reform and party members on both sides realizing the political importance of the issue, comprehensive legislation is one thing we can be sure of in 2014.

#### Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 **In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic.** Scholars have long noted that President Lyndon **Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking** the requisite funds in a war-depleted treasury and **the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away** as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, **many of** President **Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.**61 **When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Immigration reform is key to generate jobs and attract high skilled workers that solves for competitiveness and the econ

Johnson 13

(Simon Johnson, former chief economist of the International Monetary Fund, is the Ronald A. Kurtz Professor of Entrepreneurship at the M.I.T. Sloan School of Management and co-author of “White House Burning: The Founding Fathers, Our National Debt, and Why It Matters to You.” “How Immigration Reform Would Help the Economy” 6-20-13 http://economix.blogs.nytimes.com/2013/06/20/how-immigration-reform-would-help-the-economy//wyoccd)

The assessment is positive. This precise immigration proposal would improve the budget picture (see this helpful chart) and stimulate economic growth. The immediate effects are good and the more lasting effects even better. If anything, the long-run positive effects are likely to be even larger than the C.B.O. is willing to predict, in my assessment. (I’m a member of the office’s Panel of Economic Advisers but I was not involved in any way in this work.)¶ The debate over immigration is emotionally charged and, judging from recent blog posts, the Heritage Foundation in particular seems primed to dispute every detail in the C.B.O. approach – and to assert that it is underestimating some costs (including what happens when illegal immigrants receive an amnesty and subsequently claim government-provided benefits, a point Heritage has emphasized in its own report).¶ There is good reason for the C.B.O.’s careful wording in its analysis; it operates within narrow guidelines set by Congress, and its staff is wise to stick to very well-documented points. Still, as the legislation gains potential traction, it is worth keeping in mind why there could be an even larger upside for the American economy.¶ In 1776, the population of the United States was around 2.5 million; it is now more than 316 million (you can check the real-time Census Bureau population clock, but of course that is only an estimate).¶ Think about this: What if the original inhabitants had not allowed immigration or imposed very tight restrictions – for example, insisting that immigrants already have a great deal of education? It’s hard to imagine that the United States would have risen as an economy and as a country. How many United States citizens reading this column would be here today? (I’m proud to be an immigrant and a United States citizen.)¶ The long-term strength of the United States economy lies in its ability to create jobs. For more than 200 years as a republic (and 400 years in total) immigrants have not crowded together on a fixed amount of existing resources – land (in the early days) or factories (from the early 1800s) or the service sector (where most modern jobs arise). Rather the availability of resources essential for labor productivity has increased sharply. Land is improved, infrastructure is built and companies develop.¶ Most economic analysis about immigration looks at wages and asks whether natives win or lose when more immigrants show up in particular place or with certain skills. At the low end of wage distribution, there is reason to fear adverse consequences for particular groups because of increased competition for jobs. In fact, the C.B.O. does find that income per capita would decline slightly over the next 10 years before increasing in the subsequent 10 years: “Relative to what would occur under current law, S. 744 would lower per capita G.N.P. by 0.7 percent in 2023 and raise it by 0.2 percent in 2033, according to C.B.O.’s central estimates.”¶ And it is reasonable to ask who will pay how much into our tax system – and who will receive what kind of benefits. This is the terrain that the C.B.O. and the Heritage Foundation are contesting. (See, too, a letter to Senator Marco Rubio, Republican of Florida, from Stephen Gross, the chief actuary of the Social Security Administration. Mr. Gross said immigration reform would be a net positive; of the current 11.5 million illegal immigrants, “many of these individuals already work in the country in the underground economy, not paying taxes, and will begin paying taxes” if the immigration legislation are adopted. New illegal immigration would decline but not be eliminated.)¶ But the longer-run picture is most obviously quite different. The process of creating businesses and investing – what economists like to call capital formation – is much more dynamic than allowed for in many economic models.¶ People will save and they will invest. Companies will be created. The crucial question is who will have the ideas that shape the 21st century. (See, for example, the work of Charles I. Jones of Stanford University on this point and a paper he and Paul Romer wrote for a broader audience.)¶ This is partly about education – and the proposed legislation would tilt new visas more toward skilled workers, particularly those in science, technology, engineering, and math (often referred to as STEM).¶ But it would be a mistake to limited those admitted – or those allowed legal status and eventual citizenship – to people who already have or are in the process of getting a university-level education. To be clear, under the new system there may well be more low-wage immigrants than high-wage immigrants, but the transition to a point system for allocating green cards is designed to increase the share of people with more education and more scientific education, relative to the situation today and relative to what would otherwise occur.¶ Many people have good ideas. The Internet has opened up the process of innovation. I don’t know anyone who can predict where the next big technologies will come from. I also don’t know who will figure out how to organize production – including the provision of services – in a more effective manner.¶ We are competing in a world economy based on human capital, and people’s skills and abilities are the basis for our productivity. What we need more than anything, from an economic point of view, is more people (of any age or background) who want to acquire and apply new skills.¶ Increasing the size of our domestic market over the last 400 years has served us well. Allowing in immigrants in a fiscally responsible manner makes a great deal of sense — and the reports from the Joint Committee on Taxation and C.B.O. are very clear that this is now what is on the table. If the children of immigrants want to get more education, we should welcome the opportunity that this presents. When you cut off the path to higher education, you are depriving people of opportunity – and you are also hurting the economy.¶ The deeper political irony, of course, is that if the Heritage Foundation and its allies succeed in defeating immigration legislation, there are strong indications that this will hurt the Republican Party at the polls over the next decade and beyond. Yet, even so, House Republicans seem inclined to oppose immigration reform. That would be a mistake on both economic and political grounds.¶ We are 316 million people in a world of more than 7 billion – on its way to 10 billion or more (read this United Nations report if you like to worry about the future).¶ We should reform immigration along the lines currently suggested and increase the supply of skilled labor in the world. This will both improve our economy and, at least potentially, help ensure the world stays more prosperous and more stable.

**Nuclear war**

**Harris and Burrows ‘9**

**(**Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>, AM)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, **history may be more instructive than ever**. While we continue to believe that **the Great Depression** is not likely to be repeated, the **lessons** to be drawn from that period **include the harmful effects on fledgling democracies and multiethnic societies** (think Central Europe in 1920s and 1930s) **and** on the **sustainability of multilateral institutions** (think League of Nations in the same period). **There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century.** For that reason, the ways in which **the potential for greater conflict could grow** would seem to be even more apt **in a constantly volatile economic environment** as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced.** For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. **Terrorist groups** in 2025 **will** likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that **become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would** almost certainly **be the Middle East**. Although Iran’s acquisition of nuclear weapons is not inevitable, **worries** about a nuclear-armed Iran **could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity **conflict** and terrorism taking place under a nuclear umbrella **could lead to an** unintended escalation **and broader conflict** if clear red lines between those states involved are not well established. **The close proximity of potential nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also **will produce inherent difficulties** in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, **short warning and missile flight times, and uncertainty** of Iranian intentions **may place more focus on preemption** rather than defense, potentially **leading to** escalatingcrises**.** 36 Types of **conflict** that the world continues to experience, such as **over resources, could reemerge**, particularly if protectionism grows **and there is a resort to neo-mercantilist practices. Perceptions** of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this **could result in interstate conflicts if government leaders deem assured access to energy resources,** for example, to be **essential for** maintaining domestic stability and the **survival of their regime**. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. **If** the **fiscal stimulus focus for** these **countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional** naval **capabilities could lead to increased tensions, rivalries, and counterbalancing moves**, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. **With water** also **becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.**

### 5th Off

#### Egalitarian politics is not real and not possible within the confines of the nation state- the state demands that woman give up her sexual difference to become a citizen, to become “neuter”, and to become incorporated into the masculine universal- women cannot participate in the law or judicial circuits because they have no language

Fermon 98

[Nicole Ferman, 1998, Women on the Global Market: Irigaray and the Democratic State, Diacritics, Vol. 28, No. 1, Irigaray and the Political Future of Sexual Difference¶ (Spring, 1998), pp. 120-137¶ uwyo//amp]

Best known for her subtle interrogation of philosophy and psychoanalysis, Luce Irigaray ¶ clearly also conducts a dialogue with the political, proposing that women's erasure from ¶ culture and society invalidates all economies, sexual or political. Because woman has ¶ disappeared both figuratively and literally from society [see Sen, "More Than 100 Million ¶ Women Are Missing"], Irigaray conceives the contemporary ethical project as a recall to ¶ difference rather than equality, to difference between women and men-that is, sexual ¶ difference. She characterizes relations between men and women as market relations in ¶ which women are commodities, objects, but never subjects of exchange, objects to men ¶ but not to themselves: women do not belong to themselves but exist "to keep relationships ¶ among men running smoothly" [TS 192]. Women under these conditions require imagi- ¶ native ways to reconfigure the self, to subvert the melancholy and regression of ¶ masculinist economies and envisage a future in which women would not be ashamed of ¶ the feminine, would experience it as a positivity worth emulating. ¶ Irigaray contends that after the gains of egalitarian politics are carefully examined, ¶ the inclusion of women in the political arena has failed to take into account women's ¶ distinct and different position from men, and from each other, as well as perpetuating the ¶ fiction of the "neutral" citizen, the ahistorical individual citizen of the nation-state. It is ¶ that fiction Irigaray dispels in her critique of liberal democratic politics and its creation, ¶ "citizens who are neuter in regard to familial singularity, its laws, and necessary sexual ¶ difference" [SG 112] in order to benefit the State and its laws. The subject is male; the ¶ citizen is neuter. Who is the female citizen in contemporary society? What is the ethical ¶ elaboration of the contractual relations between women and men, and between sexed ¶ individuals and the community? How do women imagine a distinct set of rights and ¶ responsibilities based on self-definition and autonomy, given the particular strictures of ¶ contemporary politics-that is, the market-driven, antidemocratic nature of the current ¶ economic national and global forces? Irigaray suggests that "the return of women to ¶ collective work, to public places, to social relations, demands linguistic mutations" and ¶ profound transformations, an embodied imagination with force and agency in civil life ¶ [TD 65]. ¶ Irigaray warns that if civil and political participation is construed in overly narrow ¶ terms, if focus is on economic or judicial "circuits" alone, we overlook the symbolic ¶ organization of power-women risk losing "everything without even being acknowl- ¶ edged" [TD 56]. Instead an interval of recognition can expand the political to include the ¶ concerns and activities of real women, lest silence imply consent to sexual neutrality, or ¶ more likely, to women's obliteration under men's interests and concerns. Women's ¶ insistence on self-definition and wage labor, on love and justly remunerated work, ¶ testifies to the obduracy of women's difference, one that is not likely to disappear. The ¶ patriarchal family is still the legal norm, even when certain exceptions are made, while ¶ enduring questions regarding women's health and children's physical welfare as priori- ¶ ties beyond market considerations are consigned to legislative obfuscation, still a political ¶ afterthought. Instead, in the US the liberal state removes the slender welfare net specific ¶ to women and children, Aid to Families with Dependent Children, and fails to provide ¶ medical coverage to those who are among the most vulnerable of its citizens. Women ¶ without access to the legal protection of sex-neutral citizenship, poor working women ¶ without language (the money for an effective "mouthpiece" to represent their distress in ¶ a court of law), are further disempowered by liberal politics' insistence on sexual ¶ neutrality-that is, on repression or amnesia regarding the lived experiences of women. ¶ Sexual difference is key to any project of self-definition by women. Irigaray insists ¶ on the sexual nature of this self-definition, not solely for its obvious procreative necessity, ¶ but because the natural world is a source of renewal and fecundity which requires attentive ¶ interrogation and respect [SG 15]. This rebirth seems alien to the structure of male politics, ¶ which instead seem to provoke disasters (Bhopal, Chernobyl, or the current runaway ¶ jungle fires of Indonesia, courtesy of commercial logging, spreading thick pollution to ¶ neighboring countries) and untimely death.' We talk about social justice and forget its ¶ origins in nature and not merely as an engagement between men in abstraction. Irigaray ¶ believes that recognition and respect of difference between the sexes is prior to productive ¶ and generative relations between women, between men, and between men and women. ¶ Sexual difference is universal and allows us to participate in "an immediate natural given, ¶ and it is a real and irreducible component of the universal" [ILTY 47]. It is this prior ¶ recognition of two, rather than the One that has dominated world politics and thought, ¶ which must be acknowledged, along with the possibility of a political economy of ¶ abundance, not only that of man-made scarcity then attributed to nature. This melancholic ¶ (male) script pays romantic tribute to motherhood in the abstract without due recognition ¶ of the relations between real mothers and children, thus failing to properly acknowledge ¶ and protect mother or child. Our ability to address the specifics of race, ethnicity, and ¶ religious and other differences with respect hinges on our ability to acknowledge and ¶ respect the feminine, to see it as a source of invention and possibilities. To do so would ¶ of course affect relations between the sexes, "men and women perhaps... communicat[ing] ¶ for the first time if two different genders are affirmed," it would allow a new configuration ¶ rather than continuing the present regime: "the globalization and universalization of ¶ culture ... ungovernable and beyond our control" [SG 120; ILTY 129].

#### Splitting of the atom is a symptom of man’s persistence in his refusal to reunite with and affirm his body and the female body-only through this affirmation does the destruction of humynkind become unthinkable

Irigaray 85

[Luce Irigaray, 1985, “An Ethics of Sexual Difference”, uwyo//amp]

To forget being is to forget the air, this first fluid given us gratis and free of interest in the mother's blood, given us again when we are born, like a natural profusion that raises a cry of pain: the pain of a being who comes into the world and is abandoned, forced henceforth to live without the immediate assistance of another body. Unmitigated mourning for the intrauterine nest, elemental homesickness that man will seek to assuage through his work as builder of worlds, and notably of the dwelling which seems to form the essence of his maleness: language. In all his creations, all his works, man always seems to neglect thinking of himself as flesh, as one who has received his body as that primary home (that Gestell, as Heidegger would say, when, in "Logos," the seminar on Heraclitus, he recognizes that what metaphysics has not begun to address is the issue of the body) which determines the possibility of his coming into the world and the potential opening of a horizon of thought, of poetry, of celebration, that also includes the god or gods. The fundamental dereliction in our time may be interpreted as our failure to remember or prize the element that is indispensable to life in all its manifestations: from the lowliest plant and animal forms to the highest. Science and technology are reminding men of their careless neglect by forcing them to consider the most frightening question possible, the question of a radical polemic: the destruction of the universe and of the human race through the splitting of the atom and its exploitation to achieve goals that are beyond our capacities as mortals.

#### The alternative is to reject the affirmative’s masculine, universal silence and instead affirm a radical ethics of sexual difference that comes to grips with the sexual violence of the 1AC.

Irigaray 85

[Luce Irigaray, 1985, “An Ethics of Sexual Difference”, uwyo//amp]

Sexual difference is one of the major philosophical issues, if not the issue, of our age. According to Heidegger, each age has one issue to think through, and one only. Sexual difference is prQbably the issue in our time which could be our "salvation" if we thought it through. But, whether I turn to philosophy, to science, or to religion, I find this underlying issue still cries out in vain for our attention. Think of it as an approach that would allow us to check the many forms that destruction takes in our world, to counteract a nihilism that merely affirms the reversal or the repetitive proliferation of status quo values-whether you call them the consumer society, the circularity of discourse, the more or less cancerous diseases of our age, the unreliability of words, the end of philosophy, religious despair or regression to religiosity, scientis tic or technical imperialism that fails to consider the living subject. Sexual difference would constitute the horizon of worlds more fecund than any known to date-at least in the West-and without reducing fecundity to the reproduction of bodies and flesh. For loving partners this would be a fecundity of birth and regeneration, but also the production of a new age of thought, art, poetry, and language: the creation of a new poetics. Both in theory and in practice, everything resists the discovery and affirmation of such an advent or event. In theory, philosophy wants to be literature or rhetoric, wishing either to break with ontology or to regress to the ontological. Using the same ground and the same framework as "first philosophy," working toward its disintegration but without proposing any other goals that might assure new foundations and new works. In politics, some overtures have been made to the world of women. But these overtures remain partial and local: some concessions have been made by those in power, but no new values have been established. Rarely have these measures been thought through and affirmed by women themselves, who consequently remain at the level of critical demands. Has a worldwide erosion of the gains won in women's struggles occurred because of the failure to lay foundations different from those on which the world of men is constructed? Psychoanalytic theory and therapy, the scenes of sexuality as such, are a long way from having effected their revolution. And with a few exceptions, sexual practice today is often divided between two parallel worlds: the world of men and the world of women. A nontraditional, fecund encounter between the sexes barely exists. It does not voice its demands publicly, except through certain kinds of silence and polemics. A revolution in thought and ethics is needed if the work of sexual difference is to take place. We need to reinterpret everything concerning the relations between the subject and discourse, the subject and the world, the subject and the cosmic,' the microcosmic and the macrocosmic. Everything, beginning with the way in which the subject has always been written in the masculine form, as man, even when it claimed to be universal or neutral. Despite the fact that man-at least in French-rather than being neutral, is sexed.

## Case

### 1NC Solvency

#### Prez will circumvent-

#### [1.] invokes state secrets to avoid oversight

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 24//wyo-sc]

Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise,18 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here the relative lack of legislative expertise is only part of the problem; what makes it worse is that the legislature lacks the raw information that experts need to make assessments. The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges— doctrines that may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The problem becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a wellmotivated executive or by an ill-motivated executive, albeit for very different reasons.

#### [3.] Empirics on presidents ignoring WPR prove the trend

Isaacs 2011

[John Isaacs, 2011, executive director of Council for a Livable World, War Powers Resolution consistently ignored, <http://thehill.com/blogs/congress-blog/foreign-policy/172803-war-powers-resolution-consistently-ignored>, uwyo//amp]

President Harry F. Truman ignored Congress when in 1950 he sent troops to Korea to stave off a North Korean advance into the South. Almost 1.8 million Americans fought in Korea, with some 33,600 American deaths. But there never was a congressional authorization, and Congress continued to appropriate funds to prosecute the war. The War Powers Resolution also appeared to be a check against Nixon’s power, a President recently overwhelmingly re-elected who was becoming more and more enmeshed in the Watergate scandal. Indeed, I played only a bit role, helping to convince some liberals such as Representatives Bella Abzug (D-NY) and Robert Drinan (D-Mass.) that Congress was not ceding additional power to the President by giving him or her 60 or 90 days to conduct war without approval of Congress. Fast forward to today. Every President since 1973, including Barack Obama, has decided to ignore the law as an unconstitutional assertion of power.

#### [4.] Cancels testimony, Justice Department ignores oversight requests

Victor ‘03

[Kirk Victor, writer for government executive.com, 2003, Congress in eclipse as power shifts to executive branch, <http://www.govexec.com/management/2003/04/congress-in-eclipse-as-power-shifts-to-executive-branch/13800/>, uwyo//amp]

Senate Finance Committee Chairman Charles Grassley, R-Iowa, agreed in an interview that "getting information from the Justice Department under Ashcroft is like pulling teeth." But Grassley sees it as an institutional problem, and said it had also been difficult to get responses when Janet Reno led the department. Grassley said he has had no problem in asserting his oversight powers with the executive branch. As for his colleagues who worry about presidential usurpation of Congress's powers, Grassley added, "It doesn't matter to me what the president thinks, unless I want to take it into consideration. He didn't elect me-the people of Iowa elected me. I am a trustee of the people, not a messenger boy for the president." But Leahy had a far more negative, withering take on the Bush administration's actions to avoid oversight. He and some other Senate Judiciary Committee members have sent the Justice Department 28 requests for oversight information, dating back to July 2001. The department has not responded to any of them. Ashcroft "basically ignores most of the requests, but at least I give him credit for being bipartisan-he ignores Republican requests, too," Leahy said in the interview. "And this is the man who [when he was a senator] thought he should hold up judicial nominations and everything else when the attorney general didn't give us what we wanted." Several members of the Senate Foreign Relations Committee also reacted angrily when the administration canceled, at the last minute, testimony by the top official in charge of reconstruction and humanitarian assistance in Iraq, who was to appear at a March 11 hearing. They also were surprised to learn from that day's newspapers that the administration was seeking bids from U.S. corporations on reconstruction contracts for Iraq.

### 1NC AT: Terrorism

#### We are winning the War on Terror Now

Dreyfuss 13

[Robert, a Nation contributing editor, is an investigative journalist in Alexandria, Virginia, specializing in politics and national security. He is the author of Devil's Game: How the United States Helped Unleash Fundamentalist Islam and is a frequent contributor to Rolling Stone, The American Prospect and Mother Jones., “Despite Boston, Terror Is at an All-Time Low,” The Nation, 04.27.2013. <[http://www.thenation.com/blog/173876/despite-boston-terror-all-time-low#](http://www.thenation.com/blog/173876/despite-boston-terror-all-time-low)>//wyo-hdm]

The headline in today’s New York Times had to be read twice to make sure that’s what it really said: “Blasts End A Decade of Terrorism on the Wane.” Yes. On the wane. You probably didn’t know that over the past ten years there has been very little significant terrorism in the United States. As I've written repeatedly, terrorism today—here at home, not in, say, Iraq—is just a nuisance, nothing more. In 2004, John Kerry, running for president, said that the then-infinite War on Terror would be won when terrorism was reduced to the status of being a deadly nuisance rather an a constant crisis. By 2004, of course, it already was. The Times, in its lede, says this: The bombing of the Boston Marathon on Monday was the end of more than a decade in which the United States experienced strikingly few terrorist attacks, in part because of the far more aggressive law enforcement tactics that arose after the Sept. 11, 2001, attacks. Well. It adds: In fact, the Sept. 11 attacks were an anomaly in an overall gradual decline in the number of terrorist attacks since the 1970s, according to the Global Terrorism Database, one of the most authoritative sources of terrorism statistics, which is maintained by a consortium of researchers and based at the University of Maryland. The worst decade for terrorism in the United States? The 1970s. The horrible bombings in Boston killed more people, three, than any incident of terrorism except 9/11, the 1993 World Trade Center attack, the 1995 Oklahoma City bombing, and “the poisoning of restaurant salad bars with salmonella bacteria by religious cultists in Oregon in 1984.” The paper quotes Gary LaFree, the researcher who helps compile the date base, thus: I think people are actually surprised when they learn that there’s been a steady decline in terrorist attacks in the U.S. since 1970. And it adds this stunner from LaFree: He said there were about 40 percent more attacks in the United States in the decade before Sept. 11 than in the decade after.

#### US winning the war on terror- no WMD attacks

Oswald 5/30

Rachel Oswald, staff editor for the National Journal and the Global Security Newswire, “Despite WMD fears, terrorists are focused on conventional attacks,” May 30, 2013, <http://www.nationaljournal.com/nationalsecurity/despite-wmd-fears-terrorists-are-focused-on-conventional-attacks-20130417?page=1&utm_source=feedly>

WASHINGTON – The United States has spent billions of dollars to prevent terrorists from obtaining a weapon of mass destruction even as this week’s [bombings in Boston](http://www.nti.org/gsn/article/police-scrutinize-remnants-boston-blasts/" \t "_blank) further show that a nuclear weapon or lethal bioagent is not necessary for causing significant harm.¶ Organized group plots against the U.S. homeland since Sept. 11, 2001 have all involved conventional means of attack. Beyond that have been a handful of instances in which individuals used the postal system to deliver disease materials -- notably [this week’s ricin letters](http://www.nti.org/gsn/article/lab-confirms-ricin-letter-sent-senator/" \t "_blank) to President Obama and at least one senator and the 2001 anthrax mailings.¶ Terrorism experts offer a range of reasons for why al-Qaida or other violent militants have never met their goal of carrying out a biological, chemical, nuclear or radiological attack on the United States or another nation. These include:¶ -- substantive efforts by the United States and partner nations to secure the most lethal WMD materials;¶ -- improved border security and visa checks that deny entry to possible foreign-born terrorists;¶ -- a lack of imagination and drive on the part of would-be terrorists to pursue the kind of novel but technically difficult attacks that could lead to widespread dispersal of unconventional materials;¶ -- a general haplessness on the part of the native-born U.S. extremists who have pursued WMD attacks, specifically involving weaponized pathogens;¶ -- elimination of most of al-Qaida’s original leadership, notably those members with the most experience orchestrating large-scale attacks abroad; and¶ -- the Arab Spring uprisings have likely drawn down the pool of terrorists with the proper training and focus to organize WMD attacks abroad as they have opted instead to join movements to overthrow governments in places such as Syria and Yemen.¶ “We killed a lot of people. That was one thing,” said Randall Larsen, founding director of the Bipartisan WMD Terrorism Research Center, referring to the deaths in recent years of al-Qaida chief Osama bin Laden and any number of his direct or philosophical adherents.¶ Bin Laden is known to have exhorted his followers to seek weapons of mass destruction for use in attacks against the West. Leading al-Qaida propagandist Anwar al-Awlaki of the group’s Yemen affiliate, who was killed in a 2011 U.S. drone strike, used his Inspire magazine to [encourage sympathizers](http://www.nti.org/gsn/article/al-qaeda-magazine-urges-chemical-biological-strikes-us/" \t "_blank) to develop and carry out their own chemical and biological attacks.¶ Al-Qaida also had separate efforts in [Afghanistan](http://www.nti.org/gsn/article/al-qaeda-operatives-discussed-wmd-attacks-while-training-prior-to-911-report-says/" \t "_blank) and [Malaysia](http://www.nti.org/gsn/article/us-officials-worried-by-release-of-al-qaeda-bioweapons-operative/" \t "_blank) that worked on developing anthrax for use in attacks before they were broken up or abandoned following the September 2001 attacks.¶ In the last decade, the technological means to carry out new kinds of improvised WMD attacks such as those involving [laboratory-engineered pathogens](http://www.nti.org/gsn/article/synthetic-pathogens-might-pose-bioterror-threat-scientists-warn/" \t "_blank) has become much more available. However, it can take some time for bad actors to recognize how these new technologies can open the doorway to heretofore unseen massively disruptive terrorist attacks, according to Larsen.¶ Passenger airplanes were flying across the United States for decades before any terrorists realized that they would make a highly destructive improvised weapon when flown at high speeds into skyscrapers filled with thousands of people, Larsen noted.¶ A 2012 analysis by terrorism experts at the New America Foundation detailed a number of disrupted unconventional weapon plots against the country that counterintuitively were much more likely to involve home-grown antigovernment groups and lone-wolf actors than Muslim extremists. "In the past decade, there is no evidence that jihadist extremists in the United States have acquired or attempted to acquire material to construct CBRN weapons," according to authors Peter Bergen and Jennifer Rowland.¶ They documented a [number of failed domestic plots](http://homegrown.newamerica.net/" \t "_blank), often involving cyanide or ricin. Only former Army microbiologist Bruce Ivins was successful in actually carrying out such an effort, killing five people with anthrax spores in 2001.¶ “Right-wing and left-wing extremist groups and individuals have been far more likely to acquire toxins and to assemble the makings of radiological weapons than al-Qaida sympathizers.

#### Strikes low—we need intel and few high value targets left

Taylor and Wong 10-9 [Guy Taylor, State Dept. Correspondent at the Washington Times and former editor of the World Politics Review and Kristina Wong, national security reporter for The Washington Times, “Drone strikes plummet as U.S. seeks more human intelligence,” October 9, 2013, http://www.washingtontimes.com/news/2013/oct/9/drone-strikes-drop-as-us-craves-more-human-intelli/#ixzz2hp6pBp9h, wyo-sc]

The number of drone strikes approved by the Obama administration on suspected terrorists has fallen dramatically this year, as the war with al Qaeda increasingly shifts to Africa and U.S. intelligence craves more captures and interrogations of high-value targets.¶ U.S. officials told The Washington Times on Wednesday that the reasons for a shift in tactics are many — including that al Qaeda’s senior ranks were thinned out so much in 2011 and 2012 by an intense flurry of drone strikes, and that the terrorist network has adapted to try to evade some of Washington’s use of the strikes or to make them less politically palatable.¶ But the sources acknowledged that a growing desire to close a recent gap in actionable human intelligence on al Qaeda’s evolving operations also has renewed the administration’s interest in more clandestine commando raids like the one that netted a high-value terrorist suspect in Libya last weekend.

#### AUMF revisions crush counter-terror- crushes flexibility, announces our vulnerabilities, and snowballs- Green highlighting

Corn, 13 Geoffrey, Professor of Law and Presidential Research Professor, Testimony at the Hearing of the Senate Armed Services Committee Subject: "The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force" May 16th, Federal News Service, Nexis

Because I do not believe there is inconsistency between the nature of U.S. operations to date and these inherent limitations, I do not believe it is necessary at this point in time to modify the AUMF. Instead, I believe that Congress should continue to engage in oversight to remain fully apprised of the strategic, operational, and at times tactical decisionmaking processes that result in the employment of U.S. combat power pursuant to the statute, enabling Congress to ensure that such use falls within the scope of an authorization targeted at al Qaeda, intended to protect the Nation from future terrorist attacks, and that these operations reflect unquestioned commitment to the principles of international law that regulate the use of military force during any armed conflict. I believe the AUMF effectively addresses the belligerent threat against the United States posed by terrorist groups. I emphasize the term ‘‘belligerent’’ for an important reason. It is obvious that the AUMF has granted authority to use the Nation’s military power against threats falling within its scope. Therefore, only those organizations that pose a risk of sufficient magnitude to justify invoking the authority associated with armed conflict should be included within that scope as a result of their affiliation with al Qaeda. Determining what groups properly fall within this scope is, therefore, both critical and challenging. The AUMF provides the President with the necessary flexibility to tailor U.S. operations to the evolving nature of this unconventional enemy, maximizing the efficacy of U.S. efforts to deny al Qaeda the freedom of action they possessed in Afghanistan prior to Operation Enduring Freedom. In reaction to this evolution, the United States has employed combat power against what the prior panel referred to as associated forces or co-belligerents of al Qaeda, belligerent groups assessed to adhere to the overall terrorist objectives of the organization and engage in hostilities alongside al Qaeda directed against the United States or its interests. The focused on shared ideology, tactics, and indicia of connection between high-level group leaders seems both logical and legitimate for including these offshoots of al Qaeda within the scope of the AUMF as co-belligerents, a determination that, based on publicly available information, has to date been limited to groups seeking the sanctuary of the Afghanistan-Pakistan border areas, Yemen, or Somalia. If Congress does, however, choose to revise the AUMF, I do not believe that the revision should incorporatean exclusive list of defined co-belligerent groups, a geographic scope limitation, or some external oversight of targeting decisions**,** all of which would undermine the efficacy of U.S. operations by signaling to the enemy limits on U.S. operational and tactical reach**.** It is an operational and tactical axiom that insurgent and non- state threats rarely seek the proverbial toe-to-toe confrontation with clearly superior military forces. Al Qaeda is no different. Indeed, their attempts to engage in such tactics in the initial phases of Operation Enduring Freedom proved disastrous. Incorporating such limitations into the AUMF would, therefore, be inconsistent with the operational objective of seizing and retaining the initiative against this unconventional enemy and the strategic objective of preventing future terrorist attacks against the United States. Finally, I believe to target decisionmaking during armed conflict is a quintessential command function and that the President, acting in his own capacity or through subordinate officers, should make these decisions. He and his subordinates bear an obligation to ensure compliance with the Law of Armed Conflict and other principles of international law when employing U.S. combat power. Every subordinate officer in the chain of command is sworn to uphold and defend the constitution which, by implication, also requires compliance with this law. I believe the level of commitment to ensuring such compliance in structure, process, education, training, and internal oversight is more significant today than at any time in our Nation’s history. As one familiar with all these aspects of the compliance process, I am discouraged by the common assertion that there is insufficient oversight for targeting decisions. Furthermore, I believe few people better understand the immense moral burden associated with a decision to order lethal attack than experienced military leaders who never take these decisions lightly. If our confidence in these leaders to make sound military decisions is sufficient to entrust to them the lives of our sons and daughters—and on this point, again I must admit my self-interest as my son is a second-year cadet in the U.S. Air Force Academy and my brother is a serving colonel in the United States Army—I believe it must be sufficient to judge when and how to employ lethal combat power against an enemy. These leaders spend their entire professional careers immersed in the operational, moral, ethical, and legal aspects of employing combat power. I just do not believe some external oversight mechanism or a Federal judge is more competent to make these extremely difficult and weighty judgments as the people that this Nation entrusts for that responsibility. Finally, I would like to make one comment on the very hotly discussed issue of associated forces and the scope of the AUMF. In my view, when the administration refers to an associated or affiliated force, it is referring to a process of mutation that this organization undergoes. Obviously, we are dealing with an enemy that is going to seek every asymmetrical tactic to avoid the capability of the United States to disrupt or disable its operations. Part of that tactic, I think is to recruit and grow affiliated organizations. I certainly understand the logic of wanting to include those organizations within the scope of a revised AUMF. My concern echoes that of Senator Inhofe, which is the risk is if you open that Pandora’s box, what other changes to this authority might be included in the statute which I believe could denigrate or limit the effectiveness of U.S. military operations. And so while I believe Congress absolutely has an important function to ensure that the use of force under the statute is consistent with the underlying principles that frame the enactment of the AUMF, which is to defeat al Qaeda as an entity in the corporate sense and protect the United States from future terrorist attacks, I do not believe at this point in time it is necessary to modify the statute

**The worst case scenario happened – no extinction**

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

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

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

### Firebreaks

#### No US precedent---not causal

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### No new detainees-it’s administrative policy

Gerstein 2011

[Josh Gerstein, 2011, John Brennan: No new prisoners to Guantanamo Bay¶ Read more: <http://www.politico.com/news/stories/0911/62990.html#ixzz2kP8K1sO8>, uwyo//amp]

The Obama administration has ruled out sending any new war-on-terror prisoners to Guantanamo Bay, President Barack Obama’s top counterterrorism adviser said Thursday.¶ “We’re not going to bring people to Guantanamo,” Deputy National Security Adviser John Brennan told reporters. “It’s this administration’s policy to close Guantanamo and, despite some congressional hurdles that have been put in our path, we’re going to continue to pursue that.”

#### China-Taiwan war unlikely – economic ties and improving relations

Weede, Former Professor of Sociology at the University of Bonn, 2010

(Erich, retired in 2004, current member of the Mont Pelerin Society, “The Capitalist Peace and the Rise of China: Establishing Global Harmony by Economic Interdependence”, International Interactions 36:2, 206-213, 5/18/10, accessed 6/20/11) JDB

From an international trade perspective, all of East Asia has recently become a Chinese sphere of influence. China is the most important destination of Japanese, South Korean, and Taiwanese exports—ahead of the United States. Although Taiwanese politicians around the turn of the millennium rejected the idea of reunification on the Mainland’s terms, and although some of them were attracted to the idea of declaring the legal independence of Taiwan, economic and social ties across the Taiwan Strait grew vigorously at the same time. Taiwanese companies employ millions of people on the mainland. About a million people from Taiwan live on the Chinese mainland. Mainland China has been the preferred destination of Taiwan’s foreign investment. Since the lateral escalation of a military conflict between the People’s Republic of China and Taiwan constitutes the most plausible scenario whereby the U.S. and China might get into a war, economic interdependence between China and Taiwan contributes to the preservation of peace. Recently, political relations between the People’s Republic of China and the Republic of China on Taiwan have improved fast. Given the record of Sino-Japanese wars in the past and the power of these neighboring states, the extent of Sino-Japanese economic cooperation provides another reason for optimism. The capitalist peace stands a chance to apply between China and its neighbors and competitors.

#### No war – deterrence checks escalation

Ganguly, 8

[Sumit Ganguly is a professor of political science and holds the Rabindranath Tagore Chair at Indiana University, Bloomington. “Nuclear Stability in South Asia,” International Security, Vol. 33, No. 2 (Fall 2008), pp. 45–70]

As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan’s acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article’s analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan’s willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India’s internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability. Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground ªre.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India’s first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People’s Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993:. The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its “Operation Gibraltar” and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87

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

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

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

#### **B. Authortarian States won’t listen and democratic states make their own norms**

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 United States 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, § Marked 15:23 § 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.

#### C. won’t follow legal guidelines **Saunders 3-4-13** [Paul, Center for the National Interest executive director and National Interest associate publisher, “We Won’t Always Drone Alone”<http://nationalinterest.org/commentary/we-wont-always-drone-alone-8177?page=1>, wyo-sc]

A broader and deeper challenge is how others—outside the United States—will use drones, whether armed or unarmed, and what lessons they will draw from Washington’s approach. Thus far, the principal lesson may well be that drones can be extremely effective in killing your opponents, wherever they are, without risking your own troops and without sending soldiers or law enforcement personnel across another country’s borders. It seems less likely that others will adopt U.S.-style legal standards and oversight procedures, or that they will always ask other governments before sending drones into their airspace.

## 2NC

# CP

#### Second, unilateralism key

Singer 13

[Singer, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/’13

(Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620])

It is time for a new approach. And **all that is required** of the President is to do the thing that he does perhaps best of all: to speak.

Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war.

While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.

The U.S. military’s unmanned systems, popularly known as “drones,” now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.

This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called “shadow wars.” These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world’s first known use of a specially designed cyber weapon.

Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies.

This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.

But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.

By acting but barely explaining our actions, we’re creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.

In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.

Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power.

The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.

Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either.

Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the “not sure” category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.

The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an “Alice in Wonderland” feel.

The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons.

These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the **much-needed stamp of the President’s voice and authority**, which is essential to turn tentative first steps into established policy.

Much remains to be done — and said — out in the open.

This is why it’s time for Obama’s voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons.

The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.

But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.

It’s also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.

The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?

There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.

And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way.

Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner!

The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

### AT: Perm F/L

#### First, -Doesn’t solve prez powers - congressional silence is key

Bellia 2

[Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. **The combination of** congressional silence **and judicial inaction** has the **practical** effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, **the implied** presidential power given **effect** by virtue ofcongressional silence **and judicial inaction** can solidify into a broader claim**. When the Executive exercises an "initiating"** or "concurrent" **power, it will tie that power to a textual provision or to a claim about the structure of the Constitution.** Congress's silence **as a practical matter** tends to validate theexecutive rationale, and the Executive **Branch** maythen claim a power not only to exercise the **disputed** authority in the face of congressional silence, but also **to exercise the disputed authority** inthe face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

## AT: PDCP

**[A.] Interpretation: Statutory and/or judicial restrictions on presidential War Powers authority requires an external agent to place limit on the executive branch.**

**1. Statutory restriction are limits placed on authorized activities by the legislature**

**Black’s Law**

[“statutory restriction”, <http://thelawdictionary.org/statutory-restriction/>, accessed 6-2-13, AFB]

Limits or controls that have been place on activities by its ruling legislation.

**[B.] Violation – the affirmative uses the executive branch to increase constraints on presidential war powers – executive branch actions are discretionary judgments that are within the boundaries of delegated authority. Restricting it requires action from another branch**

**Luna, 2k** (Erik, professor of law at the University of Utah, 85 Iowa L. Rev. 1107, May, lexis)

For present purposes, a modest definition will suffice--discretion is the power to choose between two or more courses of conduct. **An official**, therefore, **has discretion when the boundaries of** his **authority leave** him with **the freedom to choose how to act--or not to act.** n88 This discretionary power is a "residual" n89 concept, the latitude remaining after the authority and decisions of other actors have been tallied. Dworkin employed a colorful simile for discretion to capture its relative, contextual nature: "Discretion, like the hole of a doughnut, does not exist except as an area left open by a surrounding belt of restriction." n90 Using this pastry-based metaphor, imagine a box containing a single doughnut. If the box's total area represents all potential courses of conduct for a particular actor, and the doughnut symbolizes the restrictions on the actor's discretion, the region within the doughnut--the doughnut hole--delineates the totality of his discretionary power. Outside of this area, the actor has no freedom of choice; he must either act in a prescribed manner or not act at all. In other words, the actor is without discretion. Greater specificity is possible by delineating discretion within American constitutionalism. Discretion inheres in each of the three branches of government--the legislative, the executive, and the judicial. n91 The term "ex  [\*1134]  ecutive discretion," therefore, refers to the authority of executive officers to choose how to act or not to act. A variety of officials enforce federal or state laws and are appropriately deemed **executive officers**--the President, the Secretary of Defense, a state governor, a city mayor, the local dog catcher, and so on. Each of these officials **exercise**s **a degree of executive discretion to choose a particular course of conduct without violating the dictates of the other branches**. For example, a state legislature might mandate that restaurants cook food in a "safe environment"; a state court might then interpret "safe" as referring to bacterial and viral hazards to the customers rather than the risks of the work environment to the employees. But **once the legislative branch has enacted the law and the judiciary has interpreted the law** (or squared it with the relevant constitutional provisions), **the executive official generally has the discretion to enforce the law as seen fit**. The relevant executive officer might, for instance, establish a grading system or minimum standards for the sanitary condition of restaurants. It is this residual power, the freedom to choose a particular course of conduct after the other branches have exercised their authority, that can be referred to as executive discretion. B. Criminal Justice Discretion in the Abstract Discretion can be further specified by placing it within the context of penal law. American constitutionalism has adopted a number of strategies to strike a balance between individual liberty and societal order in the criminal justice system. n92 Most notably, the federal Constitution enumerates individual rights protected from "the vicissitudes of political controversy," n93 thereby removing certain subjects as fodder for order maintenance. But American constitutionalism also secures order and liberty through the structural design of government, dividing official power between the three coordinate branches. n94 Specifically, the legislature determines what acts are criminal and subject to coercive sanction. The judiciary interprets the criminal law where necessary, nullifies those penal statutes that are deemed inconsistent with relevant constitutional provisions, and precludes certain modes of enforcement of otherwise valid criminal laws. Finally, the executive enforces those criminal laws that have been duly enacted by the  [\*1135]  legislature and approved by the judiciary, pursuant to procedures prescribed by the legislature or (more likely) found by the courts to pass constitutional muster. A couple of caveats should be mentioned. Not all laws are backed by penal sanctions, and not all executive officials are empowered to enforce criminal law. In general, only two groups--police and prosecutors--have the authority to implement the relevant penal code. The term "police" refers to those actors officially licensed to uncover and investigate crime and arrest suspected offenders: FBI agents, city police officers, county sheriffs, and so on. Similarly, the term "prosecutors" refers to the officials authorized to bring criminal charges against an alleged offender and to represent the government in a subsequent criminal case against the accused: the U.S. Attorney General, a U.S. Attorney, a state attorney general, a county district attorney, and their subordinates. Moreover, the passage, judicial approval, and execution of a penal statute do not necessarily follow a linear progression in practice. A given criminal law might be enacted and administered, but its constitutionality might never be questioned in the courts. Or the statute might be judicially approved in an initial proceeding but subsequently unenforced by executive officials. In turn, the courts might strike down a criminal law prior to enforcement, or the statute might not be reviewed until some official attempts to apply its strictures to a particular individual. Moreover, the ostensibly clean division among the three branches is the subject of ongoing academic and professional debate, including the battle between "formalism" and "functionalism" in the separation of powers. n95 Finally, various checks and balances are intended to ensure an interrelationship and interdependency among the branches of government. For example, a proposed federal criminal statute only becomes law if the President signs the bill or if Congress overrides his veto by a two-thirds majority. With these admonitions, it can be said that the legislature enacts criminal laws, the judiciary reviews the constitutionality of the laws and relevant enforcement procedures, and the executive administers the laws consistent with the mandates of the other branches. n96 **An executive officer is without authority to suppress conduct that the legislature has not deemed criminal**. Likewise, the officer has no power to enforce penal statutes that have been judicially invalidated or to use enforcement techniques disapproved by the courts.  [\*1136]  Building upon Dworkin's doughnut metaphor, Figure 1 schematically depicts American criminal justice. n97 The total area of the figure represents all potential combinations of criminal law and enforcement procedures. The area within the exterior circle ("the legislative act") depicts all conduct that has been criminalized by the legislature and the methods of enforcement that have been expressly or implicitly approved by the legislature. n98 The first band within the circle (B) represents those laws that the judiciary deems substantively invalid and therefore unenforceable under any procedure. The second band (C) represents those criminal statutes that pass constitutional muster but are being administered in an unconstitutional fashion. Finally, the internal core (D) depicts **the combination of criminal laws and enforcement procedures that have been enacted by the legislature** and are deemed unobjectionable by the courts. This area **represents executive discretion in criminal justice--the freedom to enforce or not enforce particular criminal laws** pursuant to particular procedures **without interference from the other branches**.  [\*1137]  To test this structure, imagine a hypothetical law "making it a crime for any person to remove another person's gall bladder." n99 Prior to the statute's enactment, assume that it was perfectly legal to remove gall bladders for any reason; graphically, this conduct exists outside of the exterior circle (A) and therefore well beyond any type of executive discretion to administer coercive sanctions. Once duly enacted by the legislature, the courts might review the statute's content under the substantive constitutional provisions: First Amendment freedom of speech and conscience, Fifth Amendment substantive due process, Eighth Amendment prohibition of cruel and unusual punishment, Fourteenth Amendment equal protection, and so on. If the gall bladder statute was found to be constitutionally obnoxious as a matter of substance--lying in area B of the graph--the executive branch would be precluded from enforcing this statute under any policing methodology. Now assume that the courts determine that there is nothing objectionable about the law's content but find that the mode of enforcing its provisions violates the procedural aspects of the Constitution. For example, maybe the police burst into a doctor's office without a warrant or probable cause and discover her performing the prohibited operation; or maybe law enforcement agents beat the physician into confessing her crimes. This time the problem is not the substance of the statute but the executive officer's impermissible enforcement. The police conduct--represented in area C--is lawless and therefore, outside the area of executive discretion. Once again, in area A the executive has not been authorized to act by the legislature; in area B the judiciary has invalidated the relevant criminal  [\*1138]  statute as substantively unconstitutional; and in area C the courts have precluded a particular enforcement methodology of an otherwise valid law. What if the legislature enacts the gall bladder statute and the courts approve both the substantive content of the law and the subsequent method of enforcement? This combination of criminal law and police procedure lies in area D, the totality of executive discretion in criminal justice. In this area, executive officials exercise complete freedom in the administration of the criminal law. In the abstract, **the legislative and judicial branches might** make every **attempt to narrow the scope of unchecked executive discretion. For example, lawmakers might** enact only a few criminal statutes and **repeal** ineffective or counterproductive **laws, thereby limiting the grounds for** coercive **enforcement**. Statutory drafters might also be very specific in the coverage of a particular provision, making clear the situations in which the law applies. **In turn, the judicial branch might exercise substantial oversight in all facets of the criminal process, including decisions not to enforce the law**. Courts might strike down or narrowly interpret vague criminal statutes and refuse to allow the application of penal provisions suffering from desuetude. Judicial review might freely entertain claims of selective enforcement or prosecutorial overreaching in the plea bargaining process. Graphically, the circumference of legislatively proscribed conduct ("the legislative act") would be relatively constricted, the band of judicial review and invalidation (B and C) would be broad, and the residual area of executive discretion (D) would be quite small.

**[C.] Prefer our interpretation**

**1. Ground and limits – internal executive reforms and actions can take an incredibly wide array of mechanisms to act and crush the core negative ground which assesses the importance of external branch check on the executive – leaving executive counterplan ground and bypass arguments is key to level the playing field for the negative.**

**2. Education – the topic paper explicitly was written with a core controversy of separations of powers debates with war powers in mind – allowing the aff to fiat executive reform crowds out competitive strategies that test that core controversy.**

**[D.] Topicality is a voting issue – rule of game, fairness, and education**

# S

#### [3.] Empirics on presidents ignoring WPR prove the trend

Isaacs 2011

[John Isaacs, 2011, executive director of Council for a Livable World, War Powers Resolution consistently ignored, <http://thehill.com/blogs/congress-blog/foreign-policy/172803-war-powers-resolution-consistently-ignored>, uwyo//amp]

President Harry F. Truman ignored Congress when in 1950 he sent troops to Korea to stave off a North Korean advance into the South. Almost 1.8 million Americans fought in Korea, with some 33,600 American deaths. But there never was a congressional authorization, and Congress continued to appropriate funds to prosecute the war. The War Powers Resolution also appeared to be a check against Nixon’s power, a President recently overwhelmingly re-elected who was becoming more and more enmeshed in the Watergate scandal. Indeed, I played only a bit role, helping to convince some liberals such as Representatives Bella Abzug (D-NY) and Robert Drinan (D-Mass.) that Congress was not ceding additional power to the President by giving him or her 60 or 90 days to conduct war without approval of Congress. Fast forward to today. Every President since 1973, including Barack Obama, has decided to ignore the law as an unconstitutional assertion of power.

#### [4.] Cancels testimony, Justice Department ignores oversight requests

Victor ‘03

[Kirk Victor, writer for government executive.com, 2003, Congress in eclipse as power shifts to executive branch, <http://www.govexec.com/management/2003/04/congress-in-eclipse-as-power-shifts-to-executive-branch/13800/>, uwyo//amp]

Senate Finance Committee Chairman Charles Grassley, R-Iowa, agreed in an interview that "getting information from the Justice Department under Ashcroft is like pulling teeth." But Grassley sees it as an institutional problem, and said it had also been difficult to get responses when Janet Reno led the department. Grassley said he has had no problem in asserting his oversight powers with the executive branch. As for his colleagues who worry about presidential usurpation of Congress's powers, Grassley added, "It doesn't matter to me what the president thinks, unless I want to take it into consideration. He didn't elect me-the people of Iowa elected me. I am a trustee of the people, not a messenger boy for the president." But Leahy had a far more negative, withering take on the Bush administration's actions to avoid oversight. He and some other Senate Judiciary Committee members have sent the Justice Department 28 requests for oversight information, dating back to July 2001. The department has not responded to any of them. Ashcroft "basically ignores most of the requests, but at least I give him credit for being bipartisan-he ignores Republican requests, too," Leahy said in the interview. "And this is the man who [when he was a senator] thought he should hold up judicial nominations and everything else when the attorney general didn't give us what we wanted." Several members of the Senate Foreign Relations Committee also reacted angrily when the administration canceled, at the last minute, testimony by the top official in charge of reconstruction and humanitarian assistance in Iraq, who was to appear at a March 11 hearing. They also were surprised to learn from that day's newspapers that the administration was seeking bids from U.S. corporations on reconstruction contracts for Iraq.

# FRBX

# Terror

#### We are winning the War on Terror Now

Dreyfuss 13

[Robert, a Nation contributing editor, is an investigative journalist in Alexandria, Virginia, specializing in politics and national security. He is the author of Devil's Game: How the United States Helped Unleash Fundamentalist Islam and is a frequent contributor to Rolling Stone, The American Prospect and Mother Jones., “Despite Boston, Terror Is at an All-Time Low,” The Nation, 04.27.2013. <[http://www.thenation.com/blog/173876/despite-boston-terror-all-time-low#](http://www.thenation.com/blog/173876/despite-boston-terror-all-time-low)>//wyo-hdm]

The headline in today’s New York Times had to be read twice to make sure that’s what it really said: “Blasts End A Decade of Terrorism on the Wane.” Yes. On the wane. You probably didn’t know that over the past ten years there has been very little significant terrorism in the United States. As I've written repeatedly, terrorism today—here at home, not in, say, Iraq—is just a nuisance, nothing more. In 2004, John Kerry, running for president, said that the then-infinite War on Terror would be won when terrorism was reduced to the status of being a deadly nuisance rather an a constant crisis. By 2004, of course, it already was. The Times, in its lede, says this: The bombing of the Boston Marathon on Monday was the end of more than a decade in which the United States experienced strikingly few terrorist attacks, in part because of the far more aggressive law enforcement tactics that arose after the Sept. 11, 2001, attacks. Well. It adds: In fact, the Sept. 11 attacks were an anomaly in an overall gradual decline in the number of terrorist attacks since the 1970s, according to the Global Terrorism Database, one of the most authoritative sources of terrorism statistics, which is maintained by a consortium of researchers and based at the University of Maryland. The worst decade for terrorism in the United States? The 1970s. The horrible bombings in Boston killed more people, three, than any incident of terrorism except 9/11, the 1993 World Trade Center attack, the 1995 Oklahoma City bombing, and “the poisoning of restaurant salad bars with salmonella bacteria by religious cultists in Oregon in 1984.” The paper quotes Gary LaFree, the researcher who helps compile the date base, thus: I think people are actually surprised when they learn that there’s been a steady decline in terrorist attacks in the U.S. since 1970. And it adds this stunner from LaFree: He said there were about 40 percent more attacks in the United States in the decade before Sept. 11 than in the decade after.

#### US winning the war on terror- no WMD attacks

Oswald 5/30

Rachel Oswald, staff editor for the National Journal and the Global Security Newswire, “Despite WMD fears, terrorists are focused on conventional attacks,” May 30, 2013, <http://www.nationaljournal.com/nationalsecurity/despite-wmd-fears-terrorists-are-focused-on-conventional-attacks-20130417?page=1&utm_source=feedly>

WASHINGTON – The United States has spent billions of dollars to prevent terrorists from obtaining a weapon of mass destruction even as this week’s [bombings in Boston](http://www.nti.org/gsn/article/police-scrutinize-remnants-boston-blasts/" \t "_blank) further show that a nuclear weapon or lethal bioagent is not necessary for causing significant harm.¶ Organized group plots against the U.S. homeland since Sept. 11, 2001 have all involved conventional means of attack. Beyond that have been a handful of instances in which individuals used the postal system to deliver disease materials -- notably [this week’s ricin letters](http://www.nti.org/gsn/article/lab-confirms-ricin-letter-sent-senator/" \t "_blank) to President Obama and at least one senator and the 2001 anthrax mailings.¶ Terrorism experts offer a range of reasons for why al-Qaida or other violent militants have never met their goal of carrying out a biological, chemical, nuclear or radiological attack on the United States or another nation. These include:¶ -- substantive efforts by the United States and partner nations to secure the most lethal WMD materials;¶ -- improved border security and visa checks that deny entry to possible foreign-born terrorists;¶ -- a lack of imagination and drive on the part of would-be terrorists to pursue the kind of novel but technically difficult attacks that could lead to widespread dispersal of unconventional materials;¶ -- a general haplessness on the part of the native-born U.S. extremists who have pursued WMD attacks, specifically involving weaponized pathogens;¶ -- elimination of most of al-Qaida’s original leadership, notably those members with the most experience orchestrating large-scale attacks abroad; and¶ -- the Arab Spring uprisings have likely drawn down the pool of terrorists with the proper training and focus to organize WMD attacks abroad as they have opted instead to join movements to overthrow governments in places such as Syria and Yemen.¶ “We killed a lot of people. That was one thing,” said Randall Larsen, founding director of the Bipartisan WMD Terrorism Research Center, referring to the deaths in recent years of al-Qaida chief Osama bin Laden and any number of his direct or philosophical adherents.¶ Bin Laden is known to have exhorted his followers to seek weapons of mass destruction for use in attacks against the West. Leading al-Qaida propagandist Anwar al-Awlaki of the group’s Yemen affiliate, who was killed in a 2011 U.S. drone strike, used his Inspire magazine to [encourage sympathizers](http://www.nti.org/gsn/article/al-qaeda-magazine-urges-chemical-biological-strikes-us/" \t "_blank) to develop and carry out their own chemical and biological attacks.¶ Al-Qaida also had separate efforts in [Afghanistan](http://www.nti.org/gsn/article/al-qaeda-operatives-discussed-wmd-attacks-while-training-prior-to-911-report-says/" \t "_blank) and [Malaysia](http://www.nti.org/gsn/article/us-officials-worried-by-release-of-al-qaeda-bioweapons-operative/" \t "_blank) that worked on developing anthrax for use in attacks before they were broken up or abandoned following the September 2001 attacks.¶ In the last decade, the technological means to carry out new kinds of improvised WMD attacks such as those involving [laboratory-engineered pathogens](http://www.nti.org/gsn/article/synthetic-pathogens-might-pose-bioterror-threat-scientists-warn/" \t "_blank) has become much more available. However, it can take some time for bad actors to recognize how these new technologies can open the doorway to heretofore unseen massively disruptive terrorist attacks, according to Larsen.¶ Passenger airplanes were flying across the United States for decades before any terrorists realized that they would make a highly destructive improvised weapon when flown at high speeds into skyscrapers filled with thousands of people, Larsen noted.¶ A 2012 analysis by terrorism experts at the New America Foundation detailed a number of disrupted unconventional weapon plots against the country that counterintuitively were much more likely to involve home-grown antigovernment groups and lone-wolf actors than Muslim extremists. "In the past decade, there is no evidence that jihadist extremists in the United States have acquired or attempted to acquire material to construct CBRN weapons," according to authors Peter Bergen and Jennifer Rowland.¶ They documented a [number of failed domestic plots](http://homegrown.newamerica.net/" \t "_blank), often involving cyanide or ricin. Only former Army microbiologist Bruce Ivins was successful in actually carrying out such an effort, killing five people with anthrax spores in 2001.¶ “Right-wing and left-wing extremist groups and individuals have been far more likely to acquire toxins and to assemble the makings of radiological weapons than al-Qaida sympathizers.

#### Terrorists aren’t pursuing nukes

**Wolfe 12 –** Alan Wolfe is Professor of Political Science at Boston College. He is also a Senior Fellow with the World Policy Institute at the New School University in New York. A contributing editor of The New Republic, The Wilson Quarterly, Commonwealth Magazine, and In Character, Professor Wolfe writes often for those publications as well as for Commonweal, The New York Times, Harper's, The Atlantic Monthly, The Washington Post, and other magazines and newspapers. March 27, 2012, "Fixated by “Nuclear Terror” or Just Paranoia?" [http://www.hlswatch.com/2012/03/27/fixated-by-“nuclear-terror”-or-just-paranoia-2/](http://www.hlswatch.com/2012/03/27/fixated-by-)

If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

**No successful detonation**

**Schneidmiller 9**(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow itup. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to giveup their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely tobe able to steala whole weapon, Mueller asserted, dismissingthe idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue withthe finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occurin the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give anuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weaponor use one that has been stolen.

## 1NR

#### Turns terror-

Glenn **Sulmasy 9**, law faculty of the United States Coast Guard Academy, , Anniversary Contributions: Use of Force: Executive Power: the Last Thirty Years, 30 U. Pa. J. Int'l L. 1355

Since the attacks of 9/11, the original concerns noted by Hamilton, Jay, and Madison have been heightened. **Never before** in the young history of the United States **has the need for an energetic executive been more vital to its national security**. **The need for quick** **action** in this arena **requires an** executive response - **particularly when fighting a shadowy enemy like al Qaeda** - **not** the **deliberative bodies** **opining on** what and **how to conduct warfare** or determining how and when to respond. **The threats from non-state actors**, such as al Qaeda, **make the need for dispatch and rapid response even greater**. Jefferson's **concerns about the slow** and deliberative institution of **Congress being prone to informational leaks** **are even more relevant** in the twenty-first century. The advent of the twenty-four hour media only leads to an increased need for retaining enhanced levels of executive [\*1362] control of foreign policy. This is particularly true in modern warfare. **In the war on** international **terror, intelligence is vital to ongoing operations and** successful **prevention of attacks.** **Al** **Qaeda** now **has both the will and the ability to strike** with the equivalent force and might of a nation's armed forces. **The need to identify** these **individuals before they can operationalize an attack is vital. Often** international terror **cells consist of** only **a small number of** **individuals** - **making intelligence that much more difficult to obtain and even more vital** than in previous conflicts. The normal movements of tanks, ships, and aircrafts that, in traditional armed conflict are indicia of a pending attack are not the case in the current "fourth generation" war. Thus, the need for intelligence becomes an even greater concern for the commanders in the field as well as the Commander-in-Chief.¶ Supporting a strong executive in foreign affairs does not necessarily mean the legislature has no role at all. In fact, their dominance in domestic affairs remains strong. Additionally, besides the traditional roles identified in the Constitution for the legislature in foreign affairs - declaring war, ratifying treaties, overseeing appointments of ambassadors, etc. - this growth of executive power now, more than ever, necessitates an enhanced, professional, and apolitical oversight of the executive. An active, aggressive oversight of foreign affairs, and warfare in particular, by the legislature is now critical. Unfortunately, the United States - particularly over the past decade - has witnessed a legislature unable to muster the political will necessary to adequately oversee, let alone check, the executive branch's growing power. Examples are abundant: lack of enforcement of the War Powers Resolution abound the executive's unchecked invasions of Grenada, Panama, and Kosovo, and such assertions as the Authorization for the Use of Military Force, the USA Patriot Act, military commissions, and the updated Foreign Intelligence Surveillance Act ("FISA"). There have been numerous grand-standing complaints registered in the media and hearings over most, if not all, of these issues. However, in each case, the legislature has all but abdicated their constitutionally mandated role and allowed the judicial branch to serve as the only real check on alleged excesses of the executive branch. This deference is particularly dangerous and, in the current environment of foreign affairs and warfare, tends to unintentionally politicize the Court.¶ The Founders clearly intended the political branches to best serve the citizenry by functioning as the dominant forces in [\*1363] guiding the nation's foreign affairs. They had anticipated the political branches to struggle over who has primacy in this arena. In doing so, they had hoped neither branch would become too strong. The common theme articulated by Madison, ambition counters ambition, n17 intended foreign affairs to be a "give and take" between the executive and legislative branches. However, inaction by the legislative branch on myriad policy and legal issues surrounding the "war on terror" has forced the judiciary to fulfill the function of questioning, disagreeing, and "checking" the executive in areas such as wartime policy, detentions at Guantanamo Bay, and tactics and strategy of intelligence collection. The unique nature of the conflict against international terror creates many areas where law and policy are mixed. The actions by the Bush administration, in particular, led to outcries from many on the left about his intentions and desire to unconstitutionally increase the power of the Presidency. Yet, the Congress never firmly exercised the "check" on the executive in any formal manner whatsoever.¶ For example, many policymakers disagreed with the power given to the President within the Authorization to Use Military Force ("AUMF"). n18 Arguably, this legislation was broad in scope, and potentially granted sweeping powers to the President to wage the "war on terror." However, Congress could have amended or withdrawn significant portions of the powers it gave to the executive branch. This lack of withdrawal or amendment may have been understandable when Republicans controlled Congress, but as of November 2006, the Democrats gained control of both houses of the Congress. Still, other than arguing strongly against the President, the legislature did not necessarily or aggressively act on its concerns. Presumably this inaction was out of concern for being labeled "soft on terror" or "weak on national security" and thereby potentially suffering at the ballot box. This virtual paralysis is understandable but again, the political branches were, and remain, the truest voice of the people and provide the means to best represent the country's beliefs, interests, and national will in the arena of foreign affairs. It has been this way in the past but the more recent (certainly over the past thirty years and even more so in the past decade) intrusions of the judicial branch into what [\*1364] was intended to be a "tug and pull" between the political branches can properly be labeled as an unintended consequence of the lack of any real legislative oversight of the executive branch.¶ Unfortunately, now nine unelected, life-tenured justices are deeply involved in wartime policy decision making. Examples of judicial policy involvement in foreign affairs are abundant including Rasul v. Bush; n19 Hamdi v. Rumsfeld; n20 Hamdan v. Rumsfeld; n21 as well as last June's Boumediene v. Bush n22 decision by the Supreme Court, all impacting war policy and interpretation of U. S. treaty obligations. Simply, judges should not presumptively impact warfare operations or policies nor should this become acceptable practice. Without question, over the past thirty years, this is the most dramatic change in executive power. It is not necessarily the strength of the Presidency that is the change we should be concerned about - the institutional search for enhanced power was anticipated by the Founders - but they intended for Congress to check this executive tendency whenever appropriate. Unfortunately, this simply is not occurring in twenty-first century politics. Thus, the danger does not necessarily lie with the natural desire for Presidents to increase their power. The real danger is the judicial branch being forced, or compelled, to fulfill the constitutionally mandated role of the Congress in checking the executive.¶ 4. PRESIDENT OBAMA AND EXECUTIVE POWER¶ The Bush presidency was, and continues to be, criticized for having a standing agenda of increasing the power of the executive branch during its eight-year tenure. Numerous articles and books have been dedicated to discussing these allegations. n23 However, as argued earlier, the reality is that it is a natural bureaucratic tendency, and one of the Founders presciently anticipated, that each branch would seek greater powers whenever and wherever possible. **As the world becomes** increasingly **interdependent, technology and armament become more sophisticated, and with** [\*1365] **the rise of** twenty-first century **non-state actors**, **the need for strong executive power is not only preferred, but also necessary**. **Executive power in the current world dynamic is something, regardless of policy preference** or political persuasions, **that the new President must maintain** in order to best fulfill his constitutional role of providing for the nation's security. This is simply part of the reality of executive power in the twenty-first century. n24

#### Turns India and China

COES 2011

(Ben, former speechwriter for George H.W. Bush, September 30, “The Disease of a Weak President,” <http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/>

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician **losing the trust and respect of friends and foes alike.**

In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces.

But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons. If you can only worry about preventing one foreign policy disaster, worry about this one.

Here are a few unsettling facts to think about: First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over.

Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device.

Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world.

In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état. I wish it was that simple.

The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, **we must be ready and willing to threaten our military might on behalf of our allies**. And our allies are Israel and India.

There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. **The single greatest threat** facing America and our allies **is a weak U.S. president.** It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

#### New NDAA increases presidential flexibility and signals an end to ongoing congressional opposition.

Kaplan 13

[REBECCA KAPLAN, “Obama signs budget deal, defense authorization bills into law,” CBS NEWS, December 26, 2013, <http://www.cbsnews.com/news/obama-signs-budget-deal-defense-authorization-bills-into-law/> // wyo-cjh]

The other major piece of legislation the president signed was the National Defense Authorization Act, which stalled in the Senate in December before lawmakers were able to pass a slimmed-down version by crafting a compromise bill between Congress’ two chambers and shutting down the opportunities for senators to offer amendments. The law takes some steps to reform the way the military prosecutes sexual assault cases, but lawmakers did not have the opportunity to vote on a proposal from Sen. Kirsten Gillibrand, D-N.Y., to remove the decision to prosecute cases from the chain of command and put them into the hands of independent military prosecutors. It does give Mr. Obama additional flexibility to transfer detainees from Guantanamo Bay abroad, a step toward allowing him to close the facility and make good on a long-held promise first made in his 2008 campaign. The goal has been frustrated by Congressional opposition, among other challenges. The small bit of additional flexibility in the defense bill drew praise from the president as a “positive step” in a signing statement he released Thursday, but he also urged Congress to lift other restrictions that slow down the process of negotiating with foreign countries to transfer detainees and prevent the administration from transferring Guantanamo detainees to the U.S., where they could be tried. These restrictions, Mr. Obama suggested in the statement, are a violation of the constitutional principle of separation of powers. “The executive branch must have the authority to determine when and where to prosecute Guantanamo detainees, based on the facts and circumstances of each case and our national security interests. For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation. Removing that tool from the executive branch does not serve our national security interests,” the statement said.

**Obama has built a solid basis for expanded Executive authority by pushing statutory and judicial limitations – Syria continues the trend**

Gordon **Silverstein**, Assistant Dean and Lecturer in Law at Yale Law School, and author of Law’s Allure: How Law Shapes, Constrains, Saves and Kills Politics, “Obama Just Increased Executive Power—Again,” New Republic, 9/4/2013

Bush-Cheney Administration alumni have risen from the ashes to denounce President Obama’s decision to force Congress to play its constitutional role in a decision to use military force in Syria. It is, they insist, yet another surrender of power by a feckless President presiding over the degradation of the Executive Branch itself, the empowerment of which was one of their central goals.¶ This is wrong on two dimensions: First, despite their aggressive efforts, **the Bush-Cheney administration left the Presidency weaker, and not stronger. And** second, far from degrading the power of the Executive, the **Obama** administration **has steadily, and significantly built up and exploited presidential power.¶** While it is too early to know if **Obama’s Syrian plan will continue this** trend, there are powerful reasons to think it will.¶ **The Bush-Cheney administration** famously asserted that when it came to foreign policy and national security, the President possessed nearly unlimited, autonomous, and unreviewable power. They insisted that the President could seize and hold prisoners at Guantanamo Bay; that the President alone could decide what and how much due process they were entitled to seek and that together with Congress, they could deny the independent federal courts, the third branch of government, the right to review their decisions. And they declared that the administration had the authority to redefine the meaning of torture.¶ All these **claims** and more were built on novel and poorly supported constitutional theories. **When** they were **challenged in Court, far from** enshrining the administration’s and **permanently shifting formal power to the Executive branch, these theories and claims were rejected, and** what had once been ambiguous and contested questions about **the allocation of power was settled, not by assigning it to the Executive but**, in fact, **by ruling that it belonged exclusively to Congress.¶** Jack Goldsmith, the head of the Office of Legal Counsel in the Bush-Cheney Justice Department, would later write that the administration advanced broad and unsupportable claims and arguments because “the President and Vice President wanted to leave the presidency stronger than they found it.” But, he concludes, “the approach they took achieved exactly the opposite effect. The central irony is that **people whose explicit goal was to expand presidential power have diminished it.”¶** Consider: In 2004 the Supreme Court ruled that the Executive could not independently order the detention of prisoners at Guantanamo, but could do so in this case because Congress had implicitly delegated this power to the President through the very open-ended language of the 2001 Authorization for the Use of Military Force. This was, in short, a power that now explicitly was assigned to Congress.¶ 2004 also was the year in which Goldsmith had to repudiate and withdraw a series of legal opinions his office had released—many authored by John Yoo—including the infamous memos ostensibly offering a legal rationale for the use of torture in interrogations.¶ The Bush-Cheney legal dream team failed again in 2006 in Hamdan v. Rumsfeld when the Supreme Court rejected their assertion that those same detainees could be tried by military commissions established by Executive Order. Commissions were possible, the Court ruled, but only if they were the produce of explicit congressional authorization. Another win for Congress. Another loss for fans of Executive prerogative.¶ But this dance was far from over. In Boumediene v. Bush in 2008, Justice Anthony Kennedy delivered a stinging blow to the Bush-Cheney project, ruling that prisoners at Guantanamo Bay had the right to file petitions for habeas corpus; that Congress and Congress alone could suspend habeas, but had to do so explicitly and could not simply forbid the Courts from hearing these appeals. A question that had been left in some shroud of ambiguity since Lincoln suspended the Great Writ in the Civil War was now clear: The power belongs to Congress alone.¶ John Yoo, one of the Bush-Cheney administration’s leading lawyers, realized in 2006 that the **Supreme Court would** actually **be a major barrier on their path to the constitutional fortification of Executive power.¶** After the Court handed the administration a defeat in the military commissions decision in Hamdan v. Rumsfeld, Yoo told the New York Times that the Justices were “attempting to suppress creative thinking.” The 2006 Hamdan decision, Yoo said, could undercut the entire legal edifice that had been built by the Bush lawyers.¶ What Yoo failed to acknowledge then (and fails to acknowledge even now) is that it was the Bush-Cheney overreach, their “creativity,” that had pressed even a conservative and friendly Supreme Court to undercut the administration’s claims to power, leaving the Executive weaker than it had been when Bush and Cheney walked into the White House in January 2001.¶ And Obama? While the Bush claims actually eroded and undercut Executive power which had built up steadily since World War II, it was the administration of Barack **Obama** that actually, quietly, **efficiently and with unerring focus has expanded, embedded and solidified Executive power.** And it has done so not by making “creative” constitutional claims, but instead **by steadily (and aggressively) building and exercising Executive power**—but doing so **by pressing existing statutes and judicial rulings, rather than unsupportable constitutional theories.**¶ **Turning to Congress now for formal authorization** to use military force **in Syria could** well be another example of this effort—and it may yet **have the same effect.¶** As I wrote in 2009, less than six months into the new administration, **in areas ranging from** the assertion of **the State Secrets privilege** in efforts **to** shut down lawsuits over warrantless **wiretapping and** extraordinary **rendition to** those concerning lawsuits over **detention and treatment in Guantanamo, and** the reach of habeas corpus to **Bagram** Air Force Base in Afghanistan, **Obama’s legal team was building up a far more impressive, far stronger and far more difficult to reverse set of precedents—winning in court after court—a trend that has continued ever since, including memos defending the legality of drone strikes** targeting U.S. citizens, **and** the sweeping authority for the **electronic surveillance** among many others. **Even** in their defense of **the use of force for limited strikes in Libya**, the Obama administration seemed to state that Congress must have a role in major military actions.¶ **These are aggressive claims. They are significant. They are new assertions of power—but they rest** far more squarely **on statutes, statutory interpretation and interpretations of judicial rulings than** did the military rationale offered by **Bush and Cheney**.¶ So—we have two models. The Bush-Cheney model, full of sound and fury which ultimately left the Executive branch weaker and not stronger, and the Obama model, which builds its case for executive power on the back of statutory authorization and judicial rulings.¶ And so, what are we to make of Obama’s decision to force Congress to play a role in a decision to use military force in Syria? Are the Bush apologists right? Is this—though a very difficult needle to thread—of a piece with Obama’s successful efforts to build executive power on a vastly firmer foundation than the constitutional “creativity” of the Bush legal team?¶ It may be, and here’s why:¶ Presidents in the modern era have turned to Congress for a fig-leaf of authorization before—in the 1964 Tonkin Gulf Resolution, or the 2001 Authorization for the Use of Military Force. But these were passed in the shadow of what was perceived to be a genuine emergency. There was no time for deliberation, no time to inspect the evidence. A vote for these authorizations was one that was all too easy for a regretful Congress to abandon as the wars they had ostensibly authorized dragged on and on.¶ This time there is time. Despite withering criticism from the Bush-Cheney apologists, Obama refused to call Congress back for an emergency session. Rather than giving them just hours to support the Commander in Chief in time of crisis, he has assured the nation that the military is confident that a few weeks will make no difference in our ability to achieve our military objectives.¶ A yes vote under this scenario means Congress fully shares the ownership of this policy (and its results). It means that whatever horror comes next in the Middle East, America’s policy there will be just that—America’s policy: The product of Congress acting together with the President, under the traditional rules and process laid out by the U.S. Constitution.¶ And if Congress votes no? Then we have one of two scenarios: The blame for the next atrocity, or the next deployment of chemical weapons in the Middle East or elsewhere is as much their heavy burden as it is Obama’s or, to prevent that, Congress will be compelled to actually deal with a serious policy issue and not simply vote a few dozen more times to repeal Obamacare.¶ **Turning to Congress in this fashion is** very much **in Obama’s self-interest**. But is also **in the national interest, and** quite possibly in **the best interest of those concerned about** preserving and **enhancing Executive power. Future Presidents** who will no doubt face complicated and risky security challenges, **will require the full force of a nation united behind them and** may now be more willing to **follow the precedent Obama has set**.

#### .]Syria proves statute outweighs- Obama AUMF over Syria would set precedent for no president to have to statutorily consult congress- means he or she no longer has to navigate political legitimacy for interventions- can blame congress for expanded authority

Eppssep, 13

(“The Senate's Syria Resolution Has a Huge Secret Giveaway to the President”

[GARRETT EPPS](http://www.theatlantic.com/garrett-epps/)SEP former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore. Sept 6 2013, http://www.theatlantic.com/politics/archive/2013/09/the-senates-syria-resolution-has-a-huge-secret-giveaway-to-the-president/279421/) KH

The "Whereas" language in the draft AUMF gives significant support to the position that the President has some (uncertain) independent constitutional authority to use force in Syria, regardless of what Congress authorizes, and (perhaps) beyond what Congress authorizes. Since I believe that a unilateral presidential use of force in Syria would [go beyond all past OLC precedents](http://www.lawfareblog.com/2013/08/how-administration-lawyers-are-probably-thinking-about-the-constitutionality-of-the-syria-intervention-and-a-note-on-the-domestic-political-dangers-of-intervention/), the "Whereas" clause as currently drafted is especially important to the President's novel constitutional position.

Note that this astonishing language did not appear in [the administration's own draft authorization](http://www.cnn.com/2013/08/31/us/obama-authorization-request-text/index.html?hpt=hp_t1). Having been asked for broad authority already, the warriors on the Senate Foreign Relations Committee, for all their minimizing language, have in practice widened the White House's mandate -- to the point that, if it is adopted by Congress, neither Barack Obama nor any future president will likely have to come back for additional authority to fight against Syria and its chemical weapons anywhere in the region. And it will have written into law an explicit statement that the president doesn't need authorization to use force anywhere, any time he or she determines that "national security" demands it.

#### [3.] Politics is a red herring-Syrian crisis proves it’s a disguise for expanding statutory capacity

NYT, 13

(“In Syrian crisis, US President Barack Obama tests limits of power” [Charlie Savage, The New York Times](http://www.ndtv.com/topic/charlie-savage-the-new-york-times) | September 09, 2013 http://www.ndtv.com/article/world/in-syrian-crisis-us-president-barack-obama-tests-limits-of-power-416490) KH

Washington: In asking Congress to authorize an attack on Syria over claims it used chemical weapons, President Barack Obama has chosen to involve lawmakers in deciding whether to undertake a military intervention that in some respects resembles the limited types that many presidents - Ronald Reagan in Grenada, Bill Clinton in Kosovo and even Obama in Libya - have launched on their own. But on another level, the proposed strike is unlike anything that has come before - an attack inside the territory of a sovereign country, without its consent, without a self-defense rationale and without the authorization of the UN Security Council or even the participation of a multilateral treaty alliance like NATO, and for the purpose of punishing an alleged war crime that is already over rather than preventing an imminent disaster. The contrasting moves, ceding more of a political role to Congress domestically while expanding national war powers on the international stage, underscore the complexity of Obama's approach to the Syrian crisis. His administration pressed its case Sunday, saying it had won Saudi backing for a strike, even as the Syrian president warned he would retaliate. Obama's strategy ensures that no matter what happens, the crisis is likely to create an important precedent in the often murky legal question of when presidents or nations may lawfully use military force. Kathryn Ruemmler, the White House counsel, said the president believed a strike would be lawful, both in international law and domestic law, even if neither the Security Council nor Congress approves it. But the novel circumstances, she said, led Obama to seek congressional concurrence to bolster its legitimacy.

**targeted killing hampers the president’s constitutional authority to respond to security threats**

**Posner 2012**

[Eric Posner, a professor at the University of Chicago Law School, October 17th, 2012, The Drones Are Coming to Libya, <http://www.slate.com/articles/news_and_politics/view_from_chicago/2012/10/drones_attacks_in_libya_an_unprecedented_expansion_of_presidential_power.2.html>, uwyo//amp]

And **even if the president wants to fling drones at non-al-Qaida targets, he can.** Although President **Obama initially distanced himself from President Bush’s claim that Article 2 of the Constitution gives the president the authority to use force unilaterally to protect American interests, he used this justification for** the 2011 **Libya i**ntervention, which was not authorized by Congress, **and he would likely use it to justify an indefinite expansion of drone warfare against any security threat**, including Iran, for example. Congress will not try to stop him. **New threats emerge constantly, leaving no time for a congressional debate before each strike is authorized.** Thus, **Congress must either hand the president blanket authority to use drones as necessary**—the implicit status quo today—**or block him**, which would outrage Americans who fear terrorism. **The choice for our pusillanimous legislature, which so far has acted mainly to prevent President Obama from cutting back on some Bush-era tactics, is obvious**.

#### Drones are Obama’s weapon of choice- constraining hinders his ability to stop wars quickly and effectievly

Kenneth Anderson, professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, “The Case for Drones,” Commentary, June 2013.

1. When Obama Embraced Drone Warfare¶ How, exactly, did drone warfare and targeted killing become key elements in America’s counterterrorism strategy? And why should we care about them as essential national-security tools for the future?¶ Barack Obama campaigned for his first presidential term on the platform of ending America’s wars. Obama voters and much of the rest of the world figured this promise referred not only to the conventional conflicts in Iraq and Afghanistan, but also to what liberals considered the long and unnecessary national nightmare of the war on terror. It now seems clear he was misunderstood—though we don’t know yet whether the misunderstanding was by Obama’s design or due to changes that took place after he assumed office. Obama’s policy proved not to be “peace breaks out.” It was, rather, that America would wind down its two counterinsurgency, boots-on-the-ground wars and undertake a refocused effort against the terrorists who had set this all in motion. He framed it this way during the 2008 race. “If Pakistan cannot or will not take out al-Qaeda leadership when we have actionable intelligence about their whereabouts,” he said on the campaign trail, “we will act to protect the American people. There can be no safe haven for al-Qaeda terrorists.” No safe havens—that has been Barack Obama’s strategic lodestar in the war on terror.¶ It is this proposition, more than any other, that gets us to drone warfare.¶ Even as Obama publicly disdained the institutions and methodologies of Bush’s war on terror, he was issuing a new call to arms in that war. Taking the fight directly to the enemy required a means of combat other than counterinsurgency warfare on the ground, and the United States turned to a technology the Israelis had used effectively in their war against Palestinian terrorists: unmanned surveillance drones, now weaponized.¶ This tool had been used during the Bush administration, but sparingly-—largely due to geopolitical fears, but also because it was only by the second Bush term that the CIA had established ground-level human-intelligence networks in Afghanistan and Pakistan sufficient for making independent targeting decisions without having to rely on the questionable and self-interested information coming from Pakistan’s intelligence services.¶ The strategy has worked far better than anyone expected. It is effective, and has rightfully assumed an indispensable place on the list of strategic elements of U.S. counterterrorism-on-offense.¶ But it is not only a strategy of effectiveness, convenience, and necessity. Drone warfare offers ethical advantages as well, allowing for increased discrimination in time, manner, and targeting not available via any other comparable weapon platform. As such, it lends civilians in the path of hostilities vastly greater protection than does any other fighting tool. Drone warfare is an honorable attempt to seek out terrorists and insurgents who hide among civilians.¶ The expansion into automated and robotic military equipment owes much to the ethical impulse to create new technologies of discrimination when fighting enemies for whom unwitting civilian shields were their main materiel of war. Moreover, these are weapons that gain much of their discrimination in use from the fact that U.S. forces are not directly at personal risk and are thus able to take time to choose a moment to attack when civilians might be least at risk. Remoteness—the fact that the drone user is nowhere near the target, as the pilot is probably sitting in an air-conditioned room in Nevada—actually enables precision. Ethical and effective—and yet today drone warfare is coming under increasingly strong public attack as being neither. Opponents of drones are seeking to raise the political costs of drone warfare to the United States, portraying it as a symbol of an arrogant, reprobate superpower dating back to the days of the “ugly American.” Steve Coll, writing in the New Yorker, says drone use is “unnervingly reminiscent of Eisenhower’s enthusiasm for poisoning schemes and coup plots.” And though, in a recent Gallup poll, two-thirds of those surveyed said they supported drone strikes, there is no question that the political, legal, and moral legitimacy of drone warfare is increasingly at risk. The delegitimators are the international community, both its UN officials and NGO advocates; a sizable portion of academic international lawyers; much of the elite international media; and Obama’s American left.¶ These delegitimators also include a number of conservatives and Republicans, chief among them Kentucky Senator Rand Paul. They claim the core issue is constitutional—that drones violate due process. This argument focuses specifically on the case of a radical cleric and terrorist operative in Yemen, Anwar al-Awlaki, who inspired a terrorist assault at Fort Hood in 2009, designed an al-Qaeda effort to detonate a plane over Detroit on Christmas Day in the same year, and was deeply involved in a plot to load printer ink cartridges with explosives for detonation on a plane. Awlaki was killed in a targeted drone strike in Yemen in 2011—and he was an American citizen.¶ His citizenship, some argue (most vigorously on the libertarian right), should have prevented the Obama administration from performing the targeted killing. But as an enemy combatant in the war on terror authorized by Congress in 2001, Awlaki could not be granted some special get-out-of-a-drone-strike-free card. Given the inherently unsympathetic nature of the Awlaki example, the due-process arguments of those on the right who stand in opposition to drone strikes took a markedly populist and anti-government turn. When the Republican senator Rand Paul decided to stage a 13-hour filibuster on the question of the legality of drone strikes, he and others spent a great deal of time talking not about the violated rights of a terrorist in Yemen but about the theoretical use of drones on American soil against a suspected domestic terrorist “sitting in a café.”¶ Paul’s critique delighted many conservatives and libertarians. They loved seeing him and others engage the Obama administration in a direct and seemingly high-minded manner, denouncing the “imperial” presidency. But they confused and conflated the Obama administration’s arguably imperial domestic policies with policies on national security, war, and foreign affairs—spheres in which the president has many and capacious constitutional powers. Moreover, those who were thrilled did not give much thought to whether they might see a need for a president they liked better to have access to those same policies—and whether, in making common cause with those who have opposed the war on terror since it began, they are working to destroy one of its most effective tools not only for Obama, but for future residents of the White House.

### Indef

**Padilla reversal proves-restrictions on indefinite detention encroach on presidential power**

**Kaplan 2013**

[Lewis A. Kaplan, District Judge, 07/17/2013, Hedges v. Obama, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Hedges.2d-Circuit-Opinion.pdf>, uwyo//amp]

2. Padilla **Padilla,** also an American citizen, was apprehended at Chicago’s O’Hare International Airport in May 2002 after allegedly receiving training from al-Qaeda in Afghanistan, becoming involved in a plan to detonate a “dirty bomb” here, and returning to the United States to conduct reconnaissance and facilitate attacks by al-Qaeda.21 **In December 2003—prior to Hamdi—this Court held that because Padilla was an American citizen arrested on domestic so**il away from a zone of combat**, his military detention violated the Non-Detention Act and could not be justified by the President’s Article II war powers.22 The Supreme Court reversed our decision** on procedural grounds on **the day it decided Hamdi** butdid not reach the lawfulness of Padilla’s detention.23 Following the Supreme Court’s reversal of our Padilla ruling, a new habeas petition was filed on his behalf. **The Fourth Circuit in 2005 concluded that Padilla was lawfully detained under the reasoning of Hamdi because it became known that he had been “armed and present in a combat zone during armed conflict between al Qaeda/Taliban forces and the armed forces of the United States**” while in Afghanistan prior to his return to the United States.24 Although Padilla had been apprehended in the United States, the Fourth Circuit concluded that Hamdi had not relied on the place of capture.**25 The government subsequently indicted Padilla and transferred him to civilian criminal custody. His petition for certiorari was denied.26**

#### Congressional statutes restricting executive war powers destroy broader presidential powers

Freeman 7 -- JD @ Yale Law School (Daniel J., 11/1/2007, "The Canons of War," Yale Law Journal 117(280), EBSCO)

Outside the confines of partisan absolutism, determining the scope of executive war power is a delicate balancing act. Contrasting constitutional prerogatives must be evaluated while integrating framework statutes, executive orders, and quasi-constitutional custom. The Supreme Court’s preferred abacus is the elegant three-part framework described by Justice Jackson in his concurrence to Youngstown Sheet & Tube Co. v. Sawyer.9 When the President and Congress act in concert, the action harnesses the power of both branches and is unlikely to violate the principle of separation of powers. When Congress has failed either to authorize or to deny authority, the action lurks in a “zone of twilight” of questionable power. When the President and Congress act in opposition, the President’s power is “at its lowest ebb,” and the action raises conspicuous concerns over the separation of powers.10 Therein lies the rub. Justice Jackson wrote soon after the tremendous growth of the executive during the New Deal and World War II, but the scope of legislation expanded dramatically in subsequent decades. Congress waged a counteroffensive in the campaign over interbranch supremacy by legislating extensively in the fields of foreign relations and war powers. Particularly in the post-Watergate era, Congress filled nearly every shadowy corner of the zone of twilight with its own imprimatur.11 That is not to say that Congress placed a relentless series of checks on the executive. Rather, Congress strove to establish ground rules, providing a limiting framework such as the War Powers Resolution12 for each effusive authorization like the Patriot Act.13 This leaves Jackson’s second category essentially a dead letter.14 The most sensitive questions concerning the effective distribution of governmental powers and the range of permissible executive action are therefore problems of statutory interpretation. The question becomes more complicated still when successive Congresses act in apparent opposition. While recent executives have consistently pushed to expand their authority,15 shifting patterns of political allegiance between Congress and the President yield a hodgepodge of mandates and restraints.16 Whether an action falls into Jackson’s first or third category requires one to parse the complete legislative scheme. This question is most pointed in connection with the execution of authorized war powers. Presidential power in this area is simultaneously subject to enormously broad delegations and exacting statutory limitations, torn between clashing constitutional values regarding the proper balance between branches. On one side lie authorizations for the use of military force (AUMFs), statutes empowering the President to “introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated.”17 On the other side lie framework statutes, enactments defining the mechanisms and boundaries of the execution of those war powers. Nevertheless, when faced with a conflict between an authorization for the use of military force and a preexisting framework, the Supreme Court must determine the net authorization, synthesizing those statutes while effectuating the underlying constitutional, structural, and historical concerns.

### Case

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

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

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

#### won’t follow legal guidelines **Saunders 3-4-13** [Paul, Center for the National Interest executive director and National Interest associate publisher, “We Won’t Always Drone Alone”<http://nationalinterest.org/commentary/we-wont-always-drone-alone-8177?page=1>, wyo-sc]

A broader and deeper challenge is how others—outside the United States—will use drones, whether armed or unarmed, and what lessons they will draw from Washington’s approach. Thus far, the principal lesson may well be that drones can be extremely effective in killing your opponents, wherever they are, without risking your own troops and without sending soldiers or law enforcement personnel across another country’s borders. It seems less likely that others will adopt U.S.-style legal standards and oversight procedures, or that they will always ask other governments before sending drones into their airspace.