# Round 1 Core

## 1NC Round 1

### Off 1

#### Immigration reform likely to pass now – vote counts in House, legislative momentum, business and ag pressure, Boehner will allow vote

Gamboa 11/8/13 (Suzanne, Race and Ethnicity reporter for The Associated Press, "Forecast on immigration reform? It’s getting murkier and time’s running out," http://nbclatino.com/2013/11/08/forecast-on-immigration-reform-its-getting-murkier-and-times-running-out/)

Arizona Republican Sen. Jeff Flake told his hometown paper there’s a good shot of a breakthrough on immigration this year. Michigan GOP Rep. Fred Upton told a local crowd some 120 to 140 Republicans back immigration reform, according to a local website.¶ But then, Texas Republican Mike McCaul told a conservative talk show host last week he opposed going to a conference committee on immigration and Rep. Mario Diaz-Balart said to the Washington Post, immigration isn’t going to happen this year.¶ There have been efforts to crystal ball the future of immigration reform and more specifically what the House plans to do this year or next.¶ What’s becoming clear is that there’s once again a split in the GOP, some of it fed by the upcoming 2014 elections, that the House leadership must navigate to a resolution that satisfies most of its rank-and-file.¶ Speaking at a National Journal forum Thursday, Sen. Bob Menendez, D-N.J., said the window for passing immigration reform is open until March.¶ Election filing ends that month for a majority of GOP members. When filing is done for them, they’ll know whether they have primary challengers.¶ Those who don’t get primary challengers or ones that make the race very competitive would “feel more liberated to do right by the nation,” Menendez said. “But we continue to press for a vote this year ,” he said.¶ Clashes within the House GOP – between moderates and conservatives – have been seen on other issues, most recently, in the debate over Obamacare that led to shutting down the government and edging very close to defaulting on the nation’s debt.¶ Republicans are also getting pressure from their backers and donors \_ business, evangelicals, law enforcement and agricultural interests \_ to move immigration along. Hundreds of those GOP loyalists descended on Washington last week to cajole GOP members on immigration.¶ “I think the House is probably torn,” said Sen. Lindsey Graham, who helped craft the Senate’s sweeping, bipartisan immigration reform bill. “There are some in the House who want to do a piecemeal approach, which is fine with me, and there are some who just don’t want to deal with the issue.¶ “I don’t know what’s going to happen, but from the country’s point of view our immigration system is hopelessly broken, from the party’s point of view, I think this issue hurts us,” said Graham, R-S.C.¶ Alberto Cardenas, chairman of the American Conservative Union, said reports he got from the conservatives who met with House GOP members have left him believing immigration reform would be done, if not by the end of this year then by early next year, though he said it may not include legalization.¶ Rep. Flake told the Arizona Republic he thought the push from conservatives helped shift momentum on the issue. He suggested the House would only offer those in the country illegally the chance for citizenship through existing pathways of sponsorship from relatives, spouses or employers. House Judiciary Chairman Bob Goodlatte, R-Va., floated that possibility in September.¶ “I don’t want be seen as trying to tell the House what to do. They are moving a process and have a number of people working on it and I spoke to one of them today (Tuesday). I’m pretty confident they are going to get something on the floor,” Flake told NBC Latino this week.¶ But many in the GOP ranks feel stung by the outcome of last month’s Obamacare-debt ceiling fight. They’ve emerged from the fight unwilling to negotiate with Democrats, saying they no longer trust President Barack Obama or his motives on immigration.¶ House Homeland Security Committee Chairman Mike McCaul said last week he told Boehner he does not want to go to a House-Senate conference committee on the border security bill passed by his committee and included by House Democrats in the comprehensive immigration bill they introduced last month.¶ He told conservative talk show host Laura Ingraham he refused an invitation to a White House meeting because “I saw it as a political trap.”¶ “I’ve been trying to get that border secure for the entire time I have been up here … but I am not going to go down the road of conferencing with the Senate (comprehensive) bill and I told Boehner he needs to stand up and make that very clear … We are not going to conference with the Senate, period,” McCaul said.¶ Others in the GOP see their political survival as dependent on getting immigration reform done in time for 2014 elections when all House members are up for re-election.¶ Some have heavy Hispanic districts with sufficient voters to tilt their elections. Recognizing that, Reps. Jeff Denham and David Valadao, R-Calif. and Rep. Ileana Ros-Lehtinen, R-Fla., have signed on to the Democrats’ House immigration bill. Deham’s district is 40 percent Hispanic, Valadao’s is 72 percent and Ros-Lehtinen’s is 73 percent.¶ Others are facing business owners, farmers and ranchers, and evangelical leaders who need the reform to sustain their workforce or are dealing with immigrants in their congregations and communities.¶ Fred Upton told a Rotary Club in his home state there are about 120 to 140 Republican votes in favor of immigration reform and he has backing from Boehner to try to get half the caucus to support reform, according to a report by the website MLive. He also said he expects to see some movement before Thanksgiving.

#### Congressional criticism of executive war power authority saps capital and makes immigration reform impossible

Kriner 10 (Douglas L. Kriner, assistant professor of political science at Boston University, “After the

Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec

1, 2010, page 68-69)

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

#### Obama’s capital is key to passage

Orlando Sentinel 11/1/13 ("What we think: It'll take both parties to clear immigration logjam," http://articles.orlandosentinel.com/2013-11-01/news/os-ed-immigration-reform-congress-20131031\_1\_immigration-reform-comprehensive-reform-house-republicans)

For those who thought the end of the government shutdown would provide a break from the partisan bickering in Washington, think again. The battle over comprehensive immigration reform could be every bit as contentious.¶ Polls show the popular momentum is there for comprehensive reform, which would include a path to citizenship for many of the nation's 11 million undocumented immigrants. But it'll take plenty of political capital from President Obama and leaders in both parties on Capitol Hill to make it happen.¶ Immigration-reform activists, who have been pushing for reform for years, are understandably impatient. This week police arrested 15 who blocked traffic at a demonstration in Orlando.¶ There are plenty of selling points for comprehensive immigration reform. An opportunity for millions of immigrants to get on the right side of the law. Stronger border security. The chance for law enforcement to focus limited resources on real threats to public safety, instead of nannies and fruit pickers. A more reliable work force to meet the needs of key industries. Reforms to let top talent from around the world stay here after studying in U.S. universities.¶ The Senate passed its version of comprehensive immigration in June. It includes all of the benefits above. Its path to citizenship requires undocumented immigrants to pay fines, learn English, pass a criminal background check and wait more than a decade.¶ So far, House Republicans have balked, taking a piecemeal rather than comprehensive approach. Many members fear being challenged from the right for supporting "amnesty."¶ Yet polls show the public supports comprehensive reform. In June, a Gallup poll found 87 percent of Americans — including 86 percent of Republicans — support a pathway to citizenship like the one outlined in the Senate bill.¶ Florida Republican Sen. Marco Rubio took flak from tea-party supporters for spearheading the comprehensive bill. Now, apparently aiming to mend fences, he says immigration should be handled piecemeal. He's politically savvy enough to know that's a dead end.¶ But comprehensive reform won't have a chance without President Obama making full use of his bully pulpit to promote it, emphasizing in particular all that undocumented immigrants would need to do to earn citizenship. House Democratic leaders will have to underscore the president's message.

#### Reform Solves inevitable economic collapse

Ozimek 2/7/13 (Adam, Contributor, “Does An Aging Population Hurt The Economy?” Forbes, 2013, http://www.forbes.com/sites/modeledbehavior/2013/02/07/does-an-aging-population-hurt-the-economy/)

The economic benefit of immigration is in part about how big of a problem our aging population is. Immigrants are in general younger, and our best way to fight against a growing ratio of retirees to workers. But this raises the question of how big of a problem is this ratio and our aging population in general. While many are concerned about this, Dean Baker argues it is not a problem. He agrees that the ratio has increased and will continue to increase in the future as the population ages, but he argues that we haven’t seen any problems yet so we won’t see any later: We have already seen a sharp decline in the ratio of workers to retirees, yet even people who follow the economy and economic policy closely, like Klein, were apparently not even aware of this fact. Since this decline is never cited as factor causing our current economic problems, why would we think the comparatively mild decline in this ratio projected for future decades will be a large burden? Dean is wrong that the ratio of workers to retirees is not cited as a factor in the current economic problems. The most prominent example comes from newly appointed Council of Economic Advisors member James Stock and his co-author Mark Watson. In their paper “Disentangling the Channels of the 2007-2009 Recession” they specifically cite demographic trends as a cause of our slow recovery. The variable Stock and Watson ultimately cite is the decline in labor force participation, and they argue it is driven by the aging of the workforce and the overall distribution of workers by age. Dean may argue that this technically isn’t the dependency ratio, but that would be quibbling: changes in these two measures capture the same basic economic phenomenon of the aging population and a lower percentage of the population working. Not only has the aging population contributed to the slow recovery, Stock and Watson argue there is good reason to believe it will mean slow recoveries in the future too: The main conclusion from this demographic work is that, barring a new increase in female labor force participation or a significant increase in the growth rate of the population, these demographic factors point towards a further decline in trend growth of employment and hours in the coming decades. Applying this demographic view to recessions and recoveries suggests that the future recessions with historically typical cyclical behavior will have steeper declines and slower recoveries in output and employment. Furthermore, this is just the impact of the aging population on business cycles, there is also the very serious problem of how it will affect our finances. Dean knows that by increasing the workforce immigration improves Social Security’s finances. In 2006 he wrote that if future immigration was at 2001-2002 levels instead of at around 900,000 per year it would reduce the Social Security trust fund’s long-term shortfall by 12%. A shortfall means we will reduce benefits or pay for it in higher taxes, and either are going to result in lower welfare for someone.

#### 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.

### Off 2

#### Text: The President of the United States should issue an executive order implementing, via the appropriate administrative agencies, the Rules for Limited War as specified by the 1AC Ackerman and Hathaway evidence.

#### Solves – this 1AC plan evidence does not make a congress key warrant

#### 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

#### Private military contractor use is decreasing

Schwartz 10 (Moshe – Specialist in Defense Acquisition, CRS Report, “The Department of Defense’s Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress”, 6/22, http://fpc.state.gov/documents/organization/145576.pdf)

According to DOD, from September 2007 to June 2009, the number of armed security contractors increased from 5,481 to a high of 13,232, an increase of 140%. However, from June 2009 to March 2010 the number of armed security contractors has decreased by 2,203, or 17% (see Figure 1 ). 24 DOD officials anticipate that the number of armed contractors in Iraq will continue to decrease, much as the overall number of contractors and troops in Iraq has also decreased.

#### Restricting armed forces results in a shift towards PMC use – circumvents regulation

Michaels 4 (Jon – Law Clerk to the Honorable Guido Calabresi, U.S. Court of Appeals for the Second Circuit; Law Clerk designate, the Honorable David H. Souter, U.S. Supreme Court; J.D., Yale Law School, “ARTICLE: BEYOND ACCOUNTABILITY: THE CONSTITUTIONAL, DEMOCRATIC, AND STRATEGIC PROBLEMS WITH PRIVATIZING WAR”, 2004, 82 Wash. U. L. Q. 1001, lexis)

[\*1008] Military privatization of combat duties, on the other hand, decidedly does. It has the potential to introduce a range of novel constitutional, democratic, and strategic harms that have few, if any, analogues in the context of domestic, commercial outsourcing. Military privatization can be, and perhaps already has been, used by government policymakers under Presidents Bill Clinton and George W. Bush to operate in the shadows of public attention, domestic and international laws, and even to circumvent congressional oversight. For a variety of political and legal reasons, the Executive may at times be constrained in deploying U.S. soldiers. The public's aversion to a military draft, the international community's disdain for American unilateralism, and Congress's reluctance to endorse an administration's hawkish foreign goals may each serve to inhibit, if not totally restrict, the president's ability to use U.S. troops in a given zone of conflict. In such scenarios, resorting to private contractors, dispatched to serve American interests without carrying the apparent symbolic or legal imprimatur of the United States, may be quite tempting. In those instances, it would not necessarily be the cheaper price tag or specialized expertise that makes private contractors desirable. Rather, it might be the status of the actors (as private, non-governmental agents) vis-a-vis public opinion, congressional scrutiny, and international law that entices policymakers to turn to contracting. Indeed, "tactical privatization," as I call it, is motivated at least in part by a desire to alter substantive policy: Private agents would be used to achieve public policy ends that would not otherwise be attainable, were the government confined to relying exclusively on members of the U.S. Armed Forces. Tactical privatization thus stands in contradistinction to what is widely understood to be the conventional privatization agenda, driven by economic goals, that strives for verisimilitude in replicating government responsibilities (only more efficiently). n19 To elude public debate, circumvent Congress's coordinate role in conducting military affairs, and evade Security Council dictates may help an administration achieve short-term, realpolitik ends; but in the process, the structural damage to the vibrancy and authenticity of public deliberation, to the integrity of America's constitutional architecture of separation of powers, and to the legitimacy of collective security may prove irreparable.

#### PMC reliance PMC’s breed resentment and alienate allies

Michaels 4 (Jon – Law Clerk to the Honorable Guido Calabresi, U.S. Court of Appeals for the Second Circuit; Law Clerk designate, the Honorable David H. Souter, U.S. Supreme Court; J.D., Yale Law School, “ARTICLE: BEYOND ACCOUNTABILITY: THE CONSTITUTIONAL, DEMOCRATIC, AND STRATEGIC PROBLEMS WITH PRIVATIZING WAR”, 2004, 82 Wash. U. L. Q. 1001, lexis)

A. Alienating Friends and Foes Alike Contracting out allows the U.S. government to purchase strategic outcomes at a much lower political cost than if the boys and girls of America's volunteer army were dispatched. Indeed, an overseas engagement involving contractors might, accordingly, produce neither an official body count nor much political opposition. n398 But, the security and flexibility the United States gains without expending domestic political capital and/or the lives of servicemen and women may, however, serve to validate the perception that the American agenda is driven by dollars rather than ideals; that decisions are made in private, smoke-filled backrooms rather than openly on the floors of Congress. It also invites concerns that the United States is represented in zones of hostilities by individuals who are not subject to the same standards of legal conduct and ethical restraint that this nation and the international community expects of the U.S. Armed Forces. 1. Allies Among America's allies, when the private cavalry is dispatched instead of the U.S. military, they may think that their particular crisis is outside of core American interests. This suspicion or sense of being slighted can [\*1112] breed resentment and a weakening of ties, a response not altogether lost on American leaders. Congressmen Tom Lantos and Henry Hyde had this precise concern in mind when they questioned the wisdom of contracting out President Karzai's security detail. In a joint statement, they noted: "The presence of commercial vendors [protecting Karzai] would send a message to the Afghan people and to President Karzai's adversaries that we are not serious enough about our commitment to Afghanistan to dispatch U.S. personnel." n399 Other allies too may be dissatisfied by the conduct of military engagements by private troops. No doubt the Bosnians would have preferred to receive the help of DynCorp contractors, without their extracurricular involvement in sex-trafficking operations. Moreover, perhaps pro-American leaders in the Middle East similarly feel betrayed, today, by the conduct of American privateers toward Iraqi prisoners. n400 Leaders who endorse American foreign policy aims, often at great domestic peril, n401 are then placed in an even more difficult situation at home when forced to defend their support in the face of American acts of brutality. n402 Of course, transgressions by American soldiers certainly do occur. But, at least those acts can be reported up the chain of command and, in turn, can be swiftly punished, thus demonstrating the U.S. government's commitment to justice and self-restraint; n403 as we have discussed, comparable firmness with contractors is much more difficult to achieve. n404 [\*1113] 2. Would-Be Allies Let us also not forget that American military personnel are, increasingly, serving as diplomats, humanitarian providers, political consultants, and "liberators." n405 Their conduct on such missions could leave as large of an impression on their hosts as would any tangible project or aid package they deliver. Therefore, if the United States is dispatching private actors, who are not comporting themselves well, the conduct of these privateers will inevitably be imputed to all soldiers, if not all Americans, and the goods and services they provide will be, in the long run, devalued. As P.W. Singer notes, a "key realization of contracting is that a firm becomes an extension of government policy and, when operating in foreign lands, its diplomat on the ground. As such, the firm's reputation can ... implicate the government['s] as well." n406 And, finally, America acts not just as an intervenor or liberator, but also as an occupier. While on the ground, in Kabul or Baghdad, the U.S. personnel must work to win the hearts and minds of the locals. n407 If American contractors were to act in an undignified, or offensive manner, it would only hamper the process of gaining the trust of the people. (Again, this assumes that because of the UCMJ and because of the military's ethos of honor, soldiers are less likely to act inappropriately.)

#### Strong alliances solve nuclear war

Brooks et al 13 (Stephen G. Brooks is Associate Professor of Government at Dartmouth College.G. John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs. He is also a Global Eminence Scholar at Kyung Hee University.William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College. “Don't Come Home, America: The Case against Retrenchment”, Winter 2013, Vol. 37, No. 3, Pages 7-51, <http://www.mitpressjournals.org/doi/abs/10.1162/ISEC_a_00107>)

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world’s core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional proxy wars and arming of client states—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of “unforeseen crisis dynamics” that could spin out of control is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and “pass the buck” to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China’s rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, “The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves.” 81 Therefore, unless China’s rise stalls, “the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War.” 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, the argument that U.S. security commitments are unnecessary for peace is countered by a lot of scholarship, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difficult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which the case for retrenchment misses the underlying logic of the deep engagement strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States’ formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the “focused enmity” of the United States. 84 All of the world’s most modern militaries are U.S. allies (America’s alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

### Off 4

#### The plan limits executive war fighting capabilities – devastates all operations

Kriner 10 (Douglas – asst prof of poli sci @ Boston Univ , "After the Rubicon: Congress, Presidents, and the Politics of Waging War," Ed. by William Howell and Jon Peverhouse, p. 285-286)

American history offers few examples of Congress using its legislative power to bring to heel a wayward commander in chief. Only in the rarest cases will Congress be able to marshall the supermajorities required to pass legislation compelling the president to abandon his preferred policy preferences. However, to focus only on the lack of concrete legislation terminating an ongoing war or blocking the use of force altogether is to miss the more indirect, yet still powerful means of influence through which members of Congress have routinely shaped the course of American military affairs. Even when Congress fails to write its military preferences into law, its members rarely stand on the sidelines of the policy process. Rather, members of Congress have historically engaged in a variety of actions from formal intiatives, such as introducing legislation or holding hearings that challenge the president's conduct of military action, to informal efforts to shape the nature of the policy debate in the public sphere. These actions can raise significantly the political and strategic costs to the president of waging large-scale, long-duration military actions to pursue their policy goals. In some cases, presidents may judge that the benefits of responding miltiarily to a foreign policy crisis or continuing an ongoing military engagement may outweigh even the heightened costs that congressional opposition generates. In these instances, enacting legislation to compel the president to change course may be the only remedy available to congressional opponents. In many other cases, however, congressional opposition has had tangible effects on policy outcomes. Again and again, the statistical and qualitative analyses have showed presidents modifying their policies, moderating the scale and duration of their military ventures, and sometimes foregoing a military response altogether, when faced with real or anticipated opposition on Capitol Hill. When exerted indirectly, congressional influence is less immediately visible and dramatic than it is in the rare occasions when Congress has enacted legislation to mandate a change in militar policy. Yet through indirect mechanisms, Congress has often encouraged presidents to pursue significantly different military policies than they would have adopted in the absence of congressional opposition.

#### It spills over to destabilize all presidential war powers

Heder 10 (Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

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

#### The impact is the loss of fourth-gen warfighting capabilities that escalate to nuclear use

Li 9 (Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

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

#### Bioterror causes extinction

Mhyrvold 13 (Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013)

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

### 1NC Democracy

#### 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.

#### Congress will stand down. They don’t care about institutional power

Devins 9—Professor of Law and Professor of Government @ College of William and Mary [Neal Devins, “Presidential Unilateralism and Political Polarization: Why Today's Congress Lacks the Will and the Way to Stop Presidential Initiatives,” Willamette Law Review, Vol. 45, Issue 3 (Spring 2009), pp. 395-416]

Unlike the presidency, the individual and institutional interests of members of Congress are often in conflict with one another. While each of Congress's 535 members has some stake in Congress as an institution, parochial interests will overwhelm this collective good. In particular, members of Congress regularly tradeoff their interest in Congress as an institution for their personal interests-most notably, reelection and advancing their (and their constituents') policy agenda. In describing this collective action problem, Moe and Howell note that lawmakers are "trapped in a prisoner's dilemma: all might benefit if they could cooperate in defending or advancing Congress's power, but each has a strong incentive to free ride in favor of the local constituency.

For this reason, lawmakers have no incentive to stop presidential unilateralism simply because the President is expanding his powers vis-A-vis Congress. Consider, for example, the President's use of executive orders to advance favored policies and presidential initiatives to launch military initiatives. Between 1973 and 1998, Presidents issued about 1,000 executive orders. Only 37 of these orders were challenged in Congress and only 3 of these challenges resulted in legislation. 9

Presidential unilateralism in launching military operations is even more striking-because it involves the President's willingness to commit the nation's blood without congressional authorization. Notwithstanding the clear constitutional mandate that Congress play a significant role in triggering military operations, Congress has very little incentive in playing a leadership role. Rather than oppose thePresident on a potential military action, most members of Congress find it more convenient to acquiesce and avoid criticism that they obstructed a necessary military operation. Pg. 400-401

#### President will not abide. Congress will inevitably fall in line

Bell 4—Professor of Political Science @ Randolph-Macon College [Lauren Cohen Bell, “Following the Leaders or Leading the Followers? The US President's Relations with Congress,” Journal of Legislative Studies, Summer/Autumn, 2004, Vol. 10 Issue 2/3, pg. 193-205]

As noted ahove. Article I of the Constitution grants to the Congress the sole authority to make declarations of war. However, the president has the power to command US military personnel based on the provisions of Article II. Over the course of US history, the commander-in-chief power has been interpreted to permit presidents to commit troops to areas of conflict even in the absence of a formal declaration of war. Today, formal declarations of war are the exception rather than the rule; separation of powers expert Louis Fisher notes that through 1991 only five wars had ever been declared and that "in only one (the War of 1812) did members of Congress actually debate the merits of entering into hostilities'.'^ As Samuel Kemell and Gary Jacohson note: "[SJince 1989 U.S. armed forces have been almost continuously engaged somewhere in the world.''^

This was not always the case. Fisher points out that there is evidence of presidential restraint with regard to war-making by relating the story of President Grover Cleveland (1885-89; 1893-97), who refused to mobilise troops for a conflict with Cuba despite Congress' intention to declare war. In Fisher's account, Cleveland told the Congress: 'I will not mobilize the army ... I happen to know that we can buy the island of Cuba from Spain for $100,000,000, and a war will cost vastly more than that and will entail another long list of pensioners. It would be an outrage to declare war.''^ Yet, in the modem history of presidential-congressional relations, it is much more frequently the president who has mobilised American troops without consultation with the Congress and in the absence of a formal declaration of war. And it is clear that even when we consider Cleveland's actions, the president has been far more important to the conduct of American foreign policy than the Congress.

This circumstance led, in the aftermath of the war in Vietnam, to congressional passage of the War Powers Resolution in 1973. The War Powers Resolution (WPR) was an attempt to constrain presidential discretion with regard to committing troops oversees. Section 3 of the WPR requires that 'The president in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances".' Section 4 of the WPR gives the president 48 hours to provide a report to both Chambers of the Congress detailing the reason for committing troops, the authority under which he committed them and his prediction conceming the duration of the troops' engagement abroad.'^ Once the president has informed the Congress of the commitment of troops, and in the event that the Congress does not declare war, the WPR requires the president to end the engagement within 60 days, with the possibility of an additional 30 days' commitment in the event that the president certifies to the Congress that the additional time is necessary.^\*\* According to the Congressional Research Service (CRS), the research branch of the Library of Congress, since the War Powers Resolution was enacted over President Richard M. Nixon's 1973 veto, it has been invoked on 107 occasions (to 23 July 2003).^' Figure 2 illustrates both the absolute number of times as well as the rate of each president's exercise of war powers. As Figure 2 demonstrates, the rate of War Powers Resolution uses has continually increased since it took effect in 1974.

A reading of the WPR would seem to clarify the relationship between Congress and the president with regard to the exercise of national war powers. A close reading would also suggest that the president and Congress share war-making power. Yet no president has ever recognised the WPR as a constraint on his ability to move American armed forces around the globe or keep them in place as long as necessary. Moreover, presidents rarely abide by the provisions of the Resolution that require their consultation with the Congress. As CRS researcher Richard F. Grimmett notes, 'there has been very little consultation with Congress under the Resolution when consultation is defined to mean seeking advice prior to a decision to introduce troops'.^" And while the Congress has, from time to time, expressed its sense that troops should be withdrawn from conflicts or engagements abroad, in truth the Congress has relatively few options for dealing with a president that violates the WPR. Indeed, as the late presidency scholar Aaron Wildavsky notes, the Congress is much less likely to challenge presidents" foreign policy actions than it is willing to challenge presidents" domestic policy actions.'^'^ This is because presidents oversee an enormous national security apparatus and because the constituents represented by members of Congress rarely hold strong opinions on matters of foreign policy. As a result, congressional challenges to violations of the WPR consist mostly of holding oversight hearings and passing symbolic resolutions.''\* Moreover, once troops are committed abroad. Congress almost always falls in line with the president’s vision of the scope of the conflict and the need for a military presence. The members of Congress become reluctant to challenge a president who has troops on the ground and typically acquiesce to the president’s wishes when it comes to provisions for support. In this way, the president is able to exercise some leadership over the Congress, whose members generally find it politically expedient to follow the president on matters pertaining to the military or the conduct of America's relations with other countries. Pg. 200-202

#### Plan can’t solve separation of powers – too many alt causes –

#### A. Drones

Noonan 13 (Raymond, “Law School prof addresses drone legality”, 2/22, http://yaledailynews.com/blog/2013/02/22/law-school-prof-addresses-drone-legality/)

Hathaway, who directs the Center for Global Legal Challenges at Yale Law School, said drone strikes are difficult to defend legally, though she added that some uses of drones by the American military could be justified under international law. She said the drone strikes in Pakistan could be one such example because Pakistan has probably consented to the strikes, although the country has denied such allegations. Hathaway also warned that the United States’ drone strike policy compromises the government’s separation of powers. “[Drone strikes] make it easier for the president to exercise war-making power without any checks,” she said. “[Drone strikes] threaten to very much upset traditional powers over use of military force.”

#### B. NSA Surveillance

Brito 13 (Jenny, “NSA Scandal: How Leaks Advance Liberty and Resist Tyranny”, 7/18, http://reason.com/archives/2013/06/18/nsa-scandal-how-leaks-advance-liberty-an)

If the secret surveillance itself is any indication, then the separation of powers is not up to the task. According to President Obama, domestic surveillance programs are “under very strict supervision by all three branches of government.” Yet it doesn’t seem very strict when more than half of the Senate couldn’t be bothered to show up last week for a major briefing by the government’s top intelligence officials. “Strict supervision” also doesn’t seem very meaningful when you consider that the FISA Court is a hand-picked non-adversarial specialist court that approved every surveillance request it got last year. Experience suggests that specialist courts tend to get captured by their bar, and in the case of the FISA Court, that means just the government. More to the point, a secret court issuing secret orders based on secret interpretations of the law makes any debate or commentary impossible. Even when there is a will on the part of some lawmakers to carry out oversight, executive branch officials will apparently lie under oath. So if not on the Constitution and its institutions, on what can we rely to keep government power in check?

#### C. Detention

Siegel 12 (Ashley – J.D., Boston University School of Law, “SOME HOLDS BARRED: EXTENDING EXECUTIVE DETENTION HABEAS LAW BEYOND GUANTANAMO BAY”, 2012, 92 B.U.L. Rev. 1405, lexis)

The Supreme Court created a vastly different landscape for alien detainees' rights and habeas petitions through the Boumediene line of cases. Starting with Hamdi, the Supreme Court has demonstrated an unwillingness to place a stamp of approval on the Executive's actions, despite the broad powers traditionally reserved for the Executive with regard to the military. n206 Instead, the Court has recognized the important separation-of-powers issues implicated by the Executive's indefinite detention of prisoners captured in the war on terror and the Court's own important role in preventing the Executive from assuming too much power. n207 The Court embraced its role as protector of the fundamental right of habeas review, recognizing that the Executive could not sidestep compliance with the law by reinventing categories of prisoners or locating them in offshore facilities. n208

#### No impact to SOP- Presidents bypass formal constitutional barriers all the time,

Zasloff, Professor of Law, UCLA School of Law, 2004(Jonathan, “Taking Politics Seriously: A Theory of California's Separation of Powers” 51 UCLA L. Rev. 1079, Copyright (c) 2004 The Regents of the University of California)

Presidents break legislative impasses by "solving" pressing problems with unilateral decrees that often go well beyond their formal constitutional authority; rather than protesting, representatives are relieved that they can evade political responsibility for making hard decisions; subsequent presidents use these precedents to expand their decree power further; the emerging practice may even be codified by later constitutional amendments. Increasingly, the house is reduced to a forum for demagogic posturing, while the president makes tough decisions unilaterally without considering the interests and ideologies represented by the leading political parties in Congress. n226 Will this always happen? Of course not. But it has happened frequently - far too frequently to make confident assertions about the necessity of presidentialism to the preservation of liberal democracy. The crucial question then is, what does this finding mean for the process of American constitutional interpretation? It certainly can't mean that judges should take it upon themselves to create parliamentary government in the United States. But it should give us great pause to adhere to rigid separation of powers formalism. Indeed, while the evidence so far clearly points to the conclusion that parliamentarism is superior to presidentialism, all that is necessary for the argument for judicial deference is that it is no worse. And that is unquestionable. Put another way, even if government completely slides down the slippery slope - if the worst-case scenario occurs - it should not be cause for political concern. And thus, it should not be cause for judicial concern.

### 1NC Frontline

#### Heg is completely sustainable- their authors are incorrect

**Beckley 12**

[Michael Beckley, research fellow in the International Security Program at Harvard Kennedy School’s Belfer Center for Science and International Affairs, “China’s Century?”, Winter 2012]

Hegemony is indeed expensive and provocative, but these declinist arguments tell only part of the story. The United States is both “system-maker and privilege-taker”—it pays a large share of system-maintenance costs but takes a disproportionate share of the benefiªts.36 The basic claim of the alternative perspective is that these benefiªts outweigh the costs. Most obvious, the United States, as hegemon, possesses an array of tools with which to reward and punish. It can provide, restrict, or deny access to the U.S. market, technology, foreign aid, support for membership in international organizations, bribes, and White House visits. These tit-for-tat bargains with individual states, however, are not as consequential as the United States’ power over aspects of the international system itself. In the alternative perspective, hegemony is not just preponderant power, it is “structural power.”37 It is the power to set agendas, to shape the normative frameworks within which states relate to one another, and to change the range of choices open to others without putting pressure directly on them. It is, at once, less visible and more profound than brute force. Seen in this light, the United States is neither benevolent nor feeble, but coercive and capable, and the goods it produces “are less collective goods than private ones, accruing primarily to the hegemon and thus helping maintain its hegemony.”38 Military superiority, for example, allows the United States to employ “force without war,” pressuring other countries into making concessions by shifting military units around or putting them on alert.39 It also allows the United States to run a protection racket, garnering inºfluence through the provision of security. As Joseph Nye explains, “Even if the direct use of force were banned among a group of countries, military force would still play an important political role. For example, the American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen’s minds.”40 To be sure, the costs of maintaining U.S. military superiority are substantial. By historical standards, however, they are exceptionally small.41 Past hegemons succumbed to imperial overstretch after ªfighting multifront wars against major powers and spending more than 10 percent (and often 100 or 200 percent) of their GDPs on defense.42 The United States, by contrast, spends 4 percent of its GDP on defense and concentrates its enmity on rogue nations and failed states. Past bids for global mastery were strangled before hegemony could be fully consolidated. The United States, on the other hand, has the advantage of being an extant hegemon—it did not overturn an existing international order; rather, the existing order collapsed around it. As a result, its dominant position is entrenched to the point that “any effort to compete directly with the United States is futile, so no one tries.”43 The dollar’s global role may handicap American exports, but it also comes with perks including seigniorage,44 reduced exchange rate risks for U.S. ªfirms involved in international commerce, competitive advantages for American banks in dollarized ªfinancial markets, and the ability to delay and deºflect current account adjustments onto other countries.45 More important, foreign governments that hold dollar reserves depend on U.S. prosperity for their continued economic growth and are thus “entrapped,” unable to disentangle their interests from those of the United States.46 Rather than seeking to undermine the American economy, they invest in its continued expansion.47 Finally, given its position at the top of the world trade regime, the United States can distort international markets in its favor.48 Declinists expect the hegemon to use its power magnanimously. According to the alternative perspective, however, American foreign economic policy involves the routine use of diplomatic leverage at the highest levels to create opportunities for U.S. ªfirms.49 U.S. trade offiªcials, “acting as self-appointed enforcers of the free trade regime, asserted the right with their own national law to single out and punish countries they judged to be unfair traders.”50 Globalization, therefore, may not be a neutral process that diffuses wealth evenly throughout the international system, but a political process shaped by the United States in ways that serve its interests.

#### The U.S. lead is insurmountable – still dominates economically and militarily

Kagan 12

(Robert – senior fellow in foreign policy at the Brookings Institution, Not Fade Away, The New Republic, p. International Relations Theory and the Consequences of Unipolarity, http://www.tnr.com/article/politics/magazine/99521/america-world-power-declinism?passthru=ZDkyNzQzZTk3YWY3YzE0OWM5MGRiZmIwNGQwNDBiZmI)

Less than a decade ago, most observers spoke not of America’s decline but of its enduring primacy. In 2002, the historian Paul Kennedy, who in the late 1980s had written a much-discussed book on “the rise and fall of the great powers,” America included, declared that never in history had there been such a great “disparity of power” as between the United States and the rest of the world. Ikenberry agreed that “no other great power” had held “such **formidable advantages in military, economic, technological, cultural, or political capabilities**.... The preeminence of American power” was “unprecedented.” In 2004, the pundit Fareed Zakaria described the United States as enjoying a “comprehensive uni-polarity” unlike anything seen since Rome. But a mere four years later Zakaria was writing about the “post-American world” and “the rise of the rest,” and Kennedy was discoursing again upon the inevitability of American decline. Did the fundamentals of America’s relative power shift so dramatically in just a few short years? The answer is no. Let’s start with the basic indicators. In economic terms, and even despite the current years of recession and slow growth, America’s position in the world has not changed. Its share of the world’s GDP has held remarkably steady, **not only over the past decade but over the past four decades**. In 1969, the United States produced roughly a quarter of the world’s economic output. Today it still produces roughly a quarter, and it remains not only the largest but also the richest economy in the world. People are rightly mesmerized by the rise of China, India, and other Asian nations whose share of the global economy has been climbing steadily, but this has so far come almost **entirely at the expense of Europe and Japan**, which have had a declining share of the global economy. Optimists about China’s development predict that it will overtake the United States as the largest economy in the world sometime in the next two decades. This could mean that the United States will face an increasing challenge to its economic position in the future. But the sheer size of an economy is not by itself a good measure of overall power within the international system. If it were, then early nineteenth-century China, with what was then the world’s largest economy, would have been the predominant power instead of the prostrate victim of smaller European nations. **Even if China does reach this pinnacle again**—and Chinese leaders face significant obstacles to sustaining the country’s growth indefinitely—it will still remain far behind both the United States and Europe in terms of per capita GDP. Military capacity matters, too, as early nineteenth-century China learned and Chinese leaders know today. As Yan Xuetong recently noted, “military strength underpins hegemony.” Here the United States remains unmatched. **It is far and away the most powerful nation** the world has ever known, and there has been no decline in America’s relative military capacity—at least not yet. Americans currently spend less than $600 billion a year on defense, **more than the rest of the other great powers combined**. (This figure does not include the deployment in Iraq, which is ending, or the combat forces in Afghanistan, which are likely to diminish steadily over the next couple of years.) They do so, moreover, while consuming a little less than 4 percent of GDP annually—a higher percentage than the other great powers, but in historical terms lower than the 10 percent of GDP that the United States spent on defense in the mid-1950s and the 7 percent it spent in the late 1980s. The superior expenditures underestimate America’s actual superiority in military capability. American land and air forces are **equipped with the most advanced weaponry, and are the most experienced in actual combat**. They would defeat any competitor in a head-to-head battle. American naval power remains predominant in every region of the world. By these military and economic measures, at least, the United States today is not remotely like Britain circa 1900, when that empire’s relative decline began to become apparent. It is more like Britain circa 1870, when the empire was at the height of its power. It is possible to imagine a time when this might no longer be the case, but that moment has not yet arrived.

#### Plus decline causes aggression- triggers the impact

**Snyder 07**

Robert and Renee Belfer Professor of International Relations at Columbia University

[Jack “FREE HAND ABROAD, DIVIDE AND RULE AT HOME: THE DOMESTIC POLITICS OF UNIPOLARITY” (http://www.henryfarrell.net/unipolarity.pdf)]

Plausible as these arguments may be, the opposite case may be equally plausible. States that are under intense international pressure may be especially vulnerable to myth-ridden foreign policies. Hostile encirclements heighten the enemy images, bunker mentalities, and double standards in perception that are common in competitive relationships of all kinds, especially in international relations. 9 Nationalist and garrison-state ideologies are reinforced. Likewise, Charles Kupchan argues that declining empires typically adopt strategic ideologies of aggressive forward defense out of fear that their opponents will discover the truth about their growing weakness. 10 In contrast, diplomatic historians commonly applaud the pragmatism of powerful “off-shore balancers,” whose privileged position grants them the freedom to be selective and fact-driven, waiting upon developments before committing troops. Whether powerful, unconstrained states are more ideological than weaker or highly constrained states depends greatly on their domestic politics, not simply their position in the international system. 11 Krasner’s corollary hypothesis—that powerful or unconstrained states are likely to succumb to an ideology of expansionism—is also an oversimplification. Powerful, secure states have the option to express their ideological values in the world through coercion, but they also have other options. They might choose to engage with the world pragmatically, taking what they need and ignoring the global problems that good fortune insulates them from. Or they might adopt a highly principled foreign policy that increases humanitarian assistance abroad, but eschews empire and declines to meddle in the internal politics of foreign peoples. Finally, they might be tempted by policies of limited liability, embarking on good works and moralistic hectoring abroad, but then heading for the exits when backlash makes costs rise. 12 Simply being powerful says little about whether or how ideology will express itself.

#### And we’ll always pursue heg

Shalmon and Horowitz 09

(Dan, Mike, Total B.A.’s, Orbis, Spring)

It is important to recognize at the outset two key points about United States strategy and the potential costs and benefits for the United States in a changing security environment. First, the United States is very likely to remain fully engaged in global affairs. Advocates of restraint or global withdrawal, while popular in some segments of academia, remain on the margins of policy debates in Washington D.C. This could always change, of course. However, at present, it is a given that the United States will define its interests globally and pursue a strategy that requires capable military forces able to project power around the world. Because ‘‘indirect’’ counter-strategies are the rational choice for actors facing a strong state’s power projection, irregular/asymmetric threats are inevitable given America’s role in the global order.24

#### Decline in US power will not create a peaceful concert of powers – it will result in a power vacuum that no one can fill

Oriental Morning Post 08

(Ding Gang, Who Is to Carry the Burden of the U.S.? September 19, 2008)

These three aspects together create one result: the future "power vacuum” we will face. The current world, including U.S. allies, tends to just lodge complaints or accusations against the United States, rather than pick up its burden. Some developed countries are even quietly calculating how to better get out of the “pit” if the United States is ready to slip away. Another reality is that no country is strong enough to bear the whole burden, which can only be shared amongst many countries; but as to how to share, no one can offer a solution at the moment. Moreover, the current globalized world calls for order. Superficially, the forces of globalization seem to be very strong: countries are interdependent and common interests must be taken into account in decision-making. However, during the crisis, the world is not different from what it was: national interests always remain paramount, with the iron allies of the United States not being an exception. The world is still full of risks. Since the world needs order, and an independent power cannot maintain order and provide the world with more development opportunities, other countries should stand out and assume this role in establishing a mutually participated system. Unfortunately, such an ideal system has not been formed, and nobody knows when it will take shape. The world is still a place where power speaks. The subprime crisis is an example. Many people anticipate, through this financial turmoil, a change of the current system that relies overly on the U.S. Good intentions are one thing, however, it is another matter whether or not a new multi-polar system can be established in the foreseeable future. We should notice that at present the world's financial system does not exist in isolation. It is the result of long-term historical evolution, closely associated with a country's strength, its openness, the development of globalization, and the existing global economic, political patterns. The relationship can be described as “the whole body moving when pulling one hair.” Or perhaps, it will not take you long to discover that Wall Street’s decline is not followed by a more orderly global financial market, but a more chaotic one. You may even complain about another market that is even worse than Wall Street. This is a helpless and cruel reality. The subprime crisis has affected many foreign enterprises, banks, and individuals which in itself is again a true portrayal of the power of the United States. Of course, in the long run, the growth of other economies and the rise of emerging countries will eventually alter this situation. However, this change does not depend on the amount of complaints from those countries victimized in the U.S. subprime mortgage crisis, but will depend on whether they have the ability and desire to bear the responsibility the U.S. is unwilling or unable to take, in order to build a more pluralistic and stable system with more opportunities for the entire world. Therefore, the world's problems are not merely whether or not the United States are declining, but whether any other country, including those seemingly solid allies of the United States, will help bear the U.S. load. Who is to bear and how? Are they capable of bearing it and how long will it take? Will the United States be at ease with sharing some of its load? Ultimately, it is not just a transfer of power or problem-sharing, but more an issue of sharing responsibility. The lack of strength and desire to assume responsibility will lead to an unstable world. It is from this sense that U.S. decline is dangerous. This is why many Western historians share a view that the end of U.S. hegemony is unlikely to nurture a multi-polar world system in an orderly fashion, but will lead to a world torn apart, because no other country is able to play a role of global leader. Ferguson, a British historian, even pessimistically addresses it as a "dark age." Of course, we would prefer to believe that humanity will not be foolish enough to repeat the same mistake. The world would gradually run under an order of common responsibility. But there is no doubt that it will be a difficult, painful, long and risky process, possibly accompanied by intense turbulence. This is the most important external factor that China faces in its rise. So the issue really is whether China is ready for such a change.

# 2NC

## DA

### Impact

#### engineered pathogens overwhelm technical difficulties – can spread and cause extinction

**Sandberg et al 8**—Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

### Link – Congress – 2NC

#### Theeir barron evidence doesn’t make an argument – just says we need approval – the DA impact turns that

#### Kriner = hurts preffered policy preferences and hurts

#### The aff turns the tide in war powers authority --- prevents continued expansion of executive power

FCNL 8, Friends Committee on National Legislation, the 501(c)(4) lobbying organization of the Religion Society of Friends (Quakers), October, “Reclaiming the Balance of Power: An Agenda for the 111th Congress,” Washington Newsletter No. 731, http://fcnl.org/assets/pubs/newsletter/2008/October.pdf

Pendulums swing by their nature, but sometimes they swing too far in one direction and need a push to return to balance. For several decades, the pendulum of power in the federal government has been swinging toward the president; in the past eight years, the president’s powers have reached unprecedented heights. The last two presidents have taken more power for themselves, but Congress has also ceded significant power to the executive branch. The 111th Congress has the opportunity to restore the balance. When members take their seats in January, reclaiming their constitutionally granted power to check the executive should be at the top of the agenda. Power Balanced by Design The framers of the Constitution had balance of power on their minds when they designed the U.S. government. They had recently rebelled against a monarchy with near total power over the people. Based on this experience, the framers limited specific government powers, such as compelling citizens to house soldiers in their homes, searching and seizing private property, and imposing taxes without a democratic process. The framers also structured the U.S. government to catch and prevent these kinds of abuses. They gave independent powers to the three branches of government — executive, legislative, and judicial — but they instituted mechanisms allowing the other branches to limit and balance these powers. In the first three words of the Constitution, “We the People,” the framers recognized a fourth branch of government to check the other three: the civil society. Unlike monarchs, U.S. presidents cannot act alone to commit their countries to war, empty their national treasuries, and impose new taxes on the citizenry to finance military adventures. Presidents can make treaties with other nations, and in time of war a president serves as commander in chief of the armed forces. Constitutionally, only Congress can formally declare war, “raise and support armies,” and increase taxes or otherwise fund a war. Maintaining these divisions is not easy. In the past 200 years, presidents have committed troops to military combat dozens of times without a formal declaration of war, and Congress has voted to cut off funding for war on only a few occasions. In the past eight years, Congress has failed to exercise adequate oversight of executive actions and uphold the Constitution in several areas. Most recently, President George W. Bush has defended the torture of prisoners held by the United States, denied prisoners the right to appeal their detention, and permitted spying on people in the United States without a warrant. Congress has turned a blind eye or acquiesced to the president’s requests to legalize his administration’s actions. The 111th Congress should reclaim its power on our behalf. In the mid-1970s, Congress passed laws to correct a pendulum of power that had swung too far toward the executive. The Congress that takes office in 2009 should do the same.

#### Congressional action now prevents Obama’s consolidation of Executive authority

Ackerman 11 (Bruce Ackerman 11, Professor of Law @ Yale, and Oona Hathaway, Professor of I-Law @ Yale, “Limited War and The Constitution: Iraq and the Crisis of Presidential Legality,” Michigan Law Review, 109:447, http://www.michiganlawreview.org/assets/pdfs/109/4/ackermanhathaway.pdf)

We live in an age of limited war. Yet the legal structure for authorizing and overseeing war has failed to address this modern reality. Nowhere is this failure more clear than in the recent U.S. conflict in Iraq. Congress self-consciously restricted the war’s aims to narrow purposes—expressly authorizing a limited war. But the Bush Administration evaded these constitutional limits and transformed a well-defined and limited war into an open-ended conflict operating beyond constitutional boundaries. President Obama has thus far failed to repudiate these acts of presidential unilateralism. If he continues on this course, he will consolidate the precedents set by his predecessor’s exercises in institutional aggrandizement. The presidency is not solely responsible for this unconstitutional escalation. Congress has failed to check this abuse because it has failed to adapt its central power over the use of military force—the power of the purse—to the distinctive problem of limited war. Our proposal restores Congress to its rightful role in our system of checks and balances. We suggest that the House and Senate adopt new “Rules for Limited War” that would create a presumption that any authorization of military force will expire after two years, unless Congress specifies a different deadline. The congressional time limit would be enforced by a prohibition on future war appro- priations after the deadline, except for money necessary to wind down the mission.

#### The aff sets a precedent against expansive war powers --- it’ll last for generations

Maya Schenwar 9, Executive Director @ Truthout, 1/14, “Congress Aims to Take Back Constitutional War Powers,” http://www.truth-out.org/archive/item/82004:congress-aims-to-take-back-constitutional-war-powers

Congress took little initiative to rein in Bush's excesses throughout his administration, and now, some members worry that his vast expansion of executive powers could set a dangerous precedent for generations to come. Unless Congress formally rejects Bush's generous interpretation of the role of the president, they say, the system of checks and balances could be permanently disrupted. Foremost on the list is one of Bush's most blatant unilateral actions: his recent signing, with Iraqi Prime Minister Nouri al Maliki, of the US-Iraq security pact without consulting Congress. The pact could keep US troops in Iraq until the end of 2011.

## Democracy

### 2NC Democracy

#### **Democracy** doesn’t solve war --- it’s multilateral institutions and historical patterns

**Schwartz and Skinner '01** Thomas and Kiron K (Research Fellow at the Hoover Institution at Stanford University, associate professor of history and political science at Carnegie Mellon University); December 22, 2001; “The Myth of Democratic Peace”; JAI Press; ORBIS  
Here we show that neither the historical record nor the theoretical arguments advanced for the purpose provide any support for democratic pacifism. It does not matter how high or low one sets the bar of democracy. Set it high enough to avoid major exceptions and you find few, if any, democracies until the Cold War era. Then there were no wars between them, of course. But that fact is better explained by NATO and bipolarity than by any shared form of government. Worse, the peace among the high-bar democracies of that era was part of a larger pacific pattern: peace among all nations of the First and Second Worlds. As for theoretical arguments, those we have seen rest on implausible premises. Why, then, is the belief that democracies are mutually pacific so widespread and fervent? The explanation rests on an old American tendency to slip and slide unawares between two uses of the word "democracy": as an objective description of regimes, and as a term of praise--a label to distinguish friend from foe. Because a democracy (term of praise) can do no wrong--or so the thinking seems to run--at least one side in any war cannot be a democracy (regime description). There lies the source of much potential mischief in foreign policy. The Historical Problem Democratic pacifism combines an empirical generalization with a causal attribution: democracies do not fight each other, and that is because they are democracies. Proponents often present the former as a plain fact. Yet regimes that were comparatively democratic for their times and regions have fought each other comparatively often--bearing in mind, for the purpose of comparison, that most states do not fight most states most of the time. The wars below are either counter-examples to democratic pacifism or borderline cases. Each is listed with the year it started and those combatants that have some claim to the democratic label. American Revolutionary War, 1775 (Great Britain vs. U.S.) Wars of French Revolution (democratic period), esp. 1793, 1795 (France vs. Great Britain) Quasi War, 1798 (U.S. vs. France) War of 1812 (U.S. vs. Great Britain) Texas War of Independence, 1835 (Texas vs. Mexico) Mexican War, 1846 (U.S. vs. Mexico) Roman Republic vs. France, 1849 American Civil War, 1861 (Northern Union vs. Southern Confederacy) Ecuador-Columbia War, 1863 Franco-Prussian War, 1870 War of the Pacific, 1879 (Chile vs. Peru and Bolivia) Indian Wars, much of nineteenth century (U.S. vs. various Indian nations) Spanish-American War, 1898 Boer War, 1899 (Great Britain vs. Transvaal and Orange Free State) World War I, 1914 (Germany vs. Great Britain, France, Italy, Belgium, and U.S.) Chaco War, 1932 (Chile vs. Argentina) Ecuador-Peru, 1941 Palestine War, 1948 (Israel vs. Lebanon) Dominican Invasion, 1967 (U.S. vs. Dominican Republic) Cyprus Invasion, 1974 (Turkey vs. Cyprus) Ecuador-Peru, 1981 Nagorno-Karabakh, 1989 (Armenia vs. Azerbaijan) Yugoslav Wars, 1991 (Serbia and Bosnian-Serb Republic vs. Croatia and Bosnia; sometimes Croatia vs. Bosnia) Georgia-Ossetia, 1991 (Georgia vs. South Ossetia) Georgia-Abkhazia, 1992 (Georgia vs. Abkhazia and allegedly Russia) Moldova-Dnestr Republic, 1992 (Moldova vs. Dnestr Republic and allegedly Russia) Chechen War of Independence, 1994 (Russia vs. Chechnya) Ecuador-Peru, 1995 NATO-Yugoslavia, 1999 India-Pakistan, 1999

#### Internal wars are MORE likely in democracies – controlling for all variables – that turns the aff

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[James D. Fearon & David D. Laitin, “Ethnicity, Insurgency, and Civil War”. American Political Science Review 97, 1 (Feb 2003): pp.75-90 ]

Democracy and Civil Liberties.

Broad social and political grievances should be lower, on average, in political democracies. But contrary to H4 and consistent with H11, civil war onsets are no less frequent in democracies after controlling for income, as shown by the positive and statistically insignificant coefficient for democracy, the (lagged) Polity IV measure. The results are the same if we use Przeworski et al.'s dichotomous measure instead (available for 1950–91) or the lag of Freedom House's measure of observance of civil liberties (available for 1972–99). In the former case the sign is “wrong,” while in the latter the sign is consistent with H4 but the coefficient on civil liberties is thoroughly insignificant.

Some past studies of civil strife found an “inverted-U” relationship with democracy and sought to explain this by the observation that the most autocratic regimes can repress dissent and thus avoid civil violence despite facing the highest levels of popular grievance (Hegre et al. 2001; Muller and Weede 1990). This observation does not explain why the leaders of a partially democratic regime are not able to implement full autocracy or democracy to avoid conflict and opposition. As suggested in H10c, we suspect that the answer is often that “anocracies” are weak regimes, lacking the resources to be successful autocrats or containing an unstable mix of political forces that makes them unable to move to crush nascent rebel groups. Consistent with this hypothesis and with the prior studies, Model 3 (Table 1) shows that a dummy variable marking anocracies takes a positive coefficient. **In substantive terms the estimate suggests that these regimes have about 68% greater odds of civil war outbreak in any given year than would a full autocracy**. This is so despite the fact that we are controlling for recent political instability, which is much more common in anocracies. 30

### 2NC Congress – No

#### Congress says no because of interests – no incentive for enforcement. That’s Devins.

#### Their restriction is a smokescreen and will not be enforced

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

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

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

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

## Engagement

### Sustainability

#### And their authors measurements should be discounted- the system is sustainable

**Brooks and Wohlforth 09**

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[“Reshaping the World Order,” Foreign Affairs, March/April 2009, http://www.foreignaffairs.com/articles/64652/stephen-g-brooks-and-william-c-wohlforth/reshaping-the-world-order]



Now, the conventional wisdom is that the world is rapidly approaching the end of the unipolar system with the United States as the sole superpower. A dispassionate look at the facts shows that this view understates U.S. power as much as recent talk of empire exaggerated it. That the United States weighs more on the traditional scales of world power than has any other state in modern history is as true now as it was when the commentator Charles Krauthammer proclaimed the advent of a "unipolar moment" in these pages nearly two decades ago. The United States continues to account for about half the world's defense spending and one-quarter of its economic output. Some of the reasons for bearishness concern public policy problems that can be fixed (expensive health care in the United States, for example), whereas many of the reasons for bullishness are more fundamental (such as the greater demographic challenges faced by the United States' potential rivals). So why has opinion shifted so quickly from visions of empire to gloomy declinism? One reason is that the United States' successes at the turn of the century led to irrational exuberance, thereby setting unreasonably high standards for measuring the superpower's performance. From 1999 to 2003, seemingly easy U.S. victories in Kosovo, Afghanistan, and Iraq led some to conclude that the United States could do what no great power in history had managed before: effortlessly defeat its adversaries. It was only a matter of time before such pie-in-the-sky benchmarks proved unattainable. Subsequent difficulties in Afghanistan and Iraq dashed illusions of omnipotence, but these upsets hardly displaced the United States as the world's leading state, and there is no reason to believe that the militaries of its putative rivals would have performed any better. The United States did not cease to be a superpower when its policies in Cuba and Vietnam failed in the 1960s; bipolarity lived on for three decades. Likewise, the United States remains the sole superpower today. Another key reason for the multipolar mania is "the rise of the rest." Impressed by the rapid economic growth of China and India, many write as if multipolarity has already returned. But such pronouncements mistake current trajectories for final outcomes -- a common strategic error with deep psychological roots. The greatest concern in the Cold War, for example, came not from the Soviet Union's actually attaining parity with the United States but from the expectation that it would do so in the future. Veterans of that era recall how the launch of Sputnik in 1957 fed the perception that Soviet power was growing rapidly, leading some policymakers and analysts to start acting as if the Soviet Union were already as powerful as the United States. A state that is rising should not be confused with one that has risen, just as a state that is declining should not be written off as having already declined. China is generally seen as the country best positioned to emerge as a superpower challenger to the United States. Yet depending on how one measures GDP, China's economy is between 20 percent and 43 percent the size of the United States'. More dramatic is the difference in GDP per capita, for which all measures show China's as being less than 10 percent of the United States'. Absent a 1930s-style depression that spares potential U.S. rivals, the United States will not be replaced as the sole superpower for a very long time. Real multipolarity -- an international system of three or more evenly matched powers -- is nowhere on the horizon. Relative power between states shifts slowly. This tendency to conflate trends with outcomes is often driven by the examination in isolation of certain components of state power. If the habit during the Cold War was to focus on military power, the recent trend has been to single out economic output. No declinist tract is complete without a passage noting that although the United States may remain a military superpower, economic multipolarity is, or soon will be, the order of the day. Much as highlighting the Soviet Union's military power meant overlooking the country's economic and technological feet of clay, examining only economic output means putting on blinders. In 1991, Japan's economy was two-thirds the size of the United States', which, according to the current popular metric, would mean that with the Soviet Union's demise, the world shifted from bipolarity to, well, bipolarity. Such a partial assessment of power will produce no more accurate an analysis today. Nor will giving in to apprehension about the growing importance of nonstate actors. The National Intelligence Council's report Global Trends 2025 grabbed headlines by forecasting the coming multipolarity, anticipating a power shift as much to nonstate actors as to fast-growing countries. But nonstate actors are nothing new -- compare the scale and scope of today's pirates off the Somali coast with those of their eighteenth-century predecessors or the political power of today's multinational corporations with that of such behemoths as the British East India Company -- and projections of their rise may well be as much hype as reflections of reality. And even if the power of nonstate actors is rising, this should only increase the incentives for interstate cooperation; nonstate threats do not affect just the United States. Most nonstate actors' behavior, moreover, still revolves around influencing the decisions of states. Nongovernmental organizations typically focus on trying to get states to change their policies, and the same is true of most terrorists. When it comes to making, managing, and remaking international institutions, states remain the most important actors -- and the United States is the most important of them. No other country will match the United States' combination of wealth, size, technological capacity, and productivity in the foreseeable future. The world is and will long remain a 1 + x world, with one superpower and x number of major powers. A shift from 1 + 3 to 1 + 4 or 5 or 6 would have many important consequences, but it would not change the fact that the United States will long be in a far stronger position to lead the world than any other state.

## XO

### 1NR XO

#### If not – vote neg on presumption because the plan gets rolled back too

Salter 13 (Mark, “Amid Immigration Reform Cacophony, Passage Looms”, 6/14, http://www.realclearpolitics.com/articles/2013/06/14/amid\_immigration\_reform\_cacophony\_passage\_looms\_118816.html)

Future Congresses aren’t bound by the actions of past Congresses. If five or 10 years from now Congress decides the bill didn’t achieve its objectives, it can pass new legislation. But it ought to do it by regular order, facing the same difficulties and political risks this Congress faces as it tries to pass this one.

#### 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 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 redu Diamond ev – unrestrained exec bad – this CP is an example of executive restraint AND it creates future congressional actions

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

ndancy 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

#### Transparency and accountability

**Posner and Vermeule 7 (**Eric and Adrian, Prof of Law @ University of Chicago Prof of Law @ Harvard, “The Credible Executive,” 74 U. Chi. L. Rev. 865, lexis)

As we noted earlier, legal scholars rarely note the problem of executive credibility, preferring to dwell on the problem of aggrandizement by ill-motivated presidents. Ironically, this assumption that presidents seek to maximize power has obscured one of the greatest constraints on aggrandizement, namely, the president's own interest in maintaining his credibility. Neither a well-motivated nor an ill-motivated president can accomplish his goals if the public does not trust him. n34 This **concern with reputation** may **put a** far greater check **on the president's actions than** do the **reactions of the other branches of the government.**

#### 2 – self-restraint

**Sales 12 (**Nathan Alexander, Assistant Professor of Law, George Mason University School of Law, 8/29/, “Self-Restraint and National Security,” <http://jnslp.com/2012/08/29/self-restraint-and-national-security/>)

As we’ve seen, certain officials within military and intelligence agencies – general counsels, legal advisors, and other watchdogs – are responsible for ensuring that national security operations comply with the relevant domestic and international legal requirements. These players intervene to rule out missions they believe would cross a legal line. But sometimes they go beyond that basic function – ensure compliance with the law, full stop – and reject operations that, while lawful, are thought to be undesirable on policy grounds. That is, they impose self-restraints that are stricter than the applicable laws. Why?¶ One way to answer that question is to consider the individual and institutional incentives that color the behavior of military and intelligence officials. Looking at the government’s national security apparatus through the lens of public choice theory (especially the idea that bureaucrats are rationally self interested actors who seek to maximize their utility152) and basic agency relationships (e.g., the relationships between senior policymakers and the subordinates who act on their behalf153) reveals a complex system in which power is distributed among a number of different nodes. The executive branch “is a ‘they,’ not an ‘it.’”154 The national security community in particular is subdivided into various semiautonomous entities, each of which promotes its own parochial interests within the system and, in so doing, checks the like ambitions of rival entities;155 the government thus is subject to what Neal Katyal has called the “internal separation of powers.”156 These basic insights into how military and intelligence agencies operate suggest several possible explanations for why self-restraint occurs. As elaborated in this Part, such constraints might result from systematic asymmetries in the expected value calculations of senior policymakers and their lawyers. In addition, as explained in Part IV, self-restraint might occur due to bureaucratic empire building by officials who review operations for compliance with domestic and international law.¶ A. A Simple Framework¶ One possible explanation for why the government stays its own hand is expected value asymmetry. This reluctance to push the envelope is a rational and predictable response to powerful bureaucratic incentives. Officials tend to be cautious because the costs they expect to incur as a result of forward-leaning and aggressive action usually are greater than the expected benefits. Similarly, government employment rules and other mechanisms make it easier to internalize onto individual bureaucrats the costs of a failed operation than the benefits of a successful one.157 National security players typically have more to lose from boldness than to gain, and that asymmetry inclines them to avoid risky behavior.158 While all members of the national security community experience some cost-benefit asymmetry, senior policymakers and their lawyers seem especially cautious. Attorneys who review proposed operations for legality therefore look askance at risky missions. They tend to veto proposals that, while legal, could inspire propaganda campaigns by adversaries, expose officials to ruinous investigations, or worse. The result is self-restraint – officials rule out operations that they regard as lawful because of fears they will prove too costly.

#### Comparative risk of delay and circumvention is higher with the plan

**Metzger 9** (Gillian E., professor of law at Columbia, “THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, 59 Emory L.J. 423, Lexis)

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they **avoid** the **delay** in application that can hamper both judicial and congressional oversight. n76 Second, internal mechanisms often operate **continuously**, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. n77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. n78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. n79

### PDCP

#### 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.

#### Statutes are enacted by legislative action

Ballentine’s 10 (Ballentine’s Law Dictionary, “Act”, 2010, lexis)

1. Verb: To perform; to fulfill a function; to put forth energy; to move, as opposed to remaining at rest; to carry into effect a determination of the will. Holt v Middlebrook (CA4 Va) 214 F2d 187, 52 ALR2d 1043. To simulate; to perform on stage, screen or television. 2. Noun: A thing done or established; a part of a play or musical comedy; a deed or other written instrument evidencing a contract or an obligation. A statute; a bill which has been enacted by the legislature into a law, as distinguished from a bill which is in the form of a law presented to the legislature for enactment.

#### Judicial restrictions are imposed by courts

Kang 6 (Michael – Assistant Professor, Emory University School of Law, “De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform”, 2006, 84 Wash. U. L. Rev. 667, lexis)

The Court's general reluctance to restrict partisan gerrymandering appeared motivated by a lack of judicial confidence. Judicial restriction of gerrymandering would draw courts, which are putatively nonpartisan and apolitical institutions, n39 into the untenable position of managing what is fundamentally a political exercise. Justice Kennedy emphasized the difficulty for courts of "acting without a legislature's expertise" and the unwelcome task of removing from the democratic process "one of the most significant acts a State can perform to ensure citizen participation in republican self-governance." n40 Indeed, challenges to gerrymanders demand more of courts than simply striking down excessively partisan plans. Today, judicial intervention against gerrymandering almost necessarily brings with it active judicial management of the redistricting process. A court that strikes down a redistricting plan, for whatever reason, n41 invariably is drawn into authorship of a new redistricting plan to replace it, or a close interaction with legislators working to formulate a new plan (or both). n42 Courts "become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections." n43 When courts have involved themselves in redistricting matters, namely in racial gerrymandering and one person, one vote cases, [\*675] the courts have drawn heavy criticism. n44 Even so, Justice Stevens predicted that "the present "failure of judicial will' will be replaced by stern condemnation of partisan gerrymandering." n45 Greater judicial direction of the redistricting process is a price that Justice Stevens and reformers seem happy to pay. They are more than willing to trade the costs of judicial entanglement for the perceived benefits of judicial oversight in redistricting. I further discuss the costs of this approach in Part III.

#### Severance is a voter – makes the aff a moving target and makes it impossible for the neg to have stable ground because of shifting, late-breaking debates

#### They destroy legal precision about agency implementation that’s key to topic education and the ability to test “statutory/judicial restrictions”

#### Severs –

#### US can’t be the executive

Cox 89 (Bartholomew, Legal Historian; A.B. 1959, Princeton University; M.A. 1962, Ph.D. 1967, George Washington University; J.D. 1976, George Washington University National Law Center, "Raison d'Etat and World Survival: Who Constitutionally Makes Nuclear War?," August, 57 Geo. Wash. L. Rev. 1614, lexis)

The formal Constitution also seems to allocate ultimate power in governmental matters to Congress. Despite language to the contrary from executive branch lawyers and even the Supreme Court, "the state" or "the government" or "the United States" is surely not to be equated with the executive branch. n23 The United States is [\*1619] a single metaphysical entity, encompassing state, society, and government in one artificial being. As a single entity, when disputes arise between the branches, the plain language of the document of 1787 requires the legislature to prevail. For example, Congress under Article III has express power to regulate the appellate jurisdiction of the Supreme Court, a power sustained more than a century ago in Ex parte McCardle. n24 Of more direct, present relevance, Article I, section 8, clause 18, reads: "The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, n25 and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." William Van Alstyne has argued that this clause plainly gives Congress "horizontal" powers to control the activities of the other two branches. n26 The problem thus becomes not whether Congress may exercise such control under the formal Constitution, but whether it will. Professor Charles Black appears to agree: The powers of Congress are adequate to the control of every national interest of any importance, including all those with which the president might, by piling inference on inference, be thought to be entrusted. And underlying all the powers of Congress is the appropriations power, the power that brought the kings of England to heel. . . . [B]y simple majorities, Congress could at the start of any fiscal biennium reduce the president's staff to one secretary for answering social correspondence, and . . . by two-thirds majorities, Congress could put the White House up at auction. n27

#### -- Severs the actor –

#### A) “The” means all parts

**Encarta 9** (World English Dictionary, “The”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495)

2. indicating **generic** class: used to refer to a person or thing **considered** **generically or universally**  
Description: bulletDescription: transExercise is good for **the heart**.  
Description: bulletDescription: transShe played the violin.  
Description: bulletDescription: transThe dog is a loyal pet.

#### B) That means all 3 branches have to act

Miller 86 (Arthur, Distinguished Visiting Professor of Law – Emory University, “Congress, the Constitution, and First Use of Nuclear Weapons”, Review of Politics, 48(3), Summer)

Three other points merit mention in this discussion of collective decision-making. First, both the formal and the secret constitutions allocate power over foreign relations and defense to the central government, to, that is, the United States of America visualized as a single entity. What, however, is "the" United States? The question has never been definitively answered; and indeed has sel-dom been asked in judicial opinion or scholarly discourse.42 Asked another way, the question is this: Where does sovereignty lie in the American polity? The formal constitution is supposedly based on popular sovereignty, with ultimate power resting in the people. That, however, is far from accurate. Proof positive that sover-eignty lies in the "state" came when General Robert E. Lee sur- rendered at Appomattox: "the people" of the South were not to be permitted to exercise their "sovereignty." The powers of the national government are supposedly only those delegated to it, either expressly or impliedly. But that is scarcely accurate, as 200 years of constitutional development attest. The Framers of the formal constitution established a governmental system that, as Justice Robert Jackson commented, would ensure that the dispersed powers of the federal government would be integrated into a workable government. "Separateness but interdependence, autonomy but reciprocity" was the constitutional command.43 The meaning is unmistakable: "the" United States is a single metaphysical entity, encompassing state, society, and government in one artificial being. These terms are not synonymous. The state is the fundamental entity; governmenits its apparatus; and society is composed of the individuals and groups governed. Much like the business corporation, the state-"the" United States-is an artificial construct, more a method than a thing. It exists in constitutional theory-in, for example, the state secrets privilege in litigation-even though judges and commentators alike often confuse the term with government and with society. A legal fiction that by itself can do no act, speak no work, and think no thought, the state (like the corporation) has "no anatomical parts to be kicked or consigned to the calaboose; no soul for whose salvation the parson may struggle; no body to be roasted in hell or purged for celestial enjoyment." 44 Despite loose language to the contrary from executive branch lawyers and even the Supreme Court, "the" state or "the" government-or "the" United States-is not to be equated with the executive branch. Nor with any one branch, for that matter; each branch is part of an indivisible whole.

### Theory – Agent CP – 2NC

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 3. Process key to education

Schuck 99 (Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

#### 4. Neg flex – we need to test from all angles – agent ground is vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place, not whether they should be there

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

Ramsey 12 (MICHAEL, Professor of Law at the University of San Diego School of Law, “THE FEDERALIST SOCIETY NATIONAL LAWYERS CONVENTION--2011: MEET THE NEW BOSS: CONTINUITY IN PRESIDENTIAL WAR POWERS?” Summer, 2012, Harvard Journal of Law & Public Policy, Lexis)

Thus there has been an escalation in the use of unconstitutional executive war power under President Obama, yet there has not been an outcry against him resembling the outcry against the Bush Administration, which was routinely attacked for exceeding the limits of executive power. n29 Although some voices have been raised against President Obama's claims of executive power, n30 they have been marginalized. They have not [\*871] been taken up by the mainstream in the manner of similar criticisms of President Bush. My speculation is that there is an identification by legal and media elites with the establishment Democratic Party that makes it difficult for these criticisms to gain traction in the way they did in the Bush Administration.¶ I think this makes it easier for Democratic presidents than for Republican presidents to unconstitutionally extend executive power. Thus Obama's policies, which are much more deserving of constitutional criticism, do not generate the popular pushback that we saw, perhaps unjustifiably, against President Bush. In any event, what is most striking about executive war power under President Obama is not the commonly recognized continuity as compared to the prior administration, but rather the increased disregard of constitutional limits.