### First Off

#### Immigration reform will pass --- political capital is key

Matthews, 10/16 (Laura, 10/16/2013, “2013 Immigration Reform Bill: 'I'm Going To Push To Call A Vote,' Says Obama,” [http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220)](http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220%29))

When Congress finally passes a bipartisan bill that kicks the fiscal battles over to early next year, the spotlight could return to comprehensive immigration reform before 2013 ends.¶ At least that’s the hope of President Barack Obama and his fellow Chicagoan Rep. Luis Gutierrez, D-Ill., chairman of the Immigration Task Force of the Congressional Hispanic Caucus and one of the most vocal advocates for immigration reform in the House of Representatives.¶ “When we emerge from this crazy partisan eruption from the Republicans, there will be a huge incentive for sensible Republicans who want to repair some of the damage they have done to themselves,” Gutierrez said in a statement. “Immigration reform remains the one issue popular with both Democratic and Republican voters on which the two parties can work together to deliver real, substantive solutions in the Congress this year.”¶ Reforming the status quo has consistently been favored by a majority of Americans. Earlier this year, at least two-thirds of Americans supported several major steps to make the system work better, according to a Gallup poll. Those steps include implementing an E-verify system for employers to check electronically the immigration status of would-be employees (85 percent), a path to citizenship for undocumented immigrants, (72 percent), an entry-exit check system to make sure people who enter the country then leave it (71 percent), more high-skilled visas (71 percent) and increased border security (68 percent).¶ The Senate passed its version of a 2013 immigration reform bill in June that includes, but is not limited to, a pathway to citizenship for immigrants without documentation and doubling security on the southern border. But that measure has stalled in the House, where Republicans are adamant they will take a piecemeal approach.¶ The momentum that lawmakers showed for reform has been sapped by the stalemate that that has shut down the government for 16 days and brought the U.S. to the brink of default. The Senate has agreed on Wednesday to a bipartisan solution to break the gridlock.¶ When the shutdown and default threat is resolved (for a time), that’s when Obama will renew his push to get Congress to move on immigration reform. On Tuesday the president said reform will become his top priority.¶“Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama told Univision affiliate KMEX-TV in Los Angeles. “And if I have to join with other advocates and continue to speak out on that, and keep pushing, I’m going to do so because I think it’s really important for the country. And now is the time to do it.”¶ The president pointed the finger at House Speaker John Boehner, R-Ohio, for not allowing the bill to be brought to the floor for a vote. Boehner had promised that the Senate’s bill would not be voted on unless a majority of the majority in the House supports it -- the same principle he was holding out for on the government shutdown before he gave in.¶ “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives. So we’re going to have to get through this crisis that was unnecessary, that was created because of the obsession of a small faction of the Republican Party on the Affordable Care Act.”¶ Republicans are opposing the Democratic view of immigration reform because of its inclusion of a 13-year path to citizenship for undocumented immigrants. They said this amounted to “amnesty.” Some Republicans prefer to give them legal resident status instead.¶ Immigration advocates have also been urging Obama to use his executive authority to halt the more than 1,000 deportations taking place daily. Like the activists, Gutierrez said the government shutdown didn’t do anything to slow the number of daily deportations.¶ Some Republicans who welcomed Sen. Ted Cruz’s filibuster over Obamacare because it shifted the focus from immigration.¶ “If Ted [didn’t] spin the filibuster, if we don’t make this the focus, we had already heard what was coming,” Rep. Louie Gohmert, R-Texas, told Fox News on Tuesday. “As soon as we got beyond this summer, we were going to have an amnesty bill come to the floor. That’s what we would have been talking about. And that’s where the pivot would have been if we had not focused America on Obamacare.”¶ Still, pro-immigration advocates are hopeful they can attain their goal soon. “With more prodding from the president and the American people,” Gutierrez said, “we can get immigration reform legislation passed in the House and signed into law.”

#### The plan costs substantial capital

Brecher, 12 --- J.D. Candidate, May 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations,” 111 Mich. L. Rev. 423))

[\*451] Finally, while urging Congress to clarify the law governing cyberattacks may be advisable, one should consider the reality that such legislation is very difficult to pass. Congress is notoriously slow to act and legislation is difficult to push through the arduous process to enactment. There are numerous stages in the process at which a bill, even on an issue of significant importance, can be stalled or killed. n170 For example, a bill may not be considered by its corresponding committee in either House, may be bogged down with amendments that cause it to lose support, or be subject to the Senate filibuster, among other "vetogates." n171 In the case of clarifying the appropriate procedures for conducting a cyberattack, there may be concern that such legislation, either by imposing substantive constraints or reporting requirements, will improperly burden the president on a national security issue of increasing importance. Congress as an institution tends to acquiesce to presidential prerogative in national security matters. n172 Further, given that Congress has recently addressed cyberattacks in legislation, albeit in an unhelpfully vague provision, n173 the possibility of expansive legislative clarification in the near future seems even more remote.

#### Reform key to the economy – immigrants are key to several critical sectors

West, ‘09 – Director of Governance Studies at the Brookings Institution (7/22/09, Darrell M., “The Path to a New Immigration Reform,” http://www.brookings.edu/opinions/2009/0721\_immigration\_reform\_west.aspx)

Skeptics need to understand how important a new immigration policy is to American competitiveness and long-term economic development. High-skill businesses require a sufficient number of scientists and engineers. Many industries such as construction, landscaping, health care and hospitality services are reliant on immigrant labor. Farmers need seasonal workers for agricultural productivity. Critics who worry about resource drains must understand that immigrants spend money on goods and services, pay taxes and perform jobs and start businesses vital to our economy. Beyond the economy, immigration reform prospects improve considerably across a fresh political landscape that features a popular Democratic president armed with substantial Democratic majorities in the House and Senate, many who appear receptive to comprehensive reform. Obama has called repeatedly for big ideas and bold policy actions. The country needs new policies that emphasize the importance of immigrant workers \_ across the skills spectrum \_ to our country's long-term financial future. Our universities invest millions in training foreign students but then send them home without any U.S. job opportunities that would take advantage of their new skills. And investing in the children of middle- and lower-skilled immigrants is wise as we recognize their majority role in our workforce as the next generation rises.

#### Extinction

Harris and Burrows, ‘09 [Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>]

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

### Second Off

#### The Executive branch of the United States federal government should issue an executive order to make the covert action regime the presumptive framework for offensive cyber operations. The executive branch should be held accountable and share information with legislators.

#### The counterplan solves the case, ensure presidential flexibility and avoids politics

Brecher, 12 --- J.D. Candidate, May 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations,” 111 Mich. L. Rev. 423))

III. Enacting the Covert Action Regime as Presumptive via Executive Order

Cyberattacks present a challenge for U.S. policymakers: they are difficult to locate within a clear legal category and there is a significant risk of uncontrollable consequences associated with their use. As a result, policymakers must choose a paradigm to govern their use that will ensure that the executive branch is held accountable and shares information with legislators.

This Part argues that the federal government should adopt the presumption that cyberattacks will be carried out under the covert action statute, and that the best way forward is for the president to issue an executive order making the covert action regime the presumptive framework for cyberattacks. It includes a brief discussion of why a president might willingly constrain her discretion by issuing the proposed executive order. It also shows that while the internal executive processes associated with both military and intelligence legal frameworks help mitigate the risk of cyberattacks' misuse by the executive, only the covert action regime provides an adequate role for Congress. Finally, this Part argues that the executive order option is preferable to one alternative proposed by scholars - enacting legislation - because of the practical difficulties of passing new legislation.

The covert action regime is the best approach for committing cyberattacks under the current law, as it would facilitate cooperation among executive agencies. The debate over which agency and set of legal authorities govern cyberattacks has caused no small amount of confusion. n145 Apparently, an Office of Legal Counsel ("OLC") memorandum declined to decide which legal regime should govern the use of cyberattacks, and the uncertainty has led to interagency squabbles, as well as confusion over how cyberattacks are to be regulated. n146 Establishing a presumptive answer would go far toward resolving this dispute.

Most importantly, adopting the covert action framework as the presumptive legal regime would be a principled way to help ensure constitutional legitimacy when the president orders a cyberattack. n147 There is also reason to believe that presidential power is intimately bound up in credibility, which in turn is largely dependent on the perception of presidential compliance with applicable domestic law. n148 A practice of complying with the covert action [\*448] regime for cyberattacks, both when they do not constitute a use of force and when it is unclear whether they do, is most likely to be in compliance with the law. Compliance with the covert action regime would also encourage covert action procedures in close cases without unduly restricting the executive's choice to use military authorities in appropriate circumstances.

### Third Off

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3, Law Prof at University of Chicago

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

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### **Statutory restriction of Presidential War Powers makes warfighting impossible**

Yoo 12 – prof of law @ UC Berkeley

(John, War Powers Belong to the President, ABA Journal February 2012 Issue, http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president) <we do not endorse the ableist language used in this card, but have left it in to preserve the author’s intent. we apologize for the author’s inappropriate use of the word “paralyze”>

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’ loose, decentralized structure would paralyze American policy while foreign threats grow. Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure. Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress’ check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### The plan spills over to broader Congressional decisionmaking

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Legacy Chains

Finegold & Skocpol (1995: 222) describe policy legacies: Past and present policies are connected in at least three different ways. First, past policies give rise to analogies that affect how public officials think about contemporary policy issues. Second, past policies suggest lessons that help us to understand the processes by which contemporary policies are formulated and implemented and by which the conse quences of contemporary policies will be determined. Third, past policies impose limi tations that reduce the range of policy choices available as responses to contemporary problems. All three of the ways in which they connect past policy to present policy can be viewed as changes in the institutional context in which policy is made. These legacies are institutionalized in two different ways: first, through changes in formal rules or procedures, and second, in the 'taken for granteds', 'schemas', and accepted wisdom of policy makers and ordinary citizens alike (Sewell, 1992: 1-29). While a policy or event can leave multiple legacies, it often leaves a single major legacy. For example, the War Powers Resolution for mally changed the relationship between the president and the congress with regard to war-making and the deployment of troops. Subsequent military interventions were influenced by this change and have, in turn, left their own legacy (legal scholars might call it precedent) as a link in that chain. Legacy chains can be modified, trans formed, or reinforced as they step through each 'link' in the chain. As another example, US involvement in Vietnam left a legacy in the sphere of press/military relations which affected the intervention in Grenada in 1983 (the press was completely excluded for the first 48 hours of the operation). The press legacy chain begun in Vietnam also affected the Panama invasion of 1989 (a press pool was activated, in country, but excluded from the action), but the legacy had been trans formed slightly by the Grenada invasion (the press pool system itself grew out of complaint regarding press exclusion in Grenada) (Paul & Kim, 2004). Because of the different ways in which policy legacies are institutionalized, some legacies have unintended institutional conse quences. The War Powers Resolution was intended to curtail presidential war-making powers and return some authority to the con gress. In practice, the joint resolution failed to force presidents to include congressional participation in their intervention decision making, but it had the unintended conse quence of forcing them to change the way they planned interventions to comply with the letter of the law (see the extended ex ample presented later in the article).1

#### Executive control of warmaking is key to avoiding nuclear war and terrorism

Li 2009 - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

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

### Fourth Off

#### **Asking how the executive should be allowed to conduct war masks the fundamental question of whether war should be allowed at all – ensures a military mentality**

Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 22-23)

The widespread, unquestioning acceptance of warism and the corresponding reluctance to consider pacifism as a legitimate option make it difficult to propose a genuine consideration of pacifist alternatives. Warism may be held implicitly or explicitly. Held in its implicit form, it does not occur to the warist to challenge the view that war is morally justified; war is taken to be natural and normal. No other way of understanding large-scale human conflict even comes to mind. In this sense warism is like racism, sexism, and homophobia: a prejudicial bias built into conceptions and judgments without the awareness of those assuming it. In its explicit form, warism is openly accepted, articulated, and deliberately chosen as a value judgment on nations in conflict. War may be defended as essential for justice, needed for national security, as “the only thing the enemy understands,” and so on. In both forms warism misguides judgments and institutions by reinforcing the necessity and inevitability of war and precluding alternatives. Whether held implicitly or explicitly, warism obstructs questioning the conceptual framework of the culture. If we assume (without realizing it) that war itself is morally justifiable, our moral considerations of war will be focused on whether a particular war is justified or whether particular acts within a given war are morally acceptable. These are important concerns, but addressing them does not get at the fundamental issue raised by the pacifist: the morality of war as such. In Just and Unjust Wars Michael Walzer explains that “war is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt.”8 The pacifist suggestion is that there is a third judgment of war that must be made prior to the other two: might war, by its very nature, be morally wrong? This issue is considered by Walzer only as an afterthought in an appendix, where it is dismissed as naïve. Perhaps Walzer should not be faulted for this omission, since he defines his task as describing the conventional morality of war and, as has been argued above, conventional morality does take warism for granted. To this extent Walzer is correct. And this is just the point: our warist conceptual frameworks— our warist normative lenses— blind us to the root question. The concern of pacifists is to expose the hidden warist bias and not merely describe cultural values. Pacifists seek to examine cultural values and recommend what they ought to be. This is why the pacifist insists on judging war in itself, a judgment more fundamental than the more limited assessments of the morality of a given war or the morality of specific acts within a particular war.

#### This mindset is important – our consciousness of war guarantees endless violence that ensures planetary destruction and structural violence

Lawrence 9 (Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27)

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### The alternative must begin in our minds – we need to free ourselves of the presumption towards war and advocate for peace and social justice to stop the flow of militarism that threatens existence

Demenchonok 9 – Worked as a senior researcher at the Institute of Philosophy of the Russian Academy of Sciences, Moscow, and is currently a Professor of Foreign Languages and Philosophy at Fort Valley State University in Georgia, listed in 2000 Outstanding Scholars of the 21st Century and is a recipient of the Twenty-First Century Award for Achievement in Philosophy from the International Biographical Centre --Edward, Philosophy After Hiroshima: From Power Politics to the Ethics of Nonviolence and Co-Responsibility, February, American Journal of Economics and Sociology, Volume 68, Issue 1, Pages 9-49

Where, then, does the future lie? Unilateralism, hegemonic political anarchy, mass immiseration, ecocide, and global violence—a Hobbesian bellum omnium contra omnes? Or international cooperation, social justice, and genuine collective—political and human—security? Down which path lies cowering, fragile hope?¶ Humanistic thinkers approach these problems from the perspective of their concern about the situation of individuals and the long-range interests of humanity. They examine in depth the root causes of these problems, warning about the consequences of escalation and, at the same time, indicating the prospect of their possible solutions through nonviolent means and a growing global consciousness. Today's world is in desperate need of realistic alternatives to violent conflict. Nonviolent action—properly planned and executed—is a powerful and effective force for political and social change. The ideas of peace and nonviolence, as expressed by Immanuel Kant, Leo Tolstoy, Mahatma Gandhi, Martin Luther King, and many contemporary philosophers—supported by peace and civil rights movements—counter the paralyzing fear with hope and offer a realistic alternative: a rational approach to the solutions to the problems, encouraging people to be the masters of their own destiny.¶ Fortunately, the memory of the tragedies of war and the growing realization of this new existential situation of humanity has awakened the global conscience and generated protest movements demanding necessary changes. During the four decades of the Cold War, which polarized the world, power politics was challenged by the common perspective of humanity, of the supreme value of human life, and the ethics of peace. Thus, in Europe, which suffered from both world wars and totalitarianism, spiritual-intellectual efforts to find solutions to these problems generated ideas of "new thinking," aiming for peace, freedom, and democracy. Today, philosophers, intellectuals, progressive political leaders, and peace-movement activists continue to promote a peaceful alternative. In the asymmetry of power, despite being frustrated by war-prone politics, peaceful projects emerge each time, like a phoenix arising from the ashes, as the only viable alternative for the survival of humanity. The new thinking in philosophy affirms the supreme value of human and nonhuman life, freedom, justice, and the future of human civilization. It asserts that the transcendental task of the survival of humankind and the rest of the biotic community must have an unquestionable primacy in comparison to particular interests of nations, social classes, and so forth. In applying these principles to the nuclear age, it considers a just and lasting peace as a categorical imperative for the survival of humankind, and thus proposes a world free from nuclear weapons and from war and organized violence.44 In tune with the Charter of the United Nations, it calls for the democratization of international relations and for dialogue and cooperation in order to secure peace, human rights, and solutions to global problems. It further calls for the transition toward a cosmopolitan order.¶ The escalating global problems are symptoms of what might be termed a contemporary civilizational disease, developed over the course of centuries, in which techno-economic progress is achieved at the cost of depersonalization and dehumanization. Therefore, the possibility of an effective "treatment" today depends on whether or not humankind will be able to regain its humanity, thus establishing new relations of the individual with himself or herself, with others, and with nature. Hence the need for a new philosophy of humanity and an ethics of nonviolence and planetary co-responsibility to help us make sense not only of our past historical events, but also of the extent, quality, and urgency of our present choices.

### Arms Race

#### **No arms race – defensive measures**

Libicki 13, senior management scientist at RAND

(Martin, “Brandishing Cyberattack Capabilities” Rand National Defense Research Institute, <http://www.rand.org/content/dam/rand/pubs/research_reports/RR100/RR175/RAND_RR175.pdf>)

Nevertheless, a cyber arms race is not the most likely course of events. In great contrast to most military weapons, the damage from a cyberattack tends to reflect the characteristics of the target more than the characteristics of the weapon. So the competition to reduce vulnerabilities may overshadow the competition to find and exploit them. Even were this not so, either side’s cyberweapons’ capabilities are a matter of serious dispute—an observation that undergirds this whole discussion. The sorts of numbers that inform the balance of missiles or dreadnoughts (World War I–era battleships) have no meaningful equivalents in cyberspace.

#### Flawed data supporting the arms race

Elkus 12, PhD student at GMU

(Scott, also cites “Krypt3ia” who is Scott Turben, a security architect with 13 years of experience, “Qualifying a "Cyber Arms Race"” May 28, 2012, <http://ctovision.com/2012/05/qualifying-cyber-arms-race/>)

Several recent pieces have looked at the prospects for a “cyberwarfare arms race” and a “cyber warfare gap” concerning the US, China, Russia, and other nations with an interest in offensive cyber capabilities and doctrines. Beyond the endemic refusal to distinguish between computer network attacks and computer network exploitation, there is a larger problem looming with the piece: metrics of effectiveness. It’s important to get this right lest we have the cyber equivalent of what the “bomber gap” was to the 1960 Presidential election. In conventional military assessment, forming a proper net assessment of a strategic competition involves looking at how both Red and Blue forces match up when put together on a straight line involves a number of different considerations. First, there’s obviously data about military spending and quantitative and qualitative comparisons between respective platforms and units. Doctrine, training, and capabilities matter too, because they form the basis for thinking about force employment. The nature of the military competition is paramount: is it, say, a duel in the Persian Gulf or a battle to dominate the ultimate high ground in military space? What specific subsets of the competition (like the radar vs. counter-radar competition in World War II aerial warfare) are important? How does socio-bureaucratic behavior translate (or not) into military effectiveness? How does both Red and Blue’s technical and economic base count towards their long-term effectiveness? I could go on and on but you probably get the point. And I’m sure that Andy Marshall’s folks are already on the case at the TS/SCI level. But as a matter of unclassified public policy debate, there’s significant obstacles to building a cyber net assessment. First, absence of data. Krypt3ia has been blogging up a storm lately about the attribution problem and the lack of conceptual rigor inherent in our approaches: First off, I would like to address Inductive and Deductive reasoning in this effort as one of the precepts core to these attribution attempts. By using both of these in a rigorous manner, we can attempt to shake out the truths to situations that may in fact seem clear on the face of them, but, once looked into further may be discounted, or at the very least questioned. Much of this lately has been the hue and cry that APT (Advanced Persistent Threat’s) are all pretty much originating from China. While many attacks have in fact been attributed to China, the evidence has not always been plainly clear nor, in many cases, has the evidence been anywhere in the open due to classification by the government and military. …. It just so happens that there are many other nation states as well as other actors (private/corporate/individual) that may well be the culprits in many of the attacks we have seen over the years as well. Unfortunately, all too many times though, a flawed inductive or deductive process of determination has been employed by those seeking to lay the blame for attacks like ghostnet or ghost rat etc. Such flawed thought processes can be shown by examples like the following; This has pretty much been the mindset in the public and other areas where attacks in the recent past have been concerned. The attacks on Google for instance were alleged to have come from China, no proof was ever really given publicly to back this up, but, since the media and Google said so, well, they came from China then.. Right? While the attack may have in fact come from China, there has been no solid evidence provided, but people are willing to make inductive leaps that this is indeed the truth of it and are willing to do so on other occasions where China may have had something to gain but proof is still lacking. The same can be said with the use of deductive reasoning as well. We can deduce from circumstances that something has happened and where it may have originated (re: hacking) but, without using both the inductive method as well as the deductive with evidence to back this up, you end up just putting yourselves in the cave with the elephant trunk. As Krypt3ia notes, there is an persistent idea that one can rely on the medium of the attack solely and ignore psychology, (geo)politics, and logic in combination with forensics. Attribution is only one symptom of a larger data problem about cyber exploitation infiltration that at times can lead to an misleading picture of adversary capabilities. Then add the more general problem that these activities largely take place at a covert and/or clandestine level. How are we really going to analytically build a picture of an adversary’s capabilities in reference to our own that will be more than impressionistic? Talking about Chinese PLA or Russian cyberwarfare capabilities is going to be like how Soviet paramilitary operations discussions were doing the Cold War: lots of out-of-context readings of military doctrine, speculations, and occasional insights. I own many volumes from the 80s on Soviet special forces and military, and some of the more egregiously wrong sections dealt with Soviet strategic deception and covert warfare. Victor Suvorov’s corpus in particular stands out as an example to avoid. Finally, there’s a need in these assessments to actually take into account some of the unique dynamics of cyber weapons. Here, I will build off Thomas Rid’s recent discussion of cyber weapons. Lightning fast (at least compared to the F-35) acquisition and development cycles and processes. Vulnerabilities must pre-exist, they cannot be created. The weapon uses the system itself to create the destructive effect. At a banal level, there are tons of existing vulnerabilities, but when we get to those that matter the opportunities lessen considerably. Weapons must be customized for specific vulnerabilities. The tradeoff is that while individual weapons cannot be re-used and take a lot of energy to process, they can be generated faster than most conventional weapons. Weapons require a degree of intelligence preparation that suggest, absent heroic levels of social engineering, many threats to sensitive systems will be insider-based. Note that this is an explicitly military overview, and in such a context cyber will be only one part of a mesh of larger capabilities. Most cyber threats occur within the framework of cyber conflict, a larger and more holistic category. And as Sam Liles notes in his latest entry, information security is also very different conceptually and practically from war.

No cyber war – exaggeration

Guo 12, IT and legal consultant with a JD from University of Miami

(Tony, "Shaping Preventive Policy in “Cyber War” and Cyber Security: A Pragmatic Approach" Cyber Security and Information Systems Information Analysis Center, Vol 1 Num 1, October 2012, [https://www.thecsiac.com/journal\_article/shaping-preventive-policy-“cyber-war”-and-cyber-security-pragmatic-approach#.UhP31JLvuSo](https://www.thecsiac.com/journal_article/shaping-preventive-policy-#.UhP31JLvuSo))

 “Cyber war” today exists only in the hypothetical, and its disastrous impacts are often exaggerated. For instance, the Estonia incident is a commonly cited example by proponents of “cyber war,” where a number of Estonian government websites were temporarily disabled by angry Russian citizens. A crude distributed denial of service (DDoS) attack was used to temporarily keep users from viewing government websites. To borrow an analogy, the attack was akin to sending an army of robots to board a bus, filling the bus so that regular riders could not get on. A website would fix this the same way a bus company would, by identifying the difference between robots and humans, and preventing the robots from getting on. A following MSNBC article dressed up the Estonia incident and asked the question, could a cyber skirmish lead the U.S. to actual war? Imagine this scenario: Estonia, a NATO member, is cut off from the Internet by cyber attackers who besiege the country’s bandwidth with a devastating denial of service attack. Then, the nation’s power grid is attacked, threatening economic disruption and even causing loss of life as emergency services are overwhelmed . . . outside researchers determine the attack is being sponsored by a foreign government and being directed from a military base. Desperate and outgunned in tech resources, Estonia invokes Article 5 of the NATO Treaty -- an attack against one member nation is an attack against all. The article claimed that “half of this fictional scenario occurred in 2007.” In reality, a lot less than half of it occurred, most Estonian sites immediately cut off access to international traffic soon after the increased bandwidth consumption, and botnet IP addresses were soon filtered out. Most of the attackers could not be traced, but one man was later arrested and fined £830 for an attack which blocked the website of the Prime Minister’s Reform Party. “Cyber war” has been a source of confusion due to the ubiquitous application of the terminology, inclusive of cyber crimes and cyber espionage. Cyber warfare comes with many faulty premises, for instance, proponents argue that it might allow terrorists to successfully attack a much larger target and do disproportionate damage. However, the reality is that any sufficiently effective attack will invite disproportionate retaliation. For instance, one nation may be able to make the claim that any number of nations is harboring “cyber terrorists” and invoke the right of preemptory self-defense. However, “cyber war” as it exists today is not kinetic warfare and should not be confused with traditional notions of war. “Cyber war” is about how to prevent or respond to a DDoS attack, and how to secure systems and information. Short of “re-engineering the Internet,” one could simply maintain government networks and critical infrastructure on closed-networks using proprietary software or protocols. If an organization has all its systems on a closed circuit, the only threats left are its users. Recent data suggests that problems of attribution may not be the major issue, but having reasonable security is. For instance, the U.S. Department of Homeland Security recently ran a test in 2011 where staff secretly dropped USB drives and CDs in the parking lots of government buildings and private contractors. Of those who picked up the media, an overwhelming 60% plugged them into office computers to see what they contained. If the drive or CD had an official logo, 90% were installed. “The test showed something computer security experts have long known: Humans are the weak link in the fight to secure networks against sophisticated hackers.” Moving forward, legislation and international treaties should focus on the immediate concern regarding cyber security, not on hypothetical accounts of “war.” Addressing security is practical--attacks are less likely to succeed on secured systems and networks with diligent operators, especially given that the majority of breaches today are as a result of system failures and employee negligence.

#### Widespread damage unlikely – the more sophisticated the cyber attack, the more narrow its impact

Rid 12

Thomas, “[Think Again: Cyberwar](http://www.foreignpolicy.com/articles/2012/02/27/cyberwar),” Foreign Policy, March/April, <http://www.foreignpolicy.com/articles/2012/02/27/cyberwar>

WHEN NEWS OF STUXNET BROKE, the New York Times reported that the most striking aspect of the new weapon was the "collateral damage" it created. The malicious program was "splattered on thousands of computer systems around the world, and much of its impact has been on those systems, rather than on what appears to have been its intended target, Iranian equipment," the Times reported. Such descriptions encouraged the view that computer viruses are akin to highly contagious biological viruses that, once unleashed from the lab, will turn against all vulnerable systems, not just their intended targets. ¶ But this metaphor is deeply flawed. As the destructive potential of a cyberweapon grows, the likelihood that it could do far-reaching damage across many systems shrinks. Stuxnet did infect more than 100,000 computers--mainly in Iran, Indonesia, and India, though also in Europe and the United States. But it was so specifically programmed that it didn't actually damage those machines, afflicting only Iran's centrifuges at Natanz. The worm's aggressive infection strategy was designed to maximize the likelihood that it would reach its intended target. Because that final target was not networked, "all the functionality required to sabotage a system was embedded directly in the Stuxnet executable," the security software company Symantec observed in its analysis of the worm's code. So yes, Stuxnet was "splattered" far and wide, but it only executed its damaging payload where it was supposed to. ¶ Collateral infection, in short, is not necessarily collateral damage. A sophisticated piece of malware may aggressively infect many systems, but if there is an intended target, the infection will likely have a distinct payload that will be harmless to most computers. Especially in the context of more sophisticated cyberweapons, the image of inadvertent collateral damage doesn't hold up. They're more like a flu virus that only makes one family sick.

#### **No war - no motives or capability**

Zetter 13, senior reporter at Wired

(Kim, “Spy Chief Says Little Danger of Cyber ‘Pearl Harbor’ in Next Two Years” March 12, 2013, <http://www.wired.com/threatlevel/2013/03/no-cyber-pearl-harbor/>)

Contrary to much of the fear-mongering that has been spreading through the nation’s capital on cybersecurity matters lately, the director of national intelligence bucked that trend on Tuesday when he told a senate committee that there was little chance of a major cyberattack against critical infrastructure in the next two years. DNI James Clapper was a singular voice of reason when he told the Senate Select Committee on Intelligence that lack of skills on the part of most attackers and the ability to override attacks on critical infrastructure with manual controls would make such attacks unfeasible in the near future. He also said that nation states that might have the skills to pull off such an attack lack the motive at this point. “We judge that there is a remote chance of a major cyber attack against U.S. critical infrastructure systems during the next two years that would result in long-term, wide-scale disruption of services, such as a regional power outage,” Clapper said in his statement to the committee. “The level of technical expertise and operational sophistication required for such an attack — including the ability to create physical damage or overcome mitigation factors like manual overrides — will be out of reach for most actors during this time frame. Advanced cyber actors — such as Russia and China — are unlikely to launch such a devastating attack against the United States outside of a military conflict or crisis that they believe threatens their vital interests.” Clapper’s words come in the wake of increased rhetoric in Washington over a recent report that Chinese hackers, presumed to be supported by that nation’s military and Communist Party apparatus, have been responsible for unprecedented cyberespionage attacks that have resulted in millions of dollars of intellectual property being lost. That report, published by computer security firm Mandiant, suggested that Chinese spies were also targeting critical infrastructure systems with the possible intention of causing sabotage.

### Coalitions

#### No chance cyber legal norms work – too easy to cheat and deny it

Baker 12

Stewart, attorney and former official at the US DHS, “What is the Role of Lawyers in Cyberwarfare?” ABA Journal, May 1, http://www.abajournal.com/magazine/article/what\_is\_the\_role\_of\_lawyers\_in\_cyberwarfare/

So, why do today’s lawyers think that their limits on cyberwar will fare better than FDR’s limits on air war?¶ It beats me. If anything, they have a much harder task. Roosevelt could count on a shared European horror at the aerial destruction of cities. He used that to extract an explicit and reciprocal understanding from both sides as the war was beginning. We have no such understanding, indeed no such shared horror. Quite the contrary, for some of our potential adversaries, cyberweapons are uniquely asymmetric—a horror for us, another day in the field for them. It doesn’t take a high-tech infrastructure to maintain an army that is ready in a pinch to live on grass.¶ What’s more, cheating is easy and strategically profitable. American compliance will be enforced by all those lawyers. Our adversaries can ignore the rules and say—hell, they are saying—“We’re not carrying out cyberattacks. We’re victims too. Maybe you’re the attacker. Or maybe it’s Anonymous. Where’s your proof?”¶ Even if all sides were genuinely committed to limiting cyberwar, as all sides were in 1939, we’ve seen that the logic of airpower eventually drove all sides to the horror they had originally recoiled from. Each side felt that it had observed the limits longer than the other. Each had lawyerly justifications for what it did, and neither understood or gave credence to the other’s justifications. In that climate, all it took was a single error to break the legal limits irreparably.¶ And error was inevitable. Bombs dropped by desperate pilots under fire go astray. But so do cyberweapons. Stuxnet infected thousands of networks as it searched blindly for Natanz. The infections lasted far longer than intended. Should we expect fewer errors from code drafted in the heat of battle and flung at hazard toward the enemy?¶ Of course not. But the lesson for the lawyers and the diplomats is stark: Their effort to impose limits on cyberwar is almost certainly doomed.¶ No one can welcome this conclusion, at least not in the United States. We have advantages in traditional war that we lack in cyberwar. We are not used to the idea that launching even small wars on distant continents may cause death and suffering here at home. That is what drives the lawyers. They hope to maintain the old world. But they’re driving down a dead end.¶ If we want to defend against the horrors of cyberwar, we need first to face them with the candor of a Stanley Baldwin. Then we need to charge our military strategists, not our lawyers, with constructing a cyberwar strategy for the world we live in, not the world we’d like to live in.

#### Nye is wrong – too many alt causes

Ying Fan - Senior Lecturer in Marketing at Brunel Business School, Brunel University in London – Nov 2007, Soft power: Power of attraction or confusion?, Place Branding and Public Diplomacy

A person is said to have power due to having one of the following attributes or a combination of them: status, authority, reputation, money, knowledge and beauty ( Davies, 1991 ). Individuals such as Nelson Mandela or Mother Teresa have soft power because of their reputation. A nation, however, is far more complicated than a person. It is unclear how attraction or attractiveness leads to power or influence in the context of a nation. Particularly, it is important to consider: Who — If a nation is said to have soft power, who actually possesses it: government, NGOs, commercial organisations or certain individuals? Does a country ’ s geographic landscape, culture or customs also have soft power? What — What consists of soft power — in what form and category? Or in other words, what are the sources of soft power? How relevant — To whom is it soft power and to whom is it not? Soft power may work on some people in a certain context, but not on all people all the time. Nye (2004a) also emphasises that the influence behind soft power is contingent on the preexisting preferences of the other party, giving the example that to command an excited child to jump is no manifestation of power when he / she already enjoys jumping anyway. Consequently, soft power is only meaningful in the context of a conflict of objectives, where persuasion and attraction may be employed to influence behaviour. The defnition is mildly tautological if country A is said to wield soft power purely by setting an agenda of economic prosperity and success for country B to follow, as all countries desire this. The more significant question concerns the extent to which country B is willing to alter its perception of its objectives under the influence of country A, where previously it would have perceived A ’ s actions to be detrimental to its own interests. Although Nye coined the term in 1990, the concept of soft power has its origin in the works of Hans J. Morgenthau, Klaus Knorr and Ray Cline. For example, Morgenthau (1967) identifies nine elements of national power, among which national character, national morale, the quality of diplomacy and the quality of government are closely associated with intangible sources of power, that is, soft power. Similarly, Carr (1964) writes that power over opinion is not less essential for political purposes than military and economic power, and has always been closely associated with them. These ideas have since been summarised and popularised in recent years by Nye ( Gill and Huang, 2006 ). On the other hand, the management and psychology literature has long promoted the benefits of using referent (soft) power over coercive (hard) power ( Cristo, 2005 ). According to Raven and French (1959) , there are five bases of power: reward, coercive, legitimate, referent and expert. Soft power is a kind of referent power that is based on identification and attraction, and yields the greatest influence in relation to the other powers. The thinking behind the concept of soft power can be traced even back more than 2,000 years. In ancient China, soft power was perceived stronger and more powerful than hard power, as suggested by proverbial wisdoms: to use soft and gentle means to overcome the hard and strong ( yi rou ke gang ); and drips of water can penetrate a stone ( di shui chuan shi ). Sun Tse (544 – 496BC), a military strategist of 2,500 years ago, advocates winning a battle without a fight. The Chinese philosopher Confucius (551 – 479BC) believed that the ruler should win the allegiance of people with virtue (soft power), not by force (hard power). Similarly, Mencius (372 – 289BC) advocated rule in kingly way ( wang dao ) rather than the tyrant way ( ba dao ). The kingly way refers to governing by moral example, whereas the tyrant way involves governing by brutal force ( Wang, 2006 ). Lao Tze, a contemporary of Confucius, says in Tao Te Ching, ‘ I know the benefi t of wuwei ( do nothing); the softest can win the hardest. Invisible force can pass through the intangible ’ . SOURCES OF SOFT POWER Coupled with the problems in definition, it is equally confusing on what exactly constitutes soft power. Nye (1990) identifies three sources: American culture, international laws and institutions, and American multinational corporations. But the list has changed to culture, political values and foreign policy: ‘ the attractiveness of its culture, the appeal of its domestic political and social values, and the style and substance of its foreign policies ’ ( Nye, 2004b ). Nye did not offer any explanation why such changes were made. A close examination of these three key components of soft power shows some confusion. First, policy, by definition, is the course or general plan of action adopted by state. A country ’ s foreign policy itself is not a separate form of soft power but the mere manifestation of its hard power (political power in the case of military intervention; economic power in the case of aid or sanction). No matter how attractive the style of a country ’ s foreign policies it cannot be separated from its substance, which is an integral part of hard power. The US policies of its ‘ war on terror ’ are good examples. Secondly, core values and domestic institutions are an essential part of any society’s culture, not a separate source. Thus, with only one component left, this makes the concept simpler and much clearer: soft power is cultural power. Devoting a large proportion of his new book to the description of the sources of soft power in the US as well as in other countries, Nye (2004a) lists a wide range of various examples as the proxy measures of soft power:

foreign immigrants

asylum applications

international students

tourists

book sales and music sales

popular sports

Nobel prize winners

life expectancy

overseas aids

number of Internet hosts

spending on public diplomacy

With more examples added, Nye seems to miss the point as to what soft power exactly is as the concept has been so stretched that the term comes to mean almost everything and therefore almost nothing ( Hoagland, 2004 ). In all these examples given by Nye, resources, sources (cause) and impact (effect) are mixed up. It is important to note sources and resources are not power per se but potential for power. The owners of these resources have to convert them into power. Four key factors must be in place for power conversion: capital, political structure, social capital and social structure ( Treverton and Jones, 2005 ). A key question still remains unanswered: are the sources of soft power universal or do they vary from one culture to another? Both China and India have rich cultural resources, but do they have the same type of soft power? If cultural power is soft power, why does a country like Egypt, with a history of 7,000 years, seems weaker compared with the US, founded only 200 years ago? Clearly, culture per se is not soft power but rather sources of potential soft power. Whether a cultural asset can be converted into soft power depends on other factors.

No risk from modernisation

ISN 10/3 (“The Real Reason Behind China’s Military Expansion” October 3, 2013, http://oilprice.com/Geopolitics/Asia/The-Real-Reason-Behind-Chinas-Military-Expansion.html)

Modernisation of the armed forces cannot be separated from the transformation of Chinese society in general. The PLA was a very late starter in terms of modernisation. In the 1980s, expenditure was static so the defence budget started from a very low baseline. Since then the budget has grown in parallel with the economy as a whole. Rather than raw figures, the percentage of GDP is a better indicator of defence spending levels. In the past decade it has varied from 1.22% to 1.42%, which is not outlandish. In contrast, the USA averaged 4.7% in 2010-11. Furthermore, unlike Europe and the USA, China does not have a network of alliances and international technological partners with which it can jointly develop weaponry. China is not pursuing a sudden arms race, but it is gradually upgrading a hopelessly obsolete force. Much spending goes to improving pay and living conditions – for example, in 2011 salaries and benefits for non-commissioned officers (NCO) increased 40%. Despite new equipment reaching the PLA, older weapon systems predominate. For instance, only a third of in-service ground systems can be considered modern. Similarly, just 25% of naval surface vessels and aircraft are modern. Comparing raw numbers of weapons on paper does not reflect just how outdated PLA equipment in China's inventory actually is. China recognises its equipment cannot compete directly with that of the USA, for instance. Additionally, the aircraft and amphibious vessels necessary to project power from Chinese shores are also lacking. Most analysts agree that the PLAN’s capability still falls behind that of Japan's navy. China has no recent combat experience either. Our recently commissioned Liaoning aircraft carrier is an all-new capability and it will take years to master its use. In comparison, the US Navy has a wealth of accumulated wisdom after operating carriers for 91 years. It is inevitable a nation will develop its military as its economic power rises. During the Cold War, the Soviet Union was launching a new submarine every month. In comparison, China's build-up has been measured and unhurried. Defence Minister Liang Guanglie told US Defence Secretary Robert Gates in January 2011, "I also firmly believe that in terms of the level of modernisation of the PLA, we can by no means call ourselves an advanced military force. The gap between us and that of advanced countries is at least two to three decades." It is true there are maritime territorial disputes in the East China and South China Seas. However, the PLA has been careful not to get involved. These are the domain of the China Marine Surveillance (CMS) agency. It is hoped these disputes can be solved diplomatically, as China has strong historical claims on these territories.

#### No South China Sea conflict

English News 10/11 (“China self-motivated to maintain peace in S China Sea” October 11, 2013, http://news.xinhuanet.com/english/china/2013-10/11/c\_132789903.htm)

BEIJING, Oct. 11 (Xinhua) -- China is self-motivated to maintain peace with neighboring countries surrounding the South China Sea. Firstly, economic development remains the top priority for China, and a peaceful southeast Asia is important if the world's second-biggest economy is to keep growing. If the South China Sea becomes a flashpoint, China will be distracted from transforming its economic growth model and deepening reform. Given that China owes its fast development over the past 35 years to a peaceful domestic and international environment, the country would not fly in the face of its successful experience by risking trouble at the doorstep with its neighbors. China is aware of the importance of peace, as reflected by its restraint in handling disputes with neighboring countries such as Japan and the Philippines. Secondly, any conflicts in the South China Sea would be a lose-lose situation for all parties involved. Both China and members of the Association of Southeast Asian Nations (ASEAN) have shared interests in the region's robust economic activities. China is now the largest trading partner of the ASEAN, while the association ranks as China's third-largest trading partner. Trade between China and the ASEAN amounted to 400.1 billion U.S. dollars in value last year. If conflicts escalate in the South China Sea, economic activities will certainly be affected. Neither China nor southeast Asian nations with overlapping claims to territories are not willing to see that happen. Thirdly, the U.S. backing that has made some countries grow more assertive in territorial disputes with China has actually complicated the South China Sea issue and set back progress for joint development. The issue should be addressed through consultation and negotiation between parties directly concerned, and without the meddling of a third party which seeks to impose its influence in the region by instigating conflicts. Given the strong cultural bonds and geographical closeness, China and countries in southeast Asia are capable of working out a peaceful solution eventually. Before the dispute can be fully resolved, shelving differences and seeking joint development seems to be a pragmatic solution.

#### No Taiwan war

Vu Duc ‘13 "Khanh Vu Duc is a Vietnamese-Canadian lawyer who researches on Vietnamese politics, international relations and international law. He is a frequent contributor to Asia Sentinel and BBC Vietnamese Service, "Who's Bluffing Whom in the South China Sea?" www.asiasentinel.com/index.php?option=com\_content&task=view&id=5237&Itemid=171

Nevertheless, **it remains unlikely that any conflict** between China and Japan, Philippines, or Vietnam will **amount to more than saber rattling and harsh words.** Even a "small" police action against the Philippines or Vietnam over the Spratly Islands, however successful for China, would have severe consequences. Any Chinese use of force **would realize the fears of every state** in the region. Moreover, **Beijing's hope for a peaceful rise would be immediately set back, if not ruined**.

Presently, tensions are already running high; however, any clear displays of Chinese aggression would simply add fuel to the fire. Countries such as the Philippines and Vietnam would then be able to turn some of their neighbours—previously skeptical, if not cautious, about standing in opposition to China—and convince these states to protest openly. Any goodwill China possessed among some of these countries would evaporate as the Philippines and/or Vietnam make their case.

However, of all the scenarios of a conflict involving China, what can be certain is the potential for an immediate American intervention. While it is questionable that the US would directly intervene in any skirmish between nations, it is likely that Washington would use the conflict as an excuse for deploying a larger, if not more permanent, security force in Asia-Pacific. Although an increased American footprint would not be welcomed by all in the region, **the US would prove to be an appropriate balance against China.**

### Conditionality Good 2NC

#### First our offense-

#### 1- Critical thinking- Reacting to multiple attacks increases aff ability to evaluate their best arguments and collapsing down teaches the neg to make strategic, reactive decisions- that’s key to decisionmaking skills

#### 2- Negative flexibility- The aff gets to parametricize the rez by picking one example- its an inherent advantage because they know way more about their *one* aff than the neg who has to be prepared for *every* aff- the only check is to advance multiple cps

#### Now our defense-

#### 1- Not “infinitely” regressive- time limits and quality of argument create a limit. Our interp is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### 2- Ground- Aff can always make “aff key” args and addons- it’s offense against any and all CPs

#### 3- Strat and time skew are inev- The alternative to multiple advocacies is more T and Das- those require just as many answers and create strategic double binds too

#### 4- CPs aren’t uniquely complex and perms check the advantages of neg fiat- a CP is way less threatening than a DA because you can perm it

#### 5- To vote aff you have to believe the debate is irreparably damaged by conditionality- it might make debate hard but not impossible

#### 6- Don’t be fooled by “reciprocity”- the aff’s job is to pick the question of debate and the neg’s is to find a way to disprove it- that’s why stability is important for the aff and flexibility is key for the neg

## XO CP

### 2NC Solvency

#### The counterplan constrains future administrations and provides basis for more effective congressional action if it is needed in the future

**[--- covert action regime is adequate on its own]**

Brecher, 12 --- J.D. Candidate, May 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations,” 111 Mich. L. Rev. 423))

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining future administrations or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help constrain future administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also establishes a stable legal framework for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

#### Executive branch alone provides a sufficient check --- necessary deliberation will exist

Brecher, 12 --- J.D. Candidate, May 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations,” 111 Mich. L. Rev. 423))

A presumption in favor of the title 50 regime for cyberattacks is also desirable because it comports with the reality of an executive constrained by its own internal processes. Though energy, dispatch, and secrecy are among the key advantages the executive possesses over Congress, n151 the existence of a professional bureaucratic corps, including many lawyers, within the executive branch can foster necessary deliberation about important policy decisions. n152 For issues on which there is disagreement among executive agencies, such as a potential turf war between the military and intelligence communities over control of cyberattacks, advisory and adjudicatory bodies such as the Office of Legal Counsel can play a constructive role. n153 Even on an issue such as the best legal regime to govern cyberattacks, which is essentially [\*449] a policy choice, the friction between different competing agencies itself can serve a checking function. n154

#### Self-restraint is a more effective check than other branches

Posner & Vermeule, 6 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

As we noted earlier, legal scholars rarely note the problem of executive credibility, preferring to dwell on the problem of aggrandizement by ill-motivated presidents. Ironically, this assumption that presidents seek to maximize power has obscured one of the greatest constraints on aggrandizement, namely, the president’s own interest in maintaining his credibility. Neither a well-motivated nor ill-motivated president can accomplish his goals if the public does not trust him.33 This concern with reputation may put a far greater check on the president’s actions than do the reactions of the other branches of the government.

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#### The counterplans leads more effective future legislation

Brecher, 12 --- J.D. Candidate, May 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations,” 111 Mich. L. Rev. 423))

An executive order making the covert action regime presumptive for cyberattacks gives the executive branch considerable flexibility while also ensuring notification to Congress. A presumptive regime helps remove current confusion within the executive branch, as well as allows cyberattack policy to develop with members of Congress gaining access to information that may be helpful in crafting later statutory controls on the use of cyberattacks. Moreover, some proposals for immediate legislative intervention overestimate congressional will to legislate in this field and underestimate the protections for interbranch collaboration offered by the covert action regime. Conclusion The covert action framework is a flexible one that can be applied by any appropriate agency, whether intelligence or military. The legal regimes governing military action, by contrast, lack this flexibility. Moreover, the wide array of cyberattacks that are not of a warlike nature, along with potential confusion between cyberattacks and cyberexploitations, counsels in favor of the covert action framework. In limited circumstances, the covert action [\*452] statute might serve as an alternative legal basis for certain uses of force, and adherence to the covert action procedures could move cyberattacks into a sphere of presidential authority entitled to a strong presumption of validity. Finally, an executive order making the covert action framework presumptive for cyberattacks is a more attainable goal than detailed legislation. Indeed, the reporting requirements of the covert action regime may both preserve accountability to Congress and enable legislative reform.

### AT: Perm “Do Both”

#### Perm still links to ---

#### Politics --- congress still passes restrictions that undermine Obama politically

#### (Losers Lose Link) The inclusion of the plan is seen as a power move by Congress to lock in restrictions on the president and strip Obama from controlling the process.

#### (Spend Capital to Pass Legislation ) Inclusion of the plan forces Obama to spend capital to create legislative majorities in Congress.

#### Perm still requires Obama to assemble a legislative coalition

Howell, 5 – Associate Professor of Government at Harvard

(William G., Presidential Studies Quarterly, “Unilateral Powers: A Brief Overview,” September 2005, v35n3, p.417, proquest)

Third, it can be just as difficult to convince bureaucrats to execute laws as unilateral directives. If anything, laws may prove more difficult, if only because their mandates tend to be broader and their contents more ambiguous. In order to placate the required supermajorities within Congress, members often fill laws with loopholes and compromises, granting bureaucrats ample opportunities to substitute their own policy preferences for those of their political superiors. As presidents need not assemble a legislative coalition in order to issue a unilateral directive, their orders can be more direct. And as others have effectively argued, possibilities for shirking decline in direct proportion to clarity with which directions are handed down (Huber and Shipan 2002).

#### Plan alone allows executive to avoid hardened congressional opposition

Fleishman, 76 --- Prof Law and Policy Sciences at Duke [Joel, Law & Contemporary Problems, Summer, p. 38]

Several related factors, in particular, make executive orders especially attractive policymaking tools for a President. First is speed. Even if a President is reasonably confident of securing desired legislation from congress, he must wait for congressional deliberations to run their course. Invariably, he can achieve far faster, if not immediate, results by issuing an executive order. Moreover, when a President acts through an order, he avoids having to subject his policy to public scrutiny and debate. Second is flexibility. Executive orders have the force of law. Yet they differ from congressional legislation in that a President can alter any executive order simply with the stroke of his pen—merely by issuing another executive order. As noted earlier, Presidents have developed the system of classifying national security documents in precisely this manner. Finally, executive orders allow the President, not only to evade hardened congressional opposition, but also to preempt potential or growing opposition—to throw Congress off balance, to reduce its ability to formulate a powerful opposing position.

### AT: XO Not Perceived

#### President more perceived than Congress or Courts

Marshall, 8 --- Professor of Law at the University of North Carolina

(April 2008, William P., Boston University Law Review, “THE ROLE OF THE PRESIDENT IN THE TWENTY-FIRST CENTURY: ARTICLE: ELEVEN REASONS WHY PRESIDENTIAL POWER INEVITABLY EXPANDS AND WHY IT MATTERS,” 88 B.U.L. Rev. 505))

7. The Media and the Presidency

As Justice Jackson recognized in Youngstown, the power of the Presidency has also been magnified by the nature of media coverage. This coverage, which focuses on the President as the center of national power, n66 has only increased since Jackson's day as the dominance of television has increasingly identified the image of the nation with the image of the particular President holding office. n67 The effects of this image are substantial. Because the President is seen as speaking for the nation, the Presidency is imbued with a unique credibility. The President thereby holds an immediate and substantial advantage in any political confrontation. n68 Additionally, unlike the Congress or the Court, the President is uniquely able to demand the attention of the media and, in that way, can influence the Nation's political agenda to an extent that no other individual, or institution, can even approximate.

#### President’s visibility ensures public awareness and accountability

Rao, 9 --- Assistant Professor of Law, George Mason University School of Law (Spring 2009, Neomi, Willamette Law Review, “PRESIDENTIAL POWER IN THE 21ST CENTURY SYMPOSIUM: ARTICLE: THE PRESIDENT'S SPHERE OF ACTION,” 45 Willamette L. Rev. 527))

B. Ex Ante Constraints

As with the other branches, the primary ex ante constraints on the President are inherent in the nature of the executive power. As the Chief Executive, the President stands in a unique position - he represents the nation, oversees implementation of its laws, and preserves the nation's safety. n93 These responsibilities impose certain constraints on the President.

[\*548] The Framers deliberately chose a unitary executive because, as Hamilton explained, "unity is conducive to energy... Decision, activity, secrecy, and despatch, will generally characterize the proceedings of one man, in a much more eminent degree than the proceeding of any greater number." n94 In addition to energy in the executive, unity promotes both visibility and responsibility. Because the President alone commands the executive branch, the public can identify the source and author of bad policies. As Hamilton explained, the "two greatest securities" the people have in the faithful exercise of the executive power are the restraint of public opinion and the "opportunity of discovering with facility and clearness the misconduct of the persons they trust" n95 so that censure or punishment may follow. n96

Similarly, Madison noted that the executive power has a narrower scope than the legislative power and is "more simple in its nature." n97 Accordingly, he argued, "projects of usurpation ... would immediately betray and defeat themselves." n98 By their nature, the President's actions are usually visible, and this visibility provides accountability. n99

The President's visibility substitutes for more concrete ex ante constraints on the exercise of his powers. Execution of the laws usually generates public awareness of the President's actions and triggers the possibility of political and judicial review. This [\*549] arrangement maximizes energy in the executive by leaving accountability largely to follow after the fact of executive action.

#### Executive Order won’t be kept secret --- media will perceive it

Covington, 12 --- School of Engineering, Vanderbilt University

(Spring 2012, Megan, Vanderbilt Undergraduate Research Journal, “Executive Legislation and the Expansion of Presidential Power,” http://ejournals.library.vanderbuilt.edu))

Challenges to Executive Legislation

Theoretically, the president’s use of executive orders and other forms of presidential directives is well restrained by the system of checks and balances between the three branches of government. Congress can overturn or nullify the effects of any executive order by passing new legislation or refusing to approve any necessary funds.41 In the event the president vetoes this new piece of legislation, Congress can override its veto with a 2/3 vote in both houses. Congress could pass and then over-ride the inevitable veto on a bill specifically designed to curb executive power, perhaps by banning constitutional signing statements. If the president were to ever seriously overstep his constitutional bounds, Congress could always draw up articles of impeachment. If Congress is unwilling or unable to challenge executive legislation, the Supreme Court can overturn it through judicial review. All executive orders must be reported to the Federal Register to be published unless they contain confidential information, preventing presidents from using executive orders in secret. 42 This requirement also allows for the media to play watchdog and monitor the president’s actions. Finally, any executive order can be nullified by a future president’s executive order, meaning there is no guarantee that any single executive order is permanent.43 These constraints on the presidency are designed to prevent abuse of executive power and preserve the individual authority of the other two branches of government.

### AT: Links to Politics

#### Executive order allows President to avoid spending political capital

Kassop, 2 --- Chair of the Political Science Department @ State University of New York

[Nancy, The Presidency and the Law: The Clinton Legacy, ed. Alder, p. 6]

As a president facing an opposition party in Congress, it is not surprising that President Clinton made bold use of executive orders as a means of circumventing the uncertainties of a legislature that was unlikely to be friendly to his initiatives.  Here, too, as in war powers, Clinton followed in the paths of his Republican predecessors, who also operated under conditions of divided government.  Thus, Clinton may not have blazed new trails for his successors by his use of executive orders to accomplish indirectly what he was unwilling to spend political capital on to accomplish directly.

#### Executive orders save capital by avoiding involvement with Congress

Fleishman, 76 --- Prof Law and Policy Sciences at Duke [Joel, Law & Contemporary Problems, Summer, p. 38]

Several related factors, in particular, make executive orders especially attractive policymaking tools for a President. First is speed. Even if a President is reasonably confident of securing desired legislation from congress, he must wait for congressional deliberations to run their course. Invariably, he can achieve far faster, if not immediate, results by issuing an executive order. Moreover, when a President acts through an order, he avoids having to subject his policy to public scrutiny and debate. Second is flexibility. Executive orders have the force of law. Yet they differ from congressional legislation in that a President can alter any executive order simply with the stroke of his pen—merely by issuing another executive order. As noted earlier, Presidents have developed the system of classifying national security documents in precisely this manner. Finally, executive orders allow the President, not only to evade hardened congressional opposition, but also to preempt potential or growing opposition—to throw Congress off balance, to reduce its ability to formulate a powerful opposing position.

## Case

### Alliances

#### Modeling not reverse causal – other nations won’t give up their cyber programs, the genii is out of the bottle

Lewis 12, director at CSIS

James, director of the Technology and Public Policy Program at CSIS, “Benfits are Great, and the Risks Exist Anyway,” New York Times, Oct 17

Nor do cyberattacks against Iran increase the risk of damaging cyberattacks against the United States. It is true that we are defenseless; efforts to make us safer are hamstrung by self-interest, ideology and the gridlock of American politics. But we are no more vulnerable today than we were the day before the news. If someone decides to attack us, they may cite Iran as precedent, but it will only be to justify a decision they had already made.¶ We could ask whether the United States creates more problems for itself when it makes public a new weapon while potential opponents keep it secret. Four other countries can launch sophisticated and damaging cyber attacks -- including China and Russia -- and plan to use them in warfare. Another 30 nations are acquiring cyber weapons, including Iran and North Korea.¶ There is a very old argument for disarmament that holds that if the United States were to renounce some weapons -- usually nuclear weapons -- the world would be a better place. This utopianism has a revered place in American political thinking, but when humans invent weapons they rarely give them up, especially useful weapons whose components are easy to acquire. Cyberattack is now part of warfare, no different from any other weapon. The publicity around Stuxnet may complicate U.S. efforts to get international rules for the use of cyberattack, but the White House decided that tampering with Iran’s nuclear program was more important than possible risk to slow-moving negotiations.

#### Allied cyber coop high

John Reed 12, national security reporter for Foreign Policy, 9/10, “U.S. swapping cyber notes with allies,” http://killerapps.foreignpolicy.com/posts/2012/09/10/us\_now\_swapping\_notes\_on\_cyber\_attacks\_with\_closest\_allies

The Defense Department has reached what Pentagon officials describe a key agreement with some of the United States' closest international allies to share information in the cyber realm.¶ The agreement allows the Pentagon to quickly share broad amounts of information on cyber attacks with the four other members of the so-called Five Eyes intelligence-sharing group (formally known as the UKUSA Agreement): the United Kingdom, Canada, Australia, and New Zealand.¶ "We have far more ability to share, particularly in relation to network defense and information assurance, than we've ever had previously. That's very positive," said Marine Corps Maj. Gen. George Allen, director of plans and policy for U.S. Cyber Command said on August 16. "I think you'll see a far better partnership with our coalition partners than you've ever seen" as the Five Eyes countries integrate the information into their exercises and planning.¶ "At this point it's not a full treaty because it's more an operational type cooperation; it's through a policy type memorandum of understanding," Eric Rosenbach, deputy assistant secretary of defense for cyber policy told Killer Apps during a Sept. 4 interview while discussing how the U.S. shares cyber information with its closest allies. The cyber information-sharing agreement falls under a 2003 MOU on general information sharing between the Five Eyes, according to a DoD spokesman.¶ The agreement will speed up information sharing, which is crucial in cyber, Allen said: "It's extremely important because you may see a certain threat in the U.K. that we haven't yet seen in the U.S. and you want to be able to try to bolster your defenses by seeing that before it hits us. We still have a long way to go on near real time information sharing but the technology is there."¶ Agreements like the one between the Five Eyes are being reached as a result of a National Disclosure Policy regarding the sharing of sensitive cyber information that was enacted "just a couple of months ago," said Allen.¶ The new policy also allows less extensive information sharing with other U.S. allies around the globe, according to Allen.¶ "In some cases [info-sharing agreements are part of] a bilateral relationship, depending upon the country, in other cases we have agreements with groups of countries that come together," such as the Five Eyes, explained DoD's Chief Information Officer, Teri Takai to Killer Apps during a Sept. 4 interview.¶ Defense officials say that information sharing partnerships like this one are badly needed to defeat cyber attacks since the cyber domain transcends national borders. Not only can attacks originate abroad, hackers in one country going after networks in another can often disguise their attacks to appear as if they are emanating from servers in a third nation. Furthermore, not all countries have the ability to detect cyber threats and attacks quickly. This means that a country whose servers are hijacked may not even know that it is hosting an attack.¶ "The more we can build a solid relationship with a partner, the more we're going to be able to crack the code in rapid information sharing, indications, and warnings with those partners," said Army Maj. Gen. John Davis, the military's top advisor for cyber to the undersecretary of defense for policy on August 15.¶ "If we can do that, we can get these partners to rapidly react to [cyber attacks] that we may be seeing that they may not see. We may be able to tip and cue them so that they can take action. If some of their equipment is being hijacked, we can inform them, and if we have good working relationships we can leverage that to get them to take action rather than relying on any type of U.S. government activity because then you run into issues of sovereignty and that can be very complex," he said.¶ To that end, the Five Eyes countries are already sharing lessons learned on how to defend networks, according to Davis.¶ "We are able to leverage lessons from across the five eyes, and in fact, where we find some of these nations that have particular skill or abilities in one area or another, may lead a common forum to develop that and share it with the rest of the group," said Davis.

#### No Taiwan war

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Nevertheless, **it remains unlikely that any conflict** between China and Japan, Philippines, or Vietnam will **amount to more than saber rattling and harsh words.** Even a "small" police action against the Philippines or Vietnam over the Spratly Islands, however successful for China, would have severe consequences. Any Chinese use of force **would realize the fears of every state** in the region. Moreover, **Beijing's hope for a peaceful rise would be immediately set back, if not ruined**.

Presently, tensions are already running high; however, any clear displays of Chinese aggression would simply add fuel to the fire. Countries such as the Philippines and Vietnam would then be able to turn some of their neighbours—previously skeptical, if not cautious, about standing in opposition to China—and convince these states to protest openly. Any goodwill China possessed among some of these countries would evaporate as the Philippines and/or Vietnam make their case.

However, of all the scenarios of a conflict involving China, what can be certain is the potential for an immediate American intervention. While it is questionable that the US would directly intervene in any skirmish between nations, it is likely that Washington would use the conflict as an excuse for deploying a larger, if not more permanent, security force in Asia-Pacific. Although an increased American footprint would not be welcomed by all in the region, **the US would prove to be an appropriate balance against China.**