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#### “Substantially limiting” requires a broad restriction – it excludes single-condition affs

Signorello 1, JD @ Cornell (Pamela, “The Failure of the ADA - Achieving Parity with Respect to Mental and Physical Health Care Coverage in the Private Employment Realm,” *Cornell Journal of Law and Public Policy*)

A substantial limitation of the major life activity of working is evident when one is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average- person having comparable training, skills, and abilities. '25 Hence, one's inability to perform a single job does not constitute a substantial limitation. 26

#### The means the plan must broadly limit the defense pact across-the-board

Holmen 13 (Holmen School District, SECTION 504 OF THE REHABILITATION ACT OF 1973, <https://www.holmen.k12.wi.us/board/policies_and_admin_rules/300/a342-1%20504%20Rehab%20Act%20of%201973%2012-9-13.pdf>)

A substantial limitation is a significant restriction as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, or duration under which the average person in the general population can perform that same major life activity. The Supreme Court in “Toyota v. Williams” noted that to meet the “substantially limit” definition, the disability must occur across the board in multiple environments, not only in one environment or one setting. The implication for school related 504 eligibility decisions is that the disability in question must be manifested in all facets of the student’s life, not only in school.

#### The plan restricts but doesn’t terminate the pact --- there are infinite modifications to conditions of activation based on adversary, type of conflict, location, etc… that multiplies each topic area by dozens and makes neg prep impossible. It also undermines ground – the core question is alliances good/bad, that ensures links to core positions and prevents bidirectional changes in commitment

## K

#### The affirmative is rooted in an ontology of insecurity that naturalizes enemy formation -- vote negative to endorse threat deflation.

Daniel Bessner 20, the Joff Hanauer Honors Associate Professor in Western Civilization at the University of Washington, 9/7/20, “The American Empire and Existential Enemies,” https://fx.substack.com/p/the-american-empire-and-existential

The scale of the American Empire—its move from (mostly) hemispheric to global domination—only began to change in the 1930s. In fact, in my opinion the entire way Americans understand and frame geopolitics was forged during this decade, perhaps the most influential in modern US history.

The primary impetus behind the transformation in the American imperial imagination was the rise of Nazi Germany. Before Adolf Hitler’s ascendance to the German chancellorship in 1933, Americans generally believed they could negotiate with foreign powers—especially white, European powers—in good faith. But the rise of Hitler in Germany (and Stalin in the Soviet Union, though he was less important) persuaded Americans that there were some people with whom one just couldn’t reason—or, as a well-known book from the early 1940s put it, You Can’t Do Business with Hitler.

Hitler thus decisively ended two American dreams: first, that reason could replace violence in international relations (or at least, international relations outside the Western Hemisphere); and second, that the United States could afford to remain aloof from European affairs. In fact, many of the first generation of “defense intellectuals” who would staff and build the US national security establishment during and after World War II were social democrats who in the 1930s embraced a pessimistic theory of geopolitics because they believed Hitler posed a uniquely existential threat to “Western civilization.”

Put another way, it was in the 1930s that many American elites endorsed what scholars refer to as a “Schmittian” understanding of geopolitics. Now, it’s crucial to understand who Carl Schmitt was because he was one of the most influential thinkers of the twentieth century. In brief, Schmitt was a German legal theorist (he eventually became a Nazi) who in his famous The Concept of the Political (1932) argued that “the specific political distinction to which political actions and motives can be reduced is that between friend and enemy.” In simpler terms, Schmitt claimed that politics needed to be understood as a struggle between those who were on your side (friends) and those who were not (enemies). To Americans in the 1930s, Hitler and Nazi Germany as a whole were Schmittian enemies with whom one could not negotiate.

Needless to say, Americans were right to view Hitler and the Nazis as existential enemies. They were vicious brutes who did really want to conquer and dominate a significant portion of the world. The problem, however, was that too many Americans concluded that all geopolitics after Hitler were Schmittian geopolitics. That is to say, Americans began to argue that it was an ontological fact that international relations was a Manichean sphere in which there were good guys (Americans) and bad guys (anyone who disagreed with or challenged Americans). Indeed, the very terms “good guys” and “bad guys” only took off after World War II. In the late-1940s and beyond, a simple moralism permeated American politics and culture.

After the United States emerged victorious in World War II, it was quite easy for Americans to transfer their anxieties about Hitler and Nazi Germany onto Joseph Stalin and the Soviet Union. Stalin, after all, was a brutal and inscrutable dictator with a cult of personality and an enormous military. Moreover, defining the Soviet Union as an existential enemy analogous to Nazi Germany provided Americans with a simple framework through which they could negotiate (and justify) their emergence onto the world stage. The only way to stop the Soviet Union from dominating the world, Americans (and their allies) argued, was for the United States itself to become the global hegemon.

It was to this project that the United States dedicated itself after World War II. The nation increased its military budget, embraced a posture of permanent mobilization, and constructed a worldwide system of bases that today numbers about 750.

All of these actions were justified through a Schmittian “Cold War logic” that insisted that the peace and prosperity of the United States—indeed, the peace and prosperity of the entire world—depended on confronting the evil Soviet Union wherever it attempted to spread its tentacles. This logic, of course, also vindicated numerous interventions abroad, from the Korean War to the depositions of Iran’s Mohammad Mosaddegh and Guatemala’s Jacobo Árbenz to the Vietnam War. Indeed, recent research by the political scientist Lindsey O’Rourke has revealed that during the Cold War, the US government tried to covertly overthrow foreign regimes sixty-four times, and in forty-four of these attempts it supported authoritarian forces.

It’s not an exaggeration to say that in the second half of the twentieth century, the United States organized its society and foreign affairs around its supposedly existential struggle with the Soviet Union. This is why, after the Eastern Bloc’s collapse in 1989-1991, a “Cold War nostalgia” gripped, and continues to grip, the American elite. At least with the Soviet Union, Americans knew where they stood.

When the Soviet Union disintegrated, the American Empire was left without a raison d'être. In the interregnum of the 1990s, the nation’s elites endeavored to answer a fundamental question: what does an empire without an enemy look like? (As this suggests, few concluded that the United States should, say, abandon its foreign military bases and reduce its military budget.) The answer most people settled on was that the United States should become the “world’s policeman,” the “indispensable nation” that used its overwhelming power to “protect” foreign populations whenever they were threatened (or at least, whenever they were threatened by a country not allied to the United States). Thus the nation intervened in Bosnia and Kosovo. But the dramas of the 1990s couldn’t compare to the dramas of the Cold War, when a clear and present danger hovered over American civilization.

9/11 was a godsend for an increasingly adrift American Empire. The emergence of a “radical Islamic threat” allowed American foreign policymakers to return to the Schmittian logic that had triumphed during the Cold War: similar to the evil Soviets, elites argued, evil “jihadists” promoted a totalizing ideology and wanted to dominate the entire globe. The United States we live in today, with its domestic surveillance, its permanent mobilization, and its endless wars, is the natural outcome of a way of thinking that divides geopolitics into good versus evil.

Though anxieties about Islam permeated US culture in the 2000s, by the 2010s it became clear that this most recent threat du jour didn’t have the staying power of the Soviet Union—the “jihadists” just weren’t powerful enough to truly threaten the United States. It’s partially for this reason that we’re now witnessing attempts to stoke a “New Cold War” with China, which, if initiated, would provide the foreign policy establishment with the logic it needs to justify the ever-increasing expenditures that undergird the American Empire.

Since it began in the mid-twentieth century, champions of the US empire have defended its existence by referencing a series of enemies whose supposed power made it necessary for Americans to dominate the world. As such, one of the most important projects to which leftists can dedicate themselves in 2020 and beyond is threat deflation—persuading their fellow citizens that we’re actually extremely safe and have nothing to fear from terrorists, or Russia, or China, or whomever the next enemy is. While this won’t be enough to end US imperialism, it’s a crucial first step in building the public consensus necessary to begin drawing down the American Empire. Indeed, it’s especially important to move beyond a Schmittian framework given that the United States needs to cooperate with Russia and China to solve global problems like climate change, inequality, and—as is particularly apparent at the moment—pandemics.

Americans act like it’s always the 1930s, a decade in which there were clear good guys and bad guys. Today, we must recognize that it’s almost never the thirties—the future of humanity might very well depend on it.

## Warming Review CP

#### The United States federal government should

#### -submit a proposal limiting the defense pact activation with the Republic of Korea by excluding a Chinese-led weapons of mass destruction control, defeat, disable, and dispose mission in the Democratic People’s Republic of Korea as a justification for Article III activation to a new climate review process for review

#### -implement the result of review

#### Key to prevent foreign policy failure and solves warming

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In the U.S. Democratic Party, perhaps no issue has risen more in prominence during this election year compared with prior ones than climate change. The number of self-identified Democrats who consider it a “major threat” is up from 6 in 10 in 2013 to almost 9 in 10 today. A slew of proposals—from the Green New Deal embraced by many progressive environmental groups to a new 538-page climate plan released by Democratic members of a special committee on the climate crisis in the U.S. House of Representatives—lay out various policies. Yet while these plans offer much to celebrate, all of them fall short by focusing on domestic actions while paying scant attention to the global nature of the crisis. Every ton of carbon dioxide contributes to climate change no matter where it is emitted, so an ambitious climate strategy cannot only be domestic—it must put the issue squarely at the center of U.S. foreign policy. Past U.S. efforts to advance global action, such as Washington’s leadership to help secure the 2015 Paris climate agreement, have been key to progress. Yet given both the urgency and global nature of climate change, the issue cannot be siloed into U.S. State Department or Energy Department offices and spheres of diplomacy. Many aspects of U.S. foreign policy will impact, and be impacted by, climate change. An effective foreign policy requires taking climate change directly into consideration—not just as a problem to resolve, but as an issue that can affect the success and failure of strategies in areas as varied as counterterrorism, migration, international economics, and maritime security. Human rights offers some important lessons. In the wake of the Vietnam War and the United States’ secret bombings of Cambodia, public concern for human rights was on the rise. Upon taking office in 1977, President Jimmy Carter declared human rights to be a “central concern” of U.S. foreign policy. In contrast to the realpolitik promoted by outgoing Secretary of State Henry Kissinger, Carter argued that protecting human rights would advance U.S. interests and was too important to be divorced from other aspects of U.S. foreign policy. Rather, human rights must be “woven into the fabric of our foreign policy,” as then Deputy Secretary of State Warren Christopher testified before a Senate subcommittee. Despite Carter’s mixed foreign-policy success, climate change demands a similar centrality. As the defining challenge of our time, climate change must be elevated to a foreign-policy priority and cannot be addressed with a compartmentalized approach. It is necessary, of course, to rejoin the Paris agreement, contribute to international finance efforts such as the Green Climate Fund, curb multilateral coal financing, and collaborate with other countries on clean-energy innovation. Yet all these efforts add up to an international climate strategy, not a climate-centered foreign policy. Truly making climate change a pillar of a foreign-policy strategy would have five key elements. First, the biggest shift from the current U.S. approach would be to take climate change considerations into the mainstream of all national-security and foreign-policy decision-making. If a meeting in the White House Situation Room is not squarely focused on a climate-related concern, it is unlikely any official in the room will bring that perspective to how the issue is discussed. Prioritizing climate change requires integrating its consideration into foreign-policy strategies broadly, just as issues ranging from counterterrorism to nonproliferation are treated today. For example, stability and security are central aims of U.S. foreign policy: They influence how the United States addresses conflict in the Middle East, counters Boko Haram, confronts China, and much more. Yet a strategy for stability in Iraq will not be effective unless it considers the impacts of water scarcity and heat waves on the Iraqi people or the loss of Iraq’s oil revenue as climate policy gradually erodes oil demand. Similarly, the United States’ efforts to counter terrorism in North Africa may prove fruitless unless officials also consider climate impacts on desertification that make local populations vulnerable to terrorists’ promises. A climate-centered foreign policy would also require that foreign-policy actors consider the consequences of their actions for climate change and determine whether less harmful approaches exist. For example, U.S. foreign policy has aimed for many years to rebuild Iraq’s struggling economy by helping the country to boost its oil output, and to address its chronic and politically destabilizing electricity shortages by increasing gas production as well. A climate-centered foreign policy would not only provide assistance to reduce flaring and use that gas within Iraq, but also explore opportunities to attract investment in renewable energy. Iraq’s neighbor Saudi Arabia just announced a $5 billion project to generate solar and wind energy to produce hydrogen. It is easy to say that climate change should be considered when making policy, but much harder to actually do so. As important as climate change is, there are many other urgent foreign-policy priorities, and in many cases there may not be a climate-friendly alternative approach. But foreign-policy makers won’t know whether the alternatives exist or not unless they ask the question. Domestic policymaking shows how it can be done: The National Environmental Policy Act requires that before major federal actions are taken, the relevant agency analyzes the effects on the environment and identifies reasonable alternatives that may mitigate those effects. A similar internal step in the foreign-policy making process—time permitting—would ensure that officials have full information about environmental consequences before they act. Several international financial institutions such as the World Bank have processes, albeit imperfect, to review the environmental impacts of their actions.

#### Warming causes extinction

David Spratt 19, Research Director for Breakthrough National Centre for Climate Restoration, Ian Dunlop, member of the Club of Rome, formerly an international oil, gas and coal industry executive, chairman of the Australian Coal Association, May 2019, “Existential climate-related security risk: A scenario approach,” https://docs.wixstatic.com/ugd/148cb0\_b2c0c79dc4344b279bcf2365336ff23b.pdf

An existential risk to civilisation is one posing permanent large negative consequences to humanity which may never be undone, either annihilating intelligent life or permanently and drastically curtailing its potential. With the commitments by nations to the 2015 Paris Agreement, the current path of warming is 3°C or more by 2100. But this figure does not include “long-term” carbon-cycle feedbacks, which are materially relevant now and in the near future due to the unprecedented rate at which human activity is perturbing the climate system. Taking these into account, the Paris path would lead to around 5°C of warming by 2100. Scientists warn that warming of 4°C is incompatible with an organised global community, is devastating to the majority of ecosystems, and has a high probability of not being stable. The World Bank says it may be “beyond adaptation”. But an existential threat may also exist for many peoples and regions at a significantly lower level of warming. In 2017, 3°C of warming was categorised as “catastrophic” with a warning that, on a path of unchecked emissions, low-probability, high-impact warming could be catastrophic by 2050. The Emeritus Director of the Potsdam Institute, Prof. Hans Joachim Schellnhuber, warns that “climate change is now reaching the end-game, where very soon humanity must choose between taking unprecedented action, or accepting that it has been left too late and bear the consequences.” He says that if we continue down the present path “there is a very big risk that we will just end our civilisation. The human species will survive somehow but we will destroy almost everything we have built up over the last two thousand years.”11 Unfortunately, conventional risk and probability analysis becomes useless in these circumstances because it excludes the full implications of outlier events and possibilities lurking at the fringes.12 Prudent risk-management means a tough, objective look at the real risks to which we are exposed, especially at those “fat-tail” events, which may have consequences that are damaging beyond quantification, and threaten the survival of human civilisation. Global warming projections display a “fat-tailed” distribution with a greater likelihood of warming that is well in excess of the average amount of warming predicted by climate models, and are of a higher probability than would be expected under typical statistical assumptions. More importantly, the risk lies disproportionately in the “fat-tail” outcomes, as illustrated in Figure 1.

## Courts CP

#### TEXT: The United States federal courts ought rule that responding to defense pact activation with Korea as per a Chinese-led weapons of mass destruction control, defeat, disable, and dispose mission in the Democratic People’s Republic of Korea is an unconstitutional violation of Congressional war powers.

#### Judicial review solves alliance suits and causes follow-on---sets a broader precedent for Congressional war powers

Farrier 16 [Jasmine Farrier is an associate professor of political science at the University of Louisville, “The Contemporary Presidency: Judicial Restraint and the New War Powers,” *Presidential Studies Quarterly 46, no. 2 (June),* <https://louisville.edu/politicalscience/files/the-contemporary-presidency-judicial-restraint-and-the-new-war-powers>, y2k]

From the founding to 1950, war usually proceeded in constitutional order: congressional authorization followed by executive enforcement. Over that century and a half, federal judges adjudicated dozens of war-related disputes raised by private litigants that hinged on executive branch adherence to Congress’s prior legislative direction. Today, presidents of both parties order new offensive military actions abroad without explicit congressional consent before or even during the conflict. Although House and Senate majorities eventually support these actions one way or another (bills and/or appropriations), on 10 occasions, members of Congress (up to 110 at a time) challenged presidential wars in federal court. These unsuccessful lawsuits deserve new attention because they reflect a quiet, but steady, three-branch constitutional revolution on war that has taken place in the United States, under both parties’ watch and under a variety of foreign policy contexts. If all three branches now interpret congressional silence as consent, constitutional war processes have flipped, and the War Powers Resolution is a dead letter.

This article offers three arguments about these developments, using case law, institutional archives, and interviews with members of Congress and their attorneys.1 First, there is no constitutional reason for federal courts to demur on war powers suits filed by members of Congress, outside of decades of judge-made precedent. Federal judges and scholars are divided on whether courts *should* take these cases, not whether they *can*. Second, federal courts hold member–plaintiffs to a different standard than private interest litigants. Members of Congress must show supermajority disapproval of the president’s unilateral actions whereas private war litigation once hinged on prior simple majority authorization of the action. Third, the legal postures of all three branches reflect deeply ingrained institutional habits, not partisan differences. Unlike other public policy areas, presidential war is not ideologically divisive.

Reflecting this new normal, the United States has been engaged in a military campaign against the so-called Islamic State in Iraq and Syria (ISIS) since August 2014, with no Authorization for the Use of Military Force (AUMF). According to the Department of Defense, Operation Inherent Resolve has cost an average of $11 million per day for 450 days of operations, which destroyed or damaged over 16,000 targets.2 While calling for new AUMF in the State of the Union Address in January 2015, and sending a proposal to Congress earlier that year, President Barack Obama and his administration maintained that the necessary authorization is already in place through the 2001 and 2002 AUMFs (against al-Qaeda and Iraq, respectively; Weed 2015b). While ISIS-related terrorist attacks in France have fueled some bipartisan criticism of administration strategy, a new AUMF is unlikely (Carney 2015).

Despite repeated cries of “lawlessness” against the president on domestic policy actions, members of Congress have not pursued a lawsuit on the ISIS actions. Even if members did band together to file a suit that challenged the current ISIS campaign, it is unlikely to jump the formidable hurdles to member suits that federal courts have built over four decades. However, a House-sanctioned lawsuit against the Obama administration on enforcement of the Affordable Care Act (ACA) was recently granted standing to proceed on the merits regarding whether the administration spent money on ACA implementation that was not appropriated by Congress (see United States House of Representatives v. Burwell 2015). Regardless of the ultimate outcome, members can use this case to push the argument that federal courts are a legitimate alternate arena for interbranch disputes. Divided government, partisan gridlock, and a dysfunctional political culture may prevent Congress from using normal legislative processes to challenge presidential actions, but does that mean any president can operate unilaterally until disapproved?

Scholars have taken up different facets of this question since 9/11, with fresh assessments of the policy, partisan, and institutional contours of a new “imperial presidency” (Rudalevige 2006). We are also reminded that congressional war powers are enumerated in the Constitution and the framers’ intentions for prior congressional authorization are clear, except in cases of emergency defensive actions (Edelson and Starr-Deeken 2015; Fisher 2013). Yet, the Bush and Obama presidencies defend versions of a “unitary executive theory” of war that largely rejects outside institutional meddling (Posner and Vermeule 2011; Yoo 2010), provoking repeated criticism (Edelson 2013b; Kassop 2003; Pfiffner 2008; Pious 2006). The contemporary House and Senate are also getting renewed attention, with some studies highlighting their formal and informal influence prior to presidential war decisions (Howell and Pevehouse 2007; Kriner 2014) and afterward in the oversight process (Kriner 2010). But these studies do not extinguish long-held accusations of congressional abdication (Fisher 2000b). Congress also shows bursts of short-lived ambition as it pivots from delegation of power to regret and criticism of the use of delegated power (and then delegates again) in domestic and foreign policy (Farrier 2004, 2010).

Federal courts are not a panacea to this state of affairs, but a combination of aggressive presidents, ambivalent congresses, and disinterested justices have clearly upended the Madisonian constitutional system. Unlike civil rights, civil liberties, and economic federalism, federal courts are inconsistent in their interest and more ideologically mixed in separation of powers cases. However, there was once a vibrant debate within the law and courts literature regarding whether or not the federal courts (and especially the Supreme Court) should apply their vast constitutional authority to foreign policy conflicts. Advocates of judicial restraint argued that federal courts should preserve legitimacy and institutional capital by eschewing certain types of cases (Bickel 1986). Avoiding separation of powers (and many federalism claims) would allow the courts to concentrate on protecting individual liberties and small group rights because they are structured in part to attend to these claims (Choper 1980, 2005). On legislative processes, however, courts are ill equipped to police interbranch balance, especially when Congress chooses not to defend itself (Devins and Fisher 2015). Other scholars argue that federal courts could provide a deterrent to unilateral presidential war and/or put pressure on Congress to act. While it is not ideal to “settle” war powers conflicts in court, there is no reason for presidential actions to be off the table automatically (Glennon 1990; Keynes 1982; Redish 1985). Far from deciding to go to war, Ely argued courts “have every business insisting that the officials the Constitution entrusts with that decision be the ones who make it” (1993, 54).

Rather than advocating for judicial supremacy, this article argues that federal courts can jumpstart or reframe constitutional dialogues on war, just by accepting a member lawsuit on the merits and focusing on the origins of presidential authority for the action rather than legislative disapproval after it is already in progress. Rather than being the “final word,” federal courts inspire broader conversations and direct legislative responses (Burgess 1992; Devins and Fisher 2015; Tushnet 1999). For example, a federal court can declare a nonemergency, offensive war action unconstitutional pending legislative authorization. While a formal withdrawal order would be unlikely from the court, and unwelcome by many, Congress could be granted a “reasonable time to consider the issue” (Ely 1993, 54). Presidents would then risk a legal and political rebuke when assuming prior authorization is optional, not required. Congress would be forced to make a decision one way or another, and their deliberations would be on the record. While this idea seems fanciful, Supreme Court scrutiny of presidential war powers was once fairly routine.

Three Branch Constitutional Flip from the Quasi War to Vietnam

A systemic shift on constitutional war processes took place across all three branches in the second half of the twentieth century. Before that time, presidents did not advocate unilateral war outside of defensive and emergency situations (Edelson 2013a). Congress was also protective of its war prerogatives, and federal courts scrutinized presidential military orders for evidence of prior authorization, when cases arose from private interest injury claims (Fisher 2005; Silverstein 1997). The sea change in constitutional processes reflects institutional landmarks stretching over two decades. President Truman’s initiation of the Korean War under UN authority in 1950, Congress’s passage of the broad delegation of the Gulf of Tonkin Resolution in 1964, and the Supreme Court’s handling of Vietnam-era member lawsuits.

Early Judicial Interest in War

From the plain language of the Constitution’s text, war is a three-branch power. Congress receives the power to declare war in Article I, Section 8, Clause 11. In Article II, Section 2, the “President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States” (emphasis added). Article III, Section 2 says “judicial power shall extend to all cases ... arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.” These clauses were interpreted early on by government officials present at the ratification. The Supreme Court decided the first of three “Quasi War” case in 1800, predating Marbury v. Madison by three years (and never overturned, see Adler 2000, 159). From these cases through the rest of the nineteenth century, the Court not only ruled for legislative primacy in war, as noted in the first chapter epigraph, but also for the Court’s power to review presidential action.

In the Quasi cases, all filed by private litigants, the Supreme Court had to decide whether France was an “enemy” of the United States and, in effect, whether the country was at war. The ambiguities stemmed from the fact that Congress had passed laws authorizing limited military activity by the executive branch, but did not declare war against France formally. Justice Salmon Chase explained that “perfect” (declared by Congress) and “imperfect” (authorized by Congress) military actions were still wars for the purposes of the private compensation at issue in the case (Bas v. Tingy 1800, 37, 40-41).

Another Quasi War case decision, written by Chief Justice John Marshall, said even more explicitly that to understand the state of affairs with another nation, one has to look at legislative actions. “The whole powers of war being by the Constitution of the United States vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry” (Talbot v. Seeman 1801, 28). In the final Quasi case, Chief Justice Marshall ruled against the president’s orders during, not after, the military action, saying his “instructions cannot change the nature of the transaction, or legalize an act which without those instructions would have been a plain trespass” (Little v. Barreme 1804, 170, 179).

Through the rest of the century, including the War of 1812, Mexican–American War, Civil War, and the Spanish American War, additional Supreme Court rulings addressed the authorization for individual actions against foreign governments, habeas corpus petitions, property disputes; and much more. In these cases, federal court decisions repeatedly endorsed a Congress-centered foreign policy by focusing on laws (or lack thereof) to determine the outcome. Landmark twentieth-century war-related cases still hinged on tracing some congressional authorization of the action, even if the president’s actions were sustained (Korematsu v. United States 1944; United States v. Curtiss-Wright Export Company 1936). Also through judicial scrutiny of Congress’s wishes, Youngstown Sheet & Tube Co. v. Sawyer (1952) denied President Truman the right to order his commerce secretary to seize domestic steel mills to avert labor strife that he argued would undermine U.S. war efforts during the Korean conflict. The often-cited concurring opinion by Justice Robert Jackson said the president has greatest power when he is given explicit authority to act (Youngstown Sheet and Tube Co., v. Sawyer, 1952, 637, Jackson, J., concurring).

Beginning around this time, however, three additional events shifted constitutional assumptions away from Justice Jackson’s statement. First, the Korean War was launched in 1950. It was the first truly presidential war because President Truman executed a UN resolution to delegitimize and repel Communist forces in the Korean peninsula without explicit congressional authorization (see Fisher 1995; Keynes 1982). A decade later, the Supreme Court issued the landmark case on the “political question doctrine” (Baker v. Carr 1962), which said the court should avoid certain kinds of cases because they are committed by the Constitution, or better suited to, the other branches. (As noted in the epigraph, foreign policy was not yet cordoned off as a political question.) Then, in 1964, President Lyndon Johnson received broad authorization to escalate U.S. commitments in Vietnam. President Richard Nixon’s expansion of the inherited conflict brought the first member lawsuits and a judicial pivot toward restraint.

Judicial Division and Rebuff on First Member War Cases

The Tonkin Gulf Resolution passed unanimously in the House of Representatives, and only two senators voted against it. It said “Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repeal any armed attack against the forces of the United States and to prevent any further aggression.”3 Johnson’s escalation of the war through this broad guideline prompted a national popular antiwar movement and congressional backlash, leading to his decision not to seek the Democratic nomination in 1968. Richard Nixon inherited the 1964 authority when he took office in 1969 and within a year expanded U.S. military action into Cambodia and Laos. Congress passed the “Fulbright Proviso” in 1970, saying any action in these countries must be limited to assisting the withdrawal of U.S. troops. Congress repealed the Tonkin Gulf Resolution in 1971. The two branches tangled over the contours of the Cambodia operations in particular for the next three years, with Nixon’s arguing that his administration could not be micromanaged by Congress.

Nixon’s actions also inspired 70 federal lawsuits, filed by novel types of litigants including soldiers, their families, citizens, taxpayers, and even a state (Massachusetts). The named defendants in these suits were executive branch department heads or Nixon himself. At all three levels (district, appeals, and Supreme), federal judges seemed to wrestle openly with how and whether to take these unconventional kinds of cases. In the member suits, federal courts were divided, but ultimately opted to burden Congress, not the president. The House and Senate had not exhausted all modes of disapproval of Nixon’s expansion of the war through other constitutional weapons, including overturning presidential vetoes and even impeachment.

Mitchell v. Laird (1973). This case was the first Congress-member lawsuit in U.S. history. It was filed by Representative Parren Mitchell (D-MD) and 12 other members of the House in 1971 against the president, secretaries of state, defense, and the three branches of the military. The plaintiffs alleged that the United States had been engaged in new expansions of the war for seven years (since the 1964 Resolution) without obtaining “either a declaration of war or an explicit, intentional and discrete authorization of war,” which had the effect of “unlawfully impair[ing] and defeat[ing] plaintiffs’ Constitutional right, as members of the Congress of the United States, to decide whether the United States should fight a war.” The first demand of the lawsuit was a judicial order to stop the executive branch from prosecuting the current military campaigns unless, within 60 days, Congress “explicitly, intentionally and discretely authorized a continuation of the war.” The second demand was for “a declaratory judgment that defendants are carrying on a war in violation of Article I, section 8, clause 11 of the United States Constitution.” A district court dismissed the case on standing (Mitchell v. Laird 1973, 613).

The court of appeals examined several issues, some not raised in the first round, then agreed to dismiss the case. In the opinion, Judge Charles Wyzanski and David Bazelon (appointed by Franklin Roosevelt and Harry Truman, respectively) acknowledged that the three-judge panel came to the dismissal through different jurisprudential paths. The case was ripe, not moot, and standing was approved. The political question doctrine was the fundamental barrier. In 1973, the Vietnam and Laos parts of the conflict were winding down or ended, but the Cambodia involvement was still ongoing. The panel conceded that the Vietnam War was a war in the Article 1 sense and that Congress had not authorized all the president’s actions. Therefore, President Nixon’s only duty was to end the military operations. The nonjusticiable political question was the factual determination of how and whether he was winding it down, or not.

If not, the judges cited a variety of other paths afforded to plaintiffs, including legislation, veto overrides, and pursuit of impeachment and conviction. The judges acknowledged that prior authorization was lacking (noted in the third epigraph), and that appropriations and even conscription bills were incomplete expressions of congressional policy preferences. “This court cannot be unmindful of what every schoolboy knows: that in voting to appropriate money or to draft men a congressman is not necessarily approving of the continuation of a war no matter how specifically the appropriation or draft act refers to that war” (Mitchell v. Laird 1973, 616). The logic of this argument is that while congressional majorities had not explicitly authorized the Cambodia campaign, nor had they used all the supermajority powers at their disposal to stop it. According to an attorney involved in the case, while the judges appeared sincerely torn by the war’s questionable authorization and outcome, there was no interest in taking any responsibility for the next steps of policy or directly challenging President Nixon.4

Holtzman v. Richardson/Schlesinger (1973). The continued impasse on Cambodia directly inspired two related lawsuits filed by House member Elizabeth Holtzman (D-NY) and nine Air Force personnel against both of Nixon’s secretaries of defense in 1973 (Schlesinger replaced Richardson when the latter was appointed attorney general that same year). At the time of the first filing in April, a cease-fire was in effect in Vietnam, and all American prisoners of war had been returned; still, no explicit congressional authorization existed for the ongoing bombing of Cambodia. In response to the lawsuit, according to a statement of facts in the first [Richardson] case, “the Executive has informed Congress that it is prepared to continue its military activities whether or not the Congress appropriates funds for the Cambodian combat operations” (Holtzman v. Richardson 1973, 547). Congress nevertheless tried to stop the bombings via an appropriations bill rider, President Nixon vetoed the bill, and the House did not have enough votes to override.5 Nixon signed a compromise bill that mandated the bombings stop August 15.

As this legislative conflict played out, district Judge Orrin Judd (nominated by President Johnson) broke with the Mitchell ruling and confirmed that Holtzman “has raised a serious constitutional question dealing with the war-making power of Congress enumerated in Article I, § 8 of the Constitution ... The power to wage war is a controversy arising under the Constitution and therefore within the jurisdiction of this court.” Rejecting the political question doctrine and other justiciability objections by the government, Judge Judd said the constitutional question was not hypothetical or abstract in this suit and that Holtzman had standing (Holtzman v. Richardson 1973, 549). In July, after the case’s name had been switched to Schlesinger (new secretary of defense), Judd ruled again for Holtzman, providing both declaratory and injunctive relief. The judgment declared that “there is no existing Congressional authority to order military forces into combat in Cambodia or to release bombs over Cambodia, and that military activities in Cambodia by American armed forces are unauthorized and unlawful” and restrained defendants and their staff from “participating in any way in military activities in or over Cambodia or releasing any bombs which may fall [there]” (Holtzman v. Schlesinger 1973, 553).

The order was stayed until the end of July as the legislative conflicts continued. However, Judge Judd acknowledged that the barrier to congressional control of the war was its

lack of two-thirds to override Nixon’s veto. Simple majorities were already on the record. It cannot be the rule that the President needs a vote of only one-third plus one of either House in order to conduct a war, but this would be the consequence of holding that Congress must override a Presidential veto in order to terminate hostilities which it has not authorized ... In order to avoid a constitutional crisis that would have resulted in a temporary shutdown of vital federal activities...Congress agreed to hold off any action affirmatively cutting off funds for military purposes until August 15, 1973. (Holtzman v. Schlesinger 1973, 565)

Between the district and appeals court rulings, the Supreme Court became involved through applications to vacate the stay issued by Judge Judd. In the first round, Justice Thurgood Marshall (in his circuit justice capacity) denied the plaintiff’s application to vacate. Although he strongly hinted at his policy agreement with Congresswoman Holtzman, Marshall said he needed to reflect the votes of the rest of the court when acting in his circuit capacity. He said, “if the decision were mine alone, I might well conclude on the merits that continued American military operations in Cambodia are unconstitutional.... When the final history of the Cambodian war is written, it is unlikely to make pleasant reading. The decision to send American troops [to Southeast Asia] ... may ultimately be adjudged to have been not only unwise, but also unlawful” (Holtzman v. Schlesinger 1973, 1312-13). Justice Douglas filed a dissent on the procedural issue regarding vacating the stay and disagreed with Marshall’s premise that the court had no place in weighing in on what Douglas viewed as an equivalent of a capital punishment case. “It has become popular to think the President has that power to declare war. But there is not a word in the Constitution that grants that power to him. It runs only to Congress ... But even if the ‘war’ in Vietnam were assumed to be a constitutional one, the Cambodian bombing is quite a different affair” (Holtzman v. Schlesinger 1973, 1319-20).

The appellate court heard the case on August 8. Judge Judd’s district court opinion was overturned 2-1 by the DC Circuit (all three were Nixon appointees). The majority cited the August 15 cutoff date as an indication that all actions up to that point were authorized and invoked the political question doctrine. The dissent said military capacity and authority are separate (Holtzman v. Schlesinger 1973, 1308-10). The case had two long-term legacies. First, the political question doctrine was applied to war in two back-to-back cases, building a powerful set of precedents against future lawsuits. Second, the case litigants connected undeliberated war expansion with failed policy that destabilized Cambodia for decades.6

Member Litigation after the War Powers Resolution

At the same time as the Mitchell and Holtzman cases went through the federal system, Congress debated and passed the War Powers Resolution (WPR) of 1973. Its intention was to force interbranch collaboration before and during new military operations abroad. Yet almost every president since its passage has explicitly denied, or implicitly tested, the WPR’s constitutionality, beginning with President Nixon’s veto.7 Presidents have since reported 160 actions as “consistent” with the WPR requirements (Weed 2015a). Eight lawsuits filed by members of Congress accused presidents of not complying with the WPR and other legal and constitutional requirements for offensive actions, including Ronald Reagan (interventions in El Salvador, Nicaragua, Grenada, and IranIraq war), George H. W. Bush (first Persian Gulf War), Bill Clinton (Kosovo), George W. Bush (Iraq), and Barack Obama (Libya) (Garcia 2012).

While its purpose is clear in its preamble, rebalancing congressional–presidential power over war decisions, the WPR included loopholes and internal contradictions that did little to help restrain presidents or embolden Congresses.8 Section 2(c) appears to provide clear, limited parameters for new military action, saying the president, as commander in chief, can introduce U.S. armed forces into situations of hostilities or imminent hostilities “only pursuant to—(1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.”9

But these presidential restrictions are undermined by sections 3 and 4. In section 3, presidents are required to consult with Congress “in every possible instance” before introducing U.S. forces (of any military branch) into “hostilities or ... situations where imminent involvement in hostilities is clearly indicated by the circumstances.” In section 4 (a)(1), regardless of the extent of consultation, the president must report to Congress within 48 hours of the start of a military action if a declaration of war or other legislative authorization had not been passed by both chambers. In section 5(b), if Congress did not vote to approve the action, before or after forces were committed, they would be withdrawn by the president within 60 days, which could be extended to 90 days for special military circumstances. However, section 5(c) says Congress can also vote to remove forces by concurrent resolution at any time, which would not be subject to a presidential veto. Sections 6 and 7 lay out the expedited legislative procedures to prioritize congressional authorization related to the reported conflict, or a withdrawal resolution. Section 8 says that authorization for military force cannot be construed from appropriations bills or treaties, unless accompanied by a separate authorization. Hinting at future litigation, a “separability” clause in section 9 says if any part “is held invalid” then the rest still stands.10

Influencing later WPR cases, two separate member lawsuits challenged President Jimmy Carter’s unilateral changes to the Panama Canal and Taiwan treaties. In the Taiwan case, Senator Barry Goldwater (R-AZ) and others said the Senate must consent to the action of undoing a treaty, just as the Constitution requires two-thirds of the body to ratify it. Writing for a divided court, the majority contrasted the case with Youngstown, saying in that case “private litigants brought a suit contesting the President’s authority under his war powers to seize the Nation’s steel industry, an action of profound and demonstrable domestic impact. Here, by contrast, we are asked to settle a dispute between coequal branches of our Government, each of which has resources available to protect and assert its interests, resources not available to private litigants outside the judicial forum” (Goldwater v. Carter 1979, 1004, Rehnquist, J. concurring). Both treaty cases placed the burdens on the House and Senate to demonstrate a genuine interbranch impasse, which can only occur if Congress passes formal legislation (Fisher 2014, 284-88).

Member Litigation against Presidents Reagan and Bush I

All post-WPR litigation built on the Mitchell and Holtzman precedents. First, the cases are dismissed on a variety of justiciability grounds; judges did not rule directly on the legitimacy and application of the WPR. Second, unlike private litigation prior to Vietnam, most judges do not trace presidential action to prior congressional authorization, nor compel reporting under the WPR, but rather reverse the burden to inquire whether there is supermajority disapproval of action in progress. Third, while there is ample evidence of partisanship in the lineup of member–plaintiffs against opposition party presidents, there is no ideological distinction in the constitutional claims made by Democrats and Republicans in either branch. Congress members of both parties assert the same constitutional points, as do presidents of both parties. Judges appointed presidents of both parties are largely dismissive of the cases. Crockett v. Reagan (1982-83). During a brewing civil war that was destabilizing El Salvador, President Jimmy Carter tried to shore up support for its military government through various forms of assistance beginning in 1979. Although called “non-lethal” aid, the United States sent equipment such as “tear gas grenades, grenade launchers, night vision instruments, image intensifiers, and other riot control and counterinsurgency equipment” (Harris and Espinosa 1981, 297). An attack on American nuns by a death squad linked to the rightist faction of the junta in December 1980 led Carter to suspend some of the aid pending an investigation. Then, in February and March 1981, newly elected President Ronald Reagan sent 35 military advisors to assist the Salvadoran government, in addition to maintaining the 19 dispatched by President Carter. President Reagan’s interest in expanding U.S. influence in El Salvador reflected a hemispheric cold war strategy. The new decretary of dtate, Alexander Haig, argued that U.S. interests required supporting the right-wing junta to head off a new Latin America “domino” effect of Communist influence emanating from Cuba (LeoGrande 1981).

While the legislative–executive wrangling went on for three more years over El Salvador, Crockett v. Reagan was filed early on by opponents in Congress. The lawsuit was the first one to allege violations of the WPR when it was filed in 1981 by 29 House members (all Democrats) who protested the lack of a formal WPR report, among other claims. In a one-of-a-kind response by the president’s supporters in Congress, the lawsuit prompted the same number of Republicans (13 senators and 16 Congress memebers including one southern conservative Democrat) to file an amicus curiae brief against their colleagues, claiming the original group was going to court too hastily. The allegations by Representative George W. Crockett (D-MI) et al. against the administration included violations of the Constitution, the WPR, and a legislative ban on foreign aid and military assistance to any regime alleged to have engaged in extensive human rights abuses. The defendants (President Reagan, Secretary of Defense Caspar Weinberger, and Secretary of State Alexander Haig) argued that the plaintiffs lacked standing, and assistance had been authorized by an act of Congress in 1981. While not conceding the constitutionality of the WPR, the administration said there were no “hostilities.”

Federal District Judge Joyce Hens Green (nominated by President Carter) dismissed the case, saying federal courts were not institutionally equipped or situated to define the nature of the El Salvador operation. In an interview, a House coplaintiff who had also voted in favor of the WPR in 1973 vehemently disagreed with Judge Green’s claim that fact finding on war was not possible for a judge. The member had visited El Salvador during the early 1980s and said “it looked like a war to us.” The member added that judges routinely engage in other types of fact finding.11 Judge Green instead dismissed the lawsuit on political question grounds. First, citing Baker v. Carr, Mitchell v. Laird, and Holtzman v. Schlesinger, she said the courts could not assess the facts of the case on which the two sides disagreed: were there “hostilities” in El Salvador or not? Second, Judge Green cited Goldwater v. Carter in her argument that a “constitutional impasse appropriate for judicial resolution would be presented” only if the president ignored a resolution requiring a report per WPR section 5(b) or withdrawal of the advisers. “[T]he nature of the fact finding in these circumstances precludes judicial inquiry,” but she allowed that the WPR was still open for future justiciability (Crockett v. Reagan 1982, 897-98). An appeals court affirmed, saying members lack standing without a clear “nullification or diminution of a congressman’s vote” shown by bill passage (Crockett v. Reagan 1983, 1357, Bork, J. concurring). Defendants prevailed with another pro-presidential precedent.

Sanchez-Espinoza v. Reagan (1983-85). In 1979, the Sandinistas, a left-wing guerrilla group, overthrew the Somoza family dictatorship that had ruled Nicaragua since the 1930s. In President Reagan’s first term, he issued national security findings and directives to create the “Contras,” a counterrevolutionary force. After Congress appropriated money to support the Contras in 1981, the first “Boland Amendment” passed in 1982 (named for Representative Edward P. Boland, D-MA), banning the executive branch from spending any money “for the purpose of overthrowing the government of Nicaragua.”12 Leaked classified memos proved the Reagan administration was not adhering to Boland. In 1983, the House voted to cut off all Contra aid, but a Senate-based compromise allowed $24 million, a fraction of the administration’s request. Ultimately, two more restrictive amendments passed the House and Senate in the first term. Sanchez-Espinoza v. Reagan was filed in 1983 and focused on adherence to the first Boland. Twelve members of the House of Representatives (all Democrats) joined over a dozen private citizens of Nicaragua (who alleged damages due to actions of the U.S.- supported Contra rebels) and Florida (who alleged damages due to paramilitary training operations). The suit was filed to protest U.S. paramilitary operations that the plaintiffs alleged violated various neutrality laws, the National Security Act of 1947, the Boland Amendment, WPR, and the Constitution (Michaels 1987). The plaintiffs said that the judiciary is needed to control executive abuses of power in this case “because Congress has done all it can, namely, pass legislation.” District court judge Howard Corcoran (nominated by President Lyndon Johnson) dismissed the case as a political question. He said “a court must take special care, when confronted with a challenge to the validity of U.S. foreign policy initiatives, to give appropriate deference to the decisions of the political branches, who are constitutionally empowered to conduct foreign relations” (Sanchez-Espinoza v. Reagan 1983, 599-600). Judge Corcoran cited Baker v. Carr, the Vietnam-era cases, as well as the recent Crockett precedent. He also echoed Judge Green, saying the case required fact finding that is beyond the court’s competence.

Were this Court to decide ... that President Reagan either is mistaken, or is shielding the truth, one or both of the coordinate branches would be justifiably offended ... and there is a real danger of embarrassment from multifarious pronouncements by various departments on one question ... Such an occurrence would, undoubtedly, rattle the delicate diplomatic balance that is required in the foreign affairs arena ... It is, therefore, prudent for us to decline to adjudicate plaintiffs’ claims at this time. (Sanchez-Espinoza v. Reagan 1983, 599) The appeals court affirmed Judge Corcoran’s decision unanimously. Future Supreme Court Justice Antonin Scalia (a Reagan appointee) delivered the opinion, citing mootness because the appropriations rider at issue in this lawsuit (Boland I) expired in 1983.

The congressional appellants also allege that assistance to the Contras is tantamount to waging war, so that they ‘have been deprived of their right to participate in the decision to declare war’ in violation of the war powers clause of the Constitution, art. I, § 8, cl. 11 ... Dismissal of this claim is required by our decision in Crockett v. Reagan, which upheld dismissal of a similar claim by twenty-nine members of Congress relating to alleged military activity in El Salvador on the ground that the war powers issue presented a nonjusticiable political question. (Sanchez-Espinoza v. Reagan 1985, 210) Another future justice, Ruth Bader Ginsburg (a Carter appointee), filed a concurrence on ripeness grounds, blaming Congress for ambiguities on U.S. support for the Contras. Ginsburg also cited Goldwater v. Carter, saying Congress had not thrown down the “gauntlet” by using its own tools, which are more powerful than the federal court (Sanchez-Espinoza v. Reagan 1985, 211).

Conyers v. Reagan (1984). October 1983 was an active month for U.S. military engagement. On October 12, 1983, President Reagan signed a congressional resolution that spelled out an 18-month continuation of U.S. troop presence in Lebanon, ending an interbranch dispute about Congress’s role in the deployment. Upon signing, Reagan said it “was not to be used as any acknowledgement that the President’s constitutional authority can be impermissibly infringed by statute” (Rubner 1985, 629). The next day, Maurice Bishop, the left-leaning prime minister of Grenada who had seized power in 1979, was arrested by members of his own militia. Bishop was temporarily freed by supporters on October 18 but was assassinated later that day. Bishop was replaced by what Reagan described as a more staunchly pro-Cuban junta. President Reagan decided to invade Grenada on October 24 and then announced it the next day, citing the presence of around 1,000 U.S. medical students on the island.

Reagan sent a written report of the invasion to the speaker of the House, Thomas P. O’Neill (D-MA), and the president pro tempore of the Senate, Strom Thurmond (R-SC), on October 25. The president said the letter was “consistent with” the WPR. He did not mention that troops were going into “hostilities,” which would trigger the WPR clock. The House and Senate moved swiftly to approve resolutions to hold the Grenada operations to a 60-day timetable.13 Around the same time, Representative John Conyers (DMI) was the lead plaintiff in a lawsuit filed against the president that challenged his authority to invade Grenada in the first place without congressional authorization. Ten other House Democrats signed onto the suit, most of whom had joined in previous suits, including Parren Mitchell (D-MD).

District judge Joyce Hens Green dismissed the suit, citing the member war suit precedents (two before and two after the WPR), including her own Crockett decision. She also utilized the novel equitable discretion doctrine theory that said courts should be leery of accepting cases from plaintiffs (especially members of Congress) who have other methods of resolving their disputes (see McGowan 1981).

If plaintiffs are successful in persuading their colleagues about the wrongfulness of the President’s actions, they will be provided the remedy they presently seek from this Court. If plaintiffs are unsuccessful in their efforts, it would be unwise for this Court to scrutinize that determination and interfere with the operations of the Congress ... the Court must withhold jurisdiction of this matter and exercise judicial restraint. (Conyers v. Reagan 1984, 327)

By the time the case reached the Appeals Court in 1985, the final noncombat troops were slated to leave Granada. The appeal was dismissed for mootness unanimously by the three judges, Tamm, Wald, and Bork (nominated by Presidents Johnson, Carter, and Reagan, respectively). The issue of whether the WPR clock was triggered by “hostilities” was not resolved. In the mission, 18 U.S. soldiers were killed and 116 were wounded, 24 Cuban soldiers were killed and 59 wounded, and Grenadian casualties included 45 killed and 337 wounded (Rubner 1985, 628). The final suit against President Reagan pivoted away from Central American to the Persian Gulf.

Lowry v. Reagan (1987). Beginning in 1986, during the Iran–Iraq War, Iranian military vessels around the Persian Gulf threatened Kuwaiti oil tankers. Kuwait reached out to both the Soviet Union and the United States for protection. Upon hearing that Kuwaitis requested that the United States reflag six vessels and the Soviet Union five, the Reagan administration offered to reflag all eleven tankers (Ciarrocchi 1987, 7). In 1987, 37 U.S. sailors were killed by a missile attack on the USS Stark in the Persian Gulf by Iraq. In response, the administration augmented a single aircraft carrier with 11 warships, six minesweepers, and over a dozen small patrol boats. Secretary of State George P. Shultz submitted a letter on the buildup to Speaker of the House Jim Wright (D-TX) but did not mention the WPR or clock. The administration did not file formal reports after two U.S. ships struck mines in summer 1987, nor when a U.S. fighter plane shot missiles at an Iranian aircraft the U.S. crew perceived as threatening.14 During this time, military personnel were also receiving “danger pay,” reflecting potential “hostilities” (Grimmett 2012, 16-17).

Alleging the presence of “hostilities” and “imminent hostilities,” 110 Democratic House plaintiffs filed a federal suit to demand a formal WPR report. In the district court’s dismissal of the case, Lowry v. Reagan, the judge said a “profusion of relevant congressional activity” in response to the president’s actions in the Persian Gulf was evidence that this was a matter for the two branches to work out among themselves. The litigants had in fact worried that legislative activity would shift the judicial spotlight from Reagan’s actions to Congress.15 Judge George H. Revercomb (nominated to the federal bench by Ronald Reagan) delivered the opinion, citing the equitable discretion and political question doctrines in this particular case.

This Court declines to ... impose a consensus on Congress. Congress is free to adopt a variety of positions on the War Powers Resolution, depending on its ability to achieve a political consensus. If the Court were to intervene in this political process, it would be acting ‘beyond the limits inherent in the constitutional scheme ...’ Judicial review of the constitutionality of the War Powers Resolution is not, however, precluded by this decision. A true confrontation between the Executive and a unified Congress, as evidenced by its passage of legislation to enforce the Resolution, would pose a question ripe for judicial review. (Lowry v. Reagan 1987, 337-339, 341)

On an expedited appeal, the panel affirmed as a political question (Lowry v. Reagan 1988).16 Yet, in an encouraging turn for member–litigants, this standard was rejected two years later.

Dellums v. Bush (1990). On August 2, 1990, Iraq invaded Kuwait. Within a week, the United Nations imposed economic sanctions against Iraq and, on August 25, the UN Security Council authorized “such measures as may be necessary” to cease and regulate cargo shipping to Iraq. On August 8, Bush announced the deployment of U.S. forces to Saudi Arabia in a live televised speech, saying he “shared [meaning communicated] the decision” with Congress. On August 17, 1990, Acting Secretary of State Robert M. Kimmitt sent a letter to Congress (not mentioning the WPR) saying “[i]t is not our intention or expectation that the use of force will be required to carry out these operations. However, if other means of enforcement fail, necessary and proportionate force will be employed to deny passage to ships that are in violation of... sanctions” (Grimmett 2012, 21). On November 8, 150,000 additional troops were sent to the Gulf. Bush sent a second report to Congress over a week later describing the continuing and increasing deployment of forces to the region but said hostilities were not imminent, in part due to the massive buildup. In this phase, called Operation Desert Shield, around 350,000 U.S. troops were eventually deployed.17

In response, 53 members of the House and one senator (all Democrats) filed an injunctive suit against the president to prevent his going to war against Iraq without explicit congressional consent. Dellums v. Bush was rejected for ripeness by district judge Harold Greene (a Carter appointee). Judge Greene said it is up to the other branches to parse the diplomatic and military meaning of “war,” but at a certain scale, the label clearly applies. Judge Greene explored the history of member litigation on war and concluded that political question, standing, and equitable discretion precedents did not apply here. The hurdle for the members was simply ripeness. Rejecting the administration’s argument, Greene implies that there is a door to future litigation if a president’s claim of unilateral authority is clearly out of line with the Constitution.

If the Executive had the sole power to determine that any particular offensive military operation, no matter how vast, does not constitute war-making but only an offensive military attack, the congressional power to declare war will be at the mercy of a semantic decision by the Executive. Such an ‘interpretation’ would evade the plain language of the Constitution, and it cannot stand ... here the forces involved are of such magnitude and significance as to present no serious claim that a war would not ensue if they became engaged in combat, and it is therefore clear that congressional approval is required if Congress desires to become involved. (Dellums v. Bush 1990, 1145)

The ripeness challenge came from the fact that U.S. troops had not yet engaged Iraq. Only around 10% of Congress’s membership signed onto the suit, implying that a majority-sanctioned suit might have a better chance at being heard on the merits (Dellums v. Bush 1990, 1151).18

Within a month of the federal opinion, on January 8, 1991, President Bush sent a request to the congressional leadership to pass legislation that supported military enforcement of UN Resolution 678, which called for member nations to use force to expel Iraq from Kuwait if it did not do so by January 15, 1991. The AUMF passed with party-line votes in the House (250-183) and Senate (52-47) and said explicitly that the legislation was complying with section 2 of the WPR. President Bush’s signing statement on January 14 said none of the debates, and even the resolution, was interpreted as threatening to his “constitutional authority to use the Armed Forces to defend vital U.S. interests or [acknowledging] the constitutionality of the War Powers Resolution.”19 Days later, Bush reported the beginning of combat operations “consistent with” the WPR (Grimmett 2012, 24).

Member Litigation after Raines v. Byrd

The landmark case on Congress members’ standing in court came in 1997. Senator Robert C. Byrd (D-WV) sued to prevent the Line Item Veto Act of 1996 from taking effect. Although the district court sided with Byrd on both justiciability and substance, the Supreme Court reversed on the former, saying members cannot claim an institutional injury stemming from a loss of political power (Raines v. Byrd 1997). The majority opinion, like the war powers precedents, emphasized that Congress has legislative options to recover power. However, the Court found the act unconstitutional the following year on presentment grounds once private interests claimed injury (Clinton v. City of New York, 1998; see also Farrier 2004, 2011).

Campbell v. Clinton (1999-2000). The Republican Congress granted President Clinton item veto power but did not explicitly authorize military action in Somalia, Iraq, Bosnia, and Haiti in his first term (Adler 2000). In Clinton’s second term, however, his military orders related to Kosovo inspired a congressional lawsuit in the final year of the administration. In 1998-99, a move for independence by ethnic Albanians in the Serbian province of Kosovo brought a new wave of conflict and, in 1999, a joint U.S./NATO (North Atlantic Treaty Organization) military response. The story of U.S. action in Kosovo is similar to previous cases discussed here, despite a partisan switch in both branches.

Judge Greene implied in Dellums that member–plaintiffs would have standing if they voted against a specific engagement abroad that proceeded anyway. That theory was tested in the spring of 1999. On March 24, the NATO air campaign began against targets in Serbia. Clinton announced the action in a national address and submitted a report two days later to Congress, saying it was “pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive” and the report was “consistent with the War Powers Resolution.” On April 7, Clinton updated congressional leaders, saying “it is not possible to predict how long [the] operations will continue.” Defense Secretary William Cohen told the Senate Armed Services Committee: “We’re certainly engaged in hostilities, we’re engaged in combat.”20 During the fifth week of strikes, on April 28, 1999, the House voted on multiple resolutions the same day, which ultimately neither declared war, authorized the campaign, nor withdrew forces. The Senate, however, did pass an AUMF. Then, on May 21, 1999, the president signed an emergency supplemental appropriations act that funded the operation.21

Representative Tom Campbell (R-CA) and over 20 fellow members, almost all Republicans, filed a complaint on May 19, seeking a declaratory judgment that President Clinton violated the WPR and the Constitution. The suit also demanded “that no later than May 25, 1999, the President must terminate the involvement of the United States Armed Forces in such hostilities unless Congress declares war, or enacts other explicit authorization, or has extended the sixty day period” (Campbell v. Clinton 2000, 33). The suit was dismissed by district court judge Paul Friedman (appointed by Clinton) who reviewed the congressional actions and concluded “plaintiffs have failed to establish a sufficiently genuine impasse between the legislative and executive branches to give them standing. The most that can be said is that Congress is divided about its position on the President’s actions in the Federal Republic of Yugoslavia and that [Clinton] has continued ... in the face of that divide” (Campbell v. Clinton 1999, 44).

The appeals court upheld the district court but was divided on reasoning. The panel offered four opinions among the three judges (an opinion for the court and three concurrences). The panel’s opinion was written by Judge Laurence Silberman (nominated to the appellate court by Ronald Reagan), who said the congressional votes were not sufficiently “nullified” by the president’s actions for an injury. The three judges then went in different directions. In his separate concurrence, Judge Silberman said the appellants’ claim of “hostilities” in Yugoslavia does not lend itself to resolution, even if it appears to be true: “[a]ppellants cannot point to any constitutional test for what is war.” Judge Raymond Randolph (nominated by George H. W. Bush) emphasized the principles of standing and mootness. He looked at the totality of the House votes on April 28, saying they were “not for naught” because Clinton did not introduce ground troops, which he might have if the full war declaration had passed. Judge David S. Tatel (appointed by President Clinton), offered the most sympathetic reading of the member–plaintiffs complaint. Although he agreed with the majority that the standing problems were too severe, overall he said war is justiciable. “Since the earliest years of the nation, courts have not hesitated to determine when military action constitutes ‘war’” (Campbell v. Clinton 2000, 16-37).

In interviews, a member and staffer involved in Campbell expressed frustration. They said the lawsuit was designed to bring public attention to Congress’s “lack of will” to confront President Clinton on war. “Republicans pride themselves as constitutionalists. Democrats pride themselves as learning lessons from Vietnam.” Yet “war brings ... institutional disinterest.”22

Doe v. Bush (2003). Despite campaigning against Bill Clinton’s “nation building,” and promising a “humble foreign policy” in 2000,23 President George W. Bush’s presidency was built on post-9/11 foreign interventions. However, the second Iraq war suit is unlike the previous ones because the Congress debated and passed a resolution authorizing President George W. Bush to decide when/if to invade. A dozen Democratic House members focused on the latter in a lawsuit saying that it is unconstitutional for Congress to delegate away the war powers that are enumerated in Article I. Because the nub of their argument focused on a passed law, and President Bush waited until the AUMF was in place to invade, this case had less promise for the plaintiffs than the others discussed here.24

Just weeks before the invasion began, the House members, joined by 20 private plaintiffs (active military and their families) tried to prevent the AUMF’s execution.

They made two somewhat contradictory constitutional claims: Congress delegated too much war power and what they granted to President Bush was not a green light for invasion. Judge Joseph Tauro (nominated by Richard Nixon) agreed with the defendants and dismissed the case as a political question, saying there was no clear conflict between the political branches. Tauro said, “there is a day to day fluidity in the situation that does not amount to resolute conflict between the branches – but that does argue against an uninformed judicial intervention” (Doe v. Bush 2003, 440). Circuit judges Sandra Lynch (nominated by Clinton), Conrad Cyr (nominated by Reagan and Bush I) and Norman Stahl (nominated by Bush I) dismissed the case on ripeness rather than the “murky” political questions (Doe v. Bush 2003, 138). The previous year, however, the Bush administration got a separate member suit dismissed on political question precedent.25

Kucinich v. Obama (2011). Like President Bush’s flip from candidate to president, Barack Obama’s war powers interpretations changed dramatically from 2007 to 2011 (see Edelson-Deelen 2015). During the “Arab Spring” revolts from 2010 to 2011, street protests in Benghazi, Libya, began to turn toward regime change and the ouster of longtime dictator Colonel Muammar Qadhafi. The UN Security Council passed two resolutions that together condemned violence against civilians, encouraged member nations to place asset freezes and travel bans on the Libyan leadership, endorsed the travel bans already being put into place by the Arab League and other regional organizations, introduced a no-fly zone and authorized member states through regional organizations to use “all necessary measures” to protect civilians. Operation Odyssey Dawn was a multinational coalition led by the United Stsates in response to the second UN resolution; Operation Unified Protector was the NATO operation that “responded to the UN call” by enforcing an arms embargo as well as the no-fly zone. On March 31, NATO assumed command for all international operations in Libya.26

The constitutional question through these months was whether President Barack Obama needed explicit authorization from Congress to engage in this offensive military action abroad. The president and his administration argued that he possessed unilateral authority, bolstered by treaty obligations.27 Echoing the Kosovo situation, Congress neither authorized nor banned action. The mission began on March 19; the president reported to Congress two days later that he “directed U.S military forces to commence operations to assist an international effort authorized by the United Nations.” The strikes will be “limited in their nature, duration, and scope ... I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution. I appreciate the support of the Congress in this action.”28 Without any supportive action in Congress, President Obama asserted that the United Nations can “authorize” members’ military campaigns (which the WPR specifically denies in section 8), and said “it is U.S. policy that Qaddafi needs to go” (Fisher 2013, 240). The administration took the position that the mission was not “war” in a constitutional sense that required congressional authorization. Nor did President Obama acknowledge explicitly that he was bound to a withdrawal clock under the WPR.29 However, when the 60-day clock expired on May 20, the president wrote to leaders to express support for a resolution passed in the Senate that would authorize the mission. The House did not pass it. A few days before the 90-day clock expired on June 19, the White House said there were no “hostilities” without US casualties (for more information on legal position and debates within the administration on this issue, see Edelson and Starr-Deelen 2015; Savage 2011; and Savage and Lander 2011).

Meanwhile in Congress, several House actions indicated interest in holding the president to the WPR. First, House Concurrent Resolution 51 was introduced by Dennis Kucinich (D-OH, who would soon be the lead plaintiff in the member lawsuit) and said “[p]ursuant to section 5(c) of the War Powers Resolution ...Congress directs the President to remove the United States Armed Forces from Libya by not later than the date that is 15 days after the date of the adoption of this concurrent resolution.” The resolution failed on the floor 148-265, with bipartisan groups on both sides of the question; the “yea” votes had 87 Republicans and 61 Democrats and the “nay” votes had 144 Republicans and 121 Democrats. Second, on June 3, Speaker John Boehner himself sponsored House Resolution 292, which banned ground troops and passed on a party line vote.

Third, on June 15, Boehner wrote to warn the president he was about to violate the WPR. The fourth major House action of the month came when Representative Alcee Hastings (D-FL) sponsored a resolution to authorize the mission, which failed 123-295, with only eight Republicans voting “aye.” Finally, Representative Tom Rooney (R-FL) sponsored a resolution to de-fund the NATO mission, which also failed 180-238.30 These last two (seemingly contradictory) votes took place on the same day.

In the middle of this active month, 10 members of the House of Representatives (two Democrats and eight Republicans) filed suit against President Obama on June 15, 2011. The complaint noted that “the Obama Administration had yet to ask Congress for specific funding [for military action in Libya]” nor sought “a declaration of war from Congress or even congressional approval for [the military action].” Information from the Department of Defense estimated spending around $550 million in the first 10 days of the military engagement, paid for with reallocations (Bennett 2011). Nevertheless, U.S. District Judge Reggie Walton (a G. W. Bush appointee) agreed with the defendants, and the case was dismissed in mid-October. Judge Walton rejected the members’ standing to sue as legislators and taxpayers. Citing several previous member lawsuits, he said that the alleged injuries to these 10 plaintiffs are not separate from those that may have been suffered by the other 425 members of the House (Kucinich v. Obama 2011, 113). Therefore, what Kucinich et al. claim is an “institutional injury,” which had been dismissed as a standing category in Raines v. Byrd (1997, discussed above). If an institutional injury characterizes the situation, then it should be endorsed by the body, which was precisely what Judge Rosemary Collyer noted in the current suit on enforcement of the ACA, House v. Burwell. The next issue was whether a legitimate conflict arose from the president’s actions in light of congressional votes. Specifically, did President Obama “nullify” any particular congressional action, including the defeat of the authorization bill on June 24? Judge Walton endorsed the Obama administration’s view, saying “[t]he President’s actions, being based on authority totally independent of the June 24, 2011 vote, cannot be construed as actions that nullify a specific Congressional prohibition” (Kucinich v. Obama 2011, 113). The decision came on October 20, 2011. The NATO campaign ended on October 31. Kucinich did not file an appeal. The tenth member war suit failed to disrupt the new order.

Conclusion

While federal courts are accused of activism on many policy fronts, war questions meet restraint. Whatever the motivations of federal judges who have formed these multilayered barriers around war powers, the consistency of the judicial position defies ideological polarization on other issues, and transcends change on the bench, majority control of the House and Senate, the occupant of the White House, and even the foreign policy zeitgeist. All this is not to say there is an ideal, rigid model of war powers that is appropriate to all contemporary situations, nor that courts can and should “save” the country, and Congress, from the president. It is not federal court’s burden to uphold the Constitution or WPR alone. But federal courts can take up a future suit and declare a presidential action unconstitutional pending congressional approval within a certain period of time, possibly prompting a national policy debate that will put House and Senate members on the record. It is also possible that federal courts could accept a case and rule for the president on the merits, possibly even declaring the WPR unconstitutional. In the meantime, presidential assertiveness is supported by default through congressional ambivalence and judicial discomfort or disinterest (Keynes 1982; Koh 1990).

All three branches and both parties have contributed to our nation’s flipped understanding of constitutional war. After-the-fact public criticism, oversight hearings and investigations, and party changes in the White House and Congress have not changed this dynamic. Today, in addition to bombing ISIS targets since August 2014, President Obama has sent 3,500 troops and special operations advisors to the field by October 2015 with one commando death thus far (Baker, Cooper, and Sanger 2015). The president has chided Congress repeatedly for not sending a new AUMF, but neither branch has said the lack of explicit authorization matters. These postures support modern constitutional interpretations that have received remarkably little outcry or debate. Unlike marriage, health care, campaign finance, privacy, and many other high-profile legal conflicts that ricochet through the branches, public discourse, and elections for years (and even decades at a time), Congress’s war powers are actually enumerated in the Constitution.

#### Solves multiple scenarios for nuclear war

Fuchs 18 [Michael H Fuchs is a senior fellow at the Center for American Progress, and a former deputy assistant secretary of state for east Asian and Pacific affairs, “When it comes to foreign policy, Congress must rein Trump in,” 4-24, <https://www.theguardian.com/commentisfree/2018/apr/24/foreign-policy-congress-trump>, y2k]

And yet, the US president has extensive power to craft and implement foreign policy. The constitution provides the president with tremendous authority, but the decades-long atrophy of Congress’s role as a coequal branch in executing US foreign policy has ceded even more power to the president. The president now has the ability to start wars anywhere in the world, and to use nuclear weapons on a moment’s notice.

As historian Arthur Schlesinger wrote in his classic, The Imperial Presidency: “What began as emergency powers temporarily confided to presidents soon hardened into authority claimed by presidents as constitutionally inherent in the presidential office: thus the imperial presidency.”

There is a robust, longstanding debate about the balance between legislative and executive branch powers on foreign policy. After Schlesinger first wrote about the imperial presidency, Congress attempted to re-establish its authority through the War Powers Act, imposing a number of requirements on the president’s ability to send troops into battle.

And while the extent of Congress’s role on foreign policy has ebbed and flowed ever since, especially since the terrorist attacks of 9/11 the power of the president to wage war and conduct foreign policy with few constraints has continued to grow.

Which brings us to today. Trump sitting in the Oval Office, sending out early morning tweets threatening war – without even the consultation of his cabinet and with no strategy in place – has raised the stakes on reining in the imperial presidency.

It would seem difficult to expect a Republican-controlled Congress to impose genuine constraints on a Republican president. And yet, on a few important occasions during Trump’s tenure, Congress has rejected actions by Trump that would have undermined national security: Congress forced Trump to approve new sanctions on Russia with veto-proof majorities; so far Congress has rejected Trump’s attempts to gut the budgets of the state department and USAid; and, to date, Congress has not taken Trump’s bait on the Iran deal by passing legislation that would sink it. But these are the exceptions to the norm of this Congress’ continued acquiescence to the executive branch on foreign policy – even bad foreign policy.

If there were ever a time for Congress to reassert itself on foreign policy, this is it.

First, Congress must use its legislative authority and power of the purse to force the administration to adopt reasonable policies. As the world faces the gravest crisis of forcibly displaced people since the second world war, Congress must provide funding and support for refugees and humanitarian assistance. Congress must pass legislation to protect special counsel Robert Mueller and the investigation into collusion between the Trump campaign and Russia. And Congress must continue to provide robust funding to the state department and USAid.

Second, Congress must hold regular, high-profile hearings that call senior administration officials to testify on the main threats confronting the US – and call them back regularly to provide updates on policy. From responding to Russian aggression to US policy on Syria to the status of North Korea policy, Congress must now play a leading role in keeping the administration honest.

And third – and most importantly – Congress must reassert its authority as a coequal branch of government in matters of war and peace. Today, the US is fighting conflicts in Afghanistan, Iraq, Syria, Somalia, Yemen, and beyond. The recent US military strikes on Syria – which could have resulted in escalation with Russia and Iran – did not have congressional approval. It is the responsibility of Congress to vote on any new US military intervention to ensure that it has the support of the people’s representatives.

Whether or not one believes Congress would realistically constrain a president of the same party, there is precedent. In 1966 Democratic Senator J William Fulbright held a series of public hearings on the conduct of the Vietnam war being waged by a president – Lyndon Johnson – of his own party, which helped spark a national debate.

From Vietnam to Iraq, the US has rushed into disastrous wars with limited congressional debate and quick acquiescence. Today, America faces the prospect of major conflict – with North Korea, Iran, Syria, Russia, China and more. With Donald Trump in the White House, there is no room for error. Congress must begin to act before it’s too late.

## Adv CP(Kitchen Sink)

#### TEXT: The United States Federal Government Should:

#### Give North Korea better command and control systems

#### Engage in dialogue with stakeholders in the region for an operational plan should regime instability ensue

#### Engage in dialogue with Kim, vow not to take out their c and c systems, and the USFG should not take out their c and c systems

#### Enter covert diplomacy to cooperate with China in the context of nuclear security

#### ;South Korea should not invoke article III

#### Their ev is about Kim dying---first paragraph basically just says he’s fat---scientists won’t sell nukes or make them---everything is under control---dialogue solves first advantage we’ll insert in blue

**Connolly 20**, By Rep. Gerry Connolly from Virginia 11th District. He is a member of the Foreign Affairs Committee and co-chair of the Congressional Caucus on Korea.,“Our North Korea quandary: there's instability in our future,” https://thehill.com/blogs/congress-blog/foreign-policy/497109-our-north-korea-quandary-theres-instability-in-our-future

Our North Korea quandary: there's instability in our future North Korean leader Kim Jong-un’s recent, sudden, and unexplained disappearance serves as an important reminder of how little we know about the hermit kingdom and the grave consequences of miscalculation. Since North Korea shut down its 880-mile border with China in January due to the COVID-19 outbreak, analysis of this latest episode was further muddled by a lack of firsthand reporting and on-the-ground contacts. While North Korean state media shared images of Kim Jong-un celebrating the completion of a fertilizer factory last weekend, his sudden re-emergence leaves us with more questions than answers. As a morbidly obese chain smoker with a family history of cardiovascular problems, Kim Jong-un’s health is a geopolitical ticking time bomb for which we are woefully unprepared. This recent absence highlights our lack of knowledge not only about his individual health status, including if he experienced a medical emergency, but also – and more importantly – about critical aspects of regime stability, including succession, control of North Korea’s nuclear stockpile, and plans with key regional actors such as South Korea, China and Japan. Rumors of Kim Jong-un’s possible demise spurred much speculation regarding who would take the helm following his death, which is likely to spark a powerful clash of ambitions among top leaders in Pyongyang. Given her prominent role in foreign relations of late, many analysts predicted that Kim’s younger sister – Kim Yo Jong – may be first in line to take his place, but the deeply patriarchal nature of North Korean society means that concerns about her age and gender cannot be easily dismissed. Other family members with ties to the sacred Mt. Paektu bloodline exist and could vie for ruling power amongst each other or perhaps against other party elites or military brass. The truth is – we don’t know, and the lack of a clear succession plan could lead to a power struggle that threatens the North Korean people and broader regional security. We need to gain more insight into that top tier of candidates who may replace Kim so that we are not blindly grasping at straws for intelligence about a nuclear adversary. Chief among those regional security concerns is control of North Korea’s nuclear stockpile. Estimates about the size of North Korea’s nuclear arsenal range from 20-80 bombs, based on the amount of nuclear materials the North is believed to have produced. In the event of instability above the 38th parallel, it is far too easy to imagine how these weapons fall into the wrong hands. If there is a command and control collapse, officials jockeying for power may launch missiles to garner legitimacy, renegade scientists could start selling off weapons to the highest bidder, and/or terrorist groups could gain access to fissile material that could endanger the masses. In such a scenario where troops must be sent in to restore order, the United States must have a clear sense of the roles for each of the key regional actors to avoid escalating a nuclear crisis into a nuclear war. Ongoing dialogue with these stakeholders is essential to ensure that there is an operational plan in place if the North Korean regime collapses. While the U.S. and South Korea have discussed such a plan for joint military actions, it is unclear whether the Trump and Moon administrations remain committed to it, especially in light of stalled defense cost sharing talks between our two countries. Furthermore, we must insist that China be more forthcoming about its own contingency plans at both the working level and at the highest levels. Unfortunately, when it comes to China, Trump is a corrupt quartermaster. He is singularly focused on skimming flimsy trade deals off the top while ignoring the duty he has to the broader security imperatives of our global competition with China. And if we don’t have China’s cooperation on nuclear security plans, there will be chaos in a North Korean leadership vacuum. The United States must prioritize close coordination with China, as well as South Korea and Japan, regarding the future of North Korea. For now, Kim Jong-un appears to be back in charge, but we should take no solace in that development. Despite President Trump’s misguided love affair with the dictator, Kim’s leadership of the North Korean regime has spelled disaster for North Korean human rights and overseen a dramatic expansion of the regime’s development of nuclear weapons. Kim’s recent absence exposed fissures that we would be wise to close, lest that transition arrive before we’re ready and we find ourselves caught flat-footed in a nuclear standoff with a leaderless North Korea and an adversarial China amidst a humanitarian crisis with no end in sight.

#### Their Narang and Panda ev says North Korea’s crappy c and c is what’s escalatory---also assumes the U.S. would first strike them and take out said systems---means CP solves

#### Mastro ev says war scenario is premised on China defending NoKo’s nuclear sites---CP solves escalation

## Prolif DA

#### The aff causes South Korean prolif which collapses the NPT and ensures a global wave of prolif

Stangarone 16 [Troy Stangarone is the Senior Director for Congressional Affairs and Trade at the Korea Economic Institute of America, "Is Trump Right to Suggest that South Korea and Japan Should Go Nuclear?," Korea Economic Institute of America, 2016, http://keia.org/trump-right-suggest-south-korea-and-japan-should-go-nuclear, DS]

Is it inevitable that South Korea and Japan will develop nuclear weapons? As [Mark Fitzpatrick](http://www.iiss.org/en/publications/adelphi/by%20year/2015-9b13/asias-latent-nuclear-powers-7b8a) of the Institute for International Security Studies points out, the United States’ nuclear umbrella and policy of extended deterrence have provided reassurances to Seoul and Tokyo about their security posture. Both countries would likely pursue a nuclear option if they believed that the security assurances of the United States were in doubt. At the same time, both South Korea and Japan have refrained from developing nuclear weapons despite North Korea’s continued pursuit of weapons of mass destruction. If the possession of nuclear weapons by a neighboring state were an indicator of a country’s likelihood of developing nuclear weapons, one would have expected South Korea and Japan to already have done so. Ultimately, a Trump administration policy of weakening U.S. security commitments to Seoul and Tokyo would likely do more to encourage them to develop a nuclear weapons program than anything North Korea has done to date. If the U.S. nuclear umbrella and extended deterrence can reassure U.S. allies and therefore also help to constrain nuclear proliferation, is Trump right to suggest that it is a burden that the United States can no longer afford? As [Robert Samuelson](https://www.washingtonpost.com/opinions/were-not-a-poor-country-mr-trump/2016/03/27/70bbe9fc-f2bd-11e5-85a6-2132cf446d0a_story.html) at the Washington Post points out, the United States is wealthy enough to pay for domestic needs and a robust presence abroad. Since 1950, U.S. GDP has risen from $2.2 trillion to $16.3 trillion last year in inflation adjusted terms. At the same time, Japan’s per capita GDP is only 69 percent of the United States’ and South Korea’s less so. While a debate over the best usage of resources in any society is legitimate, the United States is clearly wealthy enough to meet its commitments abroad should society at large deem them to be beneficial. More to Trump’s point about burden sharing, South Korea already contributes a great deal to the alliance in contrast to what he has suggested. Seoul provides [55 percent](http://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/mark-lippert-trump-south-korea-ambassador-221280) of the non-personnel costs for stationing U.S. troops in South Korea, including annual increases. It spends [more on defense](http://blog.keia.org/2015/08/fact-check-burdensharing-by-korea/), 2.6 percent of GDP, than any other ally in Europe and Asia, and fields an active military of 630,000 troops through conscription. South Korea has also historically contributed troops to assist the U.S. in past wars and peace keeping missions than any ally other than the United Kingdom and a few others. This brings us to the last of Trump’s arguments, that the United States does not benefit enough from its commitments abroad. Is this the case? As previously noted, U.S. commitments to our allies have helped constrain nuclear proliferation, but the United States benefits in other ways as well. U.S. commitments abroad provide necessary stability around the world to maintain the peace and order that helps to enable the international commerce necessary for U.S. prosperity. U.S. bases abroad also provide forward positioning to allow the United States to deal with military threats abroad before they endanger the homeland. At the same time, the idea of allowing South Korea and Japan to develop nuclear weapons to lessen the burden on the United States would face a series of constraints and concerns. As we have noted on [previous](http://blog.keia.org/2013/05/why-south-korea-wont-develop-nuclear-weapons/) [occasions](http://nationalinterest.org/feature/going-nuclear-wouldnt-be-easy-south-korea-15345), there are real economic and foreign policy constraints on South Korea developing a nuclear weapon. Many of these would apply to Japan as well. Seoul and Tokyo would need to either violate their commitments to or withdraw from the Nuclear Non-Proliferation Treaty (NPT). If they, along with Saudi Arabia and other countries, did so as a result of Trump’s policy, it would likely be the end of the NPT and increase nuclear proliferation worldwide. This has significant security implications for the United States, especially as it relates to terrorism. As more states develop nuclear programs there will increasingly be more states with access to fissile material that a bad actor could utilize to threaten peace and stability.

#### Allied prolif causes nuclear war

McKenzie 20 [Pete McKenzie is an independent journalist based in New Zealandk, “America’s Allies Are Becoming a Nuclear-Proliferation Threat,” 3-25, <https://www.defenseone.com/threats/2020/03/americas-allies-are-becoming-nuclear-proliferation-threat/164057/>, y2k]

Opening the box Experts emphasize that the risk of allies rapidly nuclearizing is low. “There’s a number of hurdles that [allies] would have to get very powerfully motivated to overcome,” said Michael Mazarr, senior political scientist at the RAND Corporation. But Volpe observed that “opening that box and having to ask those questions about the U.S. commitment is worrisome…The proliferation risk is low. The problem is that it’s increased. It was an almost 0 percent risk for a long time, and the reason there’s lots of interest is that that risk has gone up in a noticeable way.”Moreover, that risk will grow. According to Nicholas Miller, assistant professor of government at Dartmouth: “There are geopolitical trends that are making this happen, and are going to make it increasingly common…The shift towards multipolarity with the rise of China, the relative decline of the U.S, and Russia behaving increasingly assertively—that all makes a lot of our allies feel more insecure. That’s going to persist, so these conversations will continue.” Part of the Trump administration’s legacy will be the corrosion of America’s ability to control those risks. Previous administrations restrained proliferation by denying other governments access to technology, coercing them through threats, and reassuring them through commitments. But the rise of Russian and Chinese nuclear-technology providers has made the first option far less effective. And it would be counterproductive to coerce already-nervous allies with the type of confrontational strategies used against states like Iran and North Korea. The only useful tool the next president will have is reassurance, itself badly dulled by the current president. “From an allied perspective, you look at the U.S. and you think, ‘Well, for four years I’ll get assurance, but then the administration will change and the commitment might die again’,” Santoro said. “It’s going to be very hard for the next administration to recommit to U.S. obligations.” The consequences of proliferation among allies are dire. Miller explained that “the more countries with nuclear weapons, the more likely that a weapon gets used. That could be a deliberate attack, accident or nuclear terrorism.” Crucially, “the U.S. has adopted a strong stance against proliferation [because] we’re very worried about cascades or tipping points. If one [ally] gets nuclear weapons, it gives others incentives to do the same”.

## Coop Adv CP

#### TEXT: United States Federal Government should cooperate with China to establish rules of engagement, including buffer zones, assign governance responsibility for refugees, delineate procedures through which countries may report violations, and assign repercussions

#### Solves second advantage and 1st adv---plan doesn’t solve tho---we’ll insert their ev

Schneider 10 (Jacquelyn Captain, USAF, “Chinese Military Involvement in a Future Korean War,” Strategic Studies Quarterly ♦ Winter 2010 https://www.airuniversity.af.edu/Portals/10/SSQ/documents/Volume-04\_Issue-4/Schneider.pdf)

Perhaps the most pragmatic and achievable action that could reduce the chance of Chinese intervention into a Korean conflict would be to establish clear rules of engagement with the Chinese government. This concept, while tactically feasible, is revolutionary in regards to US–Chinese interactions. The US government would have to make the theoretical leap that the Chinese are not default enemies and would find it mutually beneficial to avoid war with the United States. After making this theoretical leap and with the eruption of conflict on the peninsula, the United States would begin coordinating with the Chinese to establish rules of engagement and guidelines to the conflict. Below are some initial recommendations:

1. Establish air, sea, and land buffer zones (or alternately conflict limit lines), beyond which US and Chinese forces will not operate. South Korean forces will be allowed to operate within the unified Korean territory, to include national air and sea boundaries.

2. Assign governance responsibility for refugees along Sino-Korean borders, to include nongovernment organization (NGO) and nation-state roles, responsibilities, and reporting authorities.

3. Delineate procedures through which countries may report violations of rules of engagement.

4. Assign repercussions for violations of the agreed upon rules of engagement.

It is highly unlikely China will want to be perceived either as colluding against the North Koreans or likewise as an ally in efforts against US and South Korean forces. Despite these Chinese concerns, the rules of engagement could still be effective as a secret agreement. Accordingly, the rules of engagement would be followed by all US and allied forces unless the Chinese were found to be supporting the North Koreans.

## Yellow Sea Advantage

### Deterrence DA---1NC

#### Plan shreds North Korean deterrence, causes adventurism, China rise, US China war, nuclear blackmailing, and Japanese proliferation and ends the liberal order

Auslin 17 [Michael Auslin is the author of The End of the Asian Century: War, Stagnation, and the Risks to the World’s Most Dynamic Region, “Is It Time to Reassess the U.S.-South Korea Alliance?”, 6-29-2017, https://www.theatlantic.com/international/archive/2017/06/south-korea-alliance-north-korea-kim-moon-trump/532113/] IanM

The **arguments** for maintaining a strong South Korean alliance rest on its deterrent effect against North Korea. The **Kim** regime has **repeatedly struck out** at the South—see the 2010 sinking of the Korean navy vessel Cheonan that killed 46 sailors and the shelling of Yongpyong Island. Yet the North has refrained from **large-scale attacks** against either South Korea or Japan, another target of Pyongyang’s ire, **despite** its **significant missile capability** and **larger military**. Washington interprets this as due, at least in part, to the assumption by all parties that a **major attack**, or full-scale war, would immediately **trigger** the **self-defense clause** of the mutual defense treaty between the United States and South Korea. If that is the case, then the U.S. commitment will be even more important: Only a firm U.S. promise to defend the South will deter the North.

But if, on the other hand, the United States decided that the risk to its interests was prohibitively high, abrogating or scaling back the alliance would potentially destabilize Asia and beyond. It would **hand** the **Kim** regime a **major** strategic **victory**, removing the single greatest deterrent to its aggression. **Pyongyang** would be emboldened to continue trying to **blackmail** the **U**nited **S**tates, **South Korea**, and **Japan,** leading to future crises. Stripped of the assurance provided by America’s support, South Korea might wind up capitulating to the North’s demands for open-ended economic assistance, or even stand down some of its forces. Japan would worry that it may be the next to be abandoned by America. Even worse, in the face of a U.S. withdrawal, both Seoul and Tokyo would immediately begin considering **developing** their own nuclear and missile programs, **instigating** a **nuclear-arms race** that would spill over to **China**, **Taiwan**, and possibly beyond.

In the event of a reduced American presence in northeast Asia, China would emerge the big winner. **Beijing** almost certainly would **offer Seoul** an **alliance** of its own, further undermining America’s regional web of alliances, likely **tipping** the **Philippines** and **Malaysia** fully into the **Chinese camp**. Japanese government officials I spoke to expressed their fears that, in the event of the collapse of the U.S.-South Korea alliance, **Beijing** may even **base Chinese warships** in Busan, the southern port **closest to Japan**, giving China a foothold on the territory closest to the Japanese home islands—historically, Japan’s major geopolitical fear. Access to the southern Korean coastline would enhance **China’s** ability to control the strategic waterways from the South China Sea through the East China Sea and into the Sea of Japan. The Japanese would consider this a grave threat. In response, the **U.S. resources** **diverted** from the Korean peninsula might be **redeployed** to **blunt China’s expansion**, including a beefing-up of the U.S. Navy **in Japan**, which would increase Sino-U.S. tensions and the **potential for** a maritime confrontation in the narrow, strategic Tsushima Strait.

Cutting South Korea adrift would likely also have **global repercussions** for America. **Other** nuclear or **potential** **nuclear states** would learn from Pyongyang’s success, opening America up to future nuclear blackmail. Just as significantly, walking away from a long-term ally would **make** the **U**nited **S**tates seem capricious and untrustworthy; **attempting to maintain** America’s **worldwide alliance system** might become impossible, as no reassurances would be sufficient for **jittery partners**.

Such fears explain the criticism of Donald Trump, precisely for his **questioning** of the value of Washington’s long-standing **alliances** with South Korea and other nations, during the 2016 presidential campaign. Experts cautioned that ending U.S. alliance commitments would “unravel the entire post-World War II order,” while seasoned diplomats warned that America was not engaged in an alliance “[protection racket](https://www.washingtonpost.com/opinions/global-opinions/mr-trump-nato-is-an-alliance-not-a-protection-racket/2016/07/25/03ca2712-527d-11e6-88eb-7dda4e2f2aec_story.html?utm_term=.c28ed2e79169),” but rather benefitted from the **global stability** that **engendered trade** and **globalization** since 1945.

Despite his campaign rhetoric, Trump appeared to acknowledge the importance of the South Korean alliance once in office. His administration **walked back** his more radical **suggestions**, mollifying the national-security establishment. Both **Secretary of Defense** Jim Mattis and **Secretary of State** Rex Tillerson reaffirmed support for the U.S.-South Korea alliance. Even more strikingly, the **administration** soon **made North** **Korea** a critical national-security issue, even claiming that it was the “[most urgent](https://www.reuters.com/article/us-usa-northkorea-idUSKBN19407I)” threat facing the United States, and that “all [options](https://www.washingtonpost.com/world/tillerson-says-all-options-are-on-the-table-when-it-comes-to-north-korea/2017/03/17/e6b3e64e-0a83-11e7-bd19-fd3afa0f7e2a_story.html?utm_term=.fc94a8a27431) are on the table” for dealing with the rogue nation.

Yet even if Trump has decided to embrace the South Korean alliance, there are numerous reasons to be worried about the liabilities that come with it.

### Defense

#### Climate change is a massive thumper – kills global biodiversity

#### Aquaculture fill-in solves

Godfey 2019 - Mark, "Chinese aquaculture project seeks to reverse sea-bed desertification," Jun 18, https://www.seafoodsource.com/news/aquaculture/chinese-aquaculture-project-seeks-to-reverse-sea-bed-desertification

A city on China’s heavily overfished Yellow Sea coast is seeking to create artificial reefs on an industrial scale as part of its plan for offshore aquaculture.

Vessels are dropping pre-fabricated concrete boxes into Bohai Bay, off the shore of Tangshan in Hebei Province, as part of the Tangshan Ocean Pasture project. The project is driven by local government and which involves the Tangshan Ocean Ranch Co. working alongside researchers from the Ocean Research Institute at the China Academy of Sciences, an institution that enjoys much prestige among policymakers and the public in China.

The white concrete boxes are loaded with seeds and micro-organisms intended to anchor algae and thus promote the growth of shellfish and fish, according to a statement from Tangshan Ocean Ranch Co., which also noted that overfishing and pollution had turned much of the seabed into “deserts.”

Ringed by a necklace of some of China biggest ports: Dalian, Tianjin, Tangshan (the collective name for three ports: Caofedian, Jingtang, and Fennan), and Huanghua, the Bohai Bay’s ecosystem has been ruined by overfishing and land reclamation that has destroyed much of its wetlands. Bohai Bay has suffered from excesses of nitrogen and phosphorous, as well as oil spills and petrochemical pollution, according to a report prepared by the China Academy of Sciences.

#### No resource wars

**Bayramov 17** Agha Bayramov, international relations PhD candidate at the University of Groningen. [Review: Dubious nexus between natural resources and conflict. Journal of Eurasian Studies, 9(1), p. 72-81, https://www.rug.nl/research/portal/files/63407252/1\_s2.0\_S187936651730026X\_main.pdf]//BPS

Second, less research has scrutinized political and economic costs of resources wars, namely occupation cost, international cost and investment costs (e.g. Meierding, 2016). The existing works give a misleading impression that resource incomes can cover easily invasion, investment and international costs of wars. Third, the existing works consider approximately most resource states to be more or less equal entities. Although such states may have equal rights from juridical perspective, they share too many diverse features to be considered equal entities in other empirical terms. For example, while Azerbaijan and Saudi Arabia have rich natural resources, they are dissimilar in a number of other important ways. However, both qualitative and quantitative analyses neglect this factor while explaining the resource-conflict nexus. Therefore, it is unwise to lump different case studies together in the same category without considering the particular characteristics of the region or country in question. Moreover, wide part of the existing works adopts a national-level approach by portraying abundancy, scarcity and conflict at the unitary state-level. Nevertheless, natural resources are distributed inconsistently over a nation’s territory. In other words, only particular places, namely cities or urban areas are affected by the abundancy or scarcity of resources. Hence, conflict more likely develops in areas which are excluded from resource wealth and development. However, the present works neglect the distinctive characteristics between resource rich cities and nonresource cities by putting them into country level analysis.

#### Stocks replenish—cod proves, strong management, consumer awareness

Harvey, 13 (Fiona – environment correspondent, 6/7, “Cod stocks recover after years of overfishing”, The Guardian, Fiona, <http://www.guardian.co.uk/environment/2013/jun/08/cod-stocks-recover-overfishing-marine>)

Cod could be in for a revival at the fish counter as stocks recover after being overfished for decades.

Eating cod has been regarded as close to a crime by environmentalists, and consumers have been urged to opt for alternatives such as gurnard.

But a survey by the Marine Stewardship Council (MSC) and other fisheries organisations suggests that effective management means cod is increasing. The standards body, which certifies certain fisheries as sustainable as a guide for consumers, said that on current trends cod would soon qualify for its certification. Richard Benyon, the fisheries minister, recently confessed to the Guardian that cod – in batter, with mushy peas – was his favourite fish. But cod aficionados will have to wait a bit longer before tucking in with a clear conscience: stocks will not be sustainable for at least a year and possibly two or three, said Claire Pescod of the MSC: "Things are a lot better than they were, but we can't let up just yet." Chef Hugh Fearnley-Whittingstall said he would be waiting for a full certification by the MSC before putting cod back on the menu. "I'm more keen than anyone to see British cod back on the 'fish to eat' list, but I can't in good conscience promote eating fish from a stock that it is still below what scientists consider safe limits, while fishermen still have to throw much of it back dead into the sea," he said. "If you know your cod is from a boat catching in a selective and low-impact way, or a trawler on the CCTV scheme for discard-free cod, then that's the best choice you can make for British cod." Some green campaigners were cautious, saying a full recovery could still take many years. Paul de Zylva of Friends of the Earth said: "We would expect some recovery of cod stocks because of the closure of the North Sea cod fisheries. But this does not mean stocks have recovered to high enough levels. "We're in this near extinction mess – and the North Sea cod fisheries were closed – precisely because industrial commercial fishing has stripped fish stock to the bone. The UK used to be self-sufficient in fish for all 12 months of the year. Now we're using our own fish stocks for just six months." He said taking species off the danger list too soon would just repeat the cycle of overfishing. "It's pointless to declare that cod and other species are recovering if they are still far from being at safe levels where adult fish reproduce, their offspring survive and overall levels are sustained." A handful of other species that have been overfished are also showing signs of improvement: Dover sole caught using trammel nets in the western channel, North Sea herring caught by drift net, and cockles from the Thames Estuary. But red gurnard may be less safe than thought – there is not enough data, according to the MSC, to say for certain how stocks are faring. The brighter prospect for cod comes in Project Inshore, a survey of 450 of the UK's inshore fishing grounds carried out by the MSC and other fishing organisations, with government backing. The organisation said: "Cod stocks in the North Sea – often perceived as a species to avoid – continue to show a strong recovery and are now close to a level where they could meet the MSC standard. The report shows that strong management measures have made a positive impact and that – once stocks have reached the required levels – all other areas of the fisheries are ready to enter an MSC full assessment."

#### No Yellow Sea escalation

Morris 2016 - Senior Policy Analyst @ RAND Lyle, "South Korea Cracks Down on Illegal Chinese Fishing, with Violent Results," https://www.rand.org/blog/2016/11/south-korea-cracks-down-on-illegal-chinese-fishing.html

In part as a consequence of Chinese illegal fishing, the KCG has embarked on a modest ship building program to procure nine vessels (eight 500-ton and one 3,000-ton) to support the Korean shipbuilding industry and strengthen maritime sovereignty and governance. Two Korean Shipbuilding companies were awarded contracts for the smaller sized vessels: Hanjin Heavy Industries & Construction and Kangnam Corporation. The wining contract for the 3,000-ton ship has yet to be announced.

Such clashes over fishing rights between China and South Korea will not greatly affect bilateral relations, but are nonetheless cause for concern among Korean lawmakers and officials who have long viewed Chinese fishermen as renegade mercenaries at sea. The clear winner in all of this may be a rejuvenated KCG, which was unceremoniously disbanded after the failed rescue operation during the sinking of the Sewol ferry in 2014. A focus on countering illegal fishing in Korean waters seems to be translating into greater budgets and renewed pride for the KCG.

## North Korea Advantage

#### No collapse.

Hwang 19 -- Balbina Y. Hwang, a visiting professor at Georgetown University, previously served as senior special adviser at the U.S. State Department. [Is North Korea’s Regime Really in Peril? 6-2-2019, https://www.worldpoliticsreview.com/articles/27932/is-north-korea-s-regime-really-in-peril]//BPS

Yet history has shown how North Korea has in fact been remarkably resilient, withstanding immense external pressures from the international community, both economic and political. The regime in Pyongyang, despite many predictions over the years, has somehow not collapsed despite the dire internal conditions of its economy and the suffering of its population.

The regime even undertook a smooth leadership transition in 2012 that brought Kim Jong Un to power, surprising even the greatest skeptics. Today, with a significantly expanded nuclear and missile arsenal, and a substantial international presence despite rumors of turmoil within his inner circle, Kim is on a much stronger footing than his father. Moreover, he is in charge of an economy that, while faltering and under more international pressure, still is arguably in a better position than it was a decade ago. If Kim chooses a path for limited reform along the rough outlines of a potential deal with the U.S., in which sanctions are lifted in exchange for nuclear concessions—no matter how unlikely the possibility of such an outcome—North Korea’s economy would also improve, further consolidating Kim’s position. Rather than collapse under internal pressure, North Korea, as it has for years, is likely to continue to perplex observers and prove much of the world wrong.

#### No NK Covid

AFP 10/10 "North Korea's Kim Jong Un Says No Coronavirus Cases In His Country," https://www.ndtv.com/world-news/north-koreas-kim-jong-un-says-no-coronavirus-cases-in-his-country-2308124

North Korean leader Kim Jong Un told the audience at a military parade Saturday that he was grateful "not a single person" in the North had contracted the coronavirus that has swept the world since emerging in neighbouring China. Pyongyang closed its borders in January to try to protect itself from the disease and regularly said it had no cases, but state media had shied away from such explicit statements in recent months, instead stressing the importance of prevention efforts

#### No internal link to prolif

1. 1AC Bennett says Chinese intervention would only prompt massive troop deployment, not nuclearization
2. The decision to nuclearize is based on long-term fears of abandonment b/c it takes time to proliferate, but Chinese invasion doesn’t signal US abandonment

#### No Chance of loose nukes impact

**Press**, Associate Professor of Government at Dartmouth College, **13** (Daryl, “Why States Won’t Give Nuclear Weapons to Terrorists,” International Security 38.1 p. muse)

Counterarguments

Critics of our analysis might offer several counterarguments. First, the problem of “loose nukes” might give state sponsors of nuclear terrorism an opportunity for avoiding responsibility for their actions. Second, one might discount empirical evidence about the attribution rate of conventional terror attacks because attributing a nuclear attack would be different—and harder—than attributing an act of conventional terrorism. Third, one might argue that some states will still be tempted to resort to nuclear attack by proxy because the threat of retaliation by the victim would lack credibility given the inherent uncertainty that would persist even in a case of so-called successful attribution.

Counterargument #1: Capitalizing On “Loose Nukes”

In the wake of a nuclear detonation, investigators would need to consider the possibility that the nuclear device or fissile materials were obtained without the consent of any state. The attack might not have resulted from a state’s attack-by-proxy strategy, but rather from the problem of “loose nukes”—poorly secured nuclear weapons or materials falling into the wrong hands through illicit means. Knowing that a victim would need to at least consider the possibility of nuclear theft, a state sponsor might hope to succeed with its nuclear handoff under one of two logics. First, a state might give nuclear weapons or materials to a terrorist organization with full awareness that it would be identified as the source, but then try to avoid responsibility by claiming that the weapons or materials had been stolen from its stockpiles. Second, a state might give nuclear weapons or materials to a terrorist organization and try to avoid responsibility by claiming that the weapons or materials were stolen from a different foreign stockpile.

The first strategy—giving nuclear weapons to terrorists and then pleading guilty to the lesser charge of maintaining inadequate stockpile security—is highly dubious. Any state rational enough to seek to avoid retaliation for a nuclear attack would recognize the incredible risk that this strategy entails. In the wake of an act of nuclear terrorism, facing an enraged and vindictive victim, would the state sponsor step forward to admit that its weapons or materials were used to attack a staunch enemy, with the hope that the victim would believe a story about theft and grant clemency on those grounds? If that logic does not appear implausible enough, recall that no state would be likely to give its nuclear weapons or materials to a terrorist organization with which it did not have a long record of cooperation and trust. Thus, a state sponsor acknowledging that it was the source of materials used in a nuclear attack would be doing so in light of its enemies’ knowledge that the terrorists who allegedly [End Page 96] stole the materials happened to have been its close collaborators in prior acts of terrorism. This strategy would be nearly as suicidal as launching a direct nuclear attack.37

The second strategy—giving nuclear weapons to terrorists and then hiding behind the possibility that they were stolen from some unspecified insecure foreign source—deserves greater scrutiny. The list of potential global sources of fissile material seems long. Nine countries possess nuclear weapons, and eleven more have enough fissile material to fashion a crude fission device.38 In 2011 the world’s stockpile of highly enriched uranium (HEU), the fissile material most likely to be sought by terrorists,39 was about 1.3 million kilograms, meaning that the material needed for a single crude weapon could be found within the rounding error of the rounding error of global stocks. Perhaps, therefore, nearly all twenty countries with sufficient stocks of fissile material would need to join the lineup of suspects after a terrorist nuclear attack, not as possible sponsors but as potential victims of theft. And if enough fissile material to make a nuclear weapon could be purloined from any of these countries, [End Page 97] then perhaps the victim would be unable to rule out all possible sources and thus be unable to punish the real culprit.

This gloomy picture overstates the difficulty of determining the source of stolen material after a nuclear terrorist attack. In the wake of a detonation, the possibility of stolen fissile material complicates the task of attribution—but only marginally. At the end of the Cold War, several countries—particularly in the former Soviet Union—confronted major nuclear security problems, but great progress has been made since then.40 Although no country has perfect nuclear security, today the greatest concerns surround just five countries: Belarus, Japan, Pakistan, Russia, and South Africa.41 In addition, not all of those states are equally worrisome as potential sources of nuclear theft. Substantial concerns exist about the security of fissile materials in Pakistan and Russia (the latter if simply because of the large size of its stockpile), but Belarus, Japan, and South Africa would likely be quickly and easily ruled out as the source of stolen fissile material. Belarus has a relatively small stockpile of fissile material—approximately 100 kilograms of HEU42 —so in the wake of a nuclear terrorist attack, it would be easy for Belarus to show that its stockpile remained intact.43 Similarly, Japan (one of the United States’ closest allies) and [End Page 98] South Africa would be keen to allow the United States to verify the integrity of their full stocks of materials. (In the wake of a nuclear terror attack, a lack of full cooperation in showing all materials accounted for would be highly revealing.) Iran is not believed to have any weapons-usable nuclear material to steal,44 although that could change. In short, a nuclear handoff strategy disguised as a loose nukes problem would be very precarious.45

Counterargument #2: Conventional Versus Nuclear Attribution

The evidence presented above shows that the perpetrators of terror attacks against the United States or its allies in which ten or more people are killed on home territory are almost always identified. But these data are based solely on conventional terror attacks. Might acts of nuclear terror be harder to attribute than their conventional cousins?

With no actual cases of nuclear terrorism to examine, it is impossible to know for sure how the challenges of attribution after a nuclear attack would compare to the difficult police and intelligence work that led to attribution in the thousands of cases of conventional terrorism. Logic suggests at least one reason why it might be harder to identify the perpetrators of nuclear terrorism, but many other factors suggest that nuclear attribution would be easier than solving conventional incidents of terrorism. Taken together, these arguments suggest that the data presented above may well understate the actual likelihood of nuclear attribution.

Identifying the perpetrators of a nuclear terror attack, as opposed to a conventional terror incident, would be harder because a nuclear detonation would destroy much of the evidence near the site of the attack. In the aftermath of a conventional bombing, investigators check nearby security cameras for images of the attackers, sift through the debris to recover physical evidence, and interview witnesses. This sort of evidence has proved useful in several terror investigations. For instance, investigators found the vehicle identification number (VIN) from the trucks used to bomb the World Trade Center in 1993 and to destroy the Alfred P. Murrah Federal Building in Oklahoma City in 1995.46 A nuclear detonation, however, would leave little (if any) of such evidence. [End Page 99]

Although investigators always prefer to have physical evidence from the scene of a bombing, in high-profile investigations such evidence is used in conjunction with vast quantities of other data: for example, information about the activities of terror groups already under surveillance before the attack; intercepted cellphone and internet communications; reports from agents embedded with known terror groups; and similar types of information shared by friendly governments. In fact, while the VIN number was useful in solving the 1993 World Trade Center attack, it was far less important in the Oklahoma City bombing investigation, because the key suspect was in custody before the on-site evidence was gathered. Nevertheless, the loss of evidence from the attack site would complicate the attribution of a nuclear terror attack relative to a conventional terror incident.

There are at least five reasons, however, to expect that attributing a nuclear terrorist attack would be easier than attributing a conventional terrorist attack. First, no terrorism investigation in history has had the resources that would be deployed to investigating the source of a nuclear terror attack—particularly one against the United States or a U.S. ally. Rapidly attributing the attack would be critical, not merely as a first step toward satisfying the rage of the victims but, more importantly, to determine whether additional nuclear attacks were imminent. The victim would use every resource at its disposal—money, threats, and force—to rapidly identify the source of the attack.47 If necessary, any investigation would go on for a long time; it would never “blow over” from the victim’s standpoint.

The second reason why attributing a nuclear terror attack would be easier than attributing a conventional terrorist attack is the level of international assistance the victim would likely receive from allies, neutrals, and even adversaries. An attack on the United States, for example, would likely trigger unprecedented intelligence cooperation from its allies, if for no other reason than the fear that subsequent attacks might target them. Perhaps more important, even adversaries of the United States—particularly those with access to fissile materials—would have enormous incentives to quickly demonstrate their innocence. To avoid being accused of sponsoring or supporting the attack, and thus to avoid the wrath of the United States, these countries would likely go to great lengths to demonstrate that their weapons were accounted for, that their fissile materials had different isotopic properties than the type used in the attack, and that they were sharing any information they had on the [End Page 100] attack. The cooperation that the United States received from Iran and Pakistan in the wake of the September 11 attacks illustrates how potential adversaries may be motivated to help in the aftermath of an attack and stay off the target list for retaliation.48 The pressure to cooperate after an anonymous nuclear detonation on U.S. soil would be many times greater.49

Third, the strong positive relationship between the number of fatalities stemming from an attack and the rate of attribution (as depicted in figures 1 to 3 above) suggests that the probability of attribution after a nuclear attack—with its enormous casualties—should be even higher. The 97 percent attribution rate for attacks that killed ten or more people on U.S. soil or that of its allies is based on a set of attacks that were pinpricks compared to nuclear terrorism. The data in those figures suggest that our conclusions understate the actual likelihood of nuclear attribution.

Fourth, the challenge of attribution after a terrorist nuclear attack should be easier than after a conventional terrorist attack, because the investigation would begin with a highly restricted suspect list. In the case of a conventional terror attack against the United States or an ally, one might begin the investigation at the broadest level with the U.S. Department of State’s list of fifty-one foreign terrorist organizations. In the case of a nuclear terror attack, only fifteen of these FTOs have state sponsors—and only one sponsor (Pakistan) has either nuclear weapons or fissile materials. (If Iran acquires nuclear weapons, that number will grow to two, but there is no overlap between the terror groups that Pakistan supports and those that Iran assists.)

Finally, any operation to detonate a nuclear weapon would involve complex planning and coordination—securing the weapon, learning to use it, planning the time and location of detonation, moving the weapon to the target, and conducting the attack. Even if only a small cadre of operatives knew the nuclear nature of the attack, the planning of a spectacular operation would be hard to keep [End Page 101] secret.50 For example, six months prior to the September 11 attacks, Western intelligence detected numerous indications that al-Qaida was planning a major attack. The intelligence was not specific enough—or the agencies were not nimble enough—to prevent the operation, but the indicators were “blinking red” for months, directing U.S. attention to al-Qaida as soon as the attacks began.51

Counterargument #3: Uncertainty and Failed Deterrence

Skeptics of our confidence in the feasibility of post-nuclear attack attribution might emphasize the role of uncertainty in constraining the response of the victim. Attribution, after all, is not a binary outcome but a matter of probabilities. Each of the cases of “successful attribution” in the data we used reflects a consensus among GTD researchers that a particular group carried out an attack—but there are few cases in which the list of the guilty parties is certain. Without such certainty, a victim of nuclear terrorism would arguably be constrained in its response against a suspected sponsor. Believing this, a state comparing the option of a direct nuclear attack to sponsorship of a terrorist strike might prefer the latter, counting on residual attribution uncertainty to dampen the response.

There are two problems with this counterargument. First, while attribution uncertainty might restrain a state from responding to an act of nuclear terror with a major nuclear retaliatory strike, that option is not the only devastating response available to a country such as the United States or one of its allies. Indeed, regardless of the level of attribution certainty, a nuclear strike might not be the preferred response. For example, in the wake of a nuclear terror attack against the United States thought to be sponsored by Pakistan, Iran, or North Korea, U.S. leaders might not feel compelled to determine those countries’ guilt “beyond a reasonable doubt” or to narrow down the suspect list further; Washington might simply decide that the era in which “rogue states” possessed nuclear weapons must end, and threaten to conquer any country that refused to disarm or that was less than forthcoming about the terror attack.52

Second, this counterargument would be unlikely to carry much weight with a leader contemplating nuclear attack by proxy. A leader tempted to attack because of the prospect of residual attribution uncertainty and the hope that such uncertainty would restrain his victim from lashing out in retaliation would need enormous confidence in the humaneness of his enemy, even at a time [End Page 102] when that enemy would be boiling over with rage. For example, could one really imagine an Iranian aide convincing the supreme leader that if Iran gave a nuclear bomb to Hezbollah, knowing that Israel would strongly suspect Iran as the source, Israel’s leaders would be too restrained by their deep humanity and lingering doubts about sponsorship to retaliate harshly against Tehran?

In fact, the U.S. response to the September 11 attacks, including the invasions of Afghanistan and Iraq, indicates a willingness to retaliate strongly against those directly culpable (al-Qaida), their associates (the Taliban), and others simply deemed to be troublemakers in the neighborhood (Iraq). There was debate in the United States over the strategic wisdom of invading Iraq, but none of Saddam Hussein’s crimes—either known, suspected, or fabricated—were held to an evidentiary standard even close to certainty.53 States that consider giving nuclear weapons to terrorists cannot be certain how the victim will react, but basing one’s hope for survival on a victim’s reluctance to act on partial evidence of culpability would be a tremendous gamble.

A nuclear terror strike would have momentous consequences. In the case of an attack on the United States, such a strike would draw the full investigative, diplomatic, and military might of the world’s only superpower. In that environment, the incentives for allies, neutrals, and adversaries to cooperate would be immense. Therefore, the data offered in figures 1 to 3 (which show attribution rates after attacks that are, by comparison to a nuclear event, mere pinpricks) probably greatly underestimate the odds of attribution. Uncertainties about the full list of possible accomplices might endure, but the notion that a victim of a nuclear terrorist attack would be paralyzed by those uncertainties is far-fetched.

Conclusion

President Obama has identified nuclear terrorism as “the single biggest threat to U.S. security,” describing it as “something that could change the security landscape of this country and around the world for years to come.”54 The prospect of an adversary state covertly giving a nuclear weapon or nuclear materials to a terrorist organization has been the animating force in U.S. grand strategy for more than a decade. The scenario was used to justify the invasion of Iraq and toppling of the Iraqi regime in 2003; and in 2012 and 2013, proponents of a preventive military strike on Iran’s nuclear facilities frequently argued that such attacks are necessary to eliminate the possibility of Iran trying a [End Page 103] nuclear attack by proxy against Israel or the United States. We demonstrate here that such fears are overblown. The rationale for state sponsorship of nuclear terrorism lacks sound deductive logic and is empirically unsupported by the most relevant available evidence.

The United States and its allies should be able to deter nuclear-armed states from passing their weapons to terrorists, because a terrorist nuclear strike would not remain anonymous for long and would soon be traced back to the originating state. This conclusion is based on two empirical findings. First, among the relevant past cases of conventional terrorist attacks—those targeting the homelands of powerful states and causing significant casualties—almost all were successfully attributed to the perpetrating terrorist organization. Second, linking the attributed terrorist organization to a state sponsor would not be difficult. Few foreign terrorist organizations have state sponsors; those that do typically have only one; and only one suspected state sponsor of terrorism (Pakistan) has nuclear weapons or sufficient stockpiles of nuclear materials.

Furthermore, potential sponsors of nuclear terror face a wicked dilemma: to maintain distance by passing the weapon to a terrorist group they do not know well or trust, or to maintain control by giving it to a group they have cooperated with repeatedly. The former strategy is mind-bogglingly dangerous; the latter option makes attribution from terror group to sponsor simple.

Our findings have two important policy implications. First, the fear of nuclear attack by proxy by itself does not justify costly military steps to prevent nuclear proliferation. Nuclear proliferation may pose a variety of other risks, and the appropriate level of U.S. efforts to stop proliferation should depend on the cumulative effect of these risks, but the dangers of a nuclear handoff to terrorists have been overstated. For example, Iranian leaders would have to be crazy or suicidal to think that they could give a nuclear weapon to one of their terrorist collaborators and face no repercussions. If leaders were that irrational, the bigger problem would be direct nuclear attack without concern for the retaliatory consequences, not the alleged problem of a nuclear handoff.

#### No risk of escalation

Jackson 2015 - Visiting Fellow at the Center for a New American Security and a Council on Foreign Relations International Affairs Fellow  
Van, Preparing for the Next Korean War, Aug 24, thediplomat.com/2015/08/preparing-for-the-next-korean-war/

Audience costs are the expected punishments or rewards a leader is likely to face based on their behavior. In democracies, domestic audience costs are thought to sometimes encourage restraint in political leaders, and to strengthen the credibility of threats when leaders of democratic polities make them. A politician who fails to live up to their word, for example, will be punished at the ballot box (this is a theory, not a description of reality). In dictatorships though, the audience cost mechanism as a source of either restraint or credibility doesn’t exist in the same way. The only audiences that might punish or reward a leader are elites who implement orders and are capable of threatening a coup. But in North Korea, Kim Jong Eun seems to be killing all those guys. So even if dictators face audience costs in general—and many scholars think they don’t—North Korea seems a special case in which audience costs are marginal if they exist at all. So if North Korea ends up in an undesirable conflict, Kim Jong Eun and the generals can de-escalate or back down without necessarily losing face. At any rate, North Korea has a history of making threats that it fails to follow through on. The stability-instability paradox was a concept developed during the Cold War to explain how two states can achieve stability at the strategic level through mutually assured destruction but, as a consequence, simultaneously be even freer to pursue small-scale and seemingly low-stakes conflicts like provocations and proxy wars. The odds of a nuclear holocaust were thought to approach zero while low-intensity conflicts became a recurring phenomenon. As North Korea’s nuclear capability improves, the logic of the stability-instability paradox becomes more compelling. Even without delivery vehicles for North Korea’s nuclear capability, some believe that the stability-instability paradox has already reached the Korean Peninsula due to the capacity of both sides to inflict unimaginable atrocities on the other through conventional weapons alone. In short, while there may be incentives for conflict by either side, both sides also have even more compelling incentives to limit the scope of any violence. There are, of course, many chances for miscalculation—especially during a crisis—but there’s no conceivable miscalculation that would reasonably lead to total war without lots of intervening steps and assumptions in between the miscalculation and the nightmare outcome. And if we reason from a place of likelihoods rather than from a place of what’s hypothetically possible, we stand a chance of crafting better policy. The structural constraints discussed above and elsewhere will remain for the foreseeable future. If the alliance is unwilling to pursue a conciliatory or appeasement approach to North Korea, then it will stay on the path of limited war, raising the question whether it’s willing to remain blind to emerging conditions or begin preparing today for what may come tomorrow. Last week’s crisis was a warning shot.

#### No first strike---it’s a strategic bluff, basic military surveys disprove, and squo posture’s identical

**Kazianis ’17** [Harry; December 26; Director of Defense Studies at the Center for the National Interest; The Hill, “Trump’s entire North Korea strategy could be a giant bluff,” <https://thehill.com/opinion/national-security/366498-trumps-entire-north-korea-strategy-could-be-a-giant-bluff>; RP]

Or is it? One of the possible policy options is that the Trump administration, with its talk of “[fire and fury](https://www.nytimes.com/2017/08/08/world/asia/north-korea-un-sanctions-nuclear-missile-united-nations.html),” that the regime would be “[will be utterly destroyed](https://www.reuters.com/article/us-northkorea-missiles/u-s-warns-north-korean-leadership-will-be-utterly-destroyed-in-case-of-war-idUSKBN1DS2MB)” in a war or that “[we will have no choice but to totally destroy North Korea](https://www.nbcnews.com/politics/white-house/trump-un-north-korean-leader-suicide-mission-n802596)” if forced to defend our allies” might not be ready poised to strike at all.

In fact, I have a different take these days: all the hot rhetoric might just be a giant bluff, using the threat of military action to get North Korea to back off.

Just a simple survey of the military landscape in East Asia provides ample evidence to support such a bluff strategy. For one, if the Trump administration was considering military action against Pyongyang, where is the large build-up of forces around Northeast Asia? If Team Trump was considering a strike that would considerably degrade or even destroy Kim Jong-un’s nuclear and missile programs, we would most likely see a massive shift in forces to that part of the world.

We would see aircraft carrier battle groups and various naval assets steaming toward the region. B-1 and B-2 Bombers would be moving closer as well as large amounts of F-22 and F-35 stealth fighters. We might even see a troop build-up, just in case North Korea decided to invade the South in response. And yet, we see nothing more than standard exercises and movements that are very much the norm.

In addition to offensive firepower, there would be moves to defend U.S. allies and citizens in the region from a North Korean counter-attack. For example, U.S. citizens would likely be evacuated out of Japan and South Korea. Also, Washington would press Seoul and Tokyo to accept a large increase in Patriot and THAAD missile defense batteries to stem the onslaught of what could be North Korea nuclear, chemical and biological missile counterstrikes. Once again, there is no indications at all that Washington is doing any such preparations at all.

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## Warming Review CP

## Kitchen Sink Adv CP

## Coop Adv CP

## Courts CP

#### Court ruling against commitments send a credible signal of alliance limitation---it’s the exact same signal as the aff

Dunne 20 [Charles Dunne is a Non-resident Fellow at Arab Center Washington DC. “There’s No Consensus on US Middle East Policy; Time to Apply the War Powers Act,” 1-23, <http://arabcenterdc.org/policy_analyses/theres-no-consensus-on-us-middle-east-policy-time-to-apply-the-war-powers-act/>, y2k]

The continual partisan churn over the applicability of the War Powers Act to particular disputes in the Middle East tends to deflect attention from the central issue: how much power should the executive be granted to wage war, with the personal discretion of the White House incumbent, and what the proper constitutional role of Congress is in circumscribing that power. The latest crisis with Iran is helping to bring that very issue to the fore and some new signs of bipartisan consensus have emerged lately. Congress must first resolve its own internal disagreements on presidential war powers or devise new legislation that would offer binding clarity. In the meantime, though, it would be important for policy-makers to consider more seriously the advantages of routinely applying the War Powers Act to US engagements in the Middle East. Submitting US military engagements in the Middle East to votes under the War Powers Act would require a degree of bipartisan congressional consensus that would, in turn, help command broader support from the American public on the purpose, size, composition, and duration of US military commitments in the Middle East. It would also put American allies—particularly those in the Gulf Cooperation Council—on notice that US involvement in their defense (and in their internecine conflicts) comes with limitations prescribed by a broad consensus of the US political system. Failing an agreement between Congress, the White House, and the courts on the routine applicability of the Act, a legal restructuring of the AUMF would serve a similar purpose. As some 2020 presidential candidates have argued, replacing the current authorization with time-limited, renewable joint resolutions—perhaps tailored to specific situations and requiring regular congressional review—would help ensure that both Congress and the White House remain in sync on how, and indeed whether, to pursue military activities in the Middle East. This would have a salutary effect on how the United States conceives of and executes its overall approach to the region. Politics might once again stop at the water’s edge. And given that the water, these days, is most often that of the Gulf, such a reorientation would make for a stronger, more unified, and more coherent American approach to the region.

### Agent CP Good---Long---2NC

#### Predictable and education---Court decisions are important in the context of alliance debates---discussing SOP in foreign engagement is key

Feldman 8 [Noah Feldman, Felix Frankfurter Professor of Law at Harvard Law School, “When Judges Make Foreign Policy,” 9-25, <https://www.nytimes.com/2008/09/28/magazine/28law-t.html>, y2k]

During the boom years of the 1990s, globalization emerged as the most significant development in our national life. With Nafta and the Internet and big-box stores selling cheap goods from China, the line between national and international began to blur. In the seven years since 9/11, the question of how we relate to the world beyond our borders — and how we should — has become inescapable. The Supreme Court, as ever, is beginning to offer its own answers. As the United States tries to balance the benefits of multilateral alliances with the demands of unilateral self-protection, the court has started to address the legal counterparts of such existential matters. It is becoming increasingly clear that the defining constitutional problem for the present generation will be the nature of the relationship of the United States to what is somewhat optimistically called the international order.

This problem has many dimensions. It includes mundane practical questions, like what force the United States should give to the law of the sea. It includes more symbolic questions, like whether high-ranking American officials can be held accountable for crimes against international law. And it includes questions of momentous consequence, like whether international law should be treated as law in the United States; what rights, if any, noncitizens have to come before American courts or tribunals; whether the protections of the Geneva Conventions apply to people that the U.S. government accuses of being terrorists; and whether the U.S. Supreme Court should consider the decisions of foreign or international tribunals when it interprets the Constitution.

In recent years, two prominent schools of thought have emerged to answer these questions. One view, closely associated with the Bush administration, begins with the observation that law, in the age of modern liberal democracy, derives its legitimacy from being enacted by elected representatives of the people. From this standpoint, the Constitution is seen as facing inward, toward the Americans who made it, toward their rights and their security. For the most part, that is, the rights the Constitution provides are for citizens and provided only within the borders of the country. By these lights, any interpretation of the Constitution that restricts the nation’s security or sovereignty — for example, by extending constitutional rights to noncitizens encountered on battlefields overseas — is misguided and even dangerous. In the words of the conservative legal scholars Eric Posner and Jack Goldsmith (who is himself a former member of the Bush administration), the Constitution “was designed to create a more perfect domestic order, and its foreign relations mechanisms were crafted to enhance U.S. welfare.”

A competing view, championed mostly by liberals, defines the rule of law differently: law is conceived not as a quintessentially national phenomenon but rather as a global ideal. The liberal position readily concedes that the Constitution specifies the law for the United States but stresses that a fuller, more complete conception of law demands that American law be pictured alongside international law and other (legitimate) national constitutions. The U.S. Constitution, on this cosmopolitan view, faces outward. It is a paradigm of the rule of law: rights similar to those it confers on Americans should protect all people everywhere, so that no one falls outside the reach of some legitimate legal order. What is most important about our Constitution, liberals stress, is not that it provides rights for us but that its vision of freedom ought to apply universally.

The Supreme Court, whose new term begins Oct. 6, has become a battleground for these two worldviews. In the last term, which ended in June, the justices gave expression to both visions. In two cases in particular — one high-profile, the other largely overlooked — the justices divided into roughly two blocs, representing the “inward” and “outward” looking conceptions of the Constitution, with Justice Anthony Kennedy voting with liberals in one case and conservatives in the other. The Supreme Court is on the verge of several retirements; how the justices will address critical issues of American foreign policy in the future hangs very much in the balance.

This may seem like an odd way of thinking about international affairs. In the coming presidential election, every voter understands that there is a choice to be made between the foreign-policy visions of John McCain and Barack Obama. What is less obvious, but no less important, is that Supreme Court appointments have become a de facto part of American foreign policy. The court, like the State Department and the Pentagon, now makes decisions in cases that directly change and shape our relationship with the world. And as the justices decide these cases, they are doing as much as anyone to shape America’s fortunes in an age of global terror and economic turmoil.

What Conservatives Understand About International Law

The debate between inward-looking conservatives and outward-looking liberals has recently taken a turn toward the shrill. Liberal lawyers do not simply accuse their conservative counterparts of denigrating the rule of law; they accuse them of violating it themselves. Calling last spring for the firing of the tenured Berkeley professor John Yoo, an architect of the Bush administration’s legal strategy in the war on terror, Marjorie Cohn, the president of the National Lawyers’ Guild, declared that “Yoo’s complicity in establishing the policy that led to the torture of prisoners constitutes a war crime under the U.S. War Crimes Act.”

The conservatives’ arguments are no less heated: not only, they contend, do liberals paint a naïvely romantic picture of the world — one in which the United Nations and its agencies and courts would make law for Americans — but liberals are also endangering American lives. Dissenting this past June from the Supreme Court decision giving those held at Guantánamo Bay a right to challenge their detention, Justice Antonin Scalia wrote that the majority’s ruling “will almost certainly cause more Americans to be killed.”

These sorts of accusations are overstated and unhelpful. Neither the liberal nor the conservative view corresponds to the stereotype assigned to it by its opponents. Notwithstanding their limitations, both views express values that are deeply grounded in the American constitutional tradition and in the rule of law. Each is necessary to help us make sense of the Constitution’s role in an increasingly complex global world.

Consider first the conservative vision, which is sometimes called “sovereigntist” because it emphasizes the power and prerogative of the United States to act as if it is responsible to no one but itself. The Bush administration, through its characteristic combination of boldness, historical ambition and operational incompetence, has given sovereignty a bad name, much as it has for unilateralism. But the constitutional principle here is actually one that most liberals also fully embrace: namely, the principle of democracy.

International law, as even its staunchest defenders must acknowledge, often fails to accord with democratic principle. Such law is not passed by a democratically elected Congress and signed by a democratically elected president. It is true that the U.S. Constitution says that international treaties signed by the president and approved by the Senate shall be the supreme law of the land, thereby conferring some democratic legitimacy on treaties. But a great deal of international law derives not from treaties signed by consenting nations but rather from the vague category of international custom, which over time can harden into binding law. For hundreds of years, until more formal treaties were adopted, custom was the main way international law was created, giving rise to the laws of war, for instance, and condemning terrorism and torture. Even today, the existence of a treaty among only a select group of nations can be invoked in international forums as evidence of an established custom — and nonparticipating countries can come to be bound by treaties that they themselves never signed.

To conservatives, such international “law” is anathema. Even in cases in which explicit treaties among nations do exist, conservatives worry. Such treaties, after all, are increasingly interpreted by nondemocratic institutions like tribunals of the World Trade Organization or the United Nations’ International Court of Justice. Two hundred years ago, treaties tended to be simple agreements between two parties, with each reserving the right to interpret (and, if necessary, enforce) the treaty’s terms for itself. Today, though, many of the most important treaties — those governing trade, the environment and other crucial matters — involve a large number of nations that agree as a condition of the treaty to be bound by the decisions of an international body. To sign on to such a treaty, conservatives point out, confers future lawmaking authority on some unelected and thus undemocratic body.

According to the sovereigntists, the United States, faced with such undemocratic regimes, should feel free to reject any undesirable verdict of a body like the International Court of Justice and embrace a policy more in line with U.S. interests — much in the way that Israel responded to the I.C.J.’s condemnation of the path of its security barrier on the West Bank. In a world where Libya can lead an international human rights commission, no international institution is free from the distortions that arise when all countries are treated as equals. Even within the distinguished higher echelons of the United Nations or European Union, there is a risk that bureaucrats may pursue policies that reflect the values and priorities of their own technocratic classes. The worst-case scenario, from the perspective of the conservatives, is one in which enemies of the United States engage in “lawfare,” opportunistically charging the country with violations of international law to impede it from rightfully ensuring its safety.

Another key sovereigntist principle is the right of the United States, when acting abroad, to protect itself, whether fighting wars or preventing terrorist attacks. Historically, the court has given the president, as commander in chief, great latitude to act abroad as he sees fit. In situations in which Congress has explicitly authorized the president’s action, the court has recognized the prerogative as almost absolute. For instance, when the United States acquired Puerto Rico, Guam and the Philippines in the Spanish-American War, the Supreme Court allowed Congress and the president to govern those territories without extending constitutional rights to the residents. Similarly, after World War II, when Germans held by the United States in occupied Germany pending war-crimes charges petitioned for judicial review, the Supreme Court turned them away.

Conservatives argue, not implausibly, that these historic decisions did not undermine the rule of law: they embodied it. The Supreme Court’s judgments derived, after all, from the Constitution itself and its own democratic pedigree. One central reason that the people of the United States formed the Constitution was in order to provide for the common defense. The Constitution does protect rights, according to this view — but they are the rights of citizens, not the rights of mankind in general or of foreigners who have never even set foot in the United States.

What Liberals Understand About International Law

From the liberal perspective, the vision espoused by the conservatives is crabbed and parochial. Of course the Constitution demands democracy and gives rights to American citizens. But, say the progressives, that does not explain why over the last two centuries the Constitution has become the very model of what a system of government under law looks like. The key to the Constitution’s global appeal, according to the liberal view, is that the document stands for the universal principle that state power over individuals may only ever be exercised through law — no matter what government is acting, and no matter where on earth.

This outward-looking, “internationalist” conception of the Constitution respects the sovereignty of the United States and that of other countries — provided they deliver a just legal order to their citizens. But liberals point out that even a constitutional state that guarantees rights for its own citizens will not protect people in many places and times, often when rights are most sorely needed. In wartime, for instance, almost no nation will have an interest in protecting the rights of foreign enemies that it encounters. On the open seas, no domestic law applies. And for reasons of sheer practicality, no country’s laws regulate all its potential relations with all other states. To cover situations like these, where domestic law runs out of rope, is the task of international law. Such law seeks to ensure rights for all, not by replacing the domestic law of independent nations but by holding it to standards of universal justice and by supplementing it where it is incomplete or inadequate.

From this perspective, international law is necessary to ensure that the rule of law will actually obtain in situations where individual states do not provide it. This is why, for liberals, it is essential that the United States comply with its international obligations. The framers of the Constitution were certainly eager to demonstrate such compliance. When they made treaties the law of the land, they were saying — according to an interpretation of Chief Justice John Marshall’s that dates back to 1829 — that the moment the Senate ratifies a treaty, it automatically becomes the supreme law of the land, binding in every court in the nation.

Deepening their historical argument, the liberals also point out that from the earliest days of the United States, the nation’s courts applied customary international law, regularly deciding who owned ships captured on the high seas according to immemorial practice that was not found in any treaty. What is more, the framers’ reliance on international law and custom went to the very heart of their constitutional endeavor: what, otherwise, did the framers mean when they spoke in the Constitution about the declaration of war, or about letters of marque and reprisal, or about judicial authority over ambassadors?

In practice, the internationalist camp argues for the prudent use of international legal materials in constitutional decision-making — not only for purposes of rhetoric and persuasion but also to provide rules and principles to help actually decide cases. For example, liberals argue that if the United States adopts laws designed to comply with the Geneva Conventions, the government is obligated to follow the treaty to the letter should the government invoke the authority to detain prisoners that the treaty confers. Likewise, when the United States has undertaken to comply with the decisions of international tribunals, those tribunals’ rulings must be treated as law, just as the treaties themselves are.

Liberals concede that the framers showed respect for international law, in part, because their country was new and revolutionary, and they sought legitimacy in the community of nations. But the liberal view stresses that the tradition of respect continued even once the nation was well established, and that it was kept alive by successive generations for different but always compelling reasons. The United States helped found the United Nations after World War II, for instance, at what was then the nation’s moment of greatest global power. Franklin Delano Roosevelt’s idea, shared by liberals then and now, was that the international rule of law was good not just in principle but also in practice. As a country governed by law, we were asserting the superiority of our system to others governed by dictatorship. Moreover, since the United States was a permanent member of the Security Council, any compromises to our national sovereignty were more than outweighed by the tremendous benefits of having a legitimate international legal order through which, as a superpower, it could assert its will.

As liberals see it, being a leading exponent of the rule of law internationally strengthens America’s ability to pressure or bully other countries to respect the rights of their own citizens. In this way, oddly enough, the liberal view is consonant with certain aspirations of the Bush administration. In Afghanistan, Iraq and beyond, President Bush has tried to export liberal constitutionalism, including both elections and basic rights. His “freedom agenda” is, in fact, a direct descendant of liberal internationalism, a policy associated with Woodrow Wilson and his plans to make the world safe for democracy through the work of international institutions.

The Bush administration, of course, distrusts international organizations that continue in the tradition of the League of Nations, which Wilson helped to found (though he could not persuade his own country to join it). But Bush’s notion that America’s democratic Constitution should be an inspiration for the world is identifiably Wilsonian — as is the zeal to spread the good word, voluntarily when possible but by force if necessary. If the greatest tragedy of the Bush presidency is the enormous human cost of America’s ham-handed efforts to accomplish this worthy goal, a second, related tragedy is that the spreading of constitutional democracy is rarely talked about anymore as a liberal goal at all.

The Court’s Liberal Victory

Each constitutional worldview — the one conservative and inward-looking, the other liberal and outward-focused — has found exponents on the current Supreme Court. This past spring, in two cases before the court, each side won an important victory. The larger battle, however, was widely overlooked. The liberal victory was widely publicized, but its full implications were not often noted. As for the conservative win, its very existence went almost entirely unnoticed.

The liberal victory, in the case of Boumediene v. Bush, took place against the backdrop of the detentions of suspected terrorists at Guantánamo Bay, Cuba. The detainees were being held there because the Bush administration’s lawyers were confident that, under the Supreme Court’s precedent, the detainees would not enjoy constitutional rights. Like the Germans denied review after World War II, the detainees were noncitizens who were neither arrested nor held in the United States. Guantánamo was leased from Cuba under a 1903 treaty, so it was not in the United States, and yet there was no tradition of applying Cuban law there.

In light of these circumstances, the Bush administration seemed to believe it could treat Guantánamo as a law-free zone. Unlike Iraq, which the administration conceded was a war zone in which the Geneva Conventions applied, Guantánamo was initially considered legally off the grid. It is often said by liberal critics that Bush’s anti-terror policies ignored the Constitution and international law. But this is a misleading oversimplification. What the choice of Guantánamo demonstrates, rather, is the profoundly legalistic way in which those policies were designed. Using the law itself, the lawyers in the Bush administration set out to make Guantánamo into a legal vacuum.

The court’s decision in Boumediene repudiated that attempt. The majority, led by Justice Kennedy, announced that for constitutional purposes, Guantánamo Bay was part of the United States: the detainees there enjoyed the same rights as if they had been held in Washington. The Boumediene decision was chiefly the accomplishment of Justice John Paul Stevens, who has made overturning the Bush detention policies into the legacy-defining task of his distinguished career. In key opinions issued in 2004 and 2006, Stevens chipped away at the special status asserted for Guantánamo, each time referring the matter of judicial review for the detainees back to Congress. But Congress repeatedly approved the administration’s proposals to deny access to the courts. To win the fight even against Congress, Stevens needed Kennedy to provide the fifth vote and hold that denying the Guantánamo detainees their day in court actually violated the Constitution.

The opinion that Kennedy wrote for the court’s majority in Boumediene announced squarely that the Constitution applied to the detainees being held in Guantánamo. Kennedy insisted that he was not overruling the precedent of the German detainees who were denied review. Unlike the situation with the Germans after World War II, he argued, the Guantánamo detainees had not received a hearing; the Guantánamo naval base was entirely under U.S. control; and granting hearings was not so impractical that it would fundamentally disrupt the operation of the prison. In effect, however, Kennedy’s opinion rejected what the Bush administration claimed to be the rule that noncitizens held outside the United States were not entitled to constitutional protection.

Having refused to overturn Roe v. Wade in the 1990s and having championed gay rights in recent years, Kennedy may now be depicted as an unlikely liberal hero — the latest in a line of Republican appointees (one of whom is John Paul Stevens) who gradually evolved into staunch exponents of liberal rights. The key to Kennedy’s reasoning in the Guantánamo case was his expansive conception of the rule of law. In the central paragraph of the decision, Kennedy explained his underlying logic: if Congress and the president had the power to take control of a territory and then determine that U.S. law does not apply there, “it would be possible for the political branches to govern without legal constraint,” he wrote. Government without courts, Kennedy suggested, was not constitutional government at all. “Our basic charter,” he went on, “cannot be contracted away like this.”

What seemed to most offend Kennedy about Guantánamo, then, was precisely the effort by the executive branch, with the approval of Congress, to make Guantánamo into a place beyond the reach of any law. By insisting on its own authority, the court was striking a blow for law itself. In this way, the court embraced the ideal of the outward-looking Constitution: a document that protects the rights not only of citizens within the United States but also of noncitizens outside its formal borders. This Constitution, by extension, stands for the ideal of legal justice being made available to all persons — no matter where they might be.

Holding that the Constitution did indeed follow the flag to Guantánamo was an act with tremendous international resonance. It can even be read as an attempt to hold the Bush administration to its own rhetoric about democracy. The rule of law, after all, is not solely an American ideal but one that is broadly shared globally. To insist that some law covers all people wherever they may be found underscores the universality that law aims to create.

The Court’s Conservative Victory

From the conservative point of view, of course, Kennedy’s decision did not follow from the basic principle of the rule of law. According to the four conservative dissenting justices, whose views closely tracked those of the Bush administration, the Constitution unquestionably binds the government. But according to their view, the Constitution also allows the president and Congress, acting together, to lease or even acquire territory and govern it without allowing recourse to the courts. Indeed, this view was precisely the one adopted by the Supreme Court after the Spanish-American War, when the United States was a rising imperial power. The dissenters in Boumediene actually agree with the liberals that law does apply to Guantánamo; they just maintain that the courts are not part of it.

The conservative cause may have lost in Boumediene. It prevailed, however, in a case decided last March that garnered little public attention— but that was, in its own way, just as important to defining our constitutional era. The case, Medellín v. Texas, grew from a conflict between the Supreme Court and the International Court of Justice over death-row inmates in the United States who were apparently never told they had the right to speak to the embassies of their home countries, a right guaranteed by a treaty called the Vienna Convention on Consular Relations. The international court declared that the violation tainted the inmates’ convictions and insisted that they have their day in court to try to get them overturned.

The Supreme Court disagreed. In his initial trial and appeal, José Medellín, the man who brought the Supreme Court case, did not raise his right to speak to his embassy — presumably because, having never been informed of the right, he had no idea that it existed. Under the arcane rules for postconviction judicial review, a defendant ordinarily cannot ask the courts to consider legal arguments that were not raised when he was tried in the first place. And in its decision, the court upheld those rules: the violation of the treaty, it held, did not demand any special exception to the usual rules governing review. The fact that the United States had violated its international-treaty obligation was of no use on death row. Medellín was executed by the State of Texas on Aug. 5.

What made this conflict between the Supreme Court and the International Court of Justice particularly stark was that the Bush administration had for once taken the side of international law. Before the Supreme Court issued its opinion, President Bush issued a memorandum advising state courts to follow the judgment of the International Court of Justice. With the ruling of the Supreme Court on one side, and that of the international court — endorsed by the president — on the other, just what did the Constitution require the state courts to do?

The United States signed three separate treaties stating that it undertook to obey the judgments of the International Court of Justice. But the Supreme Court bridled at the thought that the international court’s decision might trump its own. This was not just instinctive turf-protection, though that concern no doubt played a part. Never before had an international body replaced the Supreme Court in telling lower courts in the United States that their own procedural rules were unacceptable. The natural order of things seemed to be turned on its head.

The Supreme Court held that the treaties obligating us to listen to the International Court of Justice were not binding law. Chief Justice John Roberts wrote that a careful reading of the text of the treaties revealed no intention to subject the United States to the judgments of the international court — not, that is, unless Congress passed a separate statute demanding such obedience.

This opinion upended the rules for applying treaties in the U.S. courts. In dissent, Justice Breyer painted a grim picture of the consequences. If treaties were not automatically binding law unless they said so, he wrote, the applicability of some 70 treaties involving economic cooperation, consular relations and navigation was now thrown into doubt. The rest of the world, he intimated, would be left wondering whether the United States intended to obey its treaty obligations or not — which is not a trivial concern when the world also suspects the United States of ignoring its obligations of humane treatment under the Geneva Conventions. To Breyer, the decision was a reversal of nearly 180 years of precedent and a message to the world that the United States was prepared to play fast and loose with its international commitments.

When the justices rejected the death-row appeal, they were acting on the basis of familiar conservative concerns. The judges of the International Court of Justice were not appointed according to any constitutional procedure. To let the international body decide matters of law that would be binding for state courts seemed fundamentally undemocratic — an unjust usurpation of the judicial function. It would be absurd for the Constitution, as the core document of our democracy, to require such a result.

The old precedent regarding treaties was thus, according to the conservatives, truly obsolete. It made no sense to apply it in a globalized world where treaties are not just straightforward agreements between sovereign states; now, they often create irresponsible international tribunals to adjudicate their meaning. If the judgments of an international court were to be obligatory, a democratically legitimate body should say so explicitly — either the Senate that approved the treaty promising compliance or the whole Congress in a separate legal enactment.

By its own lights, the Supreme Court in the Medellín case was reading the Constitution to guarantee us control over our own destiny. That meant turning away from international law in a systematic and profound sense. The cost to the United States might be real, but the court considered it justified by the preservation of our democratic sovereignty.

Which Side Is Right?

The Boumediene decision saw the Constitution as facing outward, expanding and promoting the rule of law throughout the world. The Medellín decision, by contrast, saw the Constitution as a domestic blueprint designed to preserve and protect the United States from foreign encroachment, even at some cost to the international rule of law.

Underscoring the tension between the two cases is the fact that nearly all the justices of the Supreme Court voted consistently across both of them. The four conservatives — Justices Antonin Scalia, Clarence Thomas, John Roberts and Samuel Alito — dissented from the extension of habeas corpus rights to Guantánamo Bay in Boumediene and joined the majority opinion in Medellín that made it harder for treaties to become law. Meanwhile the court’s liberals — Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer — joined the majority in the Guantánamo case, and all but Stevens dissented in Medellín. (Though Stevens voted with the majority in that case, he did so seemingly only for tactical reasons; he wrote a separate, concurring opinion that did not embrace the logic of Roberts’s majority opinion.)

The key vote in both cases was that of Kennedy. In both cases, he acted to uphold the prerogatives of the Supreme Court — against the president and Congress in the Guantánamo case, and against the international court in the Medellín decision. And Kennedy does argue that such judicial supremacy is crucial to the rule of law. But the other justices did not see the cases in those terms. To them, the cases were not primarily about the perennial issue of the division of powers between the different branches of government. To these eight justices, the cases were about what sort of Constitution we have: either outward-facing or inward-looking.

Who is right? It is tempting to conclude that the Constitution must look inward and outward simultaneously. But embracing contradiction is not the answer, either. Instead what we need to resolve the present difficulty is a subtle shift in perspective.

There is an important way in which neither of the predominant approaches to the Constitution and the international order can provide a fully satisfactory answer to the problem. Although they differ deeply about what the Constitution teaches, the two sides share a common image of what the Constitution is. Both imagine it to be a blueprint offering a coherent worldview that will allow us to reach the best results most of the time. According to this shared assumption, the way to find the real or the true Constitution is to identify the core values that the document and the precedents stand for, and to use these as principles to interpret the Constitution correctly.

There is nothing wrong with this picture of constitutional interpretation when it is applied to the vast majority of constitutional decisions, from the right to bear arms to the meaning of equal protection of the laws. Deciding what deep principles emerge from our history can help resolve even problems unimagined by the framers, like those presented by abortion or claims to gay rights. Most of the time, constitutional interpretation proceeds in precisely this way — and so it should.

But when we are talking about the basic direction the country needs to face in order to achieve its goals in the modern world, deriving principles from history is often inadequate to dictate outcomes. The national and global situations in which we find ourselves are ever-changing. The ship of state must navigate in waters that correspond to no existing chart. The complexity of the world, coupled with the profound changes in the role the United States plays in it, is a very different thing from, say, our progressive recognition that African-Americans, women, gays and lesbians deserve the same equality and respect as everybody else.

For this reason, when the world has changed drastically, the Constitution has always had the flexibility to change along with it. The industrial economy, for example, was so much bigger and more complex than the economy of 1787 that the old constitutional order no longer worked. The New Deal ushered in systematic regulation and administrative agencies that had no real place in the three-branch system — but that we now accept as constitutional today. The original federal system limiting the power of the central government relative to the states also had to be reconfigured when the economy became truly national. The changed nature of the president’s war powers offers yet another pragmatic example of flexibility and change. Modern wars demand rapid decision-making and overwhelming concentrations of force; in the light of these needs, we have largely abandoned the framers’ model for war powers, which gave Congress much more authority than it is able to exercise today.

On each occasion that the Supreme Court has had to confront such drastically changed circumstances, it has adopted the approach of seeing constitutional government as an ongoing experiment. Justice Oliver Wendell Holmes Jr. wrote that our system of government is an experiment, “as all life is an experiment.” Justice Robert Jackson, confronting the separation of powers — about which the Constitution is cryptic at best — admitted frankly that nothing in the document, the case law or the scholars’ writings got him any closer to an answer. Then he tried to come up with his own rules, designed to reflect political reality and the changed nature of the presidency.

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now?

Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own.

On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches?

Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question.

#### Mixes Burdens---any CP might result in the aff---states has federal follow-on, international has US model. Any action could make the plan more likely.

Jamie Wood 13, Avatel EVP, “The Butterfly Effect – What a Fascinating Theory!”, 6-10, https://avatel.wordpress.com/2013/06/10/the-butterfly-effect-what-a-fascinating-theory/

Every action or decision has some kind of effect on something or someone, if only in an indirect way. How we approach these decisions or actions we take can have a huge impact, not just on those directly involved, but on others we could hardly fathom would be affected. You never know what little action may be the tipping point for another action and or reaction. butterfly effect When you hear the words “The Butterfly Effect”, most of you will probably think of the movie. That was about the chaos theory, meaning one series of events leads to another and the effect of changing the course of those events. Actually the term “The Butterfly Effect”, was a phenomenon proposed in a doctoral thesis written in 1963 by Edward Lorenz. It states that a butterfly, by flapping its wings in one place and time is able to create a major weather event in another place and time, eventually having a far-reaching ripple effect on subsequent events. The butterfly effect suggests that cause and effect are applicable in the universe even if the pattern is indecipherable and the precise cause of our predicaments, rooted far away in time and space, are ultimately unfathomable. More than just an esoteric science, the chaos theory works off the concept that the relation between any two things is rarely linear in nature, that any reaction is usually the result of an accumulation of causative factors small and large, intentional and accidental.

### A2: Perm Do Both---2NC

#### Perm nullifies court rulings

Baker 94 Thomas E. Baker**,** Alvin R. Allison Professor, Texas Tech University School of Law, 1994, “FEATURE ARTICLE: THE ELEVENTH CIRCUIT'S FIRST DECADE CONTRIBUTION TO THE LAW OF THE NATION, 1981-1991,” 19 Nova L. Rev. 323

 [\*337]  The mootness doctrine focuses judicial attention on "the sequence of litigation events out of a traditional and constitutional concern for the very existence of a 'case or controversy' itself." [n74](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.229847.9917424866&target=results_DocumentContent&reloadEntirePage=true&rand=1248632398709&returnToKey=20_T7032486675&parent=docview#n74) If a matter earlier in controversy is somehow resolved, the judgment of the federal court has nothing to accomplish. The lack of a judicial task ends the Article III power. Justiciability must be actual and present, not merely speculative or historical. Legislation can overtake the litigation and render it moot. For example, in Lewis v. Continental Bank Corp., [n75](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.229847.9917424866&target=results_DocumentContent&reloadEntirePage=true&rand=1248632398709&returnToKey=20_T7032486675&parent=docview#n75) the Supreme Court declared the case moot due to amendments to a federal statute that were enacted while the case was pending. Thus, the Eleventh Circuit's judicial handiwork, analyzing rather arcane issues of federal banking law, was rendered a nullity. [n76](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.229847.9917424866&target=results_DocumentContent&reloadEntirePage=true&rand=1248632398709&returnToKey=20_T7032486675&parent=docview#n76)

### A2: Perm Do CP---2NC

#### CP is competitive---

#### 1---Topical aff must explicitly add a condition that reduces commitment---CP is different because it just forces US to NOT intervene in conflict without actually limiting the conditions stipulated in defense pacts

Benson ’11 [Brett V; Associate Professor of Political Science and Asian Studies at Vanderbilt University; 9/14/11; “Unpacking Alliances: Deterrent and Compellent Alliances and Their Relationship with Conflict, 1816–2000”; <https://www.jstor.org/stable/10.1017/s0022381611000867>; The Journal of Politics, Vol. 73, No. 4; accessed 5/18/20; TV]

Schelling’s (1966) work on bargaining serves as the basis for my approach to categorizing alliances. Current methods divide offensive and defensive alliances according to which player is permitted to attack. However, leaders select the content of alliances from a broader menu of commitments. Alliances often specify the purpose of the alliance, which leaders can initiate what kinds of coercive moves, and what punishments will be imposed if demands are not met. Consequently, I divide alliances according to the signatories’ objective in forming the agreement and the terms of the commitment triggering military intervention. Following Schelling, I ascertain whether the alliance contract was written to compel ‘‘an adversary to do something’’ or to deter it ‘‘from starting something’’ (1966, 69). Then I divide commitments according to the behavior that triggers military intervention. Few alliances are unconditional, promising automatic military assistance under any circumstance. Typically, they delineate some action—e.g., attack, aggression, threat of aggression, unprovoked attack, noncompliance with a demand—which activates the alliance obligations. Finally, some alliances incorporate ambiguity or uncertainty about whether alliance members will intervene. Therefore, a separate category of alliances includes those commitments in which the language of the treaty permits alliance members to choose not to intervene even if the antecedent of the commitment condition has been completely fulfilled.

#### 2---Certainty:

#### Severs certainty- we'll win compliance but its not something we fiat

Pacelle 2Associate Professor of Political Science at the University of Missouri-St. Louis, 2002 (Richard, “The role of the Supreme Court in American politics: the least dangerous branch?” pg 102

Judicial decisions are not self-fulfilling directives. Because of institutional limitations, courts cannot implement their own decisions. Thus, the Court must rely on other individuals and institutions to carry out its directives. Because of these potential problems, many argue that the Court should not be active in policy-making. Ultimately, it is an empirical question, like broader notions of capacity. If the justices make decisions that lower courts do not apply or implementers ignore there is a loss of institutional legitimacy for the Court.

#### “Resolved” means firm decision

AHD 6 American Heritage Dictionary, http://dictionary.reference.com/browse/resolved

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

#### “Should” means must

Words & Phrases 6 Permanent Edition 39, p. 369

C.D.Cal. 2005. “Should,” as used in the Social Security Administration’s ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means “must.”—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

#### Severance is a voting issue----destroys neg ground to shift out of links and competition arguments, and makes the plan conditional

#### Aff should defend certainty, immediacy AND normal means---key to predictable ground and competition for all DA and CP because the literature controversy is about immediate limitations in alliance commitments

#### 3---Agent:

#### “The” is a mass noun

**Webster’s 8** Merriam-Webster's Online Collegiate Dictionary, 08, http://www.merriam-webster.com/dictionary/the

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### USFG means all three branches

**Columbia Encyclopedia No Date**

["United States," http://www.answers.com/topic/united-states, ]

The government of the United States is that of a federal republic set up by the Constitution of the United States, adopted by the Constitutional Convention of 1787. There is a division of powers between the federal government and the state governments. The federal government consists of three branches: the executive, the legislative, and the judicial. The executive power is vested in the President and, in the event of the President's incapacity, the Vice President. (For a chronological list of all the presidents and vice presidents of the United States, including their terms in office and political parties, see the table entitled Presidents of the United States.) The executive conducts the administrative business of the nation with the aid of a cabinet composed of the Attorney General and the Secretaries of the Departments of State; Treasury; Defense; Interior; Agriculture; Commerce; Labor; Health and Human Services; Education; Housing and Urban Development; Transportation; Energy; and Veterans' Affairs. The Congress of the United States, the legislative branch, is bicameral and consists of the Senate and the House of Representatives. The judicial branch is formed by the federal courts and headed by the U.S. Supreme Court. The members of the Congress are elected by universal suffrage (see election) as are the members of the electoral college, which formally chooses the President and the Vice President.

## North Korea Advantage

#### They have to win Kim dies AND his family doesn’t succeed him---not enough ev about this scenario---if no collapse they have no aff GMU = Blue

Bennett 18 (Bruce W., 2018, Adjunct International/Defense Researcher; Professor, Pardee RAND Graduate School, Santa Monica Office, Education, Ph.D. in policy analysis, Pardee RAND Graduate School; B.S. in economics, California Institute of Technology , “Alternative Paths to Korean Unification” RAND, https://www.rand.org/content/dam/rand/pubs/research\_reports/RR2800/RR2808/RAND\_RR2808.pdf)

DPRK Collapse: Intervention Path Under this path, Kim Jong-un dies and there is no Kim family successor. As a result, the DPRK government fails, and the country breaks into rival factions that initiate a partial civil war. The DPRK military divides into these various factions, and control of the country’s WMD and delivery systems are also split among the factions. Then, the factions start using some WMD in the civil war.2 In previous work, I have analyzed the ROK and U.S. military forces that would be needed to make a unification of Korea work under less-serious collapse circumstances.3 As this unification path continues, South Korea, fearing a spillover of the civil war and Chinese intervention, launches its forces into North Korea and is supported by the United States.4 The United States begins a full force deployment to Korea to support the ROK effort, but the initial effort on the ground depends almost entirely on ROK forces, given the limited peacetime presence of U.S. ground forces in South Korea. South Korea initially makes good progress into the North because North Korea’s DMZ defense has lost a degree of coherence in the civil war. But the ROK (and Chinese) intervention gradually unifies the North Korean factions, allowing them to pose a more stout 2 Although South Korea would likely be cautious in intervening, by waiting very long to do so, it accepts many risks, including a deteriorating situation in the North and potential Chinese intervention. 3 Bennett and Lind, 2011. This paper identifies the minimum military requirements, assuming that the largest faction essentially surrenders authority to South Korea. The analysis was designed to put a lower bound on the forces needed. If the circumstances are less favorable, larger forces would be required. 4 Indeed, fearing the costs of intervention and of trying to absorb North Korea, South Korea might refrain from intervention until Chinese forces enter North Korea. But as argued in Chapter Two, even if South Korea is initially cautious, a Chinese military intervention in North Korea is highly likely to stimulate a ROK military intervention in the North to prevent Chinese domination of all of North Korea. defense supported by the use of WMD against ROK and U.S. (and Chinese) forces. The WMD use starts initially as chemical artillery supporting the DPRK battlefield defense but eventually transitions to broader WMD use, including of nuclear weapons. If China does not intervene initially, it does so soon thereafter, facing declining security across its border with North Korea. China seeks to stabilize its border area and avoid spillover of the DPRK civil war. In addition, China acts to eliminate North Korea’s WMD. As in the War: ROK-U.S. conquest—costly victory, contested peace path, China would likely have an initial objective of advancing to the narrow neck of North Korea (between Anju and Hamhung) to secure most of the DPRK missile bases and other WMD sites in the northern part of North Korea.5 In this path, as well, China could then decide to advance to Pyongyang. Most of the forces of the Chinese Northern Theater Command and perhaps some forces from its Central Theater Command would need to be committed to achieve China’s objectives. Depending on how far the Chinese forces advance, they would likely perform most of the seizing and elimination of North Korea’s WMD. DPRK forces are much more numerous and better prepared along the DMZ than along the Chinese border. Therefore, in this scenario, DPRK forces likely have more effect in slowing ROK forces than Chinese forces as they advance, depending on the cohesion of the DPRK forces along the DMZ. Both sides presumably are trying to reach and control Pyongyang. Because the distance by road from the Chinese border to Pyongyang is very similar to the distance by road from the DMZ to Pyongyang (both are just over 200 km), and because Chinese forces would likely face lighter DPRK military opposition along the way, they have an initial advantage in trying to reach Pyongyang. But the uncertainties of warfare could allow either side to reach the capital first.6 5 On the missile base locations, see Bermudez, 2011. 6 Although the Chinese forces have sufficient combat power and would face far less DPRK opposition, they have not had to perform this kind of ground operation in recent years and thus would predictably suffer some challenges. For example, despite recent exercises to improve logistical support capabilities, Chinese forces likely would face logistical challenges. As a result, there is great uncertainty in the actual rate of Chinese advance and China’s ability to control a broader area beyond the roads along which it would focus its penetrations. There is a significant risk that, as ROK and Chinese forces approach each other, conflict between South Korea and China could develop. After all, as noted in Chapter Two, South Korea could well treat a Chinese intervention in the North as an invasion of Korea.7 And even if South Korea decided not to try to expel the Chinese forces, accidents could develop between the two forces and escalate to greater conflict. A major war between South Korea and China would be a losing proposition for South Korea and thus ought to be avoided.Depending on the level of North Korea’s escalation to WMD use, the ROK forces aided by U.S. forces might be able to stabilize the area of North Korea south of Pyongyang, which is more rural and less heavily populated. But ROK forces moving into the Pyongyang and Wonsan region, if they do, would find stabilization to be a much more daunting task: The ROK forces in these areas could face a serious DPRK insurgency. As noted in Chapter Three, a ROK government plan to replace much of the DPRK government8 would likely make the local governments in North Korea relatively ineffective for several years, having lost needed familiarity and expertise. What is known of the ROK government’s current plans suggests that many North Korean elites would be quickly alienated, increasing the severity of the insurgency that South Korea would likely face—and thus increasing the difficulty of stabilizing the unification. The bottom line of the DPRK collapse: Intervention path is that it leads to only a partial initial unification of Korea, given a Chinese intervention. The Chinese government likely would not plan to occupy and own parts of the North going forward, so the ROK government needs to plan for negotiations with the Chinese government to secure the withdrawal of its forces. After South Korea is able to achieve a partial unification in this path, it would then face serious questions about sustaining the unification. 7 Article 3 of the ROK constitution says, “The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands.” Thus, any Chinese intervention into North Korea would be perceived by many in South Korea as an invasion of South Korea. See Republic of Korea, 1987, Article 3. 8 See Gale and Jun, 2014. In particular, a ROK occupation of Pyongyang, likely a major ROK goal, would force South Korea into dealing with a potentially serious insurgency, especially if South Korea expels North Korean elites from their positions of authority, leaving them without jobs. A particular threat would be the DPRK security forces and related military forces that are heavily based in Pyongyang and would likely be opposed to a ROK occupation that would treat many of them as criminals. South Korea might have difficulty suppressing the resulting insurgency. South Korea would likely do better stabilizing the North if it plans for good treatment of North Korea’s elites and has carried out significant psychological operations well ahead of the regime’s collapse to reassure the elites of a good future under a ROK-led unification. Waiting to take such action after regime collapse would likely be too late to gain that trust; the North Koreans would have difficulty believing the sincerity of ROK changes in policy and could seek to disrupt the unification.

#### No risk of lashout—COVID, reduced trade and typhoons have impacted the North—however, maintaining readiness is necessary still

**Grady 9/11**—John Grady, reporting on national defense and national security has appeared on Breaking Defense, a former managing editor of Navy Times, retired as director of communications for the Association of the United States Army, “U.S. Forces Korea CO: North Korea Showing No Signs of Regime Instability”, *USNI News*, <https://news.usni.org/2020/09/11/u-s-forces-korea-co-north-korea-showing-no-signs-of-regime-instability>, September 11, 2020//Lee

North Korea is not showing any signs of lashing out against South Korea or Japan or launching a deliberate provocation as the American presidential election nears, the senior commander on the peninsula said Thursday.

Army Gen. Robert Abrams, speaking in a Center for Strategic and International Studies online forum, said “we’re not seeing any sign of regime instability” as North Korea confronts the threat of COVID-19 that sharply curtailed its trade with China, recovers from three typhoons this year and remains under severe U.N. economic sanctions.

North Korean leader Kim Jong-un’s regime “is focused on getting their country back together.” Abrams, commander of U.S. Forces Korea, said as harsh as conditions are now, they do not compare to the widespread famine that Kim’s father faced in the mid-1990s.

Along the Demilitarized Zone between the two Koreas, “the reduction in tensions is palpable” from earlier this year. Abrams remained hopeful that some type of negotiations over Pyongyang’s nuclear and missile programs could resume between the North and South or between the United States and North Korea.

The talks between the United States and the North over Pyongyang’s nuclear and missile programs have been on hold for months.

Speaking in the same event, Sue Mi Terry, a CSIS Korea specialist, said, “the threat remains” from the North Korean nuclear weapons stockpile and the country’s sophisticated ballistic and cruise missiles. Those facts require ready South Korean and American forces to deter any rash actions by Kim.

While the readiness of American, South Korean and U.N. forces remains high, Abrams expressed concern over his recent inability to have aviation units — fixed wing and vertical — participate with company-level ground forces in live-fire exercises. “The bottom line focus [is we] have to have company-level live-fire training. … It’s essential” with aviation units participating, he said.

For now, Army helicopter units and Air Force squadrons are receiving live-fire training “off Peninsula.”

A key reason for the shift has been “encroachment” on training ranges and complaints from civilians near those ranges about live-fire exercises on the peninsula, he said.

As for theater-level exercises, Abrams said the headquarters part worked this year with “training scenarios into the 21st century” that included cyber, space and gray zone cases. “We’re in good shape” and “have not hit the pause button” for those exercises even with the pandemic, he said.

Abrams said the headquarters exercises could continue “side by side” because the command imposed strict measures on arriving American forces and families and conducted double-testing as the quarantine ended. There also was wide-ranging cooperation between Korean health officials and the command over workers coming onto the installations and service members and others leaving.

He dated the extensive coordination back to late January “when we could see what was coming out of China” as the virus spread through its population. The last positive COVID-19 case for a service member stationed in Korea was recorded in April.

The large-scale field and naval exercises, however, remain on hold since President Donald Trump and Kim met in Singapore two years ago to discuss denuclearizing the peninsula.

Looking at the alliance’s strength, Abrams said, “we’ve had some dark patches before,” but “over 67 years, when in doubt, the alliance always wins.”

“The ROK-U.S. military alliance is truly one of a kind.” Abrams called it “typhoon-proof,” “COVID-19-proof and willing to say earthquake-proof.”

Looking ahead to the possibility of former Vice President Joseph Biden getting elected, Terry said the North Koreans likely “will have to dial up the pressure” to remind American policy-makers they are a nuclear power.

Victor Cha, director of the center’s Korea programs, said North Korea’s usual response to U.S. presidential elections “is to poke the new administration in the eye,” as it did when Trump took office in 2017. His administration’s response was to deliver “fire and fury” if Kim threatened American forces on the peninsula or the United States itself with nuclear attack.

“If we don’t see that [kind of provocation], there’s something wrong in Pyongyang,” Cha said, referring to the impact of the pandemic on North Korea’s health system, its already threatened food supply and its contracting economy, which has caused the regime to concentrate on domestic stability.

#### North Korea won’t collapse.

Hwang 19 -- Balbina Y. Hwang, a visiting professor at Georgetown University, previously served as senior special adviser at the U.S. State Department. [Is North Korea’s Regime Really in Peril? 6-2-2019, https://www.worldpoliticsreview.com/articles/27932/is-north-korea-s-regime-really-in-peril]//BPS

Most observers of North Korea are too quick to draw conclusions based on very limited information and even less knowledge about a regime that, although brutal and totalitarian, is also far more complex than the usual caricature of a mafia state run by a maniacal ruler. Even other more thoughtful and careful analysts, including well-meaning policymakers, have drawn the wrong conclusions about North Korea over the years. Despite the conventional wisdom and all the predictions of regime collapse, the Kim dynasty has managed to endure.

#### Predictions of collapse historically failed.

Kim, 15—College of Business Administration, University of Detroit Mercy (Suk Hi, “The Survival of North Korea: A Case for Rethinking the U.S.-North Korea Nuclear Standoff,” North Korean Review11.1 (Spring 2015): 101-113, dml)

Prediction Scenarios

With the survival influence of Neo-Confucianism, juche, and songun in view, the matter of predictions must be addressed. Predictions for North Korea typically fall into three broad scenarios: war, collapse, and continuation of a two-state peninsula with some reforms.18 On the first prediction, given the logistical and political problems the U.S. has confronted during and since its invasions and occupations of Afghanistan (2001-present) and Iraq (2003-2011), a preemptive attack against North Korea is improbable. Moreover, North Korea is unlikely to attack South Korea- despite such incidents as the November 23, 2010, shelling of Yeongpyeong Island near the disputed maritime border-since a Northern military offensive against the South would inexorably result in a larger scale war involving the U.S. and China, spelling the end of North Korea as it is known today.

As for the second prediction, if the U.S. sees North Korea as either collapsing or giving up its nuclear weapons through a hard-line policy of economic strangulation, the odds of success are remote, for North Korea depends heavily on Chinese aid and trade in consumer goods, food, and oil. Ironically, a strangulation policy also increases the likelihood of North Korea producing and selling more nuclear weapons internationally to replenish its economy. Simply, the collapse prediction is unreliable. International relations specialist Alon Levkowitz identifies eleven reasons why it always fails:

1. (False) analogies

2. Cold War mentality

3. Too many variables

4. (Unpredictable) idiosyncratic events

5. Western logic/values

6. Wishful thinking

7. Lack of facts

8. (Linear) determinism

9. Terminology/translation problems

10. Political bias

11. Psychological warfare19

Since the war prediction and the collapse prediction are not realistic, the most concrete prediction is the continuation of a two-state peninsula with limited reforms.20 After all, China and South Korea need to maintain North Korea as a buffer in order to protect their national interests. As a result, North Korea is dependent on China as its greatest economic benefactor-negotiating economic aid, inward investment, foreign trade, and political support-especially with the Six-Party Talks at a standstill since 2009 and with U.S. and UN economic sanctions in effect. Basically, Chinese aid and support are the economic component, among the cultural-historical and political-ideological factors, preventing a sudden collapse of North Korea, and China will never allow the U.S. to unite the Korean peninsula on American terms. As Chinese objectives toward North Korea protect Chinese interests, international efforts to foment a North Korean crisis or foreign regime change will always face Chinese resistance. And should circumstances run out of control, China will intervene to restore stability and political order.21

In view of the hard facts, the U.S. and its allies should acknowledge that North Korea will not collapse soon, nor will it surrender its nuclear weapons. Likewise, North Korea, should acknowledge that the U.S. and its allies will not give economic aid and security assurances until the country abandons its nuclear program. Contradictory as the situation may be, a mechanism is needed to convince the U.S. and North Korea to admit that each party will not accept the other's hard-line demands. Such a mechanism would help enable understanding of the respective interests and initiate a process of confidence-building in order to maintain peace and stability on the Korean peninsula and in Northeast Asia.

## Yellow Sea Advantage

### 2NC- No Impact

#### No overfishing – declines are natural variability

Bluemink 8 (Elizabeth, Staff Writer – ADN, “Greenpeace Puts Pollock Fishery in its Cross Hairs”,

Anchorage Daily News, 12-3, http://www.adn.com/news/alaska/story/609562.html)

Federal scientists say there are fewer fish but the accusation of overfishing is false. The pollock industry agrees with the federal scientists. "This (population decline) was not unexpected, and the sky is not falling," said David Benton, executive director of the Marine Conservation Alliance, which represents western Alaska fishing fleets, processors and ports. Federal scientists have called for a dramatic reduction in the pollock industry's harvest next year -- the lowest catch in the fishery's history -- in response to the decline. Greenpeace and other conservation groups say even deeper cuts in the catch are needed to ensure that pollock remain healthy in the long run. The federal scientists have recommended limiting the pollock harvest to 815,000 tons -- the smallest in more than 30 years. Greenpeace is pushing for a much smaller harvest: 458,000 tons. "Pollock is one of the most important food sources for every animal in the Bering Sea food web," said George Pletnikoff, a Greenpeace campaigner based in Alaska. Next week, the North Pacific Fishery Management Council will meet in Anchorage to consider next year's catch limit, among other tasks. The meetings begin Monday and are expected to spill over into the following week. "People can go to the Anchorage Hilton hotel next week and give their opinions and thoughts about the fishery. They should be involved in it," Pletnikoff said. National Marine Fisheries Service scientists say the decline in Bering Sea pollock is due to natural variability in the fish population that has been documented for decades, not too much harvesting.

### Escalation

#### They don’t escalate

**Atkins, 16**—PhD Candidate in Energy, Environment & Resilience at the University of Bristol (Ed, “Environmental Conflict: A Misnomer?,” <http://www.e-ir.info/2016/05/12/environmental-conflict-a-misnomer/>, dml)

It is important to note that such conflicts predominantly occur on an intra-state basis, rather than between two nations. International conflict over environmental factors remain unlikely – whether due to the robust nature of the world trade system and dynamics of supply and demand or to the spread of small arms transforming the notion of traditional conflict (Deudney, 1990). An important example can be found in the assertions of water wars. Although the management of rivers is often complicated by their crossing of territorial boundaries and nations dependent on water from beyond their borders (Egypt, Hungary and Mauritania all rely on international watercourses for 90 per cent of their water), an international conflict exclusively over possession of and access to a shared water source is still to occur. The reasons for this are simply, as Wolf (1998: 251) states, ‘War over water seems neither strategically rational, hydrographically effective, nor economically viable.’ At the international level, the costs outweigh the benefits and cooperation is sought before conflict occurs.

# 1NR

## Assurance DA

### ! OV---Ally Prolif---2NC

#### Causes global crises --- extinction

---it’s the cornerstone of global security only thing preventing global crisis – this is independent of Japan getting nukes or not it’s an immediate perception based impact

de Rivière 20 [Mr Nicolas de Rivière, Permanent Representative of France to the United Nations Security Council, “The NPT is an irreplaceable bulwark against the risk of nuclear proliferation,” 2-26, <https://onu.delegfrance.org/The-NPT-is-an-irreplaceable-bulwark-against-the-risk-of-nuclear-proliferation>, y2k]

The Treaty is one of the cornerstones of our collective security system. It is an irreplaceable bulwark against the risk of nuclear proliferation. It is, indeed, the only instrument that makes it possible to prevent nuclear war, as stated in the preamble to the Treaty, while also permitting the peaceful use of nuclear energy. Its preservation is essential, because the threat posed by the proliferation of weapons of mass destruction and their means of delivery has not disappeared, and because our world today is more uncertain and volatile than ever.

We are witnessing a troubling degradation of our strategic environment, the instability of which is nourished by asymmetries and escalations. The Security Council is regularly convened to address all these crisis situations, which are multiplying, from the Levant to North-East Asia, while the management of proliferation crises unfortunately remains a major priority that continues to require us to take action. In that context, what should be our common road map and how can we ensure the preservation of the NPT and the balance of its three pillars?

#### South Korea prolif causes regional arms racing and nuclear war

Terry 16 [Sue Mi Terry, a managing director for Bower Group Asia, is a former senior North Korea analyst at the Central Intelligence Agency., "An American Nuclear Umbrella Means a Lot to Northeast Asia," No Publication, 10-26-2016, https://www.nytimes.com/roomfordebate/2016/10/26/a-nuclear-arsenal-upgrade/an-american-nuclear-umbrella-means-a-lot-to-northeast-asia?mcubz=1, DS]

There are growing calls from South Korean lawmakers in the conservative, ruling Saenuri Party to develop nuclear weapons — an option that was endorsed by [54 percent](https://www.koreatimes.co.kr/www/news/nation/2016/08/116_210829.html) of those surveyed by Gallup Korea in January 2016. What would happen if South Korea were to go nuclear? Japan would follow suit. And then we would be in the midst of a dangerous and destabilizing nuclear-arms race involving Japan, South Korea, North Korea and China, similar to the nuclear competition that already exists between India and Pakistan. The chances of a catastrophic conflict would greatly increase. That would not be in the interests of Northeast Asia or in the interests of America.

### Brink---2NC

#### Even if credibility is not at an all time high – the commitment is sufficient enough to prevent prolif

Einhorn and kim 16 [Robert Einhorn is a senior fellow in the Foreign Policy Program at the Brookings Institution, Duyeon Kim is a senior adviser for Northeast Asia and nuclear policy at the International Crisis Group "Will South Korea go nuclear?," Bulletin of the Atomic Scientists, 8-15-2016, https://thebulletin.org/2016/08/will-south-korea-go-nuclear/, DS]

For many South Koreans, there is no contradiction between having full confidence in US willingness to meet its alliance commitments and, at the same time, believing that the US extended deterrent could and should be strengthened. Time and again, South Koreans told the authors they did not doubt US assurances but, when pressed, expressed the view that there was room for improvement in the extended deterrent. A former senior military commander told us he was “100 percent confident” in the alliance but felt that the Korean public did not share his view and that further efforts needed to be made to reassure it. A senior government official also explained that there were suspicions and doubts in South Korea about whether the current “tools of deterrence” were sufficient, but stressed that that did not mean there were doubts about the alliance.

#### Credibility is strong enough now – but it isn’t locked in – only the plan sends a signal for South Korea to proliferate

Kim 20 [Duyeon Kim is a senior adviser for Northeast Asia and nuclear policy at the International Crisis Group., "How to keep South Korea from going nuclear," Taylor and Francis, 2-21-20, https://doi.org/10.1080/00963402.2020.1728966, DS]

The South Korean public debate on the country’s future nuclear options has recently extended beyond the usual pro-nuclear, conservative fringe voices of the past. The threat from North Korea’s nuclear weapons capability has grown substantially, and more questions have been raised among South Koreans about the reliability of US security assurances to its key Asian ally, driven largely by what they see as US President Donald Trump’s leadership style. Still, South Korea’s opposition to nuclear weapons remains strong. But Seoul’s nuclear abstinence must not be taken for granted. American administrations can prevent Seoul from crossing the nuclear threshold by keeping North Korea at the top of their foreign policy priorities and taking steps to assure South Koreans that the United States will always come to its defense.

#### Global assurances being down doesn’t thump the da. The white 20 card is our uqness. The alliance doesn’t collapse now, BUT it’s tenuous.

Work 20 – Clint Work, International Studies PhD from the University of Washington, a Fellow at the Stimson Center & Stimson’s 38 North, former professor at the University of Utah. [Alternative Futures for the US-ROK Alliance: Will Things Fall Apart? May 2020, https://www.38north.org/wp-content/uploads/pdf/2020-0507\_Work-Clint\_Alternative-Futures-for-the-US-ROK-Alliance.pdf]

Over the last several months, 38 North held discussions with a broad range of former high-level US and ROK political, diplomatic and military officials as well as various analysts and academics. The following key points emerged from our discussions:

• The US-ROK alliance faces several challenges to its continued cohesion, raising serious questions about its capacity to adapt to structural and strategic shifts buffeting the relationship.

• Major changes in the alliance’s command structure, the possibility of US force withdrawals, the erosion of the US extended deterrence commitment and divergent perspectives about how to approach the DPRK and the ROK’s role in the US-China strategic competition will all stress alliance solidarity.

• To maintain extended deterrence, Washington and Seoul need to deepen their consultations. Some ROK officials argued for going beyond the type of nuclear consultations held in the North Atlantic Treaty Organization (NATO), while others advocated more regular and transparent discussion between the Trump and Moon administrations.

• There was a palpable concern about the alliance’s future direction. The general consensus was that both governments need to reassess the value and direction of the alliance as well as the costs and consequences should it fall apart.

• Many US policymakers do not fully appreciate divergent US and ROK perspectives on fundamental bilateral and regional issues. A rupture in the alliance is unlikely, but institutional inertia alone will not sustain it in the face of the centrifugal forces pulling it apart. Transforming the relationship might be a bridge too far, but intelligent and diligent alliance management can keep the relationship from going off the rails.

### link

#### Perception alone triggers the DA – the aff sends a signal that the US is abandoning South Korea

Kim 20 [Duyeon Kim is a senior adviser for Northeast Asia and nuclear policy at the International Crisis Group., "How to keep South Korea from going nuclear," Taylor and Francis, 2-21-20, https://doi.org/10.1080/00963402.2020.1728966, DS]

Members of the moderate right agree that the US South Korea alliance is critically and fundamentally important to national security and survival and are staunch supporters of it, but they also believe that the US cannot dictate to South Korea. They believe South Korea has advanced enough since the Korean War to deserve an equal partnership with the US rather than remain, indefinitely, as a “younger brother.” Moderately conservative thinkers also care about the credibility and reliability of US security guarantees in the face of a growing North Korean nuclear threat. This means that they are inclined to question US defense commitments during North Korean provocation cycles or when they perceive that Washington does not care enough to solve the North Korean nuclear problem. There is disagreement in this group, however, on whether Seoul should acquire its own nuclear weapons, whether US tactical nuclear weapons should be redeployed to Korea, and how Seoul should correct the military asymmetry. Moderate conservatives also believe that North Korea is their country’s top enemy.

#### \*\*\*The plan crushes credibility with all Asian allies

Sainath Patrick Panjeti 6-10-2016 – LCDR, U.S. Navy; B.S., Auburn University. [“PRESERVING FREEDOM OF NAVIGATION IN THE SOUTH CHINA SEA AND THE STRATEGIC SIGNIFICANCE OF THE PHILIPPINES TO U.S. MARITIME STRATEGY,” https://apps.dtic.mil/sti/pdfs/AD1020341.pdf]

If the United States played it safe and did not get involved in a future conflict between the Philippines and China, economic ties with the PRC would be preserved but the PLA-N would take Scarborough Shoal with little resistance, and perhaps the Spratlys to follow. China would almost immediately start land reclamation projects on Scarborough Shoal, complete with an airfield, surveillance radars, and deep draft ports.119 Taking Scarborough Shoal holds strategic significance for the PRC’s A2AD strategy; the PLA would now have a fortified triangulated position throughout the SCS, significantly changing the balance of power and control in China’s favor. The United States would also lose its credibility as a reliable treaty ally in the region, specifically with Japan, Australia, Thailand, and South Korea. U.S. military-to-military ties and access to the Philippines would also become nonexistent. The most serious consequence of not defending the Philippines would be the future of UNCLOS. A very likely outcome; China will lose the arbitration case but will override the legal precedent of UNCLOS with the concurrence of other nations that were economically coerced. This will trickle down to the academic domain in the U.S. who convince policy makers to accept China’s disregard for the PCA’s decision for the sake of avoiding a shooting match and maintaining economic ties120. The legal backing of UNCLOS would now come into question, and instead of adherence to the law of the sea, UNCLOS would be reverted to customary law where might makes right. An alternate outcome would be the reconstituting of a new international order written with Chinese characteristics.

### A2: Withdraw now (**Wijayadas ’14)**

### A2: NPT/Alliance remains---2NC

#### If South Korea gets the bomb – the NPT is over

Koch 20 [Dr. Susan J. Koch is a Distinguished Research Fellow at the National Defense University Center for the Study of Weapons of Mass Destruction, a Senior Scholar at the National Institute for Public Policy, and an associate faculty member in the Department of Defense and Strategic Studies at Missouri State University.., "Extended deterrence and the future of the nuclear nonproliferation treaty," Taylor & Francis, 4-1-2020, https://doi.org/10.1080/01495933.2020.1740569, DS]

The NPT has been weakened by North Korea’s withdrawal and Iran’s noncompliance. However, South Korean, Japanese, Australian and/or any European withdrawal because of a lack of confidence in U.S. extended deterrence against current security threats would be disastrous for the Treaty and perhaps for much more. Now is not the time for the United States to waver in expressing those commitments in either word or deed. On the contrary, as former Secretary Rice said, the first requirement at a time of dangerous change in the security environment is to reassure our Allies as strongly as possible

#### Reducing security commitments undermines the nuclear umbrella & NPT – that drives prolif

Rademaker 20 [Stephen Rademaker, former head of State Department ureau of Arms Control and the Bureau of International Security and Nonproliferation, “50 Years of the Non-Proliferation Treaty: Strengthening the NPT in the Face of Iranian and North Korean Nonproliferation Challenges”, 3/4/20, https://www.globalpolicywatch.com/2020/03/50-years-of-the-non-proliferation-treaty/]

Iran and North Korea are examples of what might be called the “rogue state” proliferation threat: marginal states that are unreconciled to today’s international system, seeking weapons of mass destruction to help them continue defying, and perhaps even change, the system. There used to be more countries in this category–most notably Iraq, Syria and Libya–but today the list of rogue state proliferation threats has been reduced to just Iran and North Korea.

We should not let today’s salience of the rogue state proliferation threat divert our attention from the potentially even more serious proliferation threat posed by more technologically-advanced countries that are by no stretch of the imagination rogue states. I’m referring here to the kinds of countries that the authors of the NPT were most concerned about when they drafted the treaty 50 years ago.

Today we may scoff at the idea of Sweden or Italy posing a nuclear proliferation threat, but with just modest changes in the security environment it would not be hard to imagine South Korea or Japan or Turkey deciding that the time has come for them to deploy nuclear weapons. And unlike Iran and North Korea, which have had to work for decades to advance their nuclear weapons programs, countries like Japan or South Korea could produce such weapons in very short order.

What is it that has stopped them from doing so until now? As I’ve already explained, it is primarily the U.S. nuclear umbrella that has persuaded them that they don’t need nuclear weapons despite the nuclear threats they face from countries like North Korea and China. Therefore anything that might reduce the confidence of these countries in the reliability and effectiveness of the U.S. nuclear umbrella must be seen as its own potential trigger of nuclear weapons proliferation.

### A2: No Prolif---No Capabilities---2NC

#### Korea has capabilities build the bomb in 6 months – all they need is a reason to

Lim 18 [Eunjung Lim is an assistant professor at College of International Relations, Ritsumeikan University (Kyoto, JAPAN), "South Korea’s Nuclear Dilemmas," Taylor & Francis, 7-2-2018, https://www.tandfonline.com/doi/full/10.1080/25751654.2019.1585585, DS]

Voices for nuclear armament have been rising in South Korea over the past few decades. Whenever there have been nuclear tests by North Korea, some segments of the South Korean public demanded that South Korea should develop its own nuclear weapons or bring back tactical nuclear weapons from the United States. About two out of three South Koreans seemed to support nuclear weapons for their country in a September 2017 public poll right after North Korea’s sixth nuclear test (Lee 2017b). Politicians and pundits also have argued that South Korea should be allowed to reprocess spent fuel for plutonium, as Japan does. This would put South Korea in a position to produce nuclear weapons more quickly (Kang 2016). According to Hwang Il-soon, a professor emeritus of nuclear engineering at Seoul National University (SNU), South Korea needs to have a reprocessing plant to produce weaponizable plutonium, with which it would need just one year to produce enough weapons-grade plutonium to fuel roughly 20 warheads (Oswald 2018). Yim Man-sung, another well-known nuclear engineer at the Korea Advanced Institute of Science and Technology (KAIST), estimates the country needs two years for technical development of a nuclear weapon, setting aside all political difficulties (Oswald 2018). Suh Kune-yul, a professor of nuclear engineering at SNU, said that “if we (South Korea) decide to stand on our own feet and put our resources together, we can build nuclear weapons in six months. The question is whether the president has the political will” (Sanger, Choe, and Rich 2017). In 2015, Charles Ferguson, then president of the Federation of American Scientists, said that South Korea had up to 4330 bombs’ worth of plutonium at the Wolsong site, assuming a conservative estimate of about 6 kg plutonium for a first-generation fission device. The CANDU (CANadian Deuterium Uranium) spent fuel stored at Wolsong at the time contained about 26,000 kg of plutonium (Ferguson 2015).

### A2: No Cred theory

#### Group the fisher and Goldstein cards. Cred theory is true.

Gerzhoy 15 [Gene Gerzhoy is a postdoctoral research fellow at the Belfer Center for Science and International Affairs at the John F. Kennedy School of Government at Harvard University, “Alliance Coercion and Nuclear Restraint: How the United States Thwarted West Germany’s Nuclear Ambitions,” International Security, Volume 39, Number 4, Spring 2015, y2k]

To test these competing logics of security guarantees, the article traces the process of nuclear decisionmaking in the Federal Republic of Germany (FRG) from 1954 to 1969.5 As a militarily threatened recipient of U.S. security guarantees, West Germany is representative of other U.S. clients, enabling scholars to make inferences from its nuclear history. Additionally, the country is an especially easy case for the logic of nuclear dependence, as the U.S. imperative to contain Soviet expansion should have led West Germany to perceive U.S. security guarantees as highly credible. By contrast, although Germany’s acute dependence arguably makes this an easy case for the logic of alliance coercion, existing theories of alliance politics suggest that Washington’s unique interest in West Germany’s defense should have undermined the credibility of U.S. threats of abandonment, making the case a hard one for my argument.6 Finally, because U.S. alliance policy toward Germany varied over time, scholars can employ within-case variation to test the distinct predictions of the two competing logics of security guarantees.

By examining West German nuclear history, this article helps to correct the mistaken belief—still common among political scientists studying nuclear proliferation—that German nuclear ambitions were fleeting or nonexistent. For example, two widely cited quantitative analyses of nuclear proliferation code West Germany as having never pursued nuclear weapons.7 More recent research contends that the country only explored the weapons option from 1957 to 1958.8 With notable exceptions, political scientists have concluded that there was never “any serious rethinking of the German acquiescence to renunciation [End Page 93] of a truly independent, national nuclear capability.”9 As I argue below, these assertions overlook evidence that Germany sought to acquire an independent nuclear deterrent from 1956 to 1963, and that it fought to retain its weapons option from 1964 to 1969.10 Rather than voluntarily forswearing acquisition of a nuclear capability, the FRG was compelled to do so by explicit U.S. threats of military abandonment. By failing to incorporate evidence of West German nuclear ambitions and U.S. abandonment threats into past analyses of nuclear decisionmaking, nonproliferation scholars have not only misunderstood a critical case of nuclear reversal, but have also overstated the explanatory power of the logic of nuclear dependence.

By describing and testing the logic of alliance coercion, this article advances the study of nuclear proliferation and improves upon existing theories of alliance politics. Most important, my argument contributes to a growing literature that highlights the centrality of U.S. nonproliferation policy for containing the spread of nuclear weapons.11 Nonproliferation scholars had previously accepted Kenneth Waltz’s assertion that “in the past half-century, no country has been able to prevent other countries from going nuclear if they were determined to do so.”12 By identifying the conditions when security guarantees serve as the basis for coercive leverage, this article tempers Waltz’s skepticism and demarcates the contours of U.S. influence. In addition, it challenges the argument that nuclear decisions can be understood only by examining domestic political variables.13 Instead, by demonstrating how interactions between a client [End Page 94] and its patron shape the client’s incentives for nuclear acquisition or restraint, it returns the focus to external security imperatives for explaining nuclear choices. Finally, by developing the logic of alliance coercion and demonstrating how it shaped the nuclear trajectory of a critical U.S. client, this article provides an important amendment to standard theories of alliance politics, which argue that threats of abandonment will not be credible against strategically valuable allies.14

### Extra

#### Independent of nuclearization---even moves to go for it cause extinction

Friedberg 15 [Aaron L. Friedberg, Professor of Politics and International Affairs at Princeton. The Debate Over US China Strategy. Global Politics and Strategy. May 19, 2015]

If it were to happen overnight, the acquisition of nuclear weapons by current US security partners in East Asia (perhaps including Taiwan, as well as Japan and South Korea) might improve their prospects for balancing against Chinese power. But here again, there is likely to be a significant gap between theory and reality. Assuming that Washington did not actively assist them, and that they could not produce weapons overnight or in total secrecy, the interval during which its former allies lost the protection of the American nuclear umbrella and the point at which they acquired their own would be one in which they would be exposed to coercive threats and possibly pre-emptive attack. Because it contains a large number of tense and mistrustful dyads (including North Korea and South Korea, Japan and China, China and Taiwan, Japan and North Korea and possibly South Korea and Japan), a multipolar nuclear order in East Asia might be especially prone to instability.48

#### Intra-alliance disputes don’t thump---consensus of scholars agree

---no one thinks the alliance is in danger right now, any alliance changes aff cites are perceived as temporary and limited and commitment overwhelms it

Robertson 8-4 [Dr Jeffrey Robertson is a researcher at Yonsei University, “South Korea: The next strategic surprise?”, 8-4-2020, https://easc.scholasticahq.com/article/14358.pdf] IanM

During 2019, **relations** between Seoul and Washington further **deteriorated**. **Issues concerning** **trade** and **investment**, Seoul’s **decision to end** the General Security of Military Information Agreement with Japan, **negotiations towards** the transfer of wartime **op**erational **con**trol, defense **cost-sharing negotiations**, and an **increase in anti-American demonstrations**, all exacerbated underlying fractures in the relationship. While there are exceptions, few analysts outside of South Korea believe the alliance to be at risk **or consider** it possible **that Seoul has other options**. For most, **South Korea’s** **deviation** is the **result of** a **perfect storm** of ambition and unpredictability in the presidential offices of South Korea and the United States (U.S.), respectively. For most, the alliance challenges are limited and temporary, and **there are expectations that** future administrations will repair the damage done. Few were willing to even contemplate that the long-term relationship could be coming to an end. Could radical change in Seoul’s foreign policy be the next strategic surprise in Washington?

#### Filter the prolif debate through the link---U.S. support is the only meaningful barrier to nuclearization.

Lee 19, Researcher @ Harvard International Review (Dennis, August 18th, “A Nuclear Japan: The Push for Weaponization,” *Harvard International Review*, https://hir.harvard.edu/a-nuclear-japan-the-push-for-weaponization/)

It is no surprise that the only country that has ever experienced the horror of nuclear weapons is also one of their staunchest opponents. Since the end of the Second World War, despite pursing peaceful civilian uses of nuclear energy, both the Japanese government and its general population have been opposed to the weaponization of nuclear technology. However, much has changed since the late 1940s, and as regional geopolitics change, so too may Japan's stance. Despite many diplomatic missions to the region, including a recent visit by Japan's prime minister, Southeast Asia continues to be an issue for Japan. Animosity and tensions still exist from the conquests by Imperial Japan during the Second World War, and in addition, many nations in the region depend heavily on the Chinese investment, crowding out Japan's own. As the situation develops, it is not impossible for Japan to develop nuclear weapons as a way of contesting China's increasing economic and military influence. In fact, China has already begun to clash with Japan: the territorial dispute over Senkaku/Diaoyu Island continues to be extremely dangerous to Sino-Japanese relations many believe that the risk of armed conflict between the two nations is the highest since the Second World War. In addition, North Korea continues to test nuclear weapons and missile launch capabilities, causing much unease in the Japanese government. At the end of the Second World War, many factors contributed to Japan's anti-nuclear weapon stance. While the bombs at Hiroshima and Nagasaki played a major role in its definition, the promise of US protection solidified this position. Both the Mutual Security Assistance Pact of 1952 and the 1960 Treaty of Mutual Cooperation and Security essentially guarantee that Japan is protected by the United States' military might, including its massive nuclear arsenal. Even so, in the past, regional events have triggered a move toward Japanese nuclear weaponization. In the 1960s, China's first nuclear weapons test led the Japanese Prime Minister to investigate the possibility of weaponization. In 1995, another investigation occurred as a result of the 1994 North Korean Nuclear Crisis, when North Korea threatened war in response to possible sanctions. Conducted by the Japanese Defense Agency, the secret investigation decided that developing nuclear weapons would harm USJapan relations. Notably, all of these investigations and reports proceeded in spite of a 1955 law that specifically prohibits Japan from researching and developing nuclear weapons. Japan has been at the forefront of developing next generation nuclear technology. Despite the 2011 Fukushima nuclear disaster, in which a nuclear meltdown resulted in the release of large amounts of radioactive material, the newly elected Japanese government continues to support the construction of nuclear power plants. Japan also owns 42.7 metric tons of plutonium, which, according to the Congressional Research Service, has the potential to create over 1,000 nuclear weapons, a stockpile that is predicted to increase to over 1 10 metric tons by 2020. Japan's ability to create a nuclear weapon is, according to the Center for Strategic and International Studies, "a screwdriver's turn away." In combination with missile technologies developed by the Japanese Aerospace Exploration Agency, Japan could develop its own nuclear deterrent should it decide that the United States's is inadequate or unnecessary. Japan's reliance on US military support may also be changing. Experts predicted that the warming of relations between Washington and Beijing would distance Tokyo. The Cold War is over, and the strategic need to have an extended US presence in Japan has lessened. There have been movements in both the United States and Japan for the United States to reduce its presence in the Japanese Islands. Younger Japanese are increasingly nationalistic and favor weaponization in greater numbers, but whether Japan will risk relations with the United States remains to be seen. Here, the US policy toward other East Asian allies has a large impact on Japan, which might see the lack of support for Taiwanese independence as an abandonment. The only significant barrier preventing Japan from developing nuclear weapons is the security it obtains from relying on the United States. Japan values the economic and security benefits the relationship has brought, causing reluctance among the Japanese government to perform any actions that would damage this relationship. However, if the government, for whatever reason, is able to overcome this reluctance, Japan could quickly and easily acquire a nuclear deterrent. The prospect of Japan becoming a nuclear power is disturbing; it is currently one of the most outspoken advocates against nuclear weapons and this action would severely undermine the Non-Proliferation Treaty. While it may seem unlikely at first glance, increasing external threats, such as that of China, as well as the increasing amount of youth nationalism, may be enough to push Japan over the edge. The only barrier may be the strength of the US-Japanese alliance.

#### Plan spills over to global alliances – every empiric flows neg

Brands et al. 18 [Hal Brands, Eric Edelman, Thomas G. Mahnken – Hal Brands is a Senior Fellow at CSBA and the Henry A. Kissinger Distinguished Professor of Global Affairs at Johns Hopkins University's School of Advanced International Studies (SAIS). In 2015–2016, he served as special assistant to the secretary of defense for strategic planning. He has also consulted with a range of government offices and agencies in the intelligence and national security communities, as well as the RAND Corporation, and provided research and analysis for the Office of Net Assessment in the Department of Defense. He is the author or editor of several books, including American Grand Strategy in the Age of Trump (2018), Making the Unipolar Moment: U.S. Foreign Policy and the Rise of the Post-Cold War Order (2016), What Good is Grand Strategy? Power and Purpose in American Statecraft from Harry S. Truman to George W. Bush(2014), Latin America's Cold War (2010), From Berlin to Baghdad: America's Search for Purpose in the Post-Cold War World (2008), and The Power of the Past: History and Statecraft (co-edited with Jeremi Suri, 2015).Eric S. Edelman is Counselor at the Center for Strategic and Budgetary Assessments. He retired as a career minister from the U.S. Foreign Service on May 1, 2009. As Undersecretary of Defense for Policy (2005–2009), he was DoD’s senior policy official. He served as U.S. ambassador to Finland in the Clinton administration and Turkey in the Bush administration and was Vice President Cheney’s principal deputy assistant for national security affairs. He was chief of staff to Deputy Secretary of State Strobe Talbott, special assistant to Undersecretary of State for Political Affairs Robert Kimmitt, and special assistant to Secretary of State George Shultz. Ambassador Edelman has been awarded the Department of Defense Medal for Distinguished Public Service, the Chairman of the Joint Chiefs of Staff Joint Distinguished Civilian Service Award, the Presidential Distinguished Service Award, and several Department of State Superior Honor Awards. In 2010, he was named a knight of the French National Order of the Legion of Honor. Ambassador Edelman received a B.A. in history and government from Cornell University and a Ph.D. in U.S. diplomatic history from Yale University. He is a Roger Hertog Distinguished Practitioner-in -Residence at the Philip Merrill Center for Strategic Studies at Johns Hopkins University and a non-resident senior fellow at the Miller Center of Public Affairs at the University of Virginia.. Thomas G. Mahnken is President and Chief Executive Officer of the Center for Strategic and Budgetary Assessments. He is a Senior Research Professor at the Philip Merrill Center for Strategic Studies at The Johns Hopkins University’s Paul H. Nitze School of Advanced International Studies (SAIS) and has served for over 20 years as an officer in the U.S. Navy Reserve, to include tours in Iraq and Kosovo. He currently serves as a member of the Congressionally-mandated National Defense Strategy Commission and as a member of the Board of Visitors of Marine Corps University. His previous government career includes service as Deputy Assistant Secretary of Defense for Policy Planning from 2006–2009, where he helped craft the 2006 Quadrennial Defense Review and 2008 National Defense Strategy. He served on the staff of the 2014 National Defense Panel, 2010 Quadrennial Defense Review Independent Panel, and the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. He served in the Defense Department’s Office of Net Assessment and as a member of the Gulf War Air Power Survey. In 2009 he was awarded the Secretary of Defense Medal for Outstanding Public Service and in 2016 the Department of the Navy Superior Civilian Service Medal. Dr. Mahnken is the author of several works, including Strategy in Asia: The Past, Present and Future of Regional Security (Stanford University Press, 2014), Competitive Strategies for the 21st Century: Theory, History, and Practice (Stanford University Press, 2012), Technology and the American Way of War Since 1945 (Columbia University Press, 2008), and Uncovering Ways of War: U.S. Intelligence and Foreign Military Innovation, 1918–1941(Cornell University Press, 2002). <RBanuri> “CREDIBILITY MATTERS - Strengthening American Deterrence in an Age of Geopolitical Turmoil,” *Center for Strategic and Budgetary Assessments*. May 8th, 2018. DOA: 8/28/19. Pages 5-10. <https://csbaonline.org/research/publications/credibility-matters-strengthening-american-deterrence-in-an-age-of-geopolit/publication/1>]

A later generation of scholars, however, departed from Schelling’s analysis. Few scholars question the importance of credibility per se, if credibility is defined as the perception that the United States will act to defend its key interests. What they have critiqued, rather, is the idea that establishing credibility requires regular demonstrations of American resolve, particularly through the use of force. Some scholars have noted, for instance, that concerns with resolve and credibility led the United States to undertake policies—such as escalation in Vietnam—that incurred losses far out of proportion to the reputational gains.16 Others claimed to find little evidence that past demonstrations of resolve actually mattered in affecting opponents’ calculations of credibility. In one widely read study, Daryl Press contended that Western appeasement of Hitler at Munich had little or nothing to do with his subsequent aggression, and that Nikita Khrushchev’s repeated climb-downs on Berlin and other issues in the late 1950s had scant impact on Western perceptions of his resolve.17 Press and other scholars argued that other variables—the balance of capabilities and the perceived importance of the interests at stake—were paramount in determining perceptions of credibility.18 Other scholars have made similar arguments, claiming that “politicians’ persistent belief in the value of reputation for resolve is merely a cult of reputation,” or even, in an extreme form, that “credibility is an illusion—and an exceptionally dangerous illusion at that.”19

Such **doubts may be most prevalent within the ivory tower, and** relatively **few policymakers would share academics’ skepticism about the importance of credibility and demonstrations of resolve.**20 Yet it is worth nothing that a similar skepticism has emerged in some surprising quarters of the policymaking community of late. As Jeffrey Goldberg wrote in 2016, then-President Obama believed that the U.S. foreign policy community “makes a fetish of ‘credibility’—particularly the sort of credibility purchased with force.” As the president acidly remarked, “Dropping bombs on someone to prove that you’re willing to drop bombs on someone is just about the worst reason to use force.”21 It would require an extended essay to adjudicate these debates regarding credibility and its constituent parts. Yet three key points can briefly be made here. **First**, and most important, **the more extreme critiques of credibility** and U.S. policymakers’ preoccupation therewith **are badly overstated.** For one thing, accepting that credibility is an illusion, or that past behavior has no impact on perceptions of an actor’s subsequent credibility, **requires accepting that normal rules of human interaction—in which past behavior is crucial to expectations about future behavior—are simply suspended in the international arena.** If a person reneges on a commitment, his peers and interlocutors will likely doubt his sincerity with respect to other commitments; **there is no logical reason to suspect that similar patterns do not prevail in international politics.** For another thing, deeming credibility an illusion **requires accepting that virtually all U.S. officials who think otherwise**—in part because they know, from experience, that U.S. allies as well as adversaries are constantly assessing recent American behavior in hopes of divining what Washington will do in the next crisis—**are simply mistaken.** Not least, **there is now considerable historical analysis** and evidence **illustrating that credibility does matter and past actions** do indeed **affect reputations.** Scholars have convincingly argued that:

•Ronald Reagan’s decision not to retaliate meaningfully for Hezbollah’s attacks on the Marine barracks in Beirut in 1983 had a corrosive effect on how other terrorists and state sponsors perceived U.S. intentions. When U.S. officials threatened Syrian president Hafez al-**Assad** with retribution if he did not cease supporting Hezbollah, for instance, Assad replied that he **did not credit American threats.**22

•Conversely, the U.S. **willingness to defend South Korea** in 1950 **influenced Soviet perceptions of American resolve** to resist further East bloc military advances. As William Stueck writes in his definitive history of the Korean War, “Stalin’s immediate successors learned the lesson that to arouse the United States from a slumber through blatant military action could prove a costly mistake. It would take more than a generation and a new group of leaders before the Soviet Union would run a repeat performance.”23

•The U.S. **withdrawal from Vietnam** did encourage additional East bloc challenges in the Third World—in Angola, for instance—by signaling a declining U.S. willingness to act decisively to head off Soviet and Cuban advances in peripheral areas.24

•John F. Kennedy’s perceived irresolution in handling the Bay of Pigs invasion encouraged Khrushchev to bully him at the Vienna Summit in 1961. His actions there and in response to the construction of the Berlin Wall also influenced the Soviet decision to place missiles in Cuba a year later.25

•Early U.S. irresolution and failure to make good on coercive threats in dealing with the Balkan crisis in the early 1990s led actors in that crisis to doubt subsequent U.S. promises and threats. **Later shows of resolve, by contrast, had a constructive impact on the subsequent behavior of those actors.** “Whenever US officials failed to respond to probes and challenges, violence escalated. When resolve was demonstrated through mobilizing military forces or airstrikes, escalation was controlled.”26

•Tepid U.S. responses to al-Qaeda attacks during the 1990s, along with the U.S. withdrawal from Somalia following the deaths of less than 20 American servicemen in 1993, encouraged Osama bin Laden to escalate his strikes in the belief that the United States would react to a shocking attack on the homeland by withdrawing from the greater Middle East.27

Moreover, and notwithstanding the academic skepticism discussed above, **there has also emerged a growing body of social science literature** in recent years **indicating that the extreme critiques of credibility are unpersuasive, because past actions and demonstrations of resolve do influence subsequent expectations.** Studies have shown that:

•“States that have honored their commitments in the past are more likely to find alliance partners in the future. Conversely, alliance violations decrease the likelihood of future alliance formation.”28

•Backing down in a dispute with a given challenger increases the likelihood that the challenger “will escalate the current dispute,” whereas an effective response that forces the challenger to back down decreases the likelihood that the challenger will subsequently escalate. In other words, **retreating now encourages more severe challenges later; resisting now can have the opposite effect.**29

•“A defender that enjoys superiority in military resources but does not use force in some manner in a current conflict is at a higher risk of experiencing a re-challenge than is a defender that enjoys military superiority and uses it in some.” In essence, demonstrations of resolve through the use of force are important in shaping the future behavior of adversaries.30

**•“Behavior in earlier conflicts . . . becomes the basis for inferring likely behavior in response to subsequent challenges**. . . . **A country that yielded in a dispute in the previous year is more than two and one-half times as likely to be challenged than is a country that has not yielded in the previous ten years.”**31

In short, there is good reason to think that credibility and resolve are more than mere figments of policymakers’ imaginations. A second point, however, is that there are nonetheless limits to our understanding of how credibility works. There remain unresolved debates about whether credibility attaches to leaders or countries, whether it functions more strongly within a given relationship than across the breadth of a country’s relationships, how long a reputation for resolve or lack thereof lasts, and other issues.32 This is not surprising. **Credibility is**, after all, **a state of mind.** That means it is fairly difficult to observe, let alone measure, particularly because doing so often requires getting inside the head of foreign leaders who may have incentives to publicly misrepresent their true estimation of U.S. credibility. Accordingly, credibility is a subject to which there will likely always be attached some degree of uncertainty and ambiguity.

This leads to a third point, which is that concerns with credibility—and particularly with the role that demonstrations of resolve play in generating credibility—need to be kept in perspective. When the United States withdrew from Vietnam, it may have encouraged Moscow to push for advantage in peripheral areas such as Angola, but it evidently did not lead the Kremlin to doubt American willingness to fight for areas of greater importance, such as Western Europe.33 The reason for this is not that credibility and reputation are unimportant; it is simply that past performance and perceptions of resolve are but one factor that determines the credibility of a commitment. Other issues—such as the strength of the interest at stake and the balance of capabilities—also play a vital role. In addition, there are limits to how far a country should go to establish a reputation for credibility and resolve. There was undoubtedly some reputational value in proving that the United States would absorb enormous costs to defend South Vietnam, for instance, but there was not so much value as to outweigh the massive costs in lives and treasure. Credibility is worth cultivating and defending, but not at any price.

All of this is to say that **credibility is a** crucially important—if perhaps not **all-important—factor in U.S. foreign policy.** Unfortunately, America currently confronts a growing credibility gap in international affairs.

#### Prolif causes war even before the arsenals are fully developed---no transition to stable deterrence

Horovitz 14 [Liviu Horovitz is a PhD candidate at the ETH Zurich, “Beyond Pessimism: Why the Treaty on the Non-Proliferation of Nuclear Weapons Will Not Collapse,” *Journal of Strategic Studies, 38(1-2), 126–158*. doi:10.1080/01402390.2014.917971, y2k]

First, Washington’s global ambitions would be hampered by additional proliferation, a development that the NPT helps stem.84 Primarily, minor powers acquiring nuclear arms could restrict US freedom of action by severely limiting the effectiveness of its overwhelming conventional military superiority.85 In addition, thorny policy choices might become unavoidable in crises.86 Further, proliferation might endanger regional stability, as new nuclear states not only raise suspicions among their neighbours, but also need time to develop secure retaliatory forces necessary for a stable deterrence relationship. This invites pre-emption and encourages high-alert postures prone to accidents.87 Finally, proliferation might undermine US alliances by reducing the value of American security guarantees.88 Thus, it is no surprise that US policy-makers interested in the global status-quo labour to avoid the further spread of nuclear weapons.