# 1NC

## Off

### Off 1

#### Interpretation –restrictions must directly prohibit activities currently under the president’s war powers authority – this excludes regulation or oversight

#### Restriction is a prohibition

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be **authorized by any permit or license**.

#### B. Vote Neg –

#### 1. Limits – Oversight of authority allows a litany of new affs in each area – justifies indirect effects of judicial review and affs that don’t alter presidential authority – undermines prep and clash

#### 2. Ground – Restriction ground is the locus of neg prep – their interpretation jacks all core disads – judicial deference, court politics, presidential powers, and any area based disad because an aff doesn’t have to prevent the president from doing anything

### Off 2

#### Text: The President of the United States should issue an executive order granting Article III Courts exclusive jurisdiction over the United States’ indefinite detention policy as described in the 2001 Authorization for Use of Military Force.

#### Solves –

#### Executive orders concerning war powers are common, have the same effect as the plan, and withstand judicial scrutiny

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

### Off 3

#### Obama’s war powers maintain his presidential power

Rozell 12

[Mark Rozell is Professor of Public Policy, George Mason University, and is the author of Executive Privilege: Presidential Power, Secrecy and Accountability, From Idealism to Power: The Presidency in the Age of Obama, 2012,, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>]

And yet, as Jack Goldsmith accurately details in his latest book, President Barack Obama not only has not altered the course of controversial Bush-era practices, he has continued and expanded upon many of them. On initiating war, as a candidate for the presidency in 2007, Obama said that “the president doesn’t have the power under the Constitution to unilaterally authorize a military attack,” yet that is exactly what he did in exercising the war power in Libya. He has also said that he will exercise the power to act on his own to initiate military action in Syria if it’s leader ever crosses the “red line” (i.e., use of chemical weapons). He has issued a number of signing statements that directly violate congressional intent. He has vastly expanded, far beyond Bush’s actions, the use of unconfirmed and unaccountable executive branch czars to coordinate policies and to make regulatory and spending decisions. The president has made expanded use of executive privilege in circumstances where there is no legal merit to making such a claim and he has abused the principle of the state secrets privilege. His use of the recess appointment power on many occasions has been nothing more than a blatant effort to make an end-run around the Senate confirmation process. He has continued, and expanded upon, the practice of militarily detaining persons without trial or pressing charges (on the condition that the detention is not “indefinite”). In a complete reversal of his past campaign rhetoric, the president on a number of occasions has declared his intention to act unilaterally on a variety of fronts, and to avoid having to go to Congress whenever he can do so. There are varied explanations for the president’s total reversals. The hard-core cynics of course simply resort to the “they all lie” explanation. Politicians of all stripes say things to get elected but don’t mean much of it. Recently I saw a political bumper sticker announcing “BUSH 2.0” with a picture of Obama. Many who enthusiastically supported Obama are profoundly disappointed with his full-on embrace of Bush-like unilateralism and this administration’s continuation of many of his predecessor’s policies. Goldsmith, a law professor who led the Department of Justice’s (DOJ) Office of Legal Counsel from October 2003 to June 2004, during George W. Bush’s first term, says that there were powerful forces at work in the U.S. governmental system that ensured that the president would continue many of the policies and practices of his predecessor. The president reads the daily terrorism threat reports, which has forced him to understand that things really do look differently from the inside. From this standpoint, Obama likely determined that many of Bush’s policies actually were correct and needed to be continued. “The personal responsibility of the president for national security, combined with the continuing reality of a frightening and difficult-to-detect threat, unsurprisingly led Obama, like Bush, to use the full arsenal of presidential tools,” writes Goldsmith. He further argues that Obama lacked leeway to change course in part because many of Bush’s policies “were irreversibly woven into the fabric of the national security architecture.” For example, former president Bush’s decision to use the Guantanamo detention facility created an issue for Obama that he otherwise never would have confronted. And the use of coercion on suspects made it too complicated to then employ civilian courts to try them. In perhaps the most telling example of the limits of effecting change, Obama could not end what Bush had started, even though the president issued an executive order (never carried out) to close the detention center. Here Goldsmith somewhat overstates his case. Obama was not necessarily consigned to following Bush’s policies and practices, although undoubtedly his options may have been constrained by past decisions. But consider the decision whether the government should have investigated and then taken action against illegal and unconstitutional acts by officials in the Bush Administration, particularly in the DOJ, NSA, and CIA. President Obama said it was time to look forward, not backward, thus sweeping all under the rug. Nothing “irreversibly woven” there, but rather the new president made a choice that he absolutely did not have to make. Finally, Goldsmith adds that Obama, like most of his predecessors, assumed the executive branch’s institutional perspective once he became president. If it is true about Washington that where you stand on executive powers depends on where you sit, then should it be any surprise that President Obama’s understanding differs fundamentally from Senator Obama’s? Honestly, I find that quite sad. Do the Constitution and principles of separation of powers and checks & balances mean so little that we excuse such a fundamental shift in thinking as entirely justified by switching offices? Goldsmith’s analysis becomes especially controversial when he turns to his argument that, contrary to the critiques of presidential power run amok, the contemporary chief executive is more hampered in his ability to act in the national interest than ever before. In 2002, Vice President Richard Cheney expressed the view that in his more than three decades of service in both the executive and legislative branches, he had witnessed a withering of presidential powers and prerogatives at the hands of an overly intrusive and aggressive Congress. At a time when most observers had declared a continuing shift toward presidential unilateralism and legislative fecklessness, Cheney said that something quite opposite had been taking place. Goldsmith is far more in the Cheney camp on this issue than of the critics of modern exercises of presidential powers. Goldsmith goes beyond the usual emphasis on formal institutional constraints on presidential powers to claim that a variety of additional forces also are weighing down and hampering the ability of the chief executive to act. As he explains, “the other two branches of government, aided by the press and civil society, pushed back against the Chief Executive like never before in our nation’s history”. Defenders of former president Bush decry what they now perceive as a double standard: critics who lambasted his over expansive exercises of powers don’t seem so critical of President Obama doing the same. Goldsmith makes the persuasive case that in part the answer is that Bush was rarely mindful of the need to explain his actions as necessities rather than allow critics to fuel suspicions that he acted opportunistically in crisis situations to aggrandize power, whereas Obama has given similar actions a “prettier wrapping”. Further, Obama, to be fair, on several fronts early in his first term “developed a reputation for restraint and commitment to the rule of law”, thus giving him some political leeway later on. A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms. Just as he describes how a seemingly once idealistic candidate for president as Barack Obama could see things differently from inside government, so too was Goldsmith at one time on the inside, and thus perhaps it is no surprise that he would perceive more strongly than other academic observers the forces that he believes are constantly hamstringing the executive. But he is no apologist for unfettered executive power and he takes to task those in the Bush years who boldly extolled theories of the unitary executive and thereby gave credibility to critics of the former president who said that his objective was not merely to protect the country from attack, but to empower himself and the executive branch. Goldsmith praises institutional and outside-of-government constraints on the executive as necessary and beneficial to the Republic. In the end, he sees the balance shifting in a different direction than many leading scholars of separation of powers. And unlike a good many presidency scholars and observers, he is not a cheerleader for a vastly powerful chief executive. Goldsmith’s work too is one of careful and fair-minded research and analysis. He gives substantial due to those who present a counter-view to his own, and who devote their skills and resources to battling what they perceive as abuses of executive power. Whereas they see dangers to an unfettered executive, Goldsmith wants us to feel safe that there are procedural safeguards against presidential overreaching, although he also wants us to be uncomfortable with what he believes now are intrusive constraints on the chief executive’s ability to protect the country. Goldsmith may be correct that there are more actors than ever involved in trying to trip up the president’s plans, but that does not mean that our chief executives are losing power and control due to these forces. Whether it is war and anti-terrorism powers, czars, recess appointments, state secrets privilege, executive privilege, signing statements, or any of a number of other vehicles of presidential power, our chief executives are using more and more means of overriding institutional and external checks on their powers. And by any measure, they are succeeding much more than the countervailing forces are limiting them.

#### The Courts are self-interested – they’ll use the aff’s precedent to expand their power vis-à-vis the President

Choper 7 -- Earl Warren Prof of Public Law @ UC Berkeley (Jesse H., 2007, "The Political Question Doctrine and the Supreme Court of the United States," Introduction, p. 1-21)

Because the prudential doctrine allows the Court to avoid deciding a case without an anchor in constitutional interpretation, it is this aspect of the political question doctrine that seems most troublesome. It would be unwise, however, to reject the entire political question doctrine because of the failings of the prudential doctrine. Indeed, the classical political question doctrine is critically important in the constitutional order, and its demise is cause for concern. In particular, the disappearance of the classical political question doctrine has a negative effect on two fronts. First, it has a direct negative impact in that it prevents the political branches from exercising constitutional judgment in those cases in which a classical political question is presented. Admittedly, this is a small category of cases that are not likely to arise very often. Electoral count disputes, judicial impeachments, and constitutional amendment ratification questions do not occur with much frequency. These questions are of fundamental importance, however, and judicial interference in these circumstances could have a negative effect on our government that transcends the scope of the particular case. Nothis provides a more poignant illustration than the Article II issue in the 2000 election cases. the doctrine strikes at the heart of separation of powers and the need for each branch to stay within its sphere to maintain the constitutional order. Second, the end of the classical political question doctrine has a much broader secondary effect. The Supreme Court is effectively left alone to police the boundaries of its power. This is, perhaps, the most difficult of all the Court's tasks, for it requires **the most extreme form of willpower**. It also dramatically displays the tension that exists beneath the surface of all the Court's decisions, That is, when the Court is protecting individual rights against congressional action, deciding whether authority resides with the states or with Congress, or resolving controversies between the executive and Congress, its own interest is not at the fore in the decision. Ostensibly, the Court is protecting one entity from another. When the Court decides whether the political question doctrine applies, however, what is merely implicit in those other decisions becomes explicit: the Court's institutional interests and strengths vis-a-vis the other branches. Thus, when the Court conducts the **threshold inquiry** of whether a matter rests exclusively with another branch, it must **inevitably** weigh the advantages and disadvantages of judicial review versus pure political analysis. This process therefore highlights for the Court its own strengths and weaknesses, as well as the upsides and downsides of giving the question to Congress of the executive. This is a healthy analysis for the Court to undertake, for it highlights the functional concerns behind the separation of powers and forces the Court to take a more modest view of its own powers and abilities. Therefore, eliminating this jurisdictional question from the Court's tasks helps **pave the way for a** much broader vision of judicial supremacy and a much more limited view of deference to the political branches. The end of the classical political question doctrine thus threaten to disrupt our constitutional order and turn the framers' vision of a constitutional conversation among three coordinate branches into a **monologue by the Supreme Court**.

#### Multiple scenarios for nuclear war

**Yoo 12**

[John, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, War Powers Belong to the President, 2/1/12, <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>]

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.**

### Off 4

#### Obama's capital will force the GOP to quickly cave and end the shutdown

WSJ 10/2/13 ("A GOP Shutdown Strategy," http://online.wsj.com/article/SB10001424052702303464504579107720562837270.html)

President Obama defaulted to his usual strategy Tuesday of denouncing Republicans for the partial government shutdown that began at midnight even as he refuses to negotiate. He's betting that his bully pulpit, amplified by his media echoes, will cause the GOP to blink first.¶ And the truth is that Mr. Obama and the GOP's own "defund ObamaCare" caucus have put Speaker John Boehner and House Republicans in a difficult spot. If they now surrender empty-handed, their Ted Cruz faction will denounce them as sellouts. But the longer they hold out for compromise from an AWOL President, the more chances increase that the public will turn against GOP governance.¶ We opposed this shutdown strategy precisely because the congressional math made this box canyon so clearly inevitable. But now that it's here, the question is what Republicans can do to navigate an honorable exit that accomplishes some of their goals.¶ The strategy of the defund faction seems to be for the House to hold "firm," as Mr. Cruz puts it, and wait for Democrats to break. The public won't notice much inconvenience from the furloughs of 800,000 or so employees in this view. And to the extent they do notice, the voters will blame the President as much as the GOP. Sooner or later Mr. Obama will sue for peace and agree to delay his signature legislative achievement for a year if not longer.¶ That would be great if it worked, though Mr. Obama hardly looked worried on Tuesday as he assailed the "Republican shutdown." He rolled out his usual parade of horribles, including damage to the economy.¶ He's exaggerating the harm, just as he did on the sequester spending cuts in January. The economy doesn't depend on nonessential government spending for growth. And if the showdown ended with serious reforms that reduced Washington's claim on the private economy, it would be worth the political price and help growth.¶ Yet that still leaves the not-so-small matter of what Republicans do if Mr. Obama won't compromise and if the public continues by 2 to 1 to disapprove of using the shutdown to end ObamaCare. The Presidency is a powerful platform, and the executive branch can make the shutdown more onerous if it wants to. Pressure will build on Republicans to break ranks in the kind of unruly retreat that would demoralize their own voters. A long shutdown followed by surrender would be the worst possible result.

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### Presidential war power battles expend capital – it’s immediate and forces a trade-off

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Battles undermine focus and constant pressure on the GOP – that kills budget negotiations

**Milbank 9/27/13 (**Dana**,** Washington Post Opinion Writer, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans. That’s an awfully big “if.” This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning: Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd. But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered. Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone. Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions. But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare. To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after. Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note. In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently. The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.” This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers. Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator. Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Prolonged shutdown decks global economy

Arcega 10/1/13 (Mil, Voice of America News, "Global Markets Calm on First Day of US Government Shutdown," http://www.voanews.com/content/global-markets-calm-on-first-day-of-us-government-shutdown/1761037.html)

On Tuesday, financial markets, by and large, shrugged off the first U.S. government shutdown in 17 years. Analysts believe the shutdown is likely to be short-lived but others worry a prolonged stand-off could wreak havoc on the global economy. ¶ While the back and forth continued in Washington, “The House has made its position known very clearly," said Republican Speaker of the House John Boehner.¶ “Madame President, it is embarrassing," said Democratic Leader of the Senate Harry Reid.¶ Financial markets around the world watched from the sidelines, waiting for cooler heads to prevail.¶ “I think the market is convinced that a deal eventually will be reached but right now they are really in wait and see mode," said market strategist Mike Ingram.¶ If resolved quickly, many investors believe the economic impact of the government shutdown will be minimal. Investment manager Patrick Armstrong says the danger lies in not knowing when.¶ “The longer it does drag on the more impact it will have, because it will have consequences on consumer confidence, the unemployment rate kicks up as you’ve got government workers who aren’t employed," he said. "And it will probably create a bit more uncertainty about the budget crisis that’s looming at the middle of this month as well."¶ He’s referring to the country’s $16.7 trillion debt.¶ Unless Congress reaches a deal on raising the debt limit this month, the U.S. Treasury says the country will run out of money to pay its debts. ¶ Economist Eric Chaney says the longer the political stand-off continues, the greater the risk that people who hold U.S. Treasury bonds will not get paid. ¶ ¶ “If the government shutdown in the U.S. lasts more than a week, people will start to think that “Okay, the deadline for the debt ceiling, which is around the 17th of October is not going to be met,” he said. "In that case, the risk is a risk of default. And I think in that case, we might have a very negative reaction."¶ If that happens, analysts say the dollar’s value will fall, interest rates will rise and the U.S. could see another credit downgrade. ¶ The prospect of a U.S. default is especially troubling in Asia, where stock prices were rising on manufacturing gains. ¶ South Korean TV newscasters voiced the concerns this way:¶ “If the United States federal government’s temporary shutdown is prolonged, not only America but the world’s economy could be affected negatively.”

#### Global nuclear war

Harris & Burrows 9 (Mathew, PhD European History @ Cambridge, counselor of the U.S. 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>)

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.

## On

### 1NC Legitimacy

#### The aff results in shipping enemy combatants overseas – makes us look worse

Umansky, 5 – senior editor at ProPublica (Eric, 6/17. “Closing Guantanamo prison may not be the best option.” http://onlineathens.com/stories/061805/opi\_20050618001.shtml)

Closing the U.S. prison at Guantanamo Bay has suddenly become a hot topic. Since Sen. Joseph R. Biden Jr., D-Del., broached the idea, the notion has been gaining steam. Last weekend, Sen. Mel Martinez, R-Fla., added the first Republican voice to the chorus, and there were Senate hearings Wednesday on detainee issues. Even President Bush seems to be hinting that he's game. Asked during a television interview whether Gitmo should be shut, the president said, "We're exploring all alternatives as to how best to do the main objective, which is to protect America." Gitmo has come to represent the lack of accountability and the extralegal aspects of the war on terrorism. Shuttering it would be a grand gesture. The symbolism would be important and could help improve the U.S. image. But if that is all that is done, a closure risks obscuring a more important issue and could even be counterproductive: If the U.S. is to really regain its standing as a defender of human rights, it needs to do more than mothball a single jail; it needs to change its policies. If the prison were to close, what would happen to the detainees? Most of them were judged by former commanders at Guantanamo to be merely Taliban foot soldiers. Some, presumably, would simply be released. Others might face military tribunals, and some would most likely be shipped off, to be held by other countries. The last two possibilities are not a welcome scenario from either a moral or public relations perspective. Consider the tribunals. Heavily stacked against defendants, they've been condemned by such groups as the American Bar Association and military defense lawyers, who actually sued the government over the lack of prisoners' rights. Shipping terror suspects to other countries, even their own countries, could be worse. The U.S. has been practicing a form of this: "extraordinary rendition," in which prisoners are picked up in one locale - "snatched" in CIA parlance - and find themselves incarcerated elsewhere, in countries such as Syria or Uzbekistan. A United States military boat patrols in front of Camp Delta in this 2002 file photo, in Guantanamo Bay, Cuba. The legal process in such cases isn't just flawed, it doesn't exist. Detainees get no trials or hearings before a judge. The U.S. gets pro forma promises that prisoners won't be tortured, but there is no known monitoring. And Uzbekistan, for instance, has gained some renown for reports of political prisoners being boiled alive. Rendition hasn't generated the headlines or the level of outrage as Guantanamo Bay. But stories from rendered detainees have made it out, and they do little for the U.S. image. One Australian citizen who was rendered to Egypt was reportedly hung from a wall and given electric shock. In something of a reprieve, he was transferred to Guantanamo Bay. He arrived without most of his fingernails. There's also a perverse possibility intrinsic in **closing Gitmo**: It **could end up making the U.S. less accountable. With the visible symbol of unfair treatment swept away, pressure for wider change might dissipate**. It's important to remember that Gitmo is only one of a group of U.S. prisons around the globe set up to hold "enemy combatants" captured in the war on terrorism. Far less is known about the other jails, which are reportedly run by the CIA. There's one at Bagram Air Base in Afghanistan, called the Salt Pits. As The New York Times reported, two detainees have been killed at Bagram. More obscure is the reported facility at a base in Diego Garcia in the Indian Ocean. Unlike at Guantanamo Bay, no reporters have been allowed to visit these jails.

#### Hegemony isn’t true – data’s on our side

Fettweis 11 (Christopher J., Department of Political Science, Tulane University, “Free Riding or Restraint? Examining European Grand Strategy”, 9/26, Comparative Strategy, 30:316–332, Ebsco)

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### Detention doenst spillover to warming – China and India wont listen to us because of it.

#### Warming inevitable and not anthropogenic.

**Bell 3-19** [Larry, climate, energy, and environmental writer for Forbes, University of Houston full/tenured Professor of Architecture; Endowed Professor of Space Architecture; Director of the Sasakawa International Center for Space Architecture; Head of the Graduate Program in Space Architecture; former full Professor/ Head of the University of Illinois Industrial Design Graduate Program; Associate Fellow, American Institute for Aeronautics and Astronautics, “The Feverish Hunt For Evidence Of A Man-Made Global Warming Crisis” http://www.forbes.com/sites/larrybell/2013/03/19/the-feverish-hunt-for-evidence-of-a-man-made-global-warming-crisis/2/]

Indeed, climate really does change without any help from us, and we can be very grateful that it does. Over the past 800,000 years, much of the Northern Hemisphere has been covered by ice up to miles thick at regular intervals lasting about 100,000 years each. Much shorter interglacial cycles like our current one lasting 10,000 to 15,000 years have offered reprieves from bitter cold.¶ And yes, from this perspective, current temperatures are abnormally warm. By about 12,000 to 15,000 years ago Earth had warmed enough to halt the advance of glaciers and cause sea levels to rise, and the average temperature has held fairly constant ever since, with brief intermissions.¶ Although temperatures have been generally mild over the past 500 years, we should remember that significant fluctuations are still normal. The past century has witnessed two distinct periods of warming. The first occurred between 1900 and 1945, and the second, following a slight cool-down, began quite abruptly in 1975. That second period rose at quite a constant rate until 1998, and then stopped and began falling again after reaching a high of 1.16ºF above the average global mean.¶ But What About Those “Observed” Human Greenhouse Influences?¶ The IPCC stated in its last 2007 Summary for Policymaker’s Report that “Most of the observed increase in globally averaged temperature since the mid-20th century [which is very small] is very likely due to the observed increase in anthropogenic [human-caused] greenhouse gas concentrations.” And there can be no doubt here that they are referring to CO2, not water vapor, which constitutes the most important greenhouse gas of all. That’s because the climate models don’t know how to “observe” it, plus there aren’t any good historic records to enable trends to be revealed.¶ Besides, unlike carbon, there is little incentive to attach much attention to anthropogenic water vapor. After all, no one has yet figured out a way to regulate or tax it.¶ A key problem in determining changes and influences of water vapor concentrations in the Earth’s atmosphere is that they are extremely variable. Differences range by orders of magnitude in various places. Instead, alarmists sweep the problem to one side by simply calling it a CO2 “feedback” amplification effect, always assuming that the dominant feedback is “positive” (warming) rather than “negative” (cooling). In reality, due to clouds and other factors, those feedbacks could go both ways, and no one knows for sure which direction dominates climate over the long run.¶ Treating water vapor as a known feedback revolves around an assumption that relative humidity is a constant, which it isn’t. Since it is known to vary nearly as widely as actual water vapor concentrations, no observational evidence exists to support a CO2 warming amplification conclusion.¶ But let’s imagine that CO2 is the big greenhouse culprit rather than a bit-player, and that its influences are predominately warming. Even if CO2 levels were to double, it would make little difference. While the first CO2 molecules matter a lot, successive ones have less and less effect. That’s because the carbon that exists in the atmosphere now has already “soaked up” its favorite wavelengths of light, and is close to a saturation point. Those carbon molecules that follow manage to grab a bit more light from wavelengths close to favorite bands, but can’t do much more…there simply aren’t many left-over photons at the right wavelengths. For those of you who are mathematically inclined, that diminishing absorption rate follows a logarithmic curve.¶ Who Hid the Carbon Prosecuting Evidence?¶ Since water vapor and clouds are so complex and difficult to model, their influences are neglected in IPCC reports. What about other evidence to support an IPCC claim that “most” mid-century warming can “very likely” be attributed to human greenhouse emissions? Well, if it’s there, it must me very well hidden, since direct measurements seem not to know where it is.¶ For example, virtually all climate models have predicted that if greenhouse gases caused warming, there is supposed to be a telltale “hot spot” in the atmosphere about 10 km above the tropics. Weather balloons (radiosondes) and satellites have scanned these regions for years, and there is no such pattern. It wasn’t even there during the recent warming spell between 1979 (when satellites were first available) and 1999.¶ How have the committed greenhouse zealots explained this? They claim that it’s there, but simply hidden by “fog in the data”…lost in the statistical “noise”. Yet although radiosondes and satellites each have special limitations, their measurements show very good agreement that the “human signature” doesn’t exist. Suggestions to the contrary are based upon climate model data outputs which yield a wide range of divergence and uncertainty…an example of garbage in, gospel out.

#### No impact to warming

Taylor 117/27/2011 [James Taylor, senior fellow for environment policy at The Heartland Institute and managing editor of Environment & Climate News “New NASA Data Blow Gaping Hole In Global Warming Alarmism,” http://www.forbes.com/sites/jamestaylor/2011/07/27/new-nasa-data-blow-gaping-hold-in-global-warming-alarmism/]

NASA satellite data from the years 2000 through 2011 show the Earth’s atmosphere is allowing far more heat to be released into space than alarmist computer models have predicted, reports a new study in the peer-reviewed science journal Remote Sensing. The study indicates far less future global warming will occur than United Nations computer models have predicted, and supports prior studies indicating increases in atmospheric carbon dioxide trap far less heat than alarmists have claimed. Study co-author Dr. Roy Spencer, a principal research scientist at the University of Alabama in Huntsville and U.S. Science Team Leader for the Advanced Microwave Scanning Radiometer flying on NASA’s Aqua satellite, reports that real-world data from NASA’s Terra satellite contradict multiple assumptions fed into alarmist computer models. “The satellite observations suggest there is much more energy lost to space during and after warming than the climate models show,” Spencer said in a July 26 University of Alabama press release. “There is a huge discrepancy between the data and the forecasts that is especially big over the oceans.” In addition to finding that far less heat is being trapped than alarmist computer models have predicted, the NASA satellite data show the atmosphere begins shedding heat into space long before United Nations computer models predicted. The new findings are extremely important and should dramatically alter the global warming debate. Scientists on all sides of the global warming debate are in general agreement about how much heat is being directly trapped by human emissions of carbon dioxide (the answer is “not much”). However, the single most important issue in the global warming debate is whether carbon dioxide emissions will indirectly trap far more heat by causing large increases in atmospheric humidity and cirrus clouds. Alarmist computer models assume human carbon dioxide emissions indirectly cause substantial increases in atmospheric humidity and cirrus clouds (each of which are very effective at trapping heat), but real-world data have long shown that carbon dioxide emissions are not causing as much atmospheric humidity and cirrus clouds as the alarmist computer models have predicted. The new NASA Terra satellite data are consistent with long-term NOAA and NASA data indicating atmospheric humidity and cirrus clouds are not increasing in the manner predicted by alarmist computer models. The Terra satellite data also support data collected by NASA’s ERBS satellite showing far more longwave radiation (and thus, heat) escaped into space between 1985 and 1999 than alarmist computer models had predicted. Together, the NASA ERBS and Terra satellite data show that for 25 years and counting, carbon dioxide emissions have directly and indirectly trapped far less heat than alarmist computer models have predicted. In short, the central premise of alarmist global warming theory is that carbon dioxide emissions should be directly and indirectly trapping a certain amount of heat in the earth’s atmosphere and preventing it from escaping into space. Real-world measurements, however, show far less heat is being trapped in the earth’s atmosphere than the alarmist computer models predict, and far more heat is escaping into space than the alarmist computer models predict. When objective NASA satellite data, reported in a peer-reviewed scientific journal, show a “huge discrepancy” between alarmist climate models and real-world facts, climate scientists, the media and our elected officials would be wise to take notice. Whether or not they do so will tell us a great deal about how honest the purveyors of global warming alarmism truly are.

#### No disease can cause human extinction – they either kill their hosts too quickly or aren’t lethal

**Posner 05** (Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extiinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.

#### The aff can’t solve – the executive circumvents – in future crises the President justifies skirting the law no matter what it says

Fatovic, 9 – Director of Graduate Studies for Political Science at Florida International University (Clement, *Outside the Law: Emergency and Executive Power.* pp 1-5.)

But the problem for any legal order is that law aims at fixity in a world beset by flux. The greatest challenge to legally established order comes not from the resistance of particular groups or individuals who object to any of its substantive aims but from the unruliness of the world itself. The stability, predictability, and regularity sought by law eventually runs up against the unavoidable instability, unpredictability, and irregularity of the world. Events constantly threaten to disrupt and destabilize the artificial order established by law. Emergencies-sudden and extreme occurrences such as the devastating terrorist attacks of September 11, an overwhelming natural disaster like Hurricane Katrina, a pandemic outbreak of avian flu, a catastrophic economic collapse, or a severe food shortage, to name just a few-dramatize the limitations of the law in dealing with unexpected and incalculable contingencies. Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in spite of its aspiration to comprehensiveness. When such events arise, the responsibility for formulating a response usually falls to the executive. The executive has a unique relationship to the law and the order that it seeks, especially in a liberal constitutional system committed to the rule of law. Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances. But while the executive is expected to uphold and follow the law in normal times, emergencies sometimes compel the executive to exceed the strict letter of the law. Given the unique and irrepressible nature of emergencies, the law often provides little effective guidance, leaving executives to their own devices. Executives possess special resources and characteristics that enable them to formulate responses more rapidly, flexibly, and decisively than can legislatures, courts, and bureaucracies. Even where the law seeks to anticipate and provide for emergencies by specifying the kinds of actions that public officials are permitted or required to take, emergencies create unique opportunities for the executive to exercise an extraordinary degree of discretion. And when the law seems to be inadequate to the situation at hand, executives often claim that it [is] necessary to go beyond its dictates by consolidating those powers ordinarily exercised by other branches of government or even by expanding the range of powers ordinarily permitted. But in seeking to bring order to the chaos that emergencies instigate, executives who take such action also bring attention to the deficiencies of the law in maintaining order, often with serious consequences for the rule of law. The kind of extralegal action that executives are frequently called upon to take in response to emergencies is deeply problematic for liberal constitutionalism, which gives pride of place to the rule of law, both in its self-definition and in its standard mode of operation. If emergencies test the limits of those general and prospective rules that are designed to make governmental action limited and predictable, that is because emergencies are largely unpredictable and potentially limitless.1 Yet the rule of law, which has enjoyed a distinguished position in constitutional thought going back to Aristotle, has always sought to place limits on what government may do by substituting the arbitrariness and unpredictability of extemporary decrees with the impartiality and regularity of impersonal rules promulgated in advance. The protection of individual freedom within liberal constitutionalism has come to be unimaginable where government does not operate according to general and determinate rules.2 The rule of law has achieved primacy within liberal constitutionalism because it is considered vital to the protection of individual freedom. As Max Weber famously explained of the modern bureaucratic state, legitimacy in the liberal state is not based on habitual obedience to traditions or customs sanctified by time or on personal devotion to a charismatic individual endowed with superhuman gifts but on belief in the legality of a state that is functionally competent in administering highly impersonal but "rational rules." 3 In fact, its entire history and aim can be summed up as an attempt to curtail the kind of discretionary action associated with the arbitrary "rule of men"-by making government itself subject to the law. The apparent primacy of law in liberal constitutionalism has led some critics to question its capacity to deal with emergencies. Foremost among these critics is German political and constitutional theorist Carl Schmitt, who concluded that liberalism is incapable of dealing with the "exception" or "a case of extreme peril" that poses "a danger to the existence of the state" without resorting to measures that contradict and undermine its commitments to the rule of law, the separation of powers, the preservation of civil liberties, and other core values.4 In Schmitt's view, liberalism is wedded to a "normativistic" approach that seeks to regulate life according to strictly codified legal and moral rules that not only obscure the "decisionistic" basis of all law but also deny the role of personal decision-making in the interpretation, enforcement, and application of law. 5 Because legitimacy in a liberal constitutional order is based largely on adherence to formal legal procedures that restrict the kinds of actions governments are permitted to take, actions that have not been specified or authorized in advance are simply ruled out. According to Schmitt, the liberal demand that governmental action always be controllable is based on the naive belief that the world is thoroughly calculable. 6 If it expects regularity and predictability in government, it is because it understands the world in those terms, making it oblivious to the problems of contingency. Not only does this belief that the world is subject to a rational and predictable order make it difficult for liberalism to justify actions that stand outside that order, it also makes it difficult for liberalism even to acknowledge emergencies when they do arise. But Schmitt's critique goes even further than this. When liberal constitutionalism does acknowledge the exception, its commitment to the rule of law forces it to choose between potential suicide if it adheres strictly to its legalistic ideals and undeniable hypocrisy if ignores those ideals? Either way, the argument goes, emergencies expose the inherent shortcomings and weaknesses of liberalism. It is undeniable that the rule of law occupies a privileged position within liberal constitutionalism, but it is a mistake to identify liberal constitutionalism with an excessively legalistic orientation that renders it incapable of dealing effectively with emergencies. Schmitt is correct in pointing out that liberal normativism seeks to render government action as impersonal and predictable as possible in normal circumstances, but the history of liberal 'I· constitutional thought leading up to the American Founding reveals that its main proponents recognized the need to supplement the rule of law with a personal element in cases of emergency. The political writings of John Locke, David Hume, William Blackstone, and those Founders who advocated a strong presidency indicate that many early liberal constitutionalists were highly attuned to the limitations of law in dealing with events that disrupt the regular order. They were well aware that rigid adherence to the formalities of law, both in responding to emergencies and in constraining the official who formulates the response, could undermine important substantive aims and values, thereby sacrificing the ends for the means. Their reflections on the chronic instability and irregularity of politics reveal an appreciation for the inescapable-albeit temporary-need for the sort of discretionary action that the law ordinarily seeks to circumscribe. As Locke explained in his classic formulation, that "it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick means that the formal powers of the executive specified in law must be supplemented with "prerogative," the "Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it." 8 Unlike the powers of the Hobbesian sovereign, which are effectively absolute and unlimited, the exercise of prerogative is, in principle, limited in scope and duration to cases of emergency. The power to act outside and even against the law does not mean that the executive is "above the law”—morally or politically unaccountable—but it does mean that executive power is ultimately irreducible to law.

### 1NC Democracy

#### U.S. judicial leadership is not modeled – influence is on the decline

Liptak 12 (Adam – J.D. – Yale Law School, NYT Supreme Court Correspondent, ‘We the People’ Loses Appeal With People Around the World, 2/6, <http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?_r=2&partner=MYWAY&ei=5065>)

In 1987, on the Constitution’s bicentennial, Time magazine calculated that “of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.” A quarter-century later, the picture looks very different. “The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere,” according to a new study by David S. Law of Washington University in St. Louis and Mila Versteeg of the University of Virginia. The study, to be published in June in The New York University Law Review, bristles with data. Its authors coded and analyzed the provisions of 729 constitutions adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them. “Among the world’s democracies,” Professors Law and Versteeg concluded, “constitutional similarity to the United States has clearly gone into free fall. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, **only to** reverse course **in the 1980s and 1990s**.” “The turn of the twenty-first century, however, saw the beginning of a steep plunge that continues through the most recent years for which we have data, to the point that the constitutions of the world’s democracies are, on average, less similar to the U.S. Constitution now than they were at the end of World War II.” There are lots of possible reasons. The United States Constitution is terse and old, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may send the signal that it is of little current use to, say, a new African nation. And the Constitution’s waning influence may be part of a general decline in American power and prestige. In an interview, Professor Law identified a central reason for the trend: **the availability of newer, sexier and more powerful operating systems in the constitutional marketplace**. “Nobody wants to copy Windows 3.1,” he said. In a television interview during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. “I would not look to the United States Constitution if I were drafting a constitution in the year 2012,” she said. She recommended, instead, the South African Constitution, the Canadian Charter of Rights and Freedoms or the European Convention on Human Rights. The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber. As Sanford Levinson wrote in 2006 in “Our Undemocratic Constitution,” “the U.S. Constitution is the most difficult to amend of any constitution currently existing in the world today.” (Yugoslavia used to hold that title, but Yugoslavia did not work out.) Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in a 1789 letter to James Madison, once said that every constitution “naturally expires at the end of 19 years” because “the earth belongs always to the living generation.” These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty. Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care. It has its idiosyncrasies. Only 2 percent of the world’s constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.) The Constitution’s waning global stature is consistent with the diminished influence of the Supreme Court, which “is losing the central role it once had among courts in modern democracies,” Aharon Barak, then the president of the Supreme Court of Israel, wrote in The Harvard Law Review in 2002. Many foreign judges say they have become less likely to cite decisions of the United States Supreme Court, in part because of what they consider its parochialism. “America is in danger, I think, of becoming something of a legal backwater,” Justice Michael Kirby of the High Court of Australia said in a 2001 interview. He said that he looked instead to India, South Africa and New Zealand.

#### Plan causes a compensatory shift to drone strikes – that’s worse and causes drone prolif

RT, 13 (5/3, “US targeted drone killings used as alternative to Guantanamo Bay - Bush lawyer.” http://rt.com/usa/obama-using-drones-avoid-gitmo-747/)

A lawyer who was influential in the United States’ adoption of unmanned aircraft has spoken out against the Obama administration for what he perceives as using drones as an alternative to capturing suspects and sending them to Guantanamo Bay prison camp. John Bellinger, the Bush administration attorney who drafted the initial legal specifications regarding drone killings after the September 11, 2001 terrorist attacks, said that Bush’s successor has abused the framework, skirting international law for political points. “This government has decided that instead of detaining members of Al-Qaeda [at Guantanamo Bay prison camp in Cuba] they are going to kill them,” Bellinger told a conference at the Bipartisan Policy Center, as quoted by The Guardian. Earlier this week Obama promised to reignite efforts to close Guantanamo Bay, where prisoners have gone on a hunger strike to protest human rights violations and wrongful incarcerations. They were his first in-depth remarks on the subject since 2009, when Obama had just recently been elected to office after campaigning on a promise to close the facility. But international law is equally suspect of drone strikes. Almost 5,000 people are thought to have been killed by roughly 300 US attacks in four countries, according to The Guardian. Bellinger maintained that the government has justified strikes throughout Pakistan and Yemen by using the 'War on Terror' as an excuse. “We are about the only country in the world that thinks we are in an armed conflict with Al-Qaeda,” he said. “We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law." “These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem,” he added. Of the 166 detainees at Guantanamo Bay, 86 have been cleared for release by a commission made up of officials from the Department of Homeland Security, Joint Chiefs of Staff and other influential government divisions. White House officials have justified the use of unmanned aircraft by saying the US is at war with Al-Qaeda and that those targeted in drone attacks were planning attacks on America. In the future, experts say, future countries could use the same rationale to explain their own attacks. “Countries under attack are the ones that get to decide whether or not they are at war,” said Philip Zelikow, a member of the White House Intelligence Advisory Board. While the conversation around drones is certainly a sign of things to come, Hina Shamsi of the American Civil Liberties Union encouraged Americans to think about the human rights issues posed by the new technology. It could be another long process, if the Guantanamo Bay handling is any indication. “The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programs,” Shamsi said. “Few things are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties.”

#### Drone prolif escalates and destroys deterrence without strong norms—multiple scenarios for conflict

Michael J. Boyle 13, Assistant Professor, Political Science – La Salle, International Affairs 89: 1 (2013) 1–29

An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125 A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities. The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

#### Democracies are no better because their leaders are not more accountable.

**Rosato ‘3** (Sebastian, PhD Candidate Pol. Sci. – U. Chicago, American Political Science Review, “The Flawed Logic of Democratic Peace Theory”, 97:4, November, Proquest)

Each variant of the institutional logic rests on the claim that democratic institutions make leaders accountable to various groups that may, for one reason or another, oppose the use of force. I do not dispute this claim but, instead, question whether democratic leaders are more accountable than their autocratic counterparts. Since we know that democracies do not fight one another and autocracies do fight one another, democrats must be more accountable than autocrats if accountability is a key mechanism in explaining the separate peace between democracies. On the other hand, if autocrats and democrats are equally accountable or autocrats are more accountable than democrats, then there are good reasons to believe that accountability does not exert the effect that democratic peace theorists have suggested.11 Following Goemans (2000a) I assume that a leader's accountability is determined by the consequences as well as the probability of losing office for adopting an unpopular policy. This being the case, there is no a priori reason to believe that a leader who is likely to lose office for fighting a losing or costly war, but unlikely to be exiled, imprisoned, or killed in the process, should feel more accountable for his policy choices than a leader who is unlikely to lose office but can expect to be punished severely in the unlikely event that he is in fact removed. Therefore, determining whether autocrats or democrats are more accountable and, consequently, more cautious about going to war rests on answering three questions: Are losing democrats or losing autocrats more likely to be removed from power? Are losing democrats or losing autocrats more likely to be punished severely? and Are democrats or autocrats more likely to be removed and/or punished for involvement in costly wars, regardless of the outcome? To answer these questions I have used a modified version of Goemans's (2000b) dataset. Our analyses differ in one fundamental respect: While he counts the removal of leaders by foreign powers as examples of punishment, I do not. This decision is theoretically informed. The purpose of the analysis is to determine whether leaders' decisions for war are affected by their domestic accountability, that is, if there is something about the domestic structure of states that affects their chances of being punished. Punishment by foreign powers offers no evidence for or against the claim that democrats or dictators have a higher or lower expectation of being punished by their citizens for unpopular policies, and these cases are therefore excluded. I have also made two minor changes to the data that do not affect the results: I have added 19 wars that appear in the COW dataset but not in Goemans's dataset and coded 11 regimes that Goemans excludes.12 The results appear in Table 4. Although democratic losers are two times more likely to be removed from power than autocratic losers, this evidence is not strong. This is because there are only four cases of democratic losers in the entire dataset, making it impossible to draw any firm conclusions about the likelihood that losing democrats will be removed. Prime Minister Menzies of Australia, for example, resigned early in the Vietnam War, but his resignation may have had more to do with the fact that he was in his seventies than the expectation of defeat in South East Asia a decade later. If this case is receded, as it probably should be, democratic losers have only been removed from power 50% of the time and the distinction between democrats and autocrats is small. Losing autocrats are more likely to suffer severe punishment than their democratic counterparts. None of the four losing democrats was punished, whereas 29% of autocratic losers were imprisoned, exiled, or killed. Thus, while democratic and autocratic losers have similar chances of being removed from office, autocrats seem to be more likely to suffer severe punishment in addition to removal. The evidence from costly wars, regardless of whether the leader was on the whining or losing side, confirms these findings. Costly wars are defined as wars in which a state suffered one battle fatality per 2,000 population, as the United States did in World War I.13 Historically, autocrats have been more likely both to lose office and to be punished severely if they become involved in a costly war. Autocrats have been removed 35% of the time and punished 27% of the time, while democrats have only been removed 27 % of the time and punished 7% of the time.14 In short, there is little evidence that democratic leaders face greater expected costs from fighting losing or costly wars and are therefore more accountable than their autocratic counterparts. This being the case, there is good reason to doubt each variant of the institutional logic.

#### Plan doesn’t change China’s policy towards ethnic groups – they’d crack down in other ways and probably not listen to us

#### No risk of Asia war – Peaceful China and multilateral institutions

Bitzinger and Desker, 9 [Richard, Senior Fellow at the S. Rajaratnam School of International Studies, Barry, Dean of the S. Rajaratnam School of International Studies and Director of the Institute of Defense and Strategic Studies, Nanyang Technological University, Singapore, “ Why East Asian War is Unlikely,” Survival | vol. 50 no. 6 | December 2008–January 2009

 The Asia-Pacific region can be regarded as a zone of both relative insecurity and strategic stability. It contains some of the world’s most significant flashpoints – the Korean peninsula, the Taiwan Strait, the Siachen Glacier – where tensions between nations could escalate to the point of major war. It is replete with unresolved border issues; is a breeding ground for transnational terrorism and the site of many terrorist activities (the Bali bombings, the Manila superferry bombing); and contains overlapping claims for maritime territories (the Spratly Islands, the Senkaku/Diaoyu Islands) with considerable actual or potential wealth in resources such as oil, gas and fisheries. Finally, the Asia-Pacific is an area of strategic significance with many key sea lines of communication and important chokepoints. Yet despite all these potential crucibles of conflict, the Asia-Pacific, if not an area of serenity and calm, is certainly more stable than one might expect. To be sure, there are separatist movements and internal struggles, particularly with insurgencies, as in Thailand, the Philippines and Tibet. Since the resolution of the East Timor crisis, however, the region has been relatively free of open armed warfare. Separatism remains a challenge, but the break-up of states is unlikely. Terrorism is a nuisance, but its impact is contained. The North Korean nuclear issue, while not fully resolved, is at least moving toward a conclusion with the likely denuclearisation of the peninsula. Tensions between China and Taiwan, while always just beneath the surface, seem unlikely to erupt in open conflict any time soon, especially given recent Kuomintang Party victories in Taiwan and efforts by Taiwan and China to re-open informal channels of consultation as well as institutional relationships between organisations responsible for cross-strait relations. And while in Asia there is no strong supranational political entity like the European Union, there are many multilateral organisations and international initiatives dedicated to enhancing peace and stability, including the Asia-Pacific Economic Cooperation (APEC) forum, the Proliferation Security Initiative and the Shanghai Co-operation Organisation. In Southeast Asia, countries are united in a common geopolitical and economic organisation – the Association of Southeast Asian Nations (ASEAN) – which is dedicated to peaceful economic, social and cultural development, and to the promotion of regional peace and stability. ASEAN has played a key role in conceiving and establishing broader regional institutions such as the East Asian Summit, ASEAN+3 (China, Japan and South Korea) and the ASEAN Regional Forum. All this suggests that war in Asia – while not inconceivable – is unlikely. This is not to say that the region will not undergo significant changes. The rise of China constitutes perhaps the most significant challenge to regional security and stability – and, from Washington’s vantage point, to American hegemony in the Asia-Pacific. The United States increasingly sees China as its key peer challenger in Asia: China was singled out in the 2006 Quadrennial Defense Review as having, among the ‘major and emerging powers … the greatest potential to compete militarily with the United States’.1 Although the United States has been the hegemon in the Asia-Pacific since the end of the Second World War, it will probably not remain so over the next 25 years. A rising China will present a critical foreign-policy challenge, in some ways more difficult than that posed by the Soviet Union during the Cold War.2 While the Soviet Union was a political and strategic competitor, China will be a formidable political, strategic and economic competitor. This development will lead to profound changes in the strategic environment of the Asia-Pacific. Still, the rise of China does not automatically mean that conflict is more likely; the emergence of a more assertive China does not mean a more aggressive China. While Beijing is increasingly prone to push its own agenda, defend its interests, engage in more nationalistic – even chauvinistic – behaviour (witness the Olympic torch counter-protests), and seek to displace the United States as the regional hegemon, this does not necessarily translate into an expansionist or warlike China. If anything, Beijing appears content to press its claims peacefully (if forcefully) through existing avenues and institutions of international relations, particularly by co-opting these to meet its own purposes. This ‘soft power’ process can be described as an emerging ‘Beijing Consensus’ in regional international affairs. Moreover, when the Chinese military build-up is examined closely, it is clear that the country’s war machine, while certainly worth taking seriously, is not quite as threatening as some might argue.

#### No viable alternative to detention

Kempton, 13 – professor of political science and vice president for academic affairs at Franciscan University of Steubenville, Ohio (Daniel R, 6/4. “KEMPTON: A drone war over semantics.” http://www.washingtontimes.com/news/2013/jun/4/a-drone-war-over-semantics/)

Finally — and most importantly — the president has failed to develop a realistic alternative to the war paradigm. Rejecting the tribunal system, Mr. Obama promised to end indefinite detention and to bring the prisoners into the traditional criminal justice system. He also repeatedly promised to close Guantanamo Bay. These promises weren’t kept. Mr. Obama failed not because of a lack of effort, but because of the lack of suitable alternatives. His 2009 trial balloon to move the detainees to the Thomson Correctional Center in Illinois failed to gain popular backing and was abandoned. In 2010, the administration dropped its proposal to hold trials for Khalid Shaikh Mohammed and other Sept. 11 conspirators in New York City when it drew anger from citizens and lawmakers alike. Most recently, his call to transfer Guantanamo Bay detainees to their countries of origin lacks congressional backing. Conservatives oppose it largely because of the high recidivism rate, in excess of 30 percent, among those previously returned. Moreover, those remaining at Guantanamo are the most hardened cases. Even some on the left have concerns with the concept. When the Bush administration used extraordinary rendition to send suspected terrorists, such as Abu Omar, back to their country of origin, torture sometimes resulted. In sum, after years of ideologically driven effort, Mr. Obama has failed to produce a practical — or politically viable — alternative to the Bush paradigm of the “global war on terrorism.” Instead, the tribunal system goes unused, indefinite detention continues, and suspected terrorists — even American ones — are killed without due process, or even the benefits of interrogation, enhanced or otherwise. Verbal acrobatics aside, suspending the use of the term hasn’t brought an end to the reality.

#### Evidentiary standards mean trials and habeas hearings will always go against the detainees—means they can’t solve

Ajuha and Tutt 12 [Fall, 2012, Jasmeet K. Ahuja and Andrew Tutt “Evidentiary Rules Governing Guantanamo Habeas Petitions: Their Effects and Consequences”, 31 Yale L. & Pol'y Rev. 185]

Beginning in 2001, the United States began transporting hundreds of persons captured overseas in the "War on Terror" to the U.S. Naval Base at Guantanamo Bay, Cuba. n1 They were kept at Guantanamo specifically to insulate from judicial review the military's decision to detain them. n2 Seven years later, the Supreme Court in Boumediene v. Bush granted Guantanamo detainees the right to petition for the writ of habeas corpus in the Court of Appeals for the D.C. Circuit. n3 The Court held that detainees must have "a meaningful opportunity to demonstrate that [they are] being held pursuant to the erroneous application or interpretation of relevant law." n4 The Court's central concern was with the habeas court's power to admit and consider relevant exculpatory evidence, a power necessary "for the writ of habeas corpus, or its substitute, to function." n5 But while the Court's central preoccupation was with a habeas court's power to independently review the evidence, the Court did not enumerate any specific procedural requirements. The Court - hesitant to place burdens on the military and cognizant of the need to protect classified information - sketched only the broad outlines of what the Constitution requires. n6 In so doing, it left "the extent of the showing required of the Government in these cases ... a matter to be determined" n7 and charged the district courts with the task of balancing the government's legitimate interests against each detainee's right to have a court assess the lawfulness of his detention. n8 [\*187] Since Boumediene, the courts within the D.C. Circuit have heard over sixty habeas petitions from detainees at Guantanamo Bay. n9 At first, many writs were granted. The lower courts applied a functional framework for determining the admissibility, credibility, and probity of evidence, holding the government to the ordinary burden of preponderance of the evidence. n10 However, as the government and detainees began to appeal habeas decisions on the basis of adverse evidentiary rulings, the Court of Appeals announced binding evidentiary rules limiting the district courts' discretion to admit, exclude, weigh, and consider evidence as the district courts saw fit. n11 This Note argues that these evidentiary rules deny detainees a "meaningful opportunity" to contest the factual basis of their detention. n12 The D.C. Circuit maintains that it holds the government to a preponderance standard n13 and has cast its reversals of the District Court's grants of habeas corpus as mere corrections in judging evidentiary probity. n14 However, in substance, the Court of Appeals' evidentiary rules have quietly but significantly eroded the evidentiary burden. [\*188] The way in which the evidentiary standard and the evidentiary rules interact to weaken Boumediene has, for the most part, escaped scrutiny. n15 Many have praised the D.C. Circuit for striking an appropriate balance between the needs of national security and the rights of those wrongfully detained. n16 But this underestimates the combined significance of the D.C. Circuit's evidentiary rulings. Boumediene's central purpose was to withhold from the executive branch the unchecked power to detain whomever it deems a threat. n17 Yet the D.C. Circuit's evidentiary rules have empowered the government to detain upon so little evidence that the habeas hearing no longer serves the checking role the Boumediene Court intended. n18 The D.C. Circuit has tacitly reduced the amount and quality of evidence necessary to establish the lawfulness of detention through three powerful mechanisms: (1) all but eliminating corroboration requirements and restrictions on the admissibility of hearsay evidence, no matter how unreliable; n19 (2) establishing that courts consider the evidence in the "whole record" when determining whether a petitioner meets the requirements for detention - a determination that often reduces to the Court of Appeals' deciding that the District Court [\*189] wrongly refused to credit sufficient government evidence; n20 and (3) developing irrefutable presumptions of detainability in which a single fact once established - such as a stay at an al-Qaeda affiliated guesthouse - is dispositive on the question of detention, even when other facts in the record point strongly in the opposite direction. n21

#### The executive will move detainees around without providing real due process

McNeal, 8 – Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law (Gregory, 8/8. “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS.” 103 Nw. U. L. Rev. Colloquy 29. Lexis)

3. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also incentivizes the Executive to use "lesser" forms of justice--nonprosecution or prosecutions by military commission. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President.¶ There are two primary concerns that executive actors face when selecting a forum: protecting intelligence and ensuring trial outcomes. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest.¶Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of due process and substantial justice. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

# 2NC Round 3

## DA

### 2NC Impact Wall

#### Decks US cred, global econ and military power

Ornstein 13 (Norman, resident scholar at the American Enterprise Institute, "Showdowns and Shutdowns," Sept. 1, http://www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama)

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -- with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, with devastating consequences for American credibility and the international economy.¶ Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. Avoiding this end-game bargaining will require the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -- even probability -- of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

#### Growth and globalization are key to solve disease–––enables diffusion of good health practices and knowledge globally that prevent outbreaks

**Mahmoud et al 6** (Adel, Senior Molecular Biologist in the Woodrow Wilson School of Public and International Affairs – Princeton University, Former President – Merck Vaccines, The Impact of Globalization on Infectious Disease Emergence and Control: Exploring the Consequences and Opportunities,” <http://www.nap.edu/openbook.php?record_id=11588&page=80>)

Changes in travel and trade and the disruption of economic and cultural norms have accelerated and made it much more difficult to control the emergence and spread of infectious diseases, as described in Chapters [1](http://www.nap.edu/openbook.php?record_id=11588&page=21#p2000e6299970021001)and [2](http://www.nap.edu/openbook.php?record_id=11588&page=49#p2000e6299970049001) of this report. Even as progress is made, the public health community will likely encounter further setbacks, such as growing antimicrobial resistance. Yet there is a positive side to these developments as well. While globalization intensifies the threat of infectious disease, it also results in stronger tools for addressing that threat. From technological advances in information dissemination (e.g., the Internet) to the growing number of bidirectional infectious disease training programs that are bringing clinicians, scientists, and students from both sides of the equator together, the opportunities made available by globalization appear as endless as the challenges are daunting. At the same time, the opportunities afforded by globalization do not necessarily come easily. Workshop participants identified obstacles that, if not addressed, may prevent or retard the ability to take full advantage of some of these new global tools. Global surveillance capabilities made possible by advances in information and communications technologies, for example, are still fraught with numerous challenges. This chapter summarizes the workshop presentations and discussions pertaining to some of these opportunities and obstacles. One of the most enthusiastically discussed opportunities made available by our increasingly interconnected world is the type of transnational public health research, training, and education program exemplified by the Peru–based Gorgas Course in Clinical Tropical Medicine. This program not only benefits its northern participants, but also helps build a sustainable public health capacity in the developing world. Historically, the goal of many tropical disease training programs was to strengthen the northern country’s capacity for tropical disease diagnosis and treatment. The trend toward a bidirectional, more egalitarian approach that benefits the developing–country partner as much as its northern collaborator reflects a growing awareness that a sustainable global public health capacity can be achieved only with the full and equal participation of the developing world. Thus, not only are the Gorgas Course and other, similar programs becoming more popular, both politically and among students, but their nature is also changing in significant and telling ways. The shifting focus of many of the international training programs of the Fogarty International Center (FIC) within the National Institutes of Health (NIH) further reflects the increased awareness, funding, and efforts needed to strengthen bidirectional international training in epidemiology, public health, and tropical medicine in particular.

#### Growth is vital to stop Chinese internal instability

Long 10 (Yang, Ph.D. from Jilin University, professor at Nankai University in Tianjin, “Potential Instability Caused by the Financial Crisis – Measures Taken by the Chinese,” Duisburg Working Papers On East Asian Studies, Number 86, pg. 22–29, [http://www.uni–due.de/in–east/fileadmin/publications/gruen/paper86.pdf](http://www.uni-due.de/in-east/fileadmin/publications/gruen/paper86.pdf),)

The global **financial crisis** stemming **from the U**nited **S**tates **has led to** the **decline of China’s** economic **growth**, caused rising unemployment, stock market declines, business failures, and reduced import and export trade. History and international experience have shown that an economic crisis or recession and a shift from a period of growth are prone to cause problems of political and social stability. Once economic growth slows down significantly, social contradictions and conflicts easily intensify. Alexis de Tocqueville found that social unrest was infrequent in places which experienced long–term economic stagnation, but was more likely to happen after a certain amount of economic growth. It most likely happens at a point when an economy has stopped growing and begun to decline. The French Revolution, for example occurred in just such circumstances. 2 Thus deterioration of a stable economic environment leads to explosive social contradictions. When the deterioration is slight, it will cause local social tensions; but when an economy deteriorates seriously, it will cause severe problems in political stability, such as social turmoil, political crisis or even a regime change. Conversely, political instability will cause the government to respond to an economic crisis feebly, thus deepening the economic crisis and initiating a vicious circle. Influenced by the U.S. financial crisis, **China is** now **facing** the **risk of** social **instability** from two sides. First, former potential instability was intensified by the economic downturn, including a class conflict of interest resulting from the large gap between rich and poor and an urban and rural confrontation caused by a gap between urban and rural areas. To this was added a lack of security on the part of low–income groups caused by poor coverage from the social security system and government corruption. Second, the financial crisis could still lead to further instability issues, including panic resulting from the failure of personal investments, asset shrinkage, currency devaluation, dissatisfaction triggered by unemployment and non–employment of peasant workers and university students, lack of confidence in the government because of a decline in living standards, and public discontent due to the unsuccessful government response to the crisis.

#### Turns leadership

Brzezinski 97 (Zbigniew, Former National Security Advisor – The Grand Chessboard, [http://book–case.kroupnov.ru/pages/library/Grand/part\_1.htm](http://book-case.kroupnov.ru/pages/library/Grand/part_1.htm))

America’s economic dynamism provides the **necessary precondition** for the exercise of global primacy. Initially, immediately after World War II, America’s economy stood apart from all others, accounting alone for more than 50 percent of the world’s GNP. The economic recovery of Western Europe and Japan, followed by the wider phenomenon of Asia’s economic dynamism, meant that the American share of global GNP eventually had to shrink from the disproportionately high livels of the immediate postwar era. Nonetheless, by the time the subsequent Cold War had ended, America’s share of global GNP, and more specifically its share of the world’s manufacturing output, had stabilized at about 30 percent, a level that had been the norm for most of this century, apart from those exceptional years immediately after World War II. More important, America has maintained and has even widened its lead in exploiting the latest scientific breakthroughs for military purposes, thereby creating a technologically peerless military establishment, the only one with effective global reach. All the while, is has maintained its strong competitive advantage in the economically decisive information technologies. American mastery in the cutting–edge sectors of tomorrow’s economy suggests that American technological domination is not likely to be undone soon, especially given that in the economically decisive fields, Americans are maintaining or even widening their advantage in productivity over their Western European and Japanese rivals.

### 2NC Uniqueness Wall

#### Shutdown will be short now – Boehner will likely cave after one week

Collender 10/1/13 (Stan, budget expert at Qorvis communications, "#Cliffgate Begins: Why The Shutdown Will Last At Least A Week," http://capitalgainsandgames.com/blog/stan-collender/2772/cliffgate-begins-why-shutdown-will-last-least-week)

It also means that the question has now changed from "Will there be a shutdown?" to "How long will it last?".¶ Here's what you need to know about the logistics of the shutdown.¶ Federal agencies and departments will have until noon today EDT to lock the doors and shutter the windows, so if there's some resolution of the situation by lunch time there will be no appreciable impact of the lapse in appropriations that began at midnight October 1. For example, although few will realize it and the buildings are likely to be empty, you should still be able to get into the Smithsonian.¶ The real impact will start to be felt at 12:01 pm October 1 as agencies and departments cease operating. Calls will no longer be returned, visas and passports applications will no longer be accepted, tax refund checks will no longer be processed, invoices from contractors will stop being paid, etc. That will continue until the shutdown ends.¶ As I said 10 days ago, I'm projecting that the shutdown will last at least a week because it will take that long for the impact of the shutdown to start to be felt and, therefore, to make ending it more politically acceptable.¶ Consider the following:¶ 1. The impact of the shutdown will barely start to be felt by noon today for the reasons noted above. There likely will even be some silly public statements by some elected officials that the shutdown is having no effect whatsoever.¶ 2. From noon today until the close of business on Wednesday, there will be more amusement with the spectacle of the shutdown -- such as video of federal employees leaving their buildings, "closed" signs on department offices, people being turned away from national parks, less traffic on the roads in areas with high concentrations of federal employees -- than inconvenience with the lack of government services.¶ 3. The inconvenience and, therefore, frustration, will grow steadily through the week. It will subside a bit over the weekend when most federal agencies are closed anyway and few people typically have any dealings with them. National parks and recreation areas will be obvious exceptions.¶ 4. As the weekend comes to a close, the frustration will change to anger as anyone who works for or needs to deal with the government realizes that they are facing another week without a paycheck, an answer to their question, a tax refund, an invoice payment, access to the campsite they reserved a year ago at Yosemite or Yellowstone, etc.¶ 5. This is the point at which there will start to be real pressure on members of Congress as the impact of the shutdown finally hits home for many people and the prospect of lost wages and less business becomes a reality.¶ 6. This is also the point that contractors and businesses that rely indirectly on the federal government -- like the restaurants across the street from the big IRS facility in Fresno and the suppliers those restaurants use for everything from napkins to hamburgers -- start to realize how much this could hurt them if it's not resolved soon. Many will tell employees to stay home and those that get paid by the day will suffer.¶ 7. Assuming the Democrats stay as united as they have been the past week, only 16 House Republicans will need to feel this pressure from their voters. When that happens, House Speaker John Boehner (R-OH) will have a tougher time convincing his members to stay together.¶ 8. And that's the point at which at least a short-term break in the shutdown will be politically acceptable, or possibly even mandatory.

#### Prediction markets prove

Shaw 10/1/13 (Alexis, ABC News, "Place Your Bets on Government Shutdown 2013," http://abcnews.go.com/blogs/business/2013/10/place-your-bets-on-government-shutdown-2013/)

What are the odds that within hours of the U.S. federal government shut down, bets were wagered as to how long it will take Congress to reach a deal?¶ It’s a sure thing, through bookmakers overseas including Ireland’s largest, Paddy Power, where bettors can put money on the length of the shutdown, whether the U.S. Treasury will default on its obligations by the end of 2013 and if there will be a quarter of negative growth.¶ The Government Shutdown Explained (Like You’re an Idiot)¶ Paddy Power spokesman Rory Scott told ABCNews.com that the agency believes the shutdown will be over within seven days. The odds are 11-to-10 that it will only be a week before a new budget bill is passed and federal services are restored, according to their website.¶ If the shutdown goes on for eight to 14 days, the odds are a little under two-to-one. After two weeks in, the odds lengthen, but the payoff could be sweet. If the shutdown persists for 22 to 28 days, bettors win big with 10-to-one odds.¶ British betting house Ladbrokes is also taking wagers on when the government shutdown will end.¶ Ladbrokes spokesman Alex Donohue told ABC News that the odds are one-to-two that the shutdown will end by Oct. 15. The payoff is two-to-one if the shutdown is over by the end of October and eight-to-one if compromise is reached by November.

#### Err neg – prediction markets are the most accurate and objective

Hibbs 11 (Douglas, chair as Professor of Economics at the University of Gothenburg, "The 2012 US Presidential Election: Implications of the Bread and Peace Model," http://www.douglas-hibbs.com/Election2012/2012Election-MainPage.htm)

The best predictions of 2012 election results, as of earlier elections, will almost surely be delivered by price data at thick-market betting sites like Intrade. Of course betting data contribute nothing to the explanation of voting outcomes. Instead they reveal the judgment of market participants – punters who lay money on the table (sometimes very big money) and accordingly have strong incentive to process efficiently all available information relevant to predicting elections. At the end of May 2011 Intrade prices imply that President Obama has about a 61% chance of being re-elected.

#### Shutdown ends soon – conventional spin is wrong

Parker 10/1/13 (Kathleen, Syndicated Columnist @ Wash Post, "Shutdown, schmutdown," http://www.washingtonpost.com/opinions/kathleen-parker-shutdown-schmutdown/2013/10/01/9b106190-2ada-11e3-97a3-ff2758228523\_story.html)

Finally, conventional spin goes that Republicans would rather shut down government than fund health care, roughly translated to mean they hate women and children. Not to be outdone in the nonsense department, Republicans risibly claim that Democrats would rather shut down government than negotiate about a law that is in place, already funded, adjudicated and, as of Oct. 1, rolled out.¶ This sublimely abbreviated summation is essentially what The American People — that sacred monolith about which Washington knows so little — have been told concerning the recent madness in the nation’s capital.¶ But taking a closer look, one sees that all of the above lacks context and ignores the nuances of how policy and politics play out. The shutdown, which I predict will be resolved relatively quickly to permit bragging rights for all, was really a prelude to the fight over the debt ceiling, which has to be raised by Oct. 17 or the U.S. government reneges on its debts. (Simple solution to the shutdown: The Senate repeals the medical-device tax in Obamacare; the House replaces lost revenue in a separate funding bill, not the continuing resolution; the president signs a clean resolution, federal employees return to work, and everybody says, “Yay.”)

### Political Capital Key – 2NC

#### Prefer issue specific evidence – 1NC \_\_\_\_ indicates that Obama’s use of political capital will help \_\_\_\_\_ becomes successful and is a critical factor

#### Presidential leadership shapes the agenda

Kuttner 11 (Robert, Senior Fellow – Demos and Co-editor – American Prospect, “Barack Obama's Theory of Power,” The American Prospect, 5-16, <http://prospect.org/cs/articles?article=barack_obamas_theory_of_power>)

As the political scientist Richard Neustadt observed in his classic work, Presidential Power, a book that had great influence on President John F. Kennedy, the essence of a president’s power is “the power to persuade.” Because our divided constitutional system does not allow the president to lead by commanding, presidents amass power by making strategic choices about when to use the latent authority of the presidency to move public and elite opinion and then use that added prestige as clout to move Congress. In one of Neustadt’s classic case studies, Harry Truman, a president widely considered a lame duck, nonetheless persuaded the broad public and a Republican Congress in 1947-1948 that the Marshall Plan was a worthy idea. As Neustadt and Burns both observed, though an American chief executive is weak by constitutional design, a president possesses several points of leverage. He can play an effective outside game, motivating and shaping public sentiment, making clear the differences between his values and those of his opposition, and using popular support to box in his opponents and move them in his direction. He can complement the outside bully pulpit with a nimble inside game, uniting his legislative party, bestowing or withholding benefits on opposition legislators, forcing them to take awkward votes, and using the veto. He can also enlist the support of interest groups to pressure Congress, and use media to validate his framing of choices. Done well, all of this signals leadership that often moves the public agenda.

#### Political capital is finite and drives decision-making – key to agenda success

Schier 9, Professor of Poliitcal Science at Carleton, (Steven, "Understanding the Obama Presidency," The Forum: Vol. 7: Iss. 1, Berkely Electronic Press, <http://www.bepress.com/forum/vol7/iss1/art10>)

 In additional to formal powers, a president’s informal power is situationally derived and highly variable. Informal power is a function of the “political capital” presidents amass and deplete as they operate in office. Paul Light defines several components of political capital: party support of the president in Congress, public approval of the presidential conduct of his job, the President’s electoral margin and patronage appointments (Light 1983, 15). Richard Neustadt’s concept of a president’s “professional reputation” likewise figures into his political capital. Neustadt defines this as the “impressions in the Washington community about the skill and will with which he puts [his formal powers] to use” (Neustadt 1990, 185). In the wake of 9/11, George W. Bush’s political capital surged, and both the public and Washington elites granted him a broad ability to prosecute the war on terror. By the later stages of Bush’s troubled second term, beset by a lengthy and unpopular occupation of Iraq and an aggressive Democratic Congress, he found that his political capital had shrunk. Obama’s informal powers will prove variable, not stable, as is always the case for presidents. Nevertheless, he entered office with a formidable store of political capital. His solid electoral victory means he initially will receive high public support and strong backing from fellow Congressional partisans, a combination that will allow him much leeway in his presidential appointments and with his policy agenda. Obama probably enjoys the prospect of a happier honeymoon during his first year than did George W. Bush, who entered office amidst continuing controversy over the 2000 election outcome. Presidents usually employ power to disrupt the political order they inherit in order to reshape it according to their own agendas. Stephen Skowronek argues that “presidents disrupt systems, reshape political landscapes, and pass to successors leadership challenges that are different from the ones just faced” (Skowronek 1997, 6). Given their limited time in office and the hostile political alignments often present in Washington policymaking networks and among the electorate, presidents must force political change if they are to enact their agendas. In recent decades, Washington power structures have become more entrenched and elaborate (Drucker 1995) while presidential powers – through increased use of executive orders and legislative delegation (Howell 2003) –have also grown. The presidency has more powers in the early 21st century but also faces more entrenched coalitions of interests, lawmakers, and bureaucrats whose agendas often differ from that of the president. This is an invitation for an energetic president – and that seems to describe Barack Obama – to engage in major ongoing battles to impose his preferences.

### Impact – A2: Econ Impact Defense – 2NC

#### Decline cause miscalculation and conflict – prefer statistically significant evidence

**Royal 10** (Jedediah, Director of Cooperative Threat Reduction – U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises”, Economics of War and Peace: Economic, Legal and Political Perspectives, Ed. Goldsmith and Brauer, p. 213-215)

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases**,** as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularlyduring periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate externalmilitary conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary

**MARKED**

y tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in theuse of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflictat systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

### Impact – Extended Shutdown Hurts Econ

#### Extended shutdown decks the European and global economies

NYT 10/1/13 ("Europeans Express Concern Over Shutdown," http://www.nytimes.com/news/fiscal-crisis/2013/10/01/europeans-express-concern-over-shutdown/)

Europeans reacted to the shutdown of the American federal government with a mix of astonishment and concern that the economic fallout could adversely affect their countries’ own sputtering recovery.¶ For millions of European tourists, the closure of all national parks, monuments and museums – including the Statue of Liberty and the Grand Canyon — was viewed as the biggest disappointment. Le Monde warned its readers that 400 national parks and museums across the United States would be affected, and that could translate into millions of dollars of losses for the tourism sector.¶ Writing in Britain’s Independent newspaper, Simon Calder, a senior travel editor, noted that all 17 Smithsonian museums in Washington, as well as the National Zoo, would also be closed indefinitely. He lamented that British travelers would not be able to visit the Grand Canyon and other parks, and warned that British tourists could face extended lines at airports if the Transportation Security Administration was forced to reduce staffing.¶ European Union Web sites noted that American consular services could also be affected, causing difficulties for citizens of five European countries still subject to United States visa requirements. The citizens of Bulgaria, Croatia, Cyprus, Romania and Poland still require visas to enter the United States.¶ The Economist said, “The economic impact of all this depends entirely on how long the shutdown lasts, which, given that few people expected it to occur, is hard to gauge.”¶ The Financial Times sought to minimize the impact of the shutdown, saying that investors did not seem overly bothered. It predicted that the shutdown would be brief and the consequences minimal. It cited Goldman Sachs’s assessment that a one-week shutdown would knock just 0.3 percentage points off third-quarter growth.¶ The German press was far more pessimistic, warning of severe consequences and even of another global economic crisis. “A superpower has paralyzed itself,” said Spiegel Online. But it said that politicians in Washington were working to resolve the crisis and that there was still hope of a resolution.¶ Die Welt warned that the shutdown put the world economy in danger. “The fear is real that the tender U.S. recovery will be damaged,” it said. Many Germans appeared to empathize with President Obama, who they saw as being held hostage by what the Zeit called a “handful of radicals” unwilling to compromise.

## Legitimacy

### 2NC Hegemony

#### Heg solves nothing- past two decades prove

**Mearsheimer 2011** (John J., R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, The National Interest, Imperial by Design, lexis)

One year later, Charles Krauthammer emphasized in "The Unipolar Moment" that the United States had emerged from the Cold War as by far the most powerful country on the planet.2 He urged American leaders not to be reticent about using that power "to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them." Krauthammer's advice fit neatly with Fukuyama's vision of the future: the United States should take the lead in bringing democracy to less developed countries the world over. After all, that shouldn't be an especially difficult task given that America had awesome power and the cunning of history on its side. U.S. grand strategy has followed this basic prescription for the past twenty years, mainly because most policy makers inside the Beltway have agreed with the thrust of Fukuyama's and Krauthammer's early analyses. The results, however, have been disastrous. The United States has been at war for a startling two out of every three years since 1989, and there is no end in sight. As anyone with a rudimentary knowledge of world events knows, countries that continuously fight wars invariably build powerful national-security bureaucracies that undermine civil liberties and make it difficult to hold leaders accountable for their behavior; and they invariably end up adopting ruthless policies normally associated with brutal dictators. The Founding Fathers understood this problem, as is clear from James Madison's observation that "no nation can preserve its freedom in the midst of continual warfare." Washington's pursuit of policies like assassination, rendition and torture over the past decade, not to mention the weakening of the rule of law at home, shows that their fears were justified. To make matters worse, the United States is now engaged in protracted wars in Afghanistan and Iraq that have so far cost well over a trillion dollars and resulted in around forty-seven thousand American casualties. The pain and suffering inflicted on Iraq has been enormous. Since the war began in March 2003, more than one hundred thousand Iraqi civilians have been killed, roughly 2 million Iraqis have left the country and 1.7 million more have been internally displaced. Moreover, the American military is not going to win either one of these conflicts, despite all the phony talk about how the "surge" has worked in Iraq and how a similar strategy can produce another miracle in Afghanistan. We may well be stuck in both quagmires for years to come, in fruitless pursuit of victory. The United States has also been unable to solve three other major foreign-policy problems. Washington has worked overtime-with no success-to shut down Iran's uranium-enrichment capability for fear that it might lead to Tehran acquiring nuclear weapons. And the United States, unable to prevent North Korea from acquiring nuclear weapons in the first place, now seems incapable of compelling Pyongyang to give them up. Finally, every post-Cold War administration has tried and failed to settle the Israeli-Palestinian conflict; all indicators are that this problem will deteriorate further as the West Bank and Gaza are incorporated into a Greater Israel. The unpleasant truth is that the United States is in a world of trouble today on the foreign-policy front, and this state of affairs is only likely to get worse in the next few years, as Afghanistan and Iraq unravel and the blame game escalates to poisonous levels. Thus, it is hardly surprising that a recent Chicago Council on Global Affairs survey found that "looking forward 50 years, only 33 percent of Americans think the United States will continue to be the world's leading power." Clearly, the heady days of the early 1990s have given way to a pronounced pessimism.

### 2NC Irreversible

#### Warming is irreversible

ANI 10 (“IPCC has underestimated climate-change impacts, say scientists”, 3-20, One India, http://news.oneindia.in/2010/03/20/ipcchas-underestimated-climate-change-impacts-sayscientis.html)

According to Charles H. Greene, Cornell professor of Earth and atmospheric science, "Even if all man-made greenhouse gas emissions were stopped tomorrow and carbon-dioxide levels stabilized at today's concentration, by the end of this century, the global average temperature would increase by about 4.3 degrees Fahrenheit, or about 2.4 degrees centigrade above pre-industrial levels, which is significantly above the level which scientists and policy makers agree is a threshold for dangerous climate change." "Of course, greenhouse gas emissions will not stop tomorrow, so the actual temperature increase will likely be significantly larger, resulting in potentially catastrophic impacts to society unless other steps are taken to reduce the Earth's temperature," he added. "Furthermore, while the oceans have slowed the amount of warming we would otherwise have seen for the level of greenhouse gases in the atmosphere, the ocean's thermal inertia will also slow the cooling we experience once we finally reduce our greenhouse gas emissions," he said. This means that the temperature rise we see this century will be largely irreversible for the next thousand years. "Reducing greenhouse gas emissions alone is unlikely to mitigate the risks of dangerous climate change," said Green.

### 2NC Must Read

#### The plan doesn’t get implemented

#### A. Emergencies mean the executive can do what they want – means any crisis leads to the Aff not happening

#### B. It’s inevitable anyay – the executive has special resources for the process – they’ll just shift to another budget or process. That’s Fatovic

#### Trial systems don’t solve – courts will grant enormous leeway to the executive

Scheppele, 12—Professor of Sociology and Public Affairs @ Princeton University (Kim Lane, January. “The New Judicial Deference,” Boston University Law Review, 92 B.U.L. Rev. 89. Lexis.)

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won. Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than t

**Marked**

he petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question. Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead. [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives. Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference. This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases. This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

# 1NR

## CP

### Solvency – 2NC – Congress

#### Only the CP solves – the President will refuse the plan’s limitation

Prakash 8 (Saikrishna – Herzog Research Professor of Law, University of San Diego School of Law, “The Executive's Duty To Disregard Unconstitutional Laws”, 2008, Georgetown Law Journal, 96 Geo. L.J. 1613, lexis)

Perhaps most ominously, Presidents might decline to abide by statutes that are meant to constrain presidential authority. Citing a duty to disregard unconstitutional statutes, a President might elude all manner of constraints that Congress imposed upon presidential power. n28 Indeed, such complaints have been made against President George W. Bush. n29 When Congress has tried to tie his hands, the President has declared an unwillingness to abide by such statutory limitations on the grounds that they are unconstitutional.

### Ext – Only CP Solves (Congress)

#### Presidents can refuse congressional limitations – it’s an inherent power

Ku 6 (Julian G. – Associate Professor of Law at Hofstra University Law School, “Is There an Exclusive Commander-in-Chief Power?”, 2/28, 115 Yale L.J. Pocket Part 84, lexis)

This view is also completely consistent with Justice Jackson's concurrence in Youngstown Sheet & Tube Co. v. Sawyer, n5 the famous Supreme Court decision rejecting President Truman's wartime seizure of steel mills. In his opinion, which has been widely invoked by critics of the Commander-in-Chief argument, Jackson clearly believed that the President holds some exclusive Commander-in-Chief powers that Congress cannot limit. After describing three categories of presidential power in foreign affairs, Jackson specifically left room in his analysis for the President to act against the will of Congress. Although the President's powers are at their "lowest ebb" when Congress objects to his actions, he may still act in those cases pursuant to his inherent constitutional powers. Presidential practice has uniformly recognized the existence of this exclusive power. Beginning in 1974, for instance, every U.S. President has rejected the constitutionality of the War Powers Act's ninety-day limitation on the deployment of troops without congressional authorization. n6 Indeed, President Clinton openly flouted the law in 1999 when he kept U.S. troops deployed to Kosovo past the Act's deadline. The Clinton Administration actually endorsed a more radical defense of the exclusive Commander-in-Chief power. Walter Dellinger, who served as President Clinton's chief of the Office of Legal Counsel, opined that Congress could not prohibit the deployment of U.S. soldiers under the command of [\*86] foreign commanders because of the Commander-in-Chief clause. n7 According to Dellinger, Congress could not even attach such restrictions to its defense spending appropriations. Dellinger further advised in a separate opinion that it was perfectly acceptable for a President to refuse to implement or execute a law that impermissibly restricted the President's inherent constitutional powers. n8 Academic commentators have also agreed that there is an exclusive Commander-in-Chief power. Even though Congress also holds broad powers to declare war and make rules governing the regulation of military forces, commentators have universally agreed that some part of the President's Commander-in-Chief power must remain free from congressional regulation. As Professor Louis Henkin, the nation's leading foreign relations scholar, has written of the Commander-in-Chief power, "It would be unthinkable for Congress to attempt detailed, tactical decision, or supervision, and as to these the President's authority is effectively supreme." Accepting the existence of an exclusive Commander-in-Chief power does not require critics to accept the legality of every one of the Bush Administration's policies. But it does require critics to consider seriously the dangers of excessive congressional regulation of the President's wartime powers as much as they highlight the dangers of presidential unilateralism. For instance, defenders of congressional restrictions on warrantless wiretapping should concede the necessity of an exclusively foreign surveillance power, and focus their arguments instead on justifying Congress's authority to regulate domestic surveillance operations.

### A2: Oversight

#### Executive internal restraint encourages judicial fill-in – solves oversight

Metzger 9 (Gillian – Professor of Law, Columbia Law School, “ ARTICLE & ESSAY: THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, Emory Law Journal, 2009, 59 Emory L.J. 423, lexis)

I therefore see benefits from paying greater attention to internal administrative design and in particular to analyzing what types of administrative structures are likely to prove effective and appropriate in different contexts. n9 But I believe that attending to internal constraints alone is too narrow a focus because it excludes the crucial relationship between internal and external checks on the Executive Branch. Internal checks can be, and often are, reinforced by a variety of external forces - including not just Congress and the courts, but also state and foreign governments, international bodies, the media, and civil society organizations. Moreover, the reinforcement can also work in reverse, with internal constraints serving to enhance the ability of external forces, in particular Congress and the courts, to [\*426] exert meaningful checks on the Executive Branch. Greater acknowledgment of this reciprocal relationship holds import both for fully understanding the separation of powers role played by internal constraints and for identifying effective reform strategies. One aspect of this dynamic meriting additional attention is the link between internal Executive Branch constraints and external legal doctrine. Contemporary separation of powers doctrine makes little effort to reinforce internal constraints on the Executive Branch; instead it largely focuses on whether internal constraints intrude too far on presidential power, to the extent it considers such constraints at all. This stands in contrast to administrative law doctrine, which focuses primarily on behavior internal to the Executive Branch and often seeks to encourage Executive Branch adherence to constraints on agency action. This division of labor is not coincidental; the availability of administrative law restrictions on agencies is one reason why the courts have not sought to link internal and external constraints as a matter of separation of powers analysis. Judicial concerns about unduly intruding into congressional and presidential choices in structuring administration, and about the courts' limited competency on questions of institutional design, are likely in play as well. Yet greater exploration of how separation of powers doctrine could be used to reinforce internal Executive Branch constraints appears justified, especially given the important separation of powers function that internal constraints can serve.

### A2: Rollback – Congress – 2NC

#### Executive orders aren’t overturned – reluctance, collective action, and data prove

Krause and Cohen 00 (George and David – Professors of Political Science at South Carolina, “Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders” The Journal Of Politics, Vol. 62, No. 1, February 2000, JSTOR)

We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutional-ized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, executive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In ad-dition, Congress has tended to allow executive orders to stand due to its own collective action problems and the cumbersomeness of using the legislative process to reverse or stop such presidential actions. Moe and Howell (1998) report that between 1973 and 1997, Congress challenged only 36 of more than 1,000 executive orders issued. And only two of these 36 challenges led to overturning the president's executive order. Therefore, presidents are likely to be very successful in implementing their own agendas through such actions. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worth-while.9 Such a description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

### A2: Perm – Do CP

#### -- Severs the mechanism –

#### Statutory restrictions require congressional statutes

Barron and Lederman 8 (David J. – Professor of Law, Harvard Law School, and Martin S. – Visiting Professor of Law, Georgetown University Law Center, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING”, January, 121 Harv. L. Rev. 689, lexis)

2. Congress (Almost) Always Wins Under the Separation of Powers Principle. - We must also consider a related argument for congressional supremacy. This claim is based on the doctrinal test that generally governs separation of powers issues arising from clashes between the President and the Congress in the domestic setting. n149 Under this test, the "real question" the Court asks is whether the statute "impedes the President's ability to perform" his constitutionally assigned functions. n150 And even if such a potential for disruption of executive authority is present, the Court employs a balancing test to "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." n151 Thus, under the general separation of powers principle, even a "serious impact ... on the ability of the Executive Branch to accomplish its assigned mission" might not be enough to render a statute invalid. n152 This approach appears to have a pro-congressional tilt; yet it actually does little more than relocate the dilemma it is impressed to avoid. Even under this deferential test, it is well understood that certain statutes can infringe the President's constitutionally assigned authority to exercise discretion; a statutory restriction on the pardoning of a given category of persons is an obvious example. Nothing in the application of the separation of powers test, then, explains why certain core executive powers (including merely discretionary authorities, rather than obligatory duties) cannot be infringed, even though it is generally understood that such inviolable cores might exist. For this reason, the general separation of powers principle does not actually resolve the question that arises in a Youngstown Category Three case. In all [\*739] events, the question remains whether the President possesses an illimitable reserve of wartime authority. Insofar as the separation of powers principle is thought to provide affirmative support for congressional control, it seems objectionable because it, too, fails to require the analyst to explain why the particular wartime power the President is asserting is not one that Congress can countermand. It simply asserts that it is not.

### A2: Future President Rollback – 2NC

#### Self-binding executive orders such as the counterplan are extremely durable – momentum and political costs deter future presidents

Posner and Vermeule 7 (Eric A. – Kirkland & Ellis Professor of Law, The University of Chicago Law School, and Adrian – Professor of Law, Harvard Law School, “The Credible Executive”, 2007, 74 U. Chi. L. Rev. 865, lexis)

IV. Executive Signaling: Law and Mechanisms We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations. This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895] Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types. We begin with some relevant law, then examine a set of possible mechanisms -- emphasizing both the conditions under which they might succeed and the conditions under which they might not -- and conclude by examining the costs of credibility. A. A Preliminary Note on Law and Self-Binding Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A [\*896] president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing § Marked 15:57 § so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated [\*897] presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal. B. Mechanisms What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators, and judges that his policies rest on judgments about the public interest, rather than on power maximization, partisanship, or other nefarious motives? 1. Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels "internal separation of powers" within the executive branch. n78 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger employment protections for civil servants, and internal adjudication of executive controversies by insulated "executive" decisionmakers who resemble judges in many ways. n79

### A2: legitimacy

#### Executive orders spur congressional modeling – shapes public opinion and innovation

Sovacool 9 (Benjamin – Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization and Assistant Professor at the Lee Kuan Yew School of Public Policy at the National University of Singapore, “Preventing National Electricity-Water Crisis Areas in the United States”, 2009, 34 Colum. J. Envtl. L. 333, lexis)

 In each of these circumstances, Executive Orders were used to cut through partisanship and implement important and needed [\*388] changes. Furthermore, such Executive Orders often catalyzed media and public attention to the degree that they later persuaded Congress to endorse with eventual legislation. Bruce N. Reed, a special advisor to President Clinton, put it succinctly by stating that "in our experience, when the administration takes executive action, it not only leads to results while the political process is stuck in neutral, but it often spurs Congress to follow suit." n303 Analogously, Executive Orders, notes two political scientists, "facilitate innovations in the legislative process, codify ideological commitments, and drive social change." n304

## Prez Pwrs

### 2NC Link – Congress

#### Legislative checks on war powers destroy the President – causes crisis escalation

Waxman 8/25 – Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR (Matthew, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN)

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Congress moderating the president causes a power imbalance

Yoo 08

[John, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, On Presidential Power, 2008, <http://www.writersreps.com/feature.aspx?FeatureID=152>]

The idea behind the “executive power,” which traces its origins from Alexander Hamilton and the first Washington administration, to thinkers such as Machiavelli, Locke, Montesquieu, and Blackstone, requires the perspectives of many disciplines: law, history, and political science. In the 20th century, the idea of presidential power has taken full advantage of the broad language of the Constitution and expanded to include management of the agencies and other powers inherently “executive” in nature—in contrast with the Constitution’s grant of specified, or "enumerated," powers to Congress. Presidential power also grew through the development of the President as party leader. Lastly, it grew in response to pressing challenges to the nation through its history. **Claims of an out-of-control executive have been much bandied about lately**. Most are overblown, aimed at a campaign season and audience. The Bush administration went to Congress twice for authorization for foreign combat. Congress has always has full power to cut off or roll back any military operations it chooses—however, it often does not so choose, and this fact makes no headlines. The political effort to curb the President's power over judicial appointments today has been heated: filibusters withholding Senate approval, for example, have proliferated to the point of judicial system paralysis. Judicial nominees are kept in limbo or subjected to smear campaigns, and this, at least theoretically, encourages a talent deficit in the judiciary. The national interest requires executive and legislative branches to cooperate politically. Congress can be eager to micromanage the executive branch, but whenever it addresses difficult subjects on which there is no consensus, it tends to pass ambiguous laws—sometimes bad law, incorporating contradictory goals—in its effort to placate warring interest groups and to seem to be doing good. I believe there is a current power imbalance that checks presidential action in matters of national security that were misguidedly enacted during the nation's over-reaction to Watergate and Vietnam and which have, ever since, hindered the executive branch's ability to do its job effectively—including to address dangers from terrorist networks about which many workers in government knew, as these individuals have since disclosed in scores of books. Many sensed the need to prevent the nation from attacks such as that which occurred on 9/11, but were paralyzed into inaction due to legal concerns that were sometimes overdrawn.

#### Winning the turn hinges on winning that they solve rule of law – damning alt cause is the drones debate, happenng now means we will always seem hypocritical on rule of law so they can’t access any internal to the impact

#### Court usurpation of detention authority hurts presidential power

Yoo 13

[Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, The presidency redefined, 3/11/13, <http://www.aei.org/files/2013/02/26/-the-presidency-redefined_095507160389.pdf>]

Choosing enemy targets and selecting weapons systems thus fall squarely in the executive's docket. Presidents have generally followed the laws of war, which require that militaries discriminate between civilians and combatants and use proportional force to achieve their missions. But now the administration has said, in a Justice Department white paper, that, for the first time in American history, White House advisers are choosing targets in war using criteria developed in the criminal-justice context: whether the enemy's due-process rights allow the use of force, whether capture is feasible, and whether an attack on the United States is imminent. Civil libertarians of the Left and the Right might find comfort in the fact that Obama and his advisers worry about terrorists' rights before they authorize a drone strike. But they should concede that none of it -- despite appearing in a Justice Department paper -- is required by the law. Under the traditional laws of war, members of the enemy forces are legitimate targets at any time, unless they have surrendered or can no longer fight owing to injury. It does not matter whether they are generals or privates, or whether they are continually planning attacks or pose an "imminent" threat to the United States, as required by the Obama administration. In World War II, for example, the U.S. bombed military targets in Germany and Japan far behind the front lines; the only legal question was whether the U.S. could also bomb civilian targets to stop war production or weaken the enemy's will to carry on. It does not even matter whether the enemy is American. In past wars -- especially the Civil War, during which President Abraham Lincoln believed all Confederates remained U.S. citizens -- some Americans have joined the enemy and have received the same treatment as their brothers-in-arms. By introducing law-enforcement concerns such as imminence, capture, and due process into military decisions, President Obama weakens his office. These criminal-justice notions not only slow down the military decision-making process, but also invite the judicialization of war. Obama's drone policy resembles the abortive September 10 terrorism policies he announced at the start of his first term. Soon after taking office, he ordered Guantanamo Bay shut down and terrorists transferred to a mainland prison. He halted military trials of terrorists and announced that al-Qaeda leaders such as Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks, would be tried in federal courts in downtown New York City. His Justice Department read Miranda warnings to captured al-Qaeda operatives, such as Umar Abdulmutallab, who tried to blow up a Northwest airliner over Detroit on Christmas Day 2009. -- Transferring detainees to the courts effectively gives the judiciary the final say over terrorism policy -- just as judges set the rules for police conduct. Congressional opposition, and the intrusion of the reality of the security threat, led President Obama to back away from this approach and retain much of the framework that had been established by President George W. Bush (in whose administration I served). But the president's support of legislation that would involve the courts in the question of drone strikes marks a new turn toward the mistaken idea that terrorism is just another law-enforcement matter.

#### Detention restrictions hurt broader prez powers

Pfiffner 11 (James P., University Professor and Director of the Doctoral Program in the School of Public Policy at George Mason University, "Decision Making in the Obama White House", Presidential Studies Quarterly 41, no. 2, June, Ebsco)

Obama made a number of policy decisions that changed the administration’s stance¶ on these issues from a more “liberal” legal perspective to a more conservative and¶ politically attuned stance. He rejected early policy advice from Attorney General Eric¶ Holder and favored the more politically attuned White House advisors, particularly¶ Chief of Staff Rahm Emanuel. The broader political sensitivity of Obama’s White House¶ advisors overcame the more legally oriented judgments of the attorney general and the¶ Justice Department. Decisions on detainee policy became more centralized in the White¶ House within the ﬁrst six months of the Obama presidency.¶ Despite previous bipartisan support for closing the Guantanamo Bay prison, which¶ had become a symbol of the mistreatment and torture of suspects in the war on terror,¶ Congress prevented Obama from doing so within the one-year deadline that Obama had¶ promised (McNamara 2006; Baldwin 2009). Political opposition for closing Guantanamo¶ began to build in the spring of 2009, and in May Congress passed an amendment with¶ bipartisan support to a supplemental spending bill that dropped the $80 million the¶ administration had requested to close Guantanamo. It also prohibited spending appropriated funds for closing Guantanamo or bringing any of its detainees into the United States.¶ During the Bush administration, it became abundantly clear that in the course of¶ interrogating suspects of terrorism, U.S. personnel had used very harsh techniques (EITs)¶ that sometimes amounted to torture and resulted in the deaths of detainees (Pﬁffner¶ 2010). Obama used the harsh treatment of detainees as a campaign issue, and he¶ promised that such techniques would not be authorized if he were elected. His executive¶ order of January 22 declared that Common Article 3 of the Geneva Conventions was a “minimum baseline” for the treatment of prisoners. It ordered that detained “persons¶ shall in all circumstances be treated humanely and shall not be subjected to violence to¶ life and person,” including outrages on their personal dignity and humiliating and¶ degrading treatment. “From this day forward” interrogations would have to be consistent¶ with Army Field Manual 2-22.3 (2006).¶ Vice President Cheney and other Bush administration ofﬁcials severely criticized¶ Obama for his abjuring of EITs and accused him of endangering the security of the¶ country (Thiessen 2010). President Obama also enraged supporters of the Bush administration’s approach to interrogation by moving to release several memoranda on the use¶ of EITs during the Bush era and photographs of U.S. personnel abusing detainees. While¶ preparing to act in accord with a court order to release the memos (written by acting¶ Ofﬁce of Legal Counsel (OLC) Director Stephen Bradbury in May 2005) and photos,¶ Obama was publicly entreated to reconsider by former CIA Director Michael Hayden,¶ who organized other former directors of the CIA to object to the release. Emanuel and¶ the political side of the White House warned the president that the release would cause¶ a political backlash in the country, and Obama began to consider more seriously the¶ political repercussions of the proposed actions.¶ On April 15, in reconsidering the advice of Attorney General Holder to release the¶ memos, Obama in an evening White House meeting, set up a debate on the issue¶ between his counsel Greg Craig, who favored the release, and NSC aide Denis McDonough, who opposed the release (Calabresi and Weisskopf 2009). Obama ﬁnally decided to¶ release the memos. But after listening to an argument by Secretary Robert Gates and¶ others that public release of the photos would likely inﬂame Muslims and lead to more¶ violence that would jeopardize U.S. lives, he decided not to release the photos. At the¶ same time that the memos were released, Emanuel announced that the administration¶ would not prosecute CIA agents who used interrogation techniques approved by the OLC¶ of the Justice Department (Klaidman 2009). Emanuel prevailed over Holder on the issues¶ of releasing the photos and not prosecuting CIA interrogators.¶ After suffering criticism for his ratifying questionable pardons at the end of the¶ Clinton administration, Holder wanted to demonstrate his independence from Obama,¶ who was also his friend. He also wanted to distinguish his approach to the attorney¶ general’s ofﬁce from the Bush administration’s tight White House control of legal issues.¶ Thus, he convinced Obama to publicly delegate to him the authority to make decisions¶ about prosecuting terrorist suspects in the war on terror.¶ Holder’s based his decision on November 13, 2009, to try the 9/11 suspects in criminal¶ court on his conviction that civil trials would demonstrate American adherence to the rule¶ of law, since the court system held the legitimacy of centuries of jurisprudence and was seen¶ internationally as a model of due process of law. He was convinced that civil courts, having¶ conducted hundreds of trials of terrorists, were capable of effectively prosecuting the 9/11¶ terrorists.Holderconcludedthat“TryingthecaseinanarticleIII[oftheConstitution]court¶ is best for the case and best for our overall ﬁght against al Qaeda” (Kornblut and Johnson¶ 2010). One argument for using Article III trials concerned the willingness of European¶ countries, some of which were holding suspected terrorists, to extradite them to the United¶ States for prosecution (Savage and Shane 2010). They would hesitate to send suspects to the¶ United States unless they were conﬁdent that due process would be guaranteed.¶ Obama ordered an in-depth review of the legal cases against Guantanamo detainees¶ by a committee of the Justice Department, with representatives from the Departments of¶ State and Defense, the CIA, and Federal Bureau of Investigation (FBI). With the committee’s and Holder’s advice, Obama decided that 25 Guantanamo detainees could be¶ prosecuted either in Article III courts or military commissions, and detainees 110 could¶ be released. He also announced that the United States would continue to hold some¶ detainees without charges or trials. Such a policy amounted to indeﬁnite detention¶ without trial, for which liberals criticized him.¶ Holder and advocates for trying detainees in civil courts argued that Article III¶ courts represented what was best in U.S. legal institutions and were a tried and true¶ instrument of the U.S. justice system. They also noted that Common Article 3 of the¶ Geneva Conventions requires that defendants be tried by “a regularly constituted court,¶ affording all the judicial guarantees which are recognized as indispensable by civilized¶ peoples” (Pﬁffner 2010, chap. 3). They also argued that military commissions had only¶ recently been set up by the Military Commissions Act and that trial procedures had not¶ been tested in court or been subject to appeals. Thus, military commission procedures¶ would much more likely be overturned by appellate courts than the procedures of Article¶ 3 courts, which had survived appeals for decades. In pointing out the limited experience¶ with military commissions, they noted that only three terrorists had been tried by¶ military commissions, two of which were subsequently released.¶ Obama’s earlier delegation decision allowed Holder to decide which detainees¶ would be tried in which venue. But when Holder announced his decision to try some of¶ the 9/11 suspects in federal court, Republican critics loudly objected. They argued that¶ civilian trials would provide too many defendants’ rights to suspects and that the¶ defendants could use their trials to make public statements denouncing the United¶ States. In contrast, the military commissions would allow hearsay and coerced testimony¶ to be introduced as evidence.¶ The issue came to a head when, on December 25, 2009, Umar Farouk Abdulmutallab¶ attempted to blow up an airplane using explosives that had been hidden in his underwear.¶ He was unsuccessful, and the FBI took him into custody and questioned him about his¶ terrorist connections. After weeks of public criticism of the administration’s decision to¶ prosecute him in court, Attorney General Holder wrote to Minority Leader Senator Mitch¶ McConnell to explain the administration’s policy. Holder pointed out that every terrorist¶ suspect captured in the United States by the Bush administration, from 9/11 to 2009, was¶ handled under the criminal law in Article III courts. The criminal justice system convicted¶ more than 300 suspects and put them in jail (Center for Law and Security 2009).¶ When Holder decided to charge Khalid Sheikh Mohammed (KSM), the selfproclaimed master mind of 9/11, in federal court, he also decided that the venue would¶ be New York City, since that was the “State and district wherein the crime [had] been¶ committed” (Sixth Amendment). Because of the political volatility of the issue, the¶ White House did not allow Holder to defend his venue decision publicly (Kantor and¶ Savage 2010). The political backlash from the decisions to prosecute suspected 9/11¶ plotters and the Christmas hijacker in civil court created a political tempest, and the¶ advocates for military commissions seemed to have public opinion on their side.¶ From the beginning of the administration, White House political aides, led by¶ Chief of Staff Emanuel did not want contentious national security issues to endanger the¶ administration’s domestic policy agenda, and they tried to get Holder to react more¶ sensitively to partisan political factors (Kantor and Savage 2010). For instance, Senator¶ Lindsey Graham felt strongly that any 9/11 trials should be held by military commissions, and he offered to try to get Republican support for closing Guantanamo Bay if the¶ administration would agree to try KSM and others by military commissions rather than¶ Article III courts.¶ Rahm Emanuel thought that Graham’s help in closing Guantanamo was crucial¶ and wanted to reduce the partisan attacks about trials of terrorist suspects, so he¶ continued to work with Senator Graham to cut a deal. According to Emanuel, “You can’t¶ close Guantanamo without Senator Graham, and KSM was a link in that deal.” (Kantor¶ and Savage 2010). Thus, Obama faced the dilemma of backing the initial decision of¶ Holder about the best legal strategy for handling detainees or bowing to political¶ pressure and switching from civil court trials to military commissions. Senators John¶ McCain and Joseph Lieberman intensiﬁed political pressure when they introduced legislation that would have required all foreign terrorism suspects to be tried by military¶ commissions rather than civil courts. Faced with this delegation-centralization dilemma,¶ Obama chose to centralize.¶ These changes of policy by President Obama illustrate the forces for centralization¶ of policy making in the White House. When Holder’s decisions attracted political¶ backlash, the White House staff, particularly the chief of staff, convinced Obama that the¶ political repercussions of Holder’s decisions were more important than Holder’s legal¶ judgments and his independence from the White House. The centralization of control of high-visibility legal policy in the Obama White House staff exempliﬁes pressures faced by all contemporary presidents to ensure that departmental perspectives do not undercut¶ broader presidential interests.

#### Detainee policy frames flexibility of the presidency

Pious 11 (Richard M., Adoplh and Effie Ochs Professor at Barnard College, member of the faculty of the Graduate School of Arts and Sciences at Columbia University, Presidential Studies Quarterly 41, no. 2, June, Ebsco)

Detentions¶ President Obama came into ofﬁce having defended the Boumediene v. Bush (2007)¶ decision (granting habeas corpus rights to detainees at Guantánamo) and having championed due process in detainee proceedings. He described both protections as “the¶ foundation of Anglo-American law” and “the essence of who we are” (Goldsmith 2009).¶ He promised to institute new procedures to ensure that mistakes could be corrected if¶ innocent people were being held.¶ Once in ofﬁce, Obama found the situation to be complicated: after the Boumediene¶ v. Bush decision recognized the right of Guantánamo detainees to petition federal courts¶ with the privilege of the writ of habeas corpus, 22 detainees sued for habeas corpus and¶ were released by federal district courts. In order to sort out the situation and develop a¶ new policy, Obama issued Executive Order 13493, “Review of Detention Policy Options”¶ January 22, 2009, which created a special interagency task force (consisting of the¶ attorney general and secretaries of a number of departments, as well as the director of the¶ CIA, director of National Intelligence, and the chairman of the Joint Chiefs of Staff), to¶ identify the options for disposition of individuals captured in connection with armed¶ conﬂicts and counterterrorism operations.¶ Soon the weight of the national security bureaucracy began to show in a “reset” of Obama’s rhetoric. At a meeting on May 20, 2009, Obama told representatives from some human rights organizations that he was thinking about creating a “preventive detention¶ system” on a legal basis to hold indeﬁnitely detainees that presented a threat to national¶ security but could not be tried. He referred to a “long game” that would preserve the¶ legal right to detain for future presidents (Stolberg 2009). In what he referred to as a¶ “ﬁfth category” of detainees, he mentioned 75 at Guantánamo whom he claimed could¶ not be released and could not be brought to trial. By November, it seemed that Obama¶ would not even seek congressional authorization but would rely on his constitutional¶ powers as commander in chief to continue with indeﬁnite detention. Shortly after the¶ Christmas Bomber was apprehended, a Department of Justice (DOJ) Task Force briefed¶ reporters that of the 196 detainees remaining at Guantánamo, 50 would be held indeﬁ-¶ nitely under the laws of war–which is quite a stretch of the conventional understandings¶ involved in holding prisoners of war under the laws of war and the Geneva Conventions.¶ Another issue involving detainees faced the administration: after the Boumediene¶ decision the Pentagon began to send prisoners to Bagram Air Force Base in Afghanistan;¶ many of them had been captured or apprehended in other countries, and nowhere near a¶ battleﬁeld. The Combat Status Review Tribunals that had been put in place in¶ Guantánamo as a result of Supreme Court decision in Hamdan v. Rumsfeld (2006) did not¶ review these prisoners. Some of the 600 held there had been detained for six years without¶ trial by the time the new administration came into power. Their relatives, after Boumediene, assisted by lawyers in the human rights community in the United States, began¶ ﬁling “best friend” petitions in the federal courts.¶ One such case wasal-Maqaleh v. Gates(2009). After Obama took ofﬁce, District Court¶ Judge John Bates (a George W. Bush appointee), asked the government if it intended to¶ change its position on the powers of the president to detain indeﬁnitely. Instead, the¶ lawyersin the DOJ ﬁled briefs claiming that at Bagram, those detained had no habeas corpus¶ rights: “the government adheres to its previously articulated position,” Michael F. Hertz,¶ acting assistant attorney general wrote in a two-sentence ﬁling. In another ﬁling, it¶ refused to limit the categories of detainees that would be denied these rights: “Law-of-war¶ principles do not limit the United States’ detention authority to this limited category of¶ individuals.” Instead, the DOJ claimed that the president could detain indeﬁnitely members¶ of al-Qaeda, the Taliban, “associated forces,” and those who “substantially support” those¶ groups—wherever they might be located. This could (in the hands of those who might be¶ overzealous) create an undeﬁned presidential “police power” that could operate far from¶ any battleﬁeld and that could allow for indeﬁnite detentions without prospect of trial for¶ anyone, anywhere, on suspicion of providing material support to terrorists.¶ Judge Bates rejected these arguments in al-Maqalah v. Gates (2009) in his¶ memorandum opinion. For Bates, although Boumediene applied only to detainees at¶ Guantánamo, there was a principle at stake that had to be defended: the judiciary and not¶ the executive decides about when habeas corpus protections can be invoked. And the key¶ factor in that decision for Bates was the question—as it had been for the Supreme Court¶ in Boumediene—of “indeﬁnite Executive detention without judicial oversight.” Bates went¶ further and ruled that the congressional statute suspending habeas corpus for detainees¶ who were unlawful combatants was unconstitutional. Thereafter, the Obama administration issued new guidelines providing detainees at Bagram with military appointed¶ representatives (not lawyers) who could gather evidence on behalf of detainees so they¶ could challenge their detentions.¶ In another case, Gherebi v. Obama (2009), the administration changed its position¶ slightly. In its respondent’s memorandum of March 13, 2009, it argued that authority for¶ indeﬁnite detention is not based on the commander-in-chief clause, but rather on the¶ Authorization for the Use of Military Force (AUMF) and on the laws of war. The administration argued (in a ﬁling by DOJ attorney Jean Lin) that Bagram was a theater of war,¶ and that to require status determination tribunals or other legal procedures would “divert¶ the military’s attention and resources at a critical time for operations in Afghanistan”¶ (Gerstein 2009a).¶ In some cases, the DOJ has taken positions in favor of continued detention that defy¶ common sense. The government was holding Abd al Rahim Abdul Rassak (also known¶ a Razak-al-Ginco) at Guantánamo, claiming he had been part of al-Qaeda and had helped¶ the Taliban in Afghanistan. Subsequently, it came into possession of videos from an¶ al-Qaeda safehouse, which showed that Rassak had been tortured by al-Qaeda for several¶ months, evidence that backed his assertion that he had cut ties with the group before¶ being detained by American forces. But the government claimed in court proceedings¶ that he still had ties to his torturers, which a U.S. district court judge in Razak v. Obama¶ (2009) characterized as “a position that deﬁes common sense” in ordering Rassak’s release¶ early in 2009. The government thereupon ﬁled a motion to dismiss Rassak’s petition in¶ the U.S. court of appeals.¶ Although the Obama administration has made claims that rival anything ﬁled by¶ Bush administration lawyers, on a case-by-case basis, it has shown ﬂexibility and a willingness, even an eagerness, to bring long-languishing detainees to trial. Yet this¶ willingness is not because of a great attachment to constitutional rights for detainees—in¶ fact, its eagerness demonstrates tactical rather than principled ﬂexibility. For example,¶ the administration announced that Ali Saleh Kahlah al-Marri, the only detainee being¶ held indeﬁnitely on American soil (in a military bridge in Charleston, SC, for six years),¶ was to be given a trial. He had been arrested in Peoria, IL, in December 2001, and¶ accused of being a sleeper agent for al-Qaeda and providing it with material support.