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#### The United States Federal Government should establish by statute a permanent war powers consultation committee, requiring the President to consult with the committee over introduction of United States Armed Forces into significant armed conflict, and require a Congressional authorization vote following consultation.  The statute should define ‘significant armed conflict’ as any conflict expressly authorized by Congress, or any mission conducted by United States Armed Forces pursuant to Rules of Engagement. The statute should include an explicit point-of order mechanism.

### Harms

#### Contention 1 is Harms

#### A—Preemption

#### Authority is modeled globally – causes preemptive conflict

Sloane, 8 [Associate Professor of Law, Boston University School of Law, Robert, Boston University Law Review, April, 88 B.U.L. Rev. 341, p. lexis]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland's sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a "very delicate, plenary and exclusive power ... as the sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress," n52 has been (correctly, in my view) criticized on a host of grounds. n53 But in practice, in part for institutional and structural reasons, n54 it accurately reflects the general **preeminence of the President** in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say - with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945, n55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art. n56 Many states took note, for example, when in the 2002 National Security Strategy of the United States ("NSS"), President Bush asserted that the United States had the right under international law to engage in preventive wars of [\*350] self-defense. n57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS's robust claims of a right to engage in preventive wars of self-defense. n58 Yet even within this brief, four-year period, an **astonishing number** of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as "rogue states," such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan. n59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a rogue regime asserting a right to engage in preventive war; the deterioration of international human rights norms against practices like torture, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but the practical ability of future Presidents to exercise that power both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### Escalates globally—US precedent key

Rehman, 12 [9/13/12, Fehzan, International Relations at the University of Westminster, "Analyzing America’s National Security Strategy", e-International Relations, http://www.e-ir.info/2012/09/13/analyzing-americas-national-security-strategy/]

Another implication on sovereignty, due to the NSS, was, yet again, demonstrated by the killing of Osama Bin Laden in Pakistan. Some academics have argued that it impeded national sovereignty. Pakistan’s foreign secretary Salman Bashir asserted that this “violation of sovereignty, and the modalities for combating terrorism, raises certain legal and moral issues which fall … in the domain of the international community” (Bowcott, 2011). Others have claimed that America sees itself as above international law and feels that they are able to take actions for which a smaller sovereign state would have received major international repercussions. Many academics believe that what America is doing is setting a new precedent, as it “continues to confuse preemption with preventive war” (Korb & Wadhams, 2006, p.1). This could lead to the demise of the international laws and norms that prohibit the offensive attacks by one state against another for simply self-gain (Korb & Wadhams, 2006, p.2). Other academics have accused the Bush Doctrine of “legitimating a doctrine of anticipatory war” (Wheeler, 2003, p.199). Senator Edward M. Kennedy assured that the Bush Doctrine “would also send a signal to governments the world over that the rules of aggression have changed for them too, which could increase the risk of conflict between countries” (Kennedy, The Bush Doctrine of Pre-Emption). The criticism of the NSS’s advancement of pre-emptive strike has been reverberated in foreign ministries across the world. Secretary General Kofi Annan, in his speech to the General Assembly in September 2003, articulated his deep restlessness with a policy that: “represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last fifty eight years… if it were to be adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force” (Annan, 2003). “The Bush administration has stubbornly resisted these warnings about the dangers of the preemptive policy set out in the NSS” (Wheeler, 2003, p.199). Kaufman agrees with the international stance that the NSS has set a dangerous precedent (Kaufman, 2007. P142). The NSS has devised other states, like India-Pakistan, Russia-Georgia, and China-Taiwan, legitimate rationales of unilateral military force for its own gains. This has already happen with the Russia-Georgia crisis of August 2008, where Russia used military intervention in South Ossetia against Georgia. Who is to say that India may use this precedent to use military force against Pakistan, asserting that it believes that Pakistan is a threat to India’s national security? Similarly, China, as an emerging super power, may want to compete with or follow American democracy promotion through pre-emption and preventive wars against Taiwan for the promotion of its Chinese values.

#### These conflicts go nuclear

Arbatov, 13 [Military Power in World Politics in the 21st Century Alexei Arbatov is Director of the International Security Center at the Institute of World Economy and International Relations; Full Member of the Russian Academy of Sciences, Real and Imaginary Threats, http://eng.globalaffairs.ru/number/Real-and-Imaginary-Threats-15925]

At the same time, there is an ongoing rivalry between them, involving **indirect means** and **local conflicts**, for economic, political and military influence in the post-Soviet space and in some regions (especially rich in raw materials) in Asia, Africa and Latin America. In addition, they are seeking to gain military and technological advantages over rivals to exert political and psychological pressure on them (missile defense, and high-precision conventional weapons, including suborbital and hypersonic ones). Military force is used to stake one’s claim to control over important geographical areas and lines of communication (the Eastern Mediterranean, the Black Sea, the Hormuz and Taiwan Straits, the Strait of Malacca, the South China Sea, shipping lanes in the Indian Ocean, extensions of the continental shelf and communications in the Arctic, etc.). Intense rivalry is going on in arms markets (especially in countries of the Middle East, Asia, Latin America, and North Africa). This rivalry involves political leverage and has political consequences. Of all hypothetical conflicts among the great powers, a conflict between China and the U.S. over Taiwan would be of the greatest danger. There is a possibility of an aggravation of the crisis over South China Sea islands, in which Southeast Asian countries will support the U.S. against China. Generally, U.S.-Chinese rivalry for domination in the Asia-Pacific region is becoming the epicenter of global military-political confrontation and competition. Failure of cooperation among the great powers and alliances against common security threats (terrorism, the proliferation of WMD and their delivery systems) **is** quite **imaginable**, which would bring about inability to counter new challenges and threats and an increasing chaos in the world economy and politics. **More** likely are conflicts **between major regional powers**: India and Pakistan, Israel (together with or without the United States) and Iran, and North and South Korea. The danger of these conflicts is exacerbated by their possible escalation to a nuclear war. The greatest threat in this regard is posed by military-political confrontation in South Asia.

#### Binding Congressional role signals measured restraint and checks escalation

Damrosch, 97 [Lori Fisler Damrosch, Professor of Law at the Columbia University School of Law, “Use of Force and Constitutionalism”, Columbia Journal of Transnational Law, 36 Colum. J. Transnat'l L. 449, Lexis]

Structural-institutional explanations, on the other hand, point to features of liberal-democratic systems that could act as brakes on conflict-initiation, as the American framers and Kant in Perpetual Peace had long ago suggested. n27 To the extent that executive military powers are subject to checks and balances--for example, **by accountability to the legislature**--war (or at least war-initiation) ought to become less likely under the structural-institutional view. Latter-day exponents of [\*457] the Kantian claim have thus hypothesized that structural constraints on executive military powers belong among the factors that may well explain (or help explain) the peace among democracies. n28 For this reason, democracy-and-peace research has pointed to the extent of constraints on the chief executive as one of the components of democracy which ought to be measured and studied in relation to the war-involvement of democratic regimes; n29 but the role of such constraints in keeping democratic polities from becoming involved in wars (or certain wars) is still only imperfectly understood. n30 The perception that one's adversary is (or is not) constrained **may be just as important as actual constraints**: "the presence of democratic institutions provides a visible and generally correct signal of "practical dovishness'--restraints on war in the form of institutional constraint if not of inherent disposition." n31

[TO FOOTNOTE] n31. Russett, supra note 23, at 39 (citing War and Reason, supra note 23, at 157-58) (the "presence of democratic institutions provides a basis for rivals to have an above-average prior belief that the potential foe is restrained from using force too readily. When this restraint exists for both sides, **amicable settlements of disputes are more likely**." ). See also War and Reason, supra note 23, at 272 ("When both sides are democracies, each actor is likely to be dovish, to see the other as dovish, and to be encouraged to pursue negotiated solutions to differences."); Russett, supra note 23, at 141 n.17 (tracing precursors of "the insight that forms of government signal a state's likely international behavior"). Conversely, where one or both sides do not perceive the other as possessing democratic institutions (e.g., U.S. perception of Spain in 1898), the restraint may fail to take effect.

#### Those constraints decrease prevalence of war and strengthen global norms

Martin, 11 [ Copyright (c) 2011 Brooklyn Law Review Brooklyn Law Review Winter, 2011 Brooklyn Law Review 76 Brooklyn L. Rev. 611LENGTH: 52175 words ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with International Law NAME: Craig Martin+ BIO: + Visiting Assistant Professor, University of Baltimore School of Law]

Conclusion The prevention of armed conflict is central to modern international law, and reducing the prevalence of war one of the enduring philosophical problems with which man has grappled. The causes of war are understood to operate at three levels--that of the individual, the state, and the international system. It follows that we need mechanisms that are capable of addressing causes within all three levels. In legal terms, that requires legal constraints at both the domestic and the international level. Yet in the twentieth century, we have left the legal constraint of armed conflict entirely to a positivist international legal system, one with thin theoretical and philosophical foundations, and without any of the domestic implementation that is necessary to improve compliance with international law regimes. The proposed Model would be a significant step towards the development of more robust and multi-dimensional legal constraints on the use of armed force, thereby reducing the prevalence of war. The domestic implementation of the international law principles on the use of force would be consistent with the ever increasing penetration of international law into domestic legal systems, and the use of domestic law mechanisms to enforce and enhance compliance with the international law regimes. This incorporation of international law principles would not only operate to ameliorate the permissiveness of the international system, **the primary cause of war** at the international level, but it would also engage significant domestic causes of war as well. The move is consistent with and supported by international law compliance [\*729] theory and constitutional law theory, operating to realize both international law and constitutional law objectives. The requirement for legislative approval of government decisions to use armed force would amplify and strengthen the operation of the first provision. Such legislative involvement would also enhance democratic accountability and bring to bear the deliberative and oversight functions of the legislature on the decision-making process, making it both more transparent and subject to diverse perspectives and arguments. It would more fully realize the structure originally thought to make republics less likely to wage war, and would engage the domestic causes of war in important ways. Subjecting the entire process to a limited form of judicial review would place a further check on the system, helping to ensure that the decision-making process was conducted as required, and genuinely based on the mandated considerations. Together, the separation of powers elements of the Model would operate to resolve aspects of the Kantian dilemma, reducing the tendency of democracies to engage in armed conflict with illiberal states, while strengthening the features of democracies that help explain the democratic peace. This would not only be a benefit to the international society more generally, but it would fundamentally benefit the states that adopt the Model, not only by increasing democratic accountability and strengthening the rule of law, but ultimately by protecting them from involvement in illegitimate and unwise military adventures.

#### Executive restraint fails and now is key

Daskal and Vladeck 14 (Jennifer, Assistant Professor of Law – American University Washington College of Law, “After the AUMF,” Harvard National Security Journal, Vol. 5, January, <http://harvardnsj.org/wp-content/uploads/2014/01/Daskal-Vladeck-Final1.pdf>)

Thus, while certain entities and individuals clearly fall outside of the Administration’s definition of “associated forces” (for example, a group of two or more terrorists with no direct affiliation with al Qaeda, such as the two brothers responsible for the 2013 Boston Marathon bombing; or entities that share ideological affinities with al Qaeda but do not engage in any hostilities against the United States or its coalition partners), there is a total lack of transparency as to who is covered. Even with respect to al Qaeda in the Arabian Peninsula (“AQAP”), the government has never clarified whether operations against its members are covered by the AUMF because they are deemed to be “part of” al Qaeda or because the group qualifies as an “associated force.” 35 **Public statements by DoD officials have only served to** confuse matters more, suggesting that there may be a long list of covered groups— while remaining unclear as to whether such references are to “associates” covered by the AUMF or “affiliates” that fall under a separate (heretofore non-public) definition that have ties with al Qaeda, but are not in fact subsumed under the 2001 AUMF. 36 As a result, there is no clarity as to which, if any, of the many groups operating in the tribal areas of Northwest Pakistan qualify, or whether and under what circumstances entities such as al Shabaab, 37 al Qaeda in the Islamic Maghreb (“AQIM”), or the Nusra Front—or parts of such groups—might also be encompassed within the definition of “associated forces.” The pervasive secrecy surrounding the government’s application of that concept has led some to speculate that the Executive Branch will simply subsume “extra-AUMF” cases within the existing AUMF framework, shoehorning emerging threats into the increasingly outdated ambit of the original statute simply by labeling the groups that pose them as “associated forces.” 38 Were this to happen, the government could—despite the incapacitation of those responsible for the September 11 attacks and the pending withdrawal of all U.S. ground troops from Afghanistan—seek to rely on the AUMF as authority for **offensive military operations in** Mali**,** Syria**, or** Somalia, even if the targets were not also deemed members of al Qaeda, to say nothing of operations in other corners of the globe with loose affiliations with al Qaeda and little to no connection to the September 11 attackers. 39 To be clear, we are not suggesting that this shift has already taken place. Indeed, we do not and would not know if it did, as the list of covered groups remains classified. 40 There is, however, relatively widespread agreement that such a shift would be unsatisfactory. 41 The more that the AUMF is used to justify the use of military force against those with no connection to the September 11 attacks and the ensuing armed conflict, the more it becomes an essentially limitless authorization, allowing the President to use force as a matter of first resort in a wide range of conflicts, untethered to the self-defense justification for the post-9/11 use of force, and irrespective of constitutional limits that give Congress, not the Executive, the authority to declare war.42 As we explain in Part II below, this is not an appropriate interpretation of the statute, and it is not an appropriate exercise of presidential power. If new groups emerge that pose a threat sufficient to warrant independent use-of-force authority, the government should affirmatively and publicly identify them and obtain from Congress specific authorization to use force against those groups. If, in contrast, no special use-of-force authority is needed to respond to these groups, then this only underscores our more fundamental point: that a new, expanded AUMF is unnecessary. The proponents of the Hoover proposal, however, have seized upon an alternative possibility: in their view, the government will seek to use force against so-called “extra-AUMF” threats regardless of the underlying statutory authorization. They rely upon this presumed fact, coupled with a concern about the lack of transparency as to which groups fall within the AUMF, to justify a new approach presented as a moderate solution: Congress delegates to the President the power to identify those groups against which military force is necessary pursuant to specific statutory criteria. In other words, Congress delegates its war-declaration authority to the Executive Branch, subject to specified criteria. The proposal further requires such delegations to be public—with ex post auditing and reporting to address the current transparency deficit. As the Hoover proposal concludes: a listing system modeled on this approach best cabins presidential power while at the same time giving the president the flexibility he needs to address emerging threats. Such a listing scheme will also render more transparent and regularized the now very murky process by which organizations and their members are deemed to fall within the September 2001 AUMF. 43 The Hoover proposal thus rests on a view—which we share—of the insufficient transparency of the identification of “associated forces.” Its solution, however, is a new use-of-force regime in which Congress enacts a wholesale delegation to the President of the power to identify the groups against which armed conflict is authorized, rather than case-by-case authorizations of such force by Congress. Although we agree that greater transparency and accountability are necessary limitations on the government’s scope of authority to use force against “associated forces” under the AUMF, we fail to see how the transparency concern justifies the type of open-ended or broad force authorizations that the Hoover paper advocates. 44 To the contrary, as we explain below, such an approach rests on two assumptions that we vigorously dispute: that an expansive and expanding war is inevitable and that no alternative means exist for achieving a comparable result. Indeed, not only do such alternatives exist, but an ever-expanding armed conflict paradoxically threatens to make the nation less safe in the long term.

#### B—Mission Failure

#### War decisions are insulated from Congressional will, resulting in lack of unity and foreign policy coherence

Gallagher, 11 [Lieutenant Colonel Joseph V. Gallagher III, United States Marine Corps, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication”, Parameters, summer, http://strategicstudiesinstitute.army.mil/pubs/parameters/articles/2011summer/gallagher.pdf]

Understanding the Gap Since World War II, a wide gap has developed between Congress and the executive branch with respect to the critical issue of war powers. Like a black hole, this gap draws in the roles and abilities of the branches to execute foreign policy. Ostensibly, this gap has resulted from two symbiotic behaviors: executive aggressiveness and congressional abdication. The historical record reveals the evolution of this phenomenon. But history does not clearly reveal the structural and political dimensions of this phenomenon. The Constitution grants most foreign policy prerogative to Congress in Article I. Article II grants the president very limited authority in the foreign policy arena.49 This results in a structural dichotomy because the executive branch is better positioned to lead and execute, but congressional actions are more indirect and diffuse. Congress’s bicameral design and widely dispersed support base do not optimize the expeditious exercise of its power. Consequently, considerable power has flowed from Congress to the president.50 Execution of US foreign policy is fraught with political uncertainty and vulnerability. Compared to domestic issues, foreign policy decisions and initiatives are susceptible to greater unpredictability.51 Therefore, when dealing with high levels of uncertainty, Congress often finds it easier to defer to the executive branch, thereby reducing congressional members’ exposure or liability.52 Because most Americans elect their congressional representatives based on domestic issues, they tend to pay little attention to foreign policy; members of Congress often defer acting on foreign policy matters as a safer political option.53 This political safe haven of indecision, however, does not serve the nation well because it encourages concentrating power in the executive branch. Likewise, it severs the link between the electorate, the constitutionally intended legislative process, and the executor. Matters of war, however, require the collective involvement of the people. Militaries fight wars, but nations go to war. In the final analysis, **congressional abdication** of its Article I authority to oversee the nation’s foreign policy has exposed America to unacceptable strategic risk. War, Strategy, and the Constitution One of Clausewitz’ greatest contributions to the study of war is his emphasis on the conceptual link between politics and war. “War is never a separate phenomenon,” Clausewitz wrote, “but the continuation of politics by other means.”54 Behind this proposition is a deeply textured argument about the intrinsic political purpose of war. This political purpose encompasses the components comprising war: societal disposition, economic capability, and strategy. Clausewitz advised leaders to thoroughly consider any use of violence. So the link between war and politics “should never be overlooked.”55 Even in the 21st century, war retains this political dimension despite the recent emergence of nonstate actors and transnational groups.56 In other words, success at the tactical level of war first requires careful preparations at the political and strategic levels. The enabling institutions for success in war—Congress, the president, the cabinet, and other advisors—all need to be fully engaged in the development of feasible, suitable, and acceptable strategy.57 And this carefully crafted strategy needs to include legitimate justification for violence, rigorous calculation and valuation of political objectives, and commitment of resources sufficient to achieve strategic objectives.58 Since 1945, the United States has built the world’s most capable war-fighting machine. So why, then, have most of the nation’s large military interventions since World War II ended in defeat or, at best, stalemate? Political leaders should attend more to what Clausewitz calls the political dimensions of war—national unity and the political value of the objective—as inseparable from national and military strategy. War theorists have long emphasized the importance of national unity and the political value of the war objective. Thousands of years ago, Sun Tzu identified the necessary pre-condition of national unity for successful war strategy.59 National unity enables political leaders to muster resources needed to win wars and to amass the human capital that makes an army. Clausewitz advised, “to discover how much of our resources must be mobilized for war, we must first examine our own political aim.”60 National unity underwrites the commitment the nation needs to successfully prosecute war, provided the war has political value commensurate to the effort expended.61 The founders directed this nation to use a collaborative process to assess the political value of a war. So the Constitution requires Congress to deliberate on the decision to go to war and, when it so decides, to declare war. Therefore, the Constitution serves as the guarantor of ensuring national unity and a legitimate valuation of the war’s political objective—provided through the mechanism of the war declaration. Consider the language of the 1941 war declaration against Japan. It captures the national unity, the political value of the objective, and the will and support of Congress to support the war.62 A Risk to Strategy As the practice of declaring war has become passé, American strategy has likewise become disjointed and disconnected from national security objectives. Following World War II, an acquiescent Congress and an aggressive presidency have, for decades, fostered a strategic climate that failed to maintain the links between the political dimensions of the state and its strategy. The predominant “NSC-68 thinking,” largely a product of executive national security panels that administrations have embraced and Congress has blithely followed, provided inadequate guidance on how objectives and capabilities should be joined to produce coherent overall strategy.63 This connection, Clausewitz observed, is necessary for success in war. For example, US strategy following World War II ironically came to resemble the German strategy of the early 20th century, relying heavily on military ways and means that failed to address the political and economic components of warfare.64 Historians are quick to extol the superiority of the German military machine, but Germany lost two world wars. Similarly, the United States has pursued a strategy built on loosely linked operational and tactical successes. Unfortunately, without concretely defined end states specified in a coherent all-encompassing strategy, these successes have not achieved national strategic ends. In Vietnam, Afghanistan, and Iraq, our leaders failed to properly define the national strategic ends, so the attendant strategies have been inchoate. Leaders’ attempts to match ways and means to fluctuating or poorly defined ends resulted in unacceptable levels of uncertainty and risk. These protracted and strategically uncertain conflicts are alien to America’s strategic culture, which has little tolerance for long, risky, or uncertain conflicts.65 More recently, as the executive branch exercises greater authority in directing military interventions, the gap between risk and strategy becomes wider. Theater commanders charged with developing adequate or complete strategies with sound ends and feasible ways to achieve them lack confidence in congressional support to provide the means necessary to achieve these strategic objectives.66 As the world’s only superpower, the United States can expect asymmetrical conflict as the norm. Future adversaries will increasingly focus on the strategic target of the American people’s collective will in their efforts to subvert our national strategy.67 Vietnam Strategy The tragic military and political experience of Vietnam was spawned by an aggressive president promoting foreign policy absent congressional and public blessings.68 Vietnam War strategy affirms how congressional abdication on war matters resulted in protracted disaster. As historian George Herring points out, “America’s failure in Vietnam and the tragedy that resulted also make clear what can happen when major decisions are made without debate or discussion.”69 After Congress passed the Gulf of Tonkin Resolution, the strategy formulation and decision process operated vacuously, failing to determine strategic objectives and the means to obtain them.70 President Johnson made numerous decisions concerning the strategy and operations of the war, resulting in a strategy of incremental gradualism. Despite some tactical successes, Vietnam strategy never developed sufficient coherence nor the sustained support of the American people. Through executive design, Congress and the people never fully vetted the value of the political objective in the context of large-scale military intervention before President Johnson committed forces to combat.71 As a result, President Johnson lacked the top cover of a war declaration. This prevented him from unleashing the nation’s enormous military capability to achieve full, quick military success. Instead, he implemented a strategy that he thought was least likely to jeopardize his legislative agenda, upset the domestic apple cart, or threaten his reelection.72 In retrospect, the incoherence of the Vietnam strategy reflected the real value of the political objective in the eyes of the American people; they could not have cared less about Vietnam.73 Afghanistan and Iraq Strategies The strategies for the ongoing conflicts in Iraq and Afghanistan have both failed to properly incorporate national strategic ends, ways, and means in a consistent manner across the whole of government. In the absence of a national consensus on strategic ends, Congressman James Marshall (D-GA) not surprisingly identified: The mismatches among the needs of post-conflict stability operations in Afghanistan and Iraq, the size and the types of military forces available, and the pitiful scarcity of capability in the civilian branches of our government to effect nation-building efforts, as well as, our utter incompetence as a government in strategic communications.74 US Afghanistan strategy has continually morphed from 2001 to the present. The sweeping language in the September 2001 congressional resolution did little to shape the effort and focus the nation on acceptable long-term national ends.75 A careful analysis of coalition command and control structures indicates how the United States, partners, and allies prosecuted any number of operational strategies.76 Strategic priorities changed from counterterrorism to counterinsurgency, to nation building, back to counterterrorism, then eventually to a combination of all of them. During the lead-up to Operation Iraqi Freedom, significant executive power may have subjected the strategy to unnecessary risk. Indeed, failure of Congress to deliberate a declaration of war may have resulted in poorly defined national objectives and shoddy strategy.77 Significant executive powers facilitated side-stepping full disclosure of policy risk. The president’s obsession with regime change subordinated other key elements crucial to a comprehensive strategy, particularly with respect to clear strategic ends. This obsession obscured full debate and railroaded the nation into a course of action fraught with unexamined risk. Additionally, it masked the real cost of the strategy in terms of lives and dollars and inevitably compromised support for the effort when the strategy did not unfold as planned.78 Eventually, the wars in Iraq and Afghanistan and their strategies became focal points in the 2008 presidential campaign. Similar to President Johnson on Vietnam, candidate Obama politicized the Iraq and Afghanistan conflicts, promising on the campaign trail that, if elected, he would redeploy US combat forces out of Iraq and refocus on Afghanistan as the central front on the war against extremism. This politicalization of the war efforts may have removed strategic considerations from decisionmaking, exposing the strategies to additional, unnecessary risk at a crucial time.79 Another Cry for Reform In 2009, The National War Powers Commission, a bipartisan group commissioned under the auspices of the University of Virginia’s Miller Center for Public Affairs, reviewed the existing WPR and addressed executive overreach with respect to military intervention. Chaired by Warren Christopher and James Baker, the 2009 War Powers Commission concluded that the 1973 WPR does not function as intended and needs replacement.80 Commission members testified before the House Foreign Affairs Committee and Senate Foreign Relations Committee recommending a policy to restore the constitutional grounding for mandatory congressional war declaration for “large” force deployments and “significant armed conflict.”81 The Commission recommended replacing the 1973 WPR with the War Powers Consultation Act of 2009 that adds fidelity to the size, scope, and types of conflict subject to the Act. Most significantly, it directs the president to consult with Congress before introducing troops into “significant armed conflict.”82 Despite the bipartisan clout of former Secretaries of State Warren Christopher and James Baker, the Commission’s recommendations still lacked the necessary political power to prevent the president from deploying forces into significant armed conflict without the full blessing of Congress.83 Conclusion Reminiscent of the 1973 WPR, the National War Powers Commission’s effort to redress war power authority hoists another warning flag about war power overreach and executive presumption of constitutional power. But it is insufficient to have an academic debate over the constitutionality of war authority. Since the end of World War II, an assertive executive branch has run roughshod over an abdicating Congress, which has compromised US military efficacy. It has repeatedly resulted in the expenditure of national blood and treasure for strategically hollow ends. The Constitution is, in itself, a strategic national security document. The founders’ wisdom imbued within Articles I and II capture, in the Clausewitzian sense, the necessary prerequisites for successful prosecution of war. As the executive and congressional branches deviate from US constitutional foundations with respect to war authority, they increasingly leave the military—and the nation—vulnerable to unacceptable strategic risk. The current interpretations or disregard for war power authority, as practiced today, no longer maintain the necessary connective tissue between political and military muscle movements. As a result, US national and military strategy has become disjoined from legitimate political will. American military operations are hampered by the leadership’s inability to harness the national will. If this nation declared war when it engaged in war, as the Constitution requires, the United States would wage fewer of them—and be far better positioned to win them.

#### Effective use of force stops hotspot escalation to nuclear war

O’Hanlon, 07 [Michael O’Hanlon, Senior Fellow and Sydney Stein Jr. Chair in Foreign Policy Studies at the Brookings Institution and Frederick Kagan, Resident Scholar at the American Enterprise Institute, and “The Case for Larger Ground Forces”, Stanley Foundation Report, April, http://stanleyfoundation.org/publications/other/Kagan\_OHanlon\_07.pdf]

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino- Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnelintensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### Conflicts are likely – the plan maintains the basis for US leadership

Kaine and McCain, 14 [Senator Kaine From West Virginia and John McCain, Senator from Arizona, “STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS”, http://beta.congress.gov/congressional-record/2014/1/16/senate-section/article/S441-1]

Mr. McCAIN. Mr. President, I am pleased today to join my colleague, the junior Senator from Virginia, as we introduce the War Powers Consultation Act of 2014. This legislation is the final product of the National War Powers Commission, which was a bipartisan effort co-led by former Secretary of State Jim Baker and former Secretary of State Warren Christopher. The commission was set up by the Miller Center at the University of Virginia to devise a modern and workable war powers consultation mechanism for the executive and legislative branches. It included some of our Nation's most distinguished and respected thinkers and practitioners of national security policy and law. In 2008, after more than a year of hard work, the commission released the final product--an actual legislative proposal to repeal and replace the War Powers Resolution of 1973, which no American President has ever accepted as constitutional. As does my colleague, I view our introduction of this legislation today as the start of an important congressional and national debate, not the final word in that debate. We wish to pick up where the National War Powers Commission left off 6 years ago, and we do so fully understanding and hopeful that **this legislation should be considered** and debated and amended and improved through regular order. My colleague from Virginia has done a great job on this legislation, and I am proud to join him. I wish to expand a bit on why updating the War Powers Resolution is such a worthwhile endeavor for the Senate to consider right now. The Constitution gives the power to declare war to the Congress, but Congress has not formally declared war since June of 1942 even though our Nation has been involved in dozens of military actions of one scale or another since that time. There is a reason for this. The nature of war is changing. It is increasingly unlikely that the combat operations our Nation will be involved in will resemble those of World War II, where the standing armies and navies of nation states squared off against those of rival nation states on clearly defined fields of battle. Rather, the conflicts in which increasingly we find ourselves and for which we must prepare will be murkier, harder to reconcile with the traditional notions of warfare; they may be more limited in their objectives, their scope, and their duration; and they likely will not conclude with a formal surrender ceremony on the deck of a battleship. The challenge for all of us serving in Congress is this: How do we reconcile the changing nature of war with Congress's proper role in the declaration of war? It is not exactly a new question, but it is a profound one, for unless we in Congress are prepared to cede our constitutional authority over matters of war to the executive, we need a more workable arrangement for consultation and decisionmaking between the executive and legislative branches. We have seen several manifestations of this challenge in recent years. In 2011 President Obama committed U.S. military forces to combat operations in Libya to protect civilian populations from imminent slaughter by a brutal, anti-American tyrant. I, for one, believe he was right to do so. But 6 months later, when our armed services were still involved in kinetic actions in Libya--not just supporting our NATO allies but conducting air-to-ground operations and targeted strikes from armed, unmanned aerial vehicles--the administration claimed, as other administrations would, that it had no obligations to Congress under the War Powers Resolution because our Armed Forces were not involved in combat operations. That struck many Members of Congress, including me, as fundamentally at odds with reality, and unfortunately it pushed more Members of Congress into opposition against the mission itself. More recently, we saw the opposite problem manifested with regard to Syria. Perhaps due to the backlash in Congress that the administration's handling of the Libya conflict engendered, President Obama decided to seek congressional authorization for limited airstrikes against the Assad regime after it slaughtered more than 1,400 of its own citizens with chemical weapons last August. An operation that likely would have lasted a few days and thus been fully consistent with the President's authority under the existing War Powers Resolution had he decided to act decisively and take limited military action instead devolved into a stinging legislative repudiation of executive action. The tragic result was that the Assad regime was spared any meaningful consequences for its use of a weapon of mass destruction against innocent men, women, and children, and, as with Libya, the forces that want to turn America away from the world were not checked but empowered. Some of us may see the problem in these two instances as a failure of Presidential leadership, and I would agree, but I also believe the examples of Libya and Syria represent the broader problem we as a nation face: What is the proper war power authority of the executive and legislative branches when it comes to limited conflicts, which are increasingly the kinds of conflicts with which we are faced? It is essential for the Congress and the President to work together to define a new war powers consultative agreement that reflects the nature of conflict in the 21st century and is in line with our Constitution. Our Nation does not have 535 commanders in chief. We have one--the President--and that role as established by our Constitution must be respected. Our Nation is poorly served when Members of Congress try to micromanage the Commander in Chief in matters of war. At the same time, now more than ever, we need to create a broader and more durable national consensus on foreign policy and national security, especially when it comes to matters of war and armed conflict. We need to find ways to make internationalist policies more politically sustainable. After the September 11 attack, we embarked on an expansive foreign policy. Spending on defense and foreign assistance went up, and energy shifted to the executive. Now things are changing. Americans want to pull back from the world. Our foreign assistance and defense budgets are declining. The desire to curb Presidential power across the board is growing, and the political momentum is shifting toward the Congress. America has gone through this kind of political rebalancing before, and much of the time we have gotten it wrong. That is how we got isolationism and disarmament after World War I, that is how we got a hollow army after Vietnam, and that is how we weakened our national security after the Cold War in the misplaced hope of cashing in on a peace dividend. **We can't afford to repeat these mistakes.** A new war powers resolution--one that is recognized as both constitutional and workable in practice--can be an important contribution to this effort. It can more effectively invest in the Congress the critical decisions that impact our national security. It can help build a more durable consensus in favor of the kinds of policies we need to sustain our global leadership and protect our Nation. In short, the legislation we are introducing today can restore a better balance to the way national security decisionmaking should work in a great democracy such as ours. Let me say again. Neither the Senator from Virginia nor I believe the legislation we are introducing today answers all of the monumental and difficult questions surrounding the issue of war powers. We believe this is a matter of transcendent importance to our Nation, and we as a deliberative body of our government should debate this issue, and we look forward to that debate. This legislation should be seen as a way of starting that discussion both here in the Congress and across our Nation. We owe that to ourselves and our constituents. Most of all, we owe that to the brave men and women who serve our Nation in uniform and are called to risk their lives in harm's way for the sake of our Nation's national defense. Before I yield to my tardy colleague from Virginia, I wish to mention again another reason why I think this legislation should be the beginning of a serious debate which we should bring to some conclusion. The fact is that no President of the United States has recognized the constitutionality of the War Powers Act. That is a problem in itself. That is a perversion, frankly, of the Constitution of the United States of America. That is one reason, but the most important reason is that I believe we are living in incredibly dangerous times. When we look across the Middle East, when we look at Asia and the rise in the tensions in that part of the world and we look at the conflicts that are becoming regional--and whose fault they are is a subject for another debate and discussion, but the fact is that we are in the path of some kind of conflict in which--whether the United States of America wants to or not--we may have to be involved in some ways. We still have vital national security interests in the Middle East. It is evolving into a chaotic situation, and one can look from the Mediterranean all the way to the Strait of Hormuz, the Gulf of Aqaba, and throughout the region. So I believe the likelihood of us being involved in some way or another in some conflict is greater than it has been since the end of the Cold War, and I believe the American people deserve legislation and a clear definition of the responsibilities of the Congress of the United States and that of the President of the United States. Again, I thank my colleague from Virginia, whose idea this is, who took a great proposal that was developed at the University of Virginia and was kind enough to involve me in this effort. I thank him for it. I thank him for his very hard work on it, despite the fact that, as the Chair will recognize, he was late for this discussion. I yield the floor. The PRESIDING OFFICER. The Senator from Virginia. Mr. KAINE. Mr. President, I thank my colleague from Arizona for pointing out to all in the Chamber my tardiness, and I should not have been tardy because I do not like to follow the Senator from Arizona. I would rather begin before him. But I want to thank him for his work with me, together, on this important issue and amplify on a few of the comments he has made. Today, together, as cosponsors we are introducing the War Powers Consultation Act of 2014, which would repeal the 1973 War Powers Resolution and replace it. I could not have a better cosponsor than Senator McCain and appreciate all the work he and his staff have done over the last months with us. I gave a floor speech about this issue in this Chamber in July of 2013, almost to the day, 40 years after the Senate passed the War Powers Resolution of 1973. Many of you remember the context of that passage. When it was passed in the summer of 1973, it was in the midst of the end of the Vietnam war. President Nixon had expanded the Vietnam war into Cambodia and Laos without explicit congressional approval, and the Congress reacted very negatively and passed this act to try to curtail executive powers in terms of the initiation of military hostilities. It was a very controversial bill. When it was passed, President Nixon vetoed it. Congress overrode the veto at the end of 1973. But as Senator McCain indicated, no President has conceded the constitutionality of the 1973 act, and most constitutional scholars who have written about the question have found at least a few of what they believe would be fatal infirmities in that 1973 resolution. It was a hyperpartisan time, maybe not unlike some aspects of the present, and in trying to find that right balance in this critical question of when the Nation goes to war or initiates military action, Congress and the President did not reach an accord. I came to the Senate with a number of passions and things I hoped to do. But I think I came with only one obsession, and this is that obsession. Virginia is a State that is most connected to the military of any State in the country. Our map is a map of American military history--from Yorktown, where the Revolutionary War ended, to Appomattox, where the Civil War ended, to the Pentagon, where 9/11 happened. That is who we are. One in nine Virginians is a veteran. If you add our Active Duty, our Guard and Reserve, our military families, our DOD civilians, our DOD contractors, you are basically talking about one in three Virginians. These issues of war and peace matter so deeply to us, as they do all Americans. The particular passion I had in coming to this body around war powers was because of kind of a disturbing thought, which is, if the President and Congress do not work together and find consensus in matters around war, we might be asking our men and women to fight and potentially give their lives without a clear political consensus and agreement behind the mission. I do not think there is anything more important that the Senate and the Congress can do than to be on board on decisions about whether we initiate military action, because if we do not, we are asking young men and women to fight and potentially give their lives, with us not having done the hard work of creating the political consensus to support them. That is why I have worked hard to bring this to the attention of this body with Senator McCain. The Constitution actually sets up a fairly clear framework. The President is the Commander in Chief, not 535 commanders-in-chief, as Senator McCain indicated. But Congress is the body that has the power both to declare war and then to fund military action. In dividing the responsibilities in this way, the Framers were pretty clear. James Madison, who worked on the Constitution, especially the Bill of Rights, wrote a letter to Thomas Jefferson and said: The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It [[Page S443]] has accordingly with studied care vested the question of war in the Legislature. Despite that original constitutional understanding, our history has not matched the notion that Congress would always be the initiator of military action. Congress has only declared war five times in the history of the United States, while Presidents have initiated military action prior to any congressional approval more than 120 times. In some of these instances where the President has initiated war, Congress has come back and either subsequently ratified Presidential action--sometimes by a formal approval or sometimes by informal approval such as budgetary allocation--but in other instances, including recently, Presidents have acted and committed American military forces to military action without any congressional approval. The Senator from Arizona mentioned the most recent one. President Obama committed military force to NATO, action against Libya in 2011, without any congressional approval, and he was formally censured by the House of Representatives for doing so. The current context that requires a reanalysis of this thorny question, after 40 years of the War Powers Resolution, was well stated by the Senator from Arizona. Wars are different. They start differently. They are not necessarily nation state against nation state. They could be limited in time or, as of now, we are still pursuing a military force that was authorized on September 18, 2001, 12 or 13 years later. Wars are of different duration, different scope, different geography. Nation states are no longer the only entities that are engaged in war. These new developments that are challenging--what do we do about drones in countries far afield from where battles were originally waged--raise the issue of the need to go back into this War Powers Resolution and update it for the current times. As the Senator from Arizona mentioned, this has been a question that Members of Congress have grappled with and thought about, as have diplomats and scholars and administration officials and Members of Congress for some time. In 2007, the Miller Center for the study of the presidency at the University of Virginia convened a National War Powers Commission under the chairmanships of two esteemable and bipartisan leaders--former Secretaries of State Warren Christopher and James Baker. The remaining members of the Commission were a complete A list of thinkers in this area--Slade Gorton, Abner Mikva, Ed Meese, Lee Hamilton. The Commission's historian was no less than Doris Kearns Goodwin, who looked at the entire scope of this problem in American history and what the role of Congress and the President should be. The Commission issued a unanimous report, proposing an act to replace the War Powers Act of 1973, briefed Congress and incoming President Obama on the particular act in 2007 and 2008, but at that time, the time was not yet ripe for consideration of this bill. But now that we are 40 years into an unworkable War Powers Resolution and now, as the Senator indicated, we have had a string of Presidents-- both Democratic Presidents and Republican Presidents--who have maintained that the act is unconstitutional and now that we have had a 40-year history of Congress often exceeding to the claim of unconstitutionality by not following the War Powers Resolution itself, we do think it is time to revisit. Let me just state two fundamental, substantive issues that this bill presents in the War Powers Consultation Act of 2014. First, there is a set of definitions. What is war? The bill defines significant military action as any action where involvement of U.S. troops would be expected to be in combat for at least a week or longer. Under those circumstances, the provisions of the act would be triggered. There are some exceptions in the act. The act would not cover defined covert action operations. But once a combat operation was expected to last for more than 7 days, the act would be triggered. The act basically sets up two important substantive improvements on the War Powers Resolution. First, a permanent consultation committee is established in Congress, with the majority and minority leaders of both Houses and the chairs and ranking members of the four key committees in both Houses that deal with war issues--Intel, Armed Services, Foreign Relations, and Appropriations. That permanent consultation committee is a venue for discussion between the executive and legislative branches--permanent and continuous--over matters in the world that may require the use of American military force. Because the question comes up often: What did the President do to consult with Congress? Is it enough to call a few leaders or call a few committee chairs? This act would normalize and regularize what consultation with Congress means by establishing a permanent consultation committee and requiring ongoing dialogue between the Executive and that committee. The second requirement of this bill is that once military action is commenced that would take more than 7 days, there is a requirement for a vote in both Houses of Congress. The consultation committee itself would put a resolution on the table in both Houses to approve or disapprove of military action. It would be a privileged motion with expedited requirements for debate, amendment, and vote, and that would ensure that we do not reach a situation where action is being taken at the instance of one branch with the other branch not in agreement, because to do that would put our men and women who are fighting and in harm's way at the risk of sacrificing their lives when we in the political leadership have not done the job of reaching a consensus behind the mission. To conclude, I will acknowledge what the Senator from Arizona said. This is a very thorny and difficult question that has created challenges and differences of interpretation since the Constitution was written in 1787. Despite the fact that the Framers who wrote the Constitution actually had a pretty clear idea about how it should operate, it has never operated that way. Forty years of a failed War Powers Resolution in today's dangerous world suggests that it is time now to get back in and to do some careful deliberation to update and normalize the appropriate level of consultation between a President and the legislature. The recent events as cited by the Senator--whatever you think about the merits or the equities, whether it is Libya, whether it is Syria, whether it is the discussions we are having now with respect to Iran or any other of a number of potential spots around the world that could lead to conflict--suggest that while decisions about war and initiation of military action will never be easy, they get harder if we do not have an agreed-upon process for coming to understand each other's points of view and then acting in the best interest of the Nation to forge a consensus.

#### Leadership failure causes extinction

Brzezinski, 12 [1/24/12, Zbigniew, Former National Security Advisor to President of the Great United States Jimmy Carter, Professor of American Foreign Policyat Johns Hopkins University's [School of Advanced International Studies](http://en.wikipedia.org/wiki/Johns_Hopkins_SAIS), scholar at the Center for Strategic and International Studies, Strategic Vision: America and the Crisis of Global Power (Kindle Locations 1476-1485). Perseus Books Group. Kindle Edition]

An American decline would impact the nuclear domain most profoundly by inciting a crisis of confidence in the credibility of the American nuclear umbrella. Countries like South Korea, Taiwan, Japan, Turkey, and even Israel, among others, rely on the United States’ extended nuclear deterrence for security. If they were to see the United States slowly retreat from certain regions, forced by circumstances to pull back its guarantees, or even if they were to lose confidence in standing US guarantees, because of the financial, political, military, and diplomatic consequences of an American decline, then they will have to seek security elsewhere. That “elsewhere” security could originate from only two sources: from nuclear weapons of one’s own or from the extended deterrence of another power—most likely Russia, China, or India. It is possible that countries that feel threatened by the ambition of existing nuclear weapon states, the addition of new nuclear weapon states, or the decline in the reliability of American power would develop their own nuclear capabilities. For crypto-nuclear powers like Germany and Japan, the path to nuclear weapons would be easy and fairly quick, given their extensive civilian nuclear industry, their financial success, and their technological acumen. Furthermore, the continued existence of nuclear weapons in North Korea and the potentiality of a nuclear-capable Iran could prompt American allies in the Persian Gulf or East Asia to build their own nuclear deterrents. Given North Korea’s increasingly aggressive and erratic behavior, the failure of the six-party talks, and the widely held distrust of Iran’s megalomaniacal leadership, the guarantees offered by a declining America’s nuclear umbrella might not stave off a regional nuclear arms race among smaller powers. Last but not least, even though China and India today maintain a responsible nuclear posture of minimal deterrence and “no first use,” the uncertainty of an increasingly nuclear world could force both states to reevaluate and escalate their nuclear posture. Indeed, they as well as Russia might even become inclined to extend nuclear assurances to their respective client states. Not only could this signal a renewed regional nuclear arms race between these three aspiring powers but it could also create new and antagonistic **spheres of influence** in Eurasia driven by competitive nuclear deterrence. The decline of the United States would thus precipitate drastic changes to the nuclear domain. An increase in proliferation among insecure American allies and/or an arms race between the emerging Asian powers are among the more likely outcomes. This ripple effect of proliferation would undermine the transparent management of the nuclear domain and increase the likelihood of **interstate rivalry, miscalc**ulation, and eventually even perhaps of international **nuclear terror**. In addition to the foregoing, in the course of this century the world will face a series of novel geopolitical challenges brought about by significant changes in the physical environment. The management of those changing environmental commons—the growing scarcity of fresh water, the opening of the Arctic, and global warming—will require global consensus and mutual sacrifice. American leadership alone is not enough to secure cooperation on all these issues, but a decline in American influence would reduce the likelihood of achieving cooperative agreements on environmental and resource management. America’s retirement from its role of global policeman could create greater opportunities for emerging powers to further exploit the environmental commons for their own economic gain, **increasing the chances of resource-driven conflict**, particularly in Asia. The latter is likely to be the case especially in regard to the increasingly scarce water resources in many countries. According to the United States Agency for International Development (USAID), by 2025 more than 2.8 billion people will be living in either water-scarce or water-stressed regions, as global demand for

water will double every twenty years.9 While much of the Southern Hemisphere is threatened by potential water scarcity, interstate conflicts—the geopolitical consequences of cross-border water scarcity—are most likely to occur in Central and South Asia, the Middle East, and northeastern Africa, regions where limited water resources are shared across borders and political stability is transient. The combination of political insecurity and resource scarcity is a menacing geopolitical combination. The threat of water conflicts is likely to intensify as the economic growth and increasing demand for water in emerging powers like Turkey and India collides with instability and resource scarcity in rival countries like Iraq and Pakistan. Water scarcity will also test China’s internal stability as its burgeoning population and growing industrial complex combine to increase demand for and decrease supply of usable water. In South Asia, the never-ending political tension between India and Pakistan combined with overcrowding and Pakistan’s heightening internal crises may put the Indus Water Treaty at risk, especially because the river basin originates in the long-disputed territory of Jammu and Kashmir, an area of ever-increasing political and military volatility. The lingering dispute between India and China over the status of Northeast India, an area through which the vital Brahmaputra River flows, also remains a serious concern. As American hegemony disappears and **regional competition intensifies**, disputes over natural resources like water have the potential to develop into **full-scale conflicts**. The slow thawing of the Arctic will also change the face of the international competition for important resources. With the Arctic becoming increasingly accessible to human endeavor, the five Arctic littoral states—the United States, Canada, Russia, Denmark, and Norway—may rush to lay claim to its bounty of oil, gas, and metals. This run on the Arctic has the potential to cause severe shifts in the geopolitical landscape, particularly to Russia’s advantage. As Vladimir Radyuhin points out in his article entitled “The Arctic’s Strategic Value for Russia,” Russia has the most to gain from access to the Arctic while simultaneously being the target of far north containment by the other four Arctic states, all of which are members of NATO. In many respects this new great game will be determined by who moves first with the most legitimacy, since very few agreements on the Arctic exist. The first Russian supertanker sailed from Europe to Asia via the North Sea in the summer of 2010.10 Russia has an immense amount of land and resource potential in the Arctic. Its territory within the Arctic Circle is 3.1 million square kilometers—around the size of India—and the Arctic accounts for 91% of Russia’s natural gas production, 80% of its explored natural gas reserves, 90% of its offshore hydrocarbon reserves, and a large store of metals.11 Russia is also attempting to increase its claim on the territory by asserting that its continental shelf continues deeper into the Arctic, which could qualify Russia for a 150-mile extension of its Exclusive Economic Zone and add another 1.2 million square kilometers of resource-rich territory. Its first attempt at this extension was denied by the UN Commission on the Continental Shelf, but it is planning to reapply in 2013. Russia considers the Arctic a true extension of its northern border and in a 2008 strategy paper President Medvedev stated that the Arctic would become Russia’s “main strategic resource base” by 2020.12 Despite recent conciliatory summits between Europe and Russia over European security architecture, a large amount of uncertainty and distrust stains the West’s relationship with Russia. The United States itself has always maintained a strong claim on the Arctic and has continued patrolling the area since the end of the Cold War. This was reinforced during the last month of President Bush’s second term when he released a national security directive stipulating that America should “preserve the global mobility of the United States military and civilian vessels and aircraft throughout the Arctic region.” The potentiality of an American decline could embolden Russia to more forcefully assert its control of the Arctic and over Europe via energy politics; though much depends on Russia’s political orientation after the 2012 presidential elections. All five Arctic littoral states will benefit from a peaceful and cooperative agreement on the Arctic—similar to Norway’s and Russia’s 2010 agreement over the Barents Strait—and the geopolitical stability it would provide. Nevertheless, political circumstances could rapidly change in an environment where control over energy remains Russia’s single greatest priority. Global climate change is the final component of the environmental commons and the one with the greatest potential geopolitical impact. Scientists and policy makers alike have projected catastrophic consequences for mankind and the planet if the world average temperature rises by more than two degrees over the next century. Plant and animal **species could grow extinct** at a rapid pace, large-scale **ecosystems** **could** **collapse**, human **migration** could increase to untenable levels, and global **economic development could be** categorically **reversed**. Changes in geography, forced migration, and global economic contraction layered on top of the perennial regional security challenges could create a geopolitical reality of **unmanageable** complexity and **conflict**, especially in the densely populated and politically unstable areas of Asia such as the Northeast and South. Furthermore, any legitimate action inhibiting global climate change will require unprecedented levels of self-sacrifice and international cooperation. The United States does consider climate change a serious concern, but its lack of both long-term strategy and political commitment, evidenced in its refusal to ratify the Kyoto Protocol of 1997 and the repeated defeat of climate-change legislation in Congress, deters other countries from participating in a global agreement. The United States is the second-largest global emitter of carbon dioxide, after China, with 20% of the world’s share. The United States is the number one per capita emitter of carbon dioxide and the global leader in per capita energy demand. Therefore, US leadership is essential in not only getting other countries to cooperate, but also in actually inhibiting climate change. Others around the world, including the European Union and Brazil, have attempted their own domestic reforms on carbon emissions and energy use, and committed themselves to pursuing renewable energy. Even China has made reducing emissions a goal, a fact it refuses to let the United States ignore. But none of those nations currently has the ability to lead a global initiative. President Obama committed the United States to energy and carbon reform at the Copenhagen Summit in 2009, but the increasingly polarized domestic political environment and the truculent American economic recovery are unlikely to inspire progress on costly energy issues. China is also critically important to any discussion of the management of climate change as it produces 21% of the world’s total carbon emissions, a percentage that will only increase as China develops the western regions of its territory and as its citizens experience a growth in their standard of living. China, however, has refused to take on a leadership role in climate change, as it has also done in the maritime, space, and cyberspace domains. China uses its designation as a developing country to shield itself from the demands of global stewardship. China’s tough stance at the 2009 Copenhagen Summit underscores the potential dangers of an American decline: no other country has the capacity and the desire to accept global stewardship over the environmental commons. Only a vigorous Unites States could lead on climate change, given Russia’s dependence on carbon-based energies for economic growth, India’s relatively low emissions rate, and China’s current reluctance to assume global responsibility. The protection and good faith management of the global commons—sea, space, cyberspace, nuclear **prolif**eration, water security, the Arctic, and the environment itself—**are imperative to** the long-term growth of the global economy and **the continuation of** basic geopolitical **stability**. But in almost every case, the potential absence of constructive and influential US leadership would fatally undermine the essential communality of the global commons.     The argument that America’s decline would generate global insecurity, endanger some vulnerable states, produce a more troubled North American neighborhood, and make cooperative management of the global commons more difficult is not an argument for US global supremacy. In fact, the strategic complexities of the world in the twenty-first century—resulting from the rise of a politically self-assertive global population and from the dispersal of global power—make such supremacy unattainable. But in this increasingly complicated geopolitical environment, an America in pursuit of a new, timely strategic vision is crucial to helping the world avoid a dangerous slide into international turmoil.

#### C – Groupthink

#### Congressional requirement avoids insularity and confirmation bias

**Holmes, 9 –** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

The most disastrous result of the Bush administration's hostility to adversarial decision making was the choice to invade Iraq. None of the many books and articles published about the run-up to the war has managed to discover any trace of a serious debate or discussion, even inside the executive branch, of the pros and cons of the war. Such a serious and informed debate did [\*329] not occur in Congress either. Members of Congress were presumably reluctant to assume serious responsibility for such a momentous choice, and the voting public, having been led to believe that Saddam Hussein was somehow responsible for 9/11, would very likely have punished any elected representative who did not favor retaliation against the alleged perpetrators of the attacks. On the other hand, Congress may not have passed the AUMF of 2002 if certain of its key members had not been deliberately deceived by executive-branch prevarication. n61

To refute the Founders' claim that the executive branch will, on balance, perform better if compelled to give plausible reasons for its actions, Eric Posner and Adrian Vermeule argue, first, that Congress and especially the courts are less well-informed about terrorism than experts in the executive branch and, second, that representatives and judges are subject to the same cognitive biases that plague the president and his agents. Because judges, in particular, lack national-security expertise, they assert, non-deferential review cannot, on balance, increase executive effectiveness in the area of counterterrorism. n62 This argument is a non sequitur. That the executive branch acting alone is more effective than the judicial or legislative branches acting alone does not imply that the executive branch acting alone is more effective than the executive branch acting in coordination with the other branches. Indeed, the claim that an executive agency will, on balance, perform best when it is never observed or criticized would not be worth discussing were it not so vehemently advanced in defense of the executive-discretion agenda. The liberty which one-sided advocates of extralegal executive discretion find most odious is the right of citizens and their elected representatives to demand that the executive branch provide plausible reasons for its actions. **If a government no longer has to provide plausible reasons** for its actions, however, it is very likely, in the relative short term, to stop having plausible reasons for its actions. n63

Its capacity for secrecy and dispatch, as mentioned, qualifies the executive branch for acting effectively in a crisis. But such institutional advantages do not necessarily make the executive the most qualified branch for understanding the shape and scope of an unprecedented threat. It is not at all obvious that its hierarchical structure makes the executive capable, in bunkered isolation from the other branches, to analyze intelligently a changing and complex national- [\*330] security environment, to rank various difficult-to-compare threats according to their gravity and urgency, and to make delicate security-security tradeoffs in a responsible fashion. It has often been insinuated - but never proved - that compelling national-security officials to testify before congressional committees and to explain their interpretation of the country's national-security environment will have a detrimental chilling effect on zealous counterterrorism efforts. Reporting requirements can admittedly be onerous. But the assumption that legislative oversight will, on balance, reduce the thoughtfulness with which the executive branch approaches security-security tradeoffs is questionable.

It should also be said that the executive branch cannot hide from Congress, the courts, the public, and the press, without hiding from itself as well. Indeed, one of the main reasons why the Bush administration was reluctant to explain itself to the public was apparently that a small group of fallible individuals inside the Defense Department and the Office of the Vice President wanted to make sure that their bureaucratic rivals in other executive agencies, such as the State Department, did not learn of game-changing decisions until it was too late to reverse them. Secrecy was invoked not only to protect national security but, less justifiably, "to avoid dissent" from other executive-branch officials. n64 The personal hostility, turf warfare, and information hoarding that afflicts America's national security bureaucracies is probably more paralyzing than the government's general commitment to due process or checks and balances. Judge Richard Posner himself contends that intra-executive pathologies such as bureaucratic fragmentation and duplication, unclear chains of command, failure to standardize security clearances, and investment in the wrong set of employee skills pose greater obstacles to effective counterterrorism than congressional or judicial micromanagement. n65 The extent to which Bush's counterterrorism policy led executive agencies to withhold important secrets from each other is startling, among other reasons, because the Bush administration originally singled out the wall between national-security agencies as an important source of governmental dysfunction in the run-up to 9/11.

#### The impact is global instability and nuclear war

Friedman, 11 [George Friedman, President of Stratfor Global Forecasting, “What Happened to the American Declaration of War?”, http://www.stratfor.com/weekly/20110328-what-happened-american-declaration-war]

An Increasing Tempo of Operations All of this came just before the United States emerged as the world's single global power -- a global empire -- that by definition would be waging war at an increased tempo, from Kuwait, to Haiti, to Kosovo, to Afghanistan, to Iraq, and so on in an ever-increasing number of operations. **And** now in Libya, we have reached the point that even resolutions are no longer needed. It is said that there is no precedent for fighting al Qaeda, for example, because it is not a nation but a subnational group. Therefore, Bush could not reasonably have been expected to ask for a declaration of war. But there is precedent: Thomas Jefferson asked for and received a declaration of war against the Barbary pirates. This authorized Jefferson to wage war against a subnational group of pirates as if they were a nation. Had Bush requested a declaration of war on al Qaeda on Sept. 12, 2001, I suspect it would have been granted overwhelmingly, and the public would have understood that the United States was now at war for as long as the president thought wise. The president would have been free to carry out operations as he saw fit. Roosevelt did not have to ask for special permission to invade Guadalcanal, send troops to India, or invade North Africa. In the course of fighting Japan, Germany and Italy, it was understood that he was free to wage war as he thought fit. In the same sense, a declaration of war on Sept. 12 would have freed him to fight al Qaeda wherever they were or to move to block them wherever the president saw fit. Leaving aside the military wisdom of Afghanistan or Iraq, the legal and moral foundations would have been clear -- so long as the president as commander in chief saw an action as needed to defeat al Qaeda, it could be taken. Similarly, as commander in chief, Roosevelt usurped constitutional rights for citizens in many ways, from censorship to internment camps for Japanese-Americans. Prisoners of war not adhering to the Geneva Conventions were shot by military tribunal -- or without. In a state of war, different laws and expectations exist than during peace. Many of the arguments against Bush-era intrusions on privacy also could have been made against Roosevelt. But Roosevelt had a declaration of war and full authority as commander in chief during war. Bush did not. He worked in twilight between war and peace. One of the dilemmas that could have been avoided was the massive confusion of whether the United States was engaged in hunting down a criminal conspiracy or waging war on a foreign enemy. If the former, then the goal is to punish the guilty. If the latter, then the goal is to destroy the enemy. Imagine that after Pearl Harbor, FDR had promised to hunt down every pilot who attacked Pearl Harbor and bring them to justice, rather than calling for a declaration of war against a hostile nation and all who bore arms on its behalf regardless of what they had done. The goal in war is to prevent the other side from acting, not to punish the actors. The Importance of the Declaration A declaration of war, I am arguing, is an essential aspect of war fighting particularly for the republic when engaged in frequent wars. It achieves a number of things. First, it holds both Congress and the president equally responsible for the decision, and does so unambiguously. Second, it affirms to the people that their lives have now changed and that they will be bearing burdens. Third, it gives the president the political and moral authority he needs to wage war on their behalf and forces everyone to share in the moral responsibility of war. And finally, by submitting it to a political process, many wars might be avoided. When we look at some of our wars after World War II it is not clear they had to be fought in the national interest, nor is it clear that the presidents would not have been better remembered if they had been restrained. A declaration of war both frees and restrains the president, as it was meant to do. I began by talking about the American empire. I won't make the argument on that here, but simply assert it. What is most important is that the republic not be overwhelmed in the course of pursuing imperial goals. The declaration of war is precisely the point at which imperial interests can overwhelm republican prerogatives. There are enormous complexities here. Nuclear war has not been abolished. The United States has treaty obligations to the United Nations and other countries. Covert operations are essential, as is military assistance, both of which can lead to war. I am not making the argument that constant accommodation to reality does not have to be made. I am making the argument that the suspension of Section 8 of Article I as if it is possible to amend the Constitution with a wink and nod represents a mortal threat to the republic. If this can be done, what can't be done? My readers will know that I am far from squeamish about war. I have questions about Libya, for example, but I am open to the idea that it is a low-cost, politically appropriate measure. But I am not open to the possibility that quickly after the commencement of hostilities the president need not receive authority to wage war from Congress. And I am arguing that neither the Congress nor the president has the authority to substitute resolutions for declarations of war. Nor should either want to. Politically, this has too often led to disaster for presidents. Morally, committing the lives of citizens to waging war requires meticulous attention to the law and proprieties. As our international power and interests surge, it would seem reasonable that our commitment to republican principles would surge. These commitments appear inconvenient. They are meant to be. War is a serious matter, and presidents and particularly Congresses should be inconvenienced on the road to war. Members of Congress should not be able to hide behind ambiguous resolutions only to turn on the president during difficult times, claiming that they did not mean what they voted for. A vote on a declaration of war ends that. It also **prevents a president from acting as king** by default. Above all, it prevents the public from pretending to be victims when their leaders take them to war. The possibility of war will concentrate the mind of a distracted public like nothing else. It turns voting into a life-or-death matter, a tonic for our adolescent body politic.

#### Empirics are decisive—executive purview fosters backlash and instability

**Rockman, 12** – University Professor of Political Science and Research Professor in the University Center for International Studies at the Uniersity of Pittsburgh (Bert, Poor Leadership and Bad Governance ed: Helms, p. 18-19

Being a global power, the United States has more opportunity to fail with greater consequence than virtually all other countries despite the teetering status of Italy`s fate for Eurozone stability. Much of the US power base lies in the size of its economy, even diminished as it has been since the great recession of 2007-09. The American power base, even more however, resides in its military establishment. The United States spends more on its military than all other countries combined and it **tends to be** more **inclined to intervene** on behalf of what its leaders define as national interests than are other countries. Many examples of problematic leadership originate in the Cold War era when the United States was the chief Western protagonist. Certainly, the American engagement in the war in Vietnam reflected the domino mentality of the political leadership as a class. Similarly, the military proxy engagement in Afghanistan following the Soviet incursion into that country mirrored a tit for tat response to Soviet behavior characteristic of Cold War behavior. It does not appear that there was anything beyond a superficial understanding of why the Soviets invaded Afghanistan in the first place. And after the Soviet forces left, the US went from being actively, though indirectly engaged to total disengagement. The disengagement meant that the importance of Afghanistan to the United States was mostly a function of its importance to the Soviet Union. The US disengagement resulted from changed priorities illustrating the difficulty that competitive political systems have in sustaining activity abroad once the reasons for it have fallen out of the headlines. Yet another case occurred during the first months of the Kennedy administration when it continued a plan, devised by the Central Intelligence Agency (CIA) and originated by the Eisenhower administration, to overthrow the Fidel Castro regime in Cuba. That regime, seeking a big brother patron in the Western hemisphere, had begun to ally itself with the Soviet Union in the face of US hostility. The episode was known as the Bay of Pigs for the area where the anti-Castro Cuban exiles trained by the CIA were to land. As we examine these cases, two things stand out. One of these was a mindset across political leaders molded by the Cold War. Wherever the Soviets acted - or in some cases the Chinese - the United States reacted, and often in ways that either directly or indirectly became costly. The other characteristic that stands out is that despite the high costs of intervention, especially direct military intervention, leaders typically began to look for exit strategies out of the particular morass they helped to create or they simply walked away, meaning that a big investment of resources and blood had been committed to no clear purpose. In the post-Cold War era, the al Qaeda attacks on the United States in September 2001 provided a rationale for the American invasion of Iraq in 2003. Whatever its purposes - and these remain in doubt - the invasion and occupation were hastily and inadequately planned. The result **was** serious backlash against the US forces and the unleashing of costly sectarian strife in Iraq, a country about which America`s leaders knew too little. Another consequence of the invasion and occupation is that it also created an alliance between a new Shiite governed Iraq and the Shiite regime of America's antagonist in the Persian Gulf, Iran. There also were a number of covert operations against various regimes - Castro in Cuba (beyond the Bay of Pigs), Arbenz in Guatemala in 1954, the overthrow of the Mossadeqh regime in Iran and the restoration of the Shah in 1953, the effort to overthrow the Sandinista regime in Nicaragua later leading to scandal (known as the Iran-Contra episode) during the Reagan presidency. At least one of these events was tinged with comic opera characteristics such as the CIA-Mafia collaboration to assassinate Fidel Castro by planting explosive devices inside his cigars. Other episodes were short term successes but longer term failures as they left a heavy imprint of American imperialism and resentment. The removal of President Arbenz in Guatemala led to periods of military repression there, especially toward indigenous populations. The coup that restored the Shah`s rule in Iran ultimately led a quarter of a century later to the reactionary anti-American dictatorship of the mullahs. The effort to eliminate the Ortega-Sandinista rule in Nicaragua settled with Ortega back in power. The leadership in these situations suffered from myopia and, too often, from the conditioning of the Cold War. The short run successes often proved to be more problematic than not in the longer run.

#### Clear rules in advance are especially key for crisis management

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What the new functionalists fail to engage, however, are flexibility's substantial costs, especially in grappling with an emergency. For example, organizations that depend on decentralized decision-making but leave subordinates too much flexibility can face substantial principal-agent problems, resulting in effectively arbitrary decisions. The problem of differences in motivation or understanding between organizational leaders and frontline agents is a familiar one, a disjunction that can leave agents poorly equipped to translate organizational priorities into priority-consistent operational goals. As Sagan found in the context of U.S. nuclear weapons safety, whatever level of importance organizational leadership placed on safety, leaders and operatives would invariably have conflicting priorities, making it likely that leaders would pay "only arbitrary attention to the critical details of deciding among trade-offs" faced by operatives in real time. n186 One way of describing this phenomenon is as "goal displacement"-a narrow interpretation of operational goals by agents that obscures focus on overarching priorities. n187 In the military context, units in the field may have different interests than commanders in secure headquarters; n188 prison guards have different [\*1603] interests from prison administrators. n189 Emergencies exacerbate the risk of such effectively arbitrary decisions. Critical information may be unavailable or inaccessible. n190 Short-term interests may seek to exploit opportunities that run counter to desired long-term (or even near-term) outcomes. n191 The distance between what a leader wants and what an agent knows and does is thus likely even greater.

The Cuban Missile Crisis affords striking examples of such a problem. When informed by the Joint Chiefs of Staff of the growing tensions with the Soviet Union in late October 1962, NATO's Supreme Allied Commander in Europe, American General Lauris Norstad, ordered subordinate commanders in Europe not to take any actions that the Soviets might consider provocative. n192 Putting forces on heightened alert status was just the kind of potentially provocative move Norstad sought to forestall. Indeed, when the Joint Chiefs of Staff ordered U.S. forces globally to increase alert status in a directive leaving room for Norstad to exercise his discretion in complying with the order, Norstad initially decided not to put European-stationed forces on alert. n193 Yet despite Norstad's no- provocation instruction, his subordinate General Truman Landon, then Commander of U.S. Air Forces in Europe, increased the alert level of nuclear-armed NATO aircraft in the region. n194 In Sagan's account, General Landon's first organizational priority-to maximize combat potential-led him to undermine higher priority political interests in avoiding potential provocations of the Soviets. n195

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disastetr [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.

Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200

Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.

In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without replacing those rules with more than the most general guidance about custodial intelligence collection. n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208

Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

### Solvency

#### Contention 2 is Solvency

#### The aff spurs inter-branch debate and builds strategic coherence in foreign policy despite circumvention risks

**Smidt, 9 –** LIEUTENANT COLONEL MICHAEL L. SMIDT, US Army. Paper submitted in fulfillment of a Masters in Strategic Studies degree at the US Army War College (“THE PROPOSED 2009 WAR POWERS CONSULTATION ACT” dtic.mil)

Although the primary benefit from a joint Congressional and Presidential decision to commit the armed forces into armed conflict, it turns out, over the long run, there are significant strategic benefits in complying with the shared power construct laid out in the Constitution. Certainly Clausewitz never formally supported the ideals of the United States Constitution. However, his writings regarding the importance of government in warfare ironically do suggest there are strategic advantages for a government to follow its political principles. While certainly no two wars are alike, there are, according to Carl von Clausewitz, three common components present in all armed conflicts. This “paradoxical trinity,” as he describes it, is “composed of primordial violence, hatred and enmity. . . .”82 The first of these three aspects is generally associated with the “people,” the second, “with the commander and his army,” and the third with “the government.”83 Clausewitz goes on to explain that a successful military policy or strategy will be one that considers each leg of the trinity and balances the relationship between them like “an object suspended between three magnets.”84 Clausewitz explains that any successful wartime strategy must include participation by the political arm. In the final analysis, the use of military force is nothing more than the clear manifestation and forceful exercise of state policy by violent or potentially violent means.85 Therefore, the state political arm must clearly articulate to the military the underlying political objective sought and how the government defines success.86 Strategy is neither a purely political creation, nor a military one;87 however, “strategy ultimately derives its significance from the realm of politics. . .”88 and “the political dimension of strategy is the one that gives it meaning.”89 The governing body, not just its military forces, must participate in the making of strategy. When a decision is made to apply military force to a problem, the body politic must determine the scope, magnitude and duration of its commitment. The state must decide what it is willing to spend in terms of lives and treasure. The state must calculate what risks it is willing to assume regarding its own national security and that of its allies and the international community. 90 Failure of the government to participate in the making of strategy can lead to potentially catastrophic results on the battlefield.91 Achieving the political object underlying the decision to use military power determines the degree of effort and commitment required of the military.92 Success on the battlefield may be as much about the quality, clarity, and suitability of a state’s political objectives as it is about the relative military vitality, strength and tactical superiority of the various opponents in the conflict. When the government fails to fulfill its responsibility to set and clearly articulate policy, it creates strategic uncertainty within its own population, its armed forces and allies. Moreover, absent clearly articulated state policy, the military element of power will not enjoy its full deterrent potential against the enemy.93 As discussed above, the Framers created a system that requires the participation of both branches of government in national security decisions. Unless both branches participate, the President is acting without congressional power and he is therefore only exercising half of the available war making power of the US government. Moreover, where the President fails to consult with Congress and seek concurrence for any significant commitment of forces in hostilities, or where Congress chooses to avoid participating in any such decision, strategic uncertainty may be the result. Unless both Congress and the President clearly articulate their objectives through a declaration of war or similar legislative or regulatory equivalent, US armed forces, US allies, and perhaps most importantly, the enemy, will not be certain of America’s resolve and determination. Allies might question whether the United States has the stomach to continue for a lengthy period. Commanders will be uncertain as to the funding available and the degree to which the country will mobilize. Where both political branches participate in any significant commitment of the armed forces of the United States, constitutional principles are preserved and there are strategic benefits as well. First, adherence to these priciples demonstrates to the world that as a democratic institution, built on the rule of law, the United States remains faithful to the principles and checks and balances established in the Constitution. Second, the government leg of Clausewitz’s trinity is strengthened where both branches are involved. Any failure to include both political branches means that only half of the power available to the government is employed. Purposes and Problems Associated With The 1973 War Powers Resolution The stated purpose of the 1973 War Powers Resolution (Resolution),94 is to “insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or such situations.”95 The Resolution limits a President’s power to introduce troops into hostilities where there is (1) a congressional declaration of war, (2) a specific congressional statutory authorization, or (3) a “national emergency created by attack upon the United States, its territories or possessions or its armed forces.”96 Presidents of both political parties have argued that their power to deploy troops exceeds these three limited circumstances. For example, Presidents have asserted the power to “rescue Americans abroad, rescue foreign nationals where such action facilitates the rescue of U.S. citizens, protect U.S. Embassies and legations, suppress civil insurrection, implement the terms of an armistice or cease-fire involving the United States, and carry out the terms of security commitments contained in treaties.”97 Just to name a few, examples where Presidents have deployed military forces which exceed the authority of the Resolution include Grenada, Yugoslavia and Haiti.98 Even many strong supporters of congressional power agree that the Resolution overly restricts the President in the types of situations he may send armed forces.99 The Resolution contains requirements relating to consulting with, and reporting to, Congress. However, because of poor drafting, these otherwise justifiable requirements create issues. Presidents are to “consult” with Congress “before” introducing forces into “hostilities or into situations where imminent involvement in hostilities is clearly indicated.”100 The President must continue to consult with Congress regularly until the forces are removed from the situation.101 However, the Resolution does not explain with whom among the 535 members of Congress the President is required to consult.102 The President is required to provide a written report to Congress whenever he introduces forces into hostilities or when hostilities are imminent. He must report deploying troops to a foreign country “equipped for combat” unless those troops are involved in training exercises.103 Unless the President is granted a 30 day extension, 60 days after such a report is provided to Congress, the President must remove the forces if Congress does not affirmatively declare war or provide a statutory equivalent.104 No President has ever filed a report as required by this section.105 Many law scholars agree that Section 5(c),106 which requires the President to withdraw troops from hostile areas where Congress issues a “concurrent” resolution to withdraw troops, is unconstitutional. Only one branch of government is required to participate in a concurrent resolution. In INS v. Chadha, 107 a case decided by the Supreme Court subsequent to the 1973 War Powers Resolution, the Court struck down the practice of using one-house legislative vetoes.108 The Supreme Court has never decided a case on the constitutionality of the War Powers Resolution. Over the course of its existence, over 100 individual members of Congress, acting alone or in small contingents, have petitioned the courts in order to challenge the legality of presidential decisions to deploy American forces. However, Congress as a whole has never sought to compel the President to comply with the Resolution, and therefore, the Supreme Court has avoided considering the issue.109 For example, individual members of Congress have redressed the courts for actions in El Salvador, Nicaragua, Grenada, tanker escort duty in the Persian Gulf, the first Iraq war, and Kosovo. In each case, the judicial branch managed to avoid making a determination on the constitutionality of the Resolution due to the courts’ determination to leave issues of national security to the political branches.110 In addition to its apparent constitutional defects, from a policy standpoint, some have argued the Resolution is detrimental to the operational effectiveness of U.S. forces. The Resolution places troops and civilians abroad at greater risk and has the potential to negatively affect a strategy based partially on deterrence.111 Critics of the Resolution point out that in 1983 members of Congress cited the Resolution and insisted on specifically knowing how long the Marines would be stationed in Lebanon. A precise timetable would certainly have benefited terrorist groups in terms of their own strategy and whether they could simply outlast the United States.112 When the U.S. agreed to reflag ships traveling through the Persian Gulf in the late 80’s, there was some concern that this reflagging action required the President to report to Congress the possibility of hostilities. Some in the international community may have been concerned that the notice to Congress of possible hostilities could have been a masked indication of the real U.S. intent to use the reflagging operations as a pretext introduce combat forces in the area for follow on combat activities in the region.113 Cirtics point out that the Resolution places citizens abroad at greater risk because the Resolution does not permit the President to send troops to rescue Americans overseas.114 Americans overseas may have been placed at greater risk in Vietnam had the President sought congressional authority to conduct a rescue when Vietnam collapsed, in Grenada when Cubans took control of that county, and in Panama when Americans were subject to attack prior to the removal of Noriega. Certainly Congress would have granted authority to rescue in these cases; however, having to seek permission takes time where time is often of the essence. Where secrecy is paramount, having to go to Congress would threaten compromise. Although Presidents have asserted the Resolution is unconstitutional, various Presidents have made decisions in order to avoid triggering certain provisions of the Resolution and thereby placing troops at risk. For example, US soldiers in El Salvador were not allowed to carry M16s in order to avoid triggering the “equipped for combat” provisions. 115 Marines in Lebanon were not permitted to carry loaded weapons and were under a very defensive ROE so that the President would not have to report to Congress that the Marines were facing “imminent involvement in hostilities.”116 As with the creation of many laws, there are potential unintended consequences. The timetables in the Resolution grant the President the ability to operate up to 90 days in certain cases without reporting to Congress. Critics of the Resolution have argued that a President may elect to bring far greater military force to bear on an opponent than is reasonable in order to ensure any military action would be complete prior to exceeding the time limits listed in the Resolution.117 Conversely, these same time tables might give strength to an enemy trying to hold on for 90 days and incite the enemy to surge and to create maximum U.S. casualties in during that same 90 day period.118 Finally, the Resolution seeks to limit a President’s authority to introduce forces into hostilities based on a mutual defense treaty unless Congress specifically grants the executive the power to deploy forces into hostilities as part of congressional implementation of such a treaty.119 These means that in a regional arrangement such as NATO, where an attack on one is considered an attack on all, the President could not come to the defense of the relevant ally without first getting a green light from Congress. This might give potential treaty partners cause for concern because although the President is promising support, his promise is contingent on congressional support and the time it takes to secure that support. Defects Cured in the Proposed 2009 War Powers Consultation Act Although the War Powers Commission concluded that the 1973 War Powers Resolution is unworkable, the Commission concurs that creating an effective legislative framework requiring both branches to participate in any decision to commit U.S. armed forces is worth pursuing. The Commission has proposed a statute that addresses the shortcomings of the 1973 War Powers Resolution by “eliminating aspects of the War Powers Resolution of 1973 that have opened it to constitutional challenge,” and by “. . . promoting meaningful consultation between the branches without tying the President’s hands.” The Act also focuses on “providing a heightened degree of clarity and striking a realistic balance that both advocates of the Executive and Legislative Branches should want.”120 If the proposed 2009 War Powers Consultation Act (Act) is enacted, it will repeal the 1973 War Powers Resolution.121 It does not seek to “define, circumscribe, or enhance the constitutional war powers of either the Executive or Legislative Branches of government. . . .”122 Its primary purpose is to require the participation of both political branches of government when American armed forces are involved in “significant armed conflict.”123 The proposed Act defines “significant armed conflict” as any conflict “expressly authorized by Congress,” or “any combat operation by U.S. armed forces lasting more than a week or expected by the President to last more than a week.”124 The drafters of the proposed Act wanted to involve Congress “only where consultation seems essential.”125 As an example of the application of the definition of significant armed conflict, the Commission points out that President Reagan’s “limited air strikes against Libya would not be considered ‘significant armed conflicts’”, but conversely, the “two Iraq Wars clearly would be . . .” the later would require consultation, the former would not.126 Certain types of combat or combat like operations are specifically exempted from coverage by the statute. For example, the Act would not be triggered when the President is acting to “repel attacks, or prevent imminent attacks” against the “United States, its territorial possessions, its embassies, its consulates, or its armed forces abroad.”127 The Act also exempts “limited acts of reprisal against terrorists or states that sponsor terrorism.”128 Other types of troop deployments expressly exempt from the coverage of the statute include foreign disaster relief,129 “acts to prevent criminal activity abroad,”130 covert operations,131 training exercises,132 and rescuing U.S. citizens abroad.”133 Therefore, the Act would not apply in a Grenada-like rescue of American citizens. Unlike the War Powers Resolution of 1973, the proposed Act clearly lays out with whom in Congress the President must consult when the statute is applicable.134 The Act further requires the President to consult with the listed members of Congress, “Before ordering the deployment of United States armed forces into significant armed conflict . . . .”135 However, where the “need for secrecy or other emergent circumstances precludes consultation. . .” prior to deploying forces, the President must consult with the members of Congress listed in the Act within “three calendar days after the beginning of the significant armed conflict.”136 The President is required to consult with Congress on matters of national security and foreign policy “regularly.”137 Where a “significant armed conflict” is involved, the statute requires continued consultation every two months.138 In addition to consultation with Congress, the Act requires the President to submit a written “classified” report to Congress “setting forth the circumstances necessitating the significant armed conflict, the objectives, and the estimated scope and duration of the conflict.”139 The President must submit the report prior to ordering or approving sending of troops into significant armed conflict.140 Where however, there is a need for “secrecy” or where “emergent circumstance” exists, he must submit the report within three calendar days after the beginning of any significant armed conflict.141 The Act also creates an annual written reporting requirement for the President “due each first Monday of April each year” regarding all ongoing operations.142 Section 5 has been described as “the heart” of the Proposed War Powers Consultation Act of 2009.143 If Congress has not authorized the commitment of U.S. forces in a “significant armed conflict” after receiving presidential notice, then the Act states that the, “Joint Consultation Committee shall introduce an identical concurrent resolution in the Senate and House of Representatives calling for [its] approval.”144 If a concurrent resolution supporting the action is defeated, then any Senator or Representative may file a joint resolution of disapproval which “shall” be voted on within five calendar days.145 The joint resolution will have the force of law only if signed by the President, or if approved by Congress over the President’s veto.146 Section 5 recognizes that the framers of the Constitution intended Congress to play a role in foreign affairs and to influence the use of military force abroad. This Act requires Congress to vote up or down on a President’s decision to commit military forces in a significant armed conflict. Unlike the 1973 War Powers Resolution, the Act does require the President to remove forces from hostilities where Congress fails to act. Forcing those in Congress to vote early either places the entire strength of the government behind the action, or, in the alternative, may require the removal of troops where the entire body politic, and by extension, the American people do not support the effort. While the Act does not delineate which branch has primacy in war making decisions, or who ultimately has the responsibility to decide, , or exactly what roles the respective branches are to play; it does establish a framework requiring each branch is required to participate and work together in a cooperative and deliberative fashion when deciding whether to employ military force.147 Conclusion It is in the United States’ best interests to enact the proposed 2009 War Powers Consultation Act on the grounds that it will encourage shared decision making for any significant use of the armed forces. Joint, rather than unilateral, congressional and presidential foreign policy decisions to use the military are more consistent with the national security framework in the Constitution. The Framers intentionally built a framework which would prevent an overly aggressive government from engaging military forces without deliberate and thoughtful consideration,148 but one which would also be able to take resolute action and defend itself and its interests when necessary.149 Both branches of government have certain indispensable keys relating to the effective use of the military as an instrument of power.150 The constitutional requirement for near simultaneous use of these keys creates a shared power framework. However, Presidents have often been willing to commit troops without first consulting with Congress and Congress has simply gone along. This phenomenon has been described by one scholar as, “Executive custom and Congressional acquiescence.”151 The proposed 2009 War Powers Consultation Act preserves the spirit and objectives of the 1973 War Powers Resolution. The Act facilitates the participation of both political branches of government in any decision to commit forces in any significant operation, while addressing the constitutional and policy defects associated with the Resolution. Passage of the Act should not only serve to protect the American people from an adventurous President, but citizens will also benefit because the Act seeks to force a reluctant Congress to debate and participate in these most important governmental decisions. The Act will go a long way toward restoring the balance of power established by the Framers in the Constitution. In a democracy built on the rule of law, it is imperative that the government comply with the ideals enunciated in the Constitution even though this might, on occasion, mean more time and debate. As discussed above, the Act carves out exceptions to the consultation and voting requirements for emergency situations where time is of the essence. Congress is the peoples’ branch of government and the people need to be heard when their sons and daughters are sent into harms way.152 Moreover, when the government adheres to constitutional provisions in matters of national security, strategic advantages will follow. First, in the general sense, the government will appear strong when in compliance with its own rules. The government will not appear panicked or stressed. Second, with regard to the specific conflict involved, when both branches of government support a military action, it will be clear to allies, neutrals and enemies alike the United States means business and is willing to use its military element of power to resolve the issue. Third, a declaration of war or similar statutory pronouncement would have the pragmatic advantage of legal sanction and all that that entails. A declaration of war or similar vote as required by the 2009 War Powers Consultation Act would serve to mobilize the American public.153 And finally, U.S. commanders and soldiers on the ground we be in a better position to plan and execute military operations on the ground. The political objectives established by the policy makers will be more clear. Commanders will have a better idea of how the civilian leadership defines success when national interest are at stake. Where the entire government supports a military action, commanders and soldiers will have reason for faith that the government will provide the resources and personnel required. As has been said, Unless Congress has un-equivocally authorized a war at the outset, it is a good deal more likely to undercut the effort, leaving it in a condition that satisfies neither the allies we induced to rely on us, our troops who fought and sometimes died, nor for that matter anyone else except, conceivably the enemy.154 Congress can easily strangle any war effort where it has not been consulted in advance.155 Of course there are potential risks involved with any attempt to shore up the Constitution with statutory law. First, any legislative framework carries with it the possibility of creating new and unforeseen problems. An overly ambitious attempt to create a more shared balance of power between the Executive and the Legislature, could cause the system to take on the nature of a more parliamentary form of government, which, when viewing the European experience since 9/11, and our own experience during the Revolutionary War, may not be in the United States’ best security interests. Others may argue that we do not need a legislative solution which attempts to mandate exactly how the two branches are to balance the war making power. What we currently have works. Our current system, as flawed as it may be, is one born both of constitutional theory and the “gloss” of historical practice. As Justices Jackson and Douglas teach us in Youngstown,156 both political branches have participated to varying degrees in the decisions to use the armed forces. These two justices seem to be suggesting that the Constitution created a theoretical framework of balanced or shared power, leaving it to history and application to fill in the details. Statutory refinements may only serve to frustrate the application of the Constitution. And finally, it is questionable whether the 2009 War Powers Consultation Act would be enforced anymore than the 1973 War Powers Resolution has been. As with the 1973 War Powers Resolution, there is no guarantee that one or both branches will not simply ignore the law. Furthermore, based on the political question doctrine, the Supreme Court may be just as reluctant to enforce or interpret the Act as it has been the Resolution. These potential risks are minimal as compared to the likely benefits of the Act. The potential restoration of a balanced and shared war making power as originally intended by the Framers outweighs the risks. After 35 years of War Powers Resolution experimentation, the drafters have been able to create a statute which will alleviate the constitutional and policy problems with the Resolution. And as a pragmatic benefit, compliance with the act will lead to greater strategic certainty. From the trench, that sounds like a strategy worth pursuing.

#### Our WPCA modifications avoid circumvention and solidify congressional role

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

The inherent flaws in the War Powers Resolution have recently become the focus of an initiative far more important than the scholarly debate that has previously been its primary product.16 In a recently published report,17 the National War Powers Commission, composed of distinguished former public officials and nationally renowned constitutional scholars proposed the enactment of the War Powers Consultation Act of 2009 (WPCA) as a replacement for the War Powers Resolution.18 This Commission performed its work at the Miller Center of the University of Virginia, and its report articulates in compelling terms why the WPR has failed19, and why consultation between the two political branches has and remains the sine qua non of constitutionally legitimate war powers decisions. Accordingly, the members of the Commission: urge that in the first 100 days of the next presidential Administration, the President and Congress work jointly to enact the War Powers Consultation Act of 2009 to replace the impractical and ineffective War Powers Resolution of 1973. The Act we propose places its focus on ensuring that Congress has an opportunity to consult meaningfully with the President about significant armed conflicts and that Congress expresses its views. We believe this new Act represents not only sound public policy, but a pragmatic approach that both the next President and Congress can and should endorse. The need for reform **stems from** the gravity and uncertainty posed by war powers questions. Few would dispute that the most important decisions our leaders make involve war. Yet after more than 200 years of constitutional history, what powers the respective branches of government possess in making such decisions is still heavily debated. The Constitution provides both the President and Congress with explicit grants of war powers, as well as a host of arguments for implied powers. How broadly or how narrowly to construe these powers is a matter of ongoing debate. Indeed, the constitution’s framers disputed these very issues in the years following the Constitution’s ratification, expressing contrary views about the respective powers of the President, as “Commander in Chief,” and Congress, which the Constitution grants the power “To declare War.”20 The proposals focus on “meaningful” consultation is unsurprising. Indeed, this was a key concern of the drafters of the WPR. As is noted throughout the Report, consultation must be meaningful in order to ensure the cooperative decision-making process essential to constitutionally valid war powers decisions21. This in turn leads to the core of the Commission’s proposal: that consultation occurs prior to, or immediately after a use of the armed forces in a “significant armed conflict.” This term is defined in the proposal as either a use of the armed forces expressly authorized by Congress, or any other use ordered by the President that involves hostilities lasting more than 7 days It is clear from the Commission Report that the key objective of this proposal is to not only ensure cooperation between the political branches of government in relation to the decision to engage in the nation in hostilities, but perhaps more importantly to define with greater precision than the WPR those situations in which such cooperation is required. As I will argue below, this objective is consistent with the historical constitutional “gloss” of war powers. However, it is the thesis of this article that the proposal suffers from the same inherent flaw that hobbled the notification and consultation provisions of the WPR, namely a twilight zone surrounding the trigger for such notification and consultation. Like the failed concept of “hostilities or where imminent hostilities are present24”, the concept of “armed conflict25” will almost inevitably be susceptible to interpretive debate. In addition, the 7 day trigger, like the ubiquitous 60 day clock, will almost inevitably lead to assertions that the President has plenary authority to initiate hostilities, an assertion that is simply overbroad. Finally, and perhaps most problematically, it is unlikely any President will acquiesce to mandated consultation obligations for armed conflicts “thrust” upon the nation, irrespective of their duration. Instead, it is much more likely that they will assert such military operations are conducted pursuant to their exclusive authority to respond to sudden attacks by “meeting force with force26.” There is, however, simply no question that the effort to eliminate the WPR’s express authorization requirement – the provision of the Resolution most inconsistent with the history of constitutional war powers – and the effort to define a more effective triggering event for consultation, is perhaps the ideal remedy to the ongoing debate over how to effectively balance the war powers of the two political branches. What is therefore needed to “close this deal” is a more effective consultation trigger. Such a trigger will ensure Congress is placed on notice in advance of military operations that implicate its institutional war authorization (or prohibition) role. Such a trigger, if properly tailored, would facilitate the ability of Congress to “take a stand” on war making initiative in a timely manner, prevent the President from presenting Congress with a fait accompli, and validate reliance on subsequent congressional acquiescence. The consultation trigger of the proposed replacement for the WPR provides the start point for ensuring “meaningful” consultation. However, the efficacy of this proposal will remain compromised until uncertainty as to when such consultation is constitutionally required is resolved. Enhancing this proposal with a more precisely tailored and operationally grounded “trigger” for such pre-execution notice and consultation with Congress is therefore essential. This trigger must be more carefully tailored than either the current “hostilities or…situations where imminent involvement in hostilities is clearly indicated27” language of the WPR – terms that to this day remain undefined, or the proposed “significant armed conflict28” trigger of the WPCA. In addition, the trigger must be tailored to exempt from such mandated notification uses of the armed forces falling under the inherent and exclusive authority of the President – namely responses to sudden attacks. This article will propose such a trigger. Instead of using general terms subject to divergent definitions (and therefore evasion), it will propose a trigger derived from the principles of military operations. This trigger will be linked to the nature of the Rules of Engagement proposed for National Command Authority approval in relation to a given military operations29. These rules reflect the fundamental nature of the authority granted to the armed forces by the President as an aspect of all military operations, and therefore provide a viable mechanism to distinguish responsive uses of armed force from operations where the United States initiates combat activities. It is only in this latter category that pre-operation congressional notification should be required. Linking such notification to the authorization of “mission specific” Rules of Engagement – a concept that will be explained below – will substantially contribute to the efficacy of the historically validated war making balance between the President and Congress.

#### This avoids presidential powers – maintains the right to self-defense, but creates a binding requirement impervious to circumvention

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

Proposing an ROE Linked Notification Provision. This article is premised on the conclusion that express congressional approval is not a constitutionally required predicate for the initiation of armed hostilities by the United States. However, it is also premised on the equally important conclusion that this lack of an express approval requirement – perhaps the ultimate overreach of the War Powers Resolution – cannot properly be interpreted as authorizing the President to initiate all hostilities based on an assertion of inherent executive power. Instead, with the limited exceptions of response to sudden attack and genuine rescue operations, Congress retains the ultimate “check” on the assertion of executive war-making initiatives225. Accordingly, the essential element of the effective execution of the Constitution’s shared war powers framework is providing Congress with a meaningful opportunity to exercise its constitutional role226. Meaningful is the key qualifier, for it indicates that Congress must be afforded the opportunity to check executive war making initiative before they are presented with a fait accompli as the result of initiation of combat operations prior. It therefore becomes clear that pre-execution notification of a planned initiation of hostilities is essential to satisfy this constitutional imperative227. This conclusion was central to the congressional effort to re-establish its role in the war-making process when it passed the War Powers Resolution, and is equally central to the recent Miller Center proposal to amend that law.228 While the Resolution is generally regarded as ineffective,229 it is not necessarily the notification provision that led to this conclusion. In fact, that provision is perhaps the one component of the Resolution that has proved relatively successful. However, as the Miller Center proposal recognizes, uncertainty as to when notification is triggered has and will continue to compromise the efficacy of even that component of the Resolution230. Unfortunately, while the MillerCenter Proposal of a “significant armed conflict” trigger231 is less susceptible to interpretive avoidance than the current Resolution notification provision, it nonetheless fails to link notification to a military operational criteria for distinguishing responsive uses of force from initiations of hostilities. Linking notification to the authorization of ROE measures beyond the standing “inherent” right of self-defense cures this defect. Because National Command Authority approval is necessary for ROE measures that permit the application of combat power in a manner necessary to initiate hostilities with another state or even a non-state entity,232 a contemporaneous notification provision provides the most effective method of ensuring notification is provided to Congress based on an operational standard for conflict initiation. In addition, required notification will be triggered by the decision-making process of the President, and not on an interpretation of the term “hostilities”. Perhaps most importantly, it will ensure notification occurs no later than the point in time when the authorization necessary to employ force for mission accomplishment is provided, thereby mitigating the risk of presenting Congress with a proverbial fait accompli, a result essentially conceded as acceptable by the Miller Center proposal.233 It is the opinion of this author that incorporating such a notification trigger into the proposed War Powers Consultation Act of 2009 would result in a significant improvement to that exceptionally well conceived legislation. This improvement would be the result of the elimination of the one remaining source of uncertainty inherent in the proposal. To accomplish this, the definition provision of that law should be amended as follows: 3(A). For purposes of this Act, “significant armed conflict” means (i) any conflict expressly authorized by Congress, or (ii) any mission conducted by the U.S. armed forces pursuant to Rules of Engagement authorizing the ue of force beyond the scope of authority provided by the inherent rightof self-defense permitting those forces to initiate hostilities with any state or non-state opponent. Based on this revised definition, the notification/consultation trigger of the proposed law235 should be amended as follows: 4(B). Before ordering the deployment of United States armed forces into significant armed conflict, the President shall consult with the Joint Congressional Consultation Committee. To “consult,” for purposes of this Act, the President shall provide an opportunity for the timely exchange of views regarding whether to engage in the significant armed conflict, and not merely notify the Joint Congressional Consultation Committee that the significant armed conflict is about to be initiated. In order to ensure this constitutionally meaningful consultation, the President shall engage in such consultation no later than that point in time when he or the Secretary of Defense authorize mission accomplishment supplement Rules of Engagement for the purpose of providing U.S. armed forces with the use of force authority necessary to accomplish the anticipated military mission. If one of the military actions described in Section 3(B) of this Act becomes a significant armed conflict as defined in Section 3(A), the President shall similarly initiate consultation with the Joint Congressional Consultation Committee. Providing for an operationally grounded trigger will ensure the full effectiveness of the remainder of the proposed statute with no further modifications. Even the three day “exigency” exception will operate consistently with this amendment, for it will limit late notification to causes beyond the control of the President, namely an inability to communicate with the designated legislators. However, this ROE trigger will eliminate or at least greatly mitigate the risk that a President might attempt to exploit this exemption in the same way that past Presidents have exploited the current sixty-day clock.236 Enacting the War Powers Consultation Act of 2009237 with this limited but important modification holds the greatest promise of finally achieving the objective of the drafters of the War Powers Resolution sought to achieve 36 year ago: to “fulfill the intent of the framers of the Constitution of the United Statesand insure that the collective judgment of both the Congress and the President238” apply to the decision to initiate armed hostilities.

#### It’s credible and improves decision making

**Cole, 12** – professor of law at Georgetown (David, “Are We Stuck with the Imperial Presidency?” 6/7,

<http://www.nybooks.com/articles/archives/2012/jun/07/are-we-stuck-imperial-presidency/?pagination=false>)

Posner and Vermeule contend that more specific statutory regimes have also failed to constrain the president. The War Powers Resolution, the National Emergencies Act, and the International Emergency Economic Powers Act, for example, all enacted after Watergate to rein in presidential action, have proved largely ineffectual. Presidents have repeatedly argued that the statutes do not apply. The Obama administration recently did so when it implausibly claimed that the War Powers Resolution—requiring congressional approval of any use of troops in “hostilities” that last more than sixty days—did not apply to the military intervention in Libya. And Congress has failed to exercise meaningful oversight even where such statutes call for it to do so. All of this seems right, to a point. But ironically, Posner and Vermeule base their “legal realist” critique on an excessively formalist assessment of whether law constrains, looking almost entirely at statutory language on its face and at judicial decisions. They argue that legal standards are often manipulable, and that judges therefore often defer to the executive. But the fact that law usually does not dictate particular executive decisions—hardly a surprising revelation—does not mean that it does not constrain them. And in particular, it is misguided to look only at judicial decisions, for law operates outside the courts as well. Thus, while the APA’s open-ended standards undoubtedly permit judges to defer to the executive, they do not require them to defer. Some judges will defer; others will not, as when the Supreme Court in 1983 reversed the National Highway Traffic Safety Administration’s repeal of a requirement for passive restraints in all new cars, or when the D.C. Circuit Court in 2008 rejected the Environmental Protection Agency’s rules for mercury emissions. The executive generally cannot know in advance whether court review will be strict or deferential, and that uncertainty itself has a deterrent effect on the choices it makes, even in the many cases that do not end up in court. In my experience, lawyers for the executive branch generally take legal limits seriously. They take an oath and have been trained to uphold the law. They know that claims of illegality can undermine their programmatic objectives. They cannot predict when they will end up in court and so try to avoid legal challenges. To focus exclusively on specific judicial decisions is to miss law’s daily operation outside the courts. Similarly, to look only at enacted laws misses the checking role that legislators play through other means—such as holding oversight hearings, launching investigations, or simply requesting information about executive practices. The experiences of executive officials, who devote much of their time to compliance with legal mandates and to defending their agency’s actions in Congress and the courts, contradict Posner and Vermeule’s armchair claims that legislative and judicial checks are illusory.3 And President Obama, who has had to fight Congress—and has often lost—on virtually every initiative he has pursued, from economic reform to health care to Guantánamo’s closure, would certainly be surprised to learn that his power knows no limits.

#### Explicit congressional authorization maintains flexibility while restraining the executive

Fleischman, 10 [J.D. Candidate, 2010, New York University School of Law; B.A., 2007, Washington University in St. Louis, A FUNCTIONAL DISTRIBUTION OF WAR POWERS Matthew Fleischman \*, <http://www.nyujlpp.org/wp-content/uploads/2012/11/Matthew-Fleischman-A-Functional-Distribution-of-War-Powers.pdf>]

IV. THE WAR POWERS LAW WE NEED Given the theoretical outline above, this Note will now present an alternative statute, **based upon the WPCA**, to govern this complex problem. The full text of the statute is appended to the end of this Note. I will explain, section by section, how and why my proposed act differs from the WPCA. Section 1 includes an alternative title for the act: the War Powers Procedure Act (WPPA). This title reinforces that this new statute does not intend to alter the constitutional distribution of war powers, but simply prescribes a process by which those powers can be effectuated. The title will still include the word “Act,” “to avoid the confusion surrounding the term ‘Resolution.’”196 Section 2 of the proposed WPPA still “recognizes that we cannot resolve the constitutional questions underlying the war powers debate,” 197 but only prescribe a process by which they will be exercised. Some have argued that the language of the WPR’s section 2 provides a mechanism for the Executive to circumvent the act.198 Nonetheless, the proposed language in the WPPA **mitigates the risk of the act being deemed unconstitutional** just as similar language did so in the WPR. The language simply serves to explain the reasons underlying the adoption of the WPPA. Just as in the WPCA, section 3 of the WPPA clearly defines the core terms of the statute. This is designed to **remedy the ambiguity created by the WPR.** Section 3(A) is altered to also include “significant armed conflict” in the definition of “declarations of war.” While formal declarations of war rarely occur and few would debate that they qualify as significant armed conflicts, it is nonetheless important to write a statute that provides for all reasonably foreseeable possibilities. Section 3(A)(iii) is modified to shorten the minimum time period required for a use of force to qualify as a significant armed conflict. Given that there is substantial reason to require congressional authorization, 199 this qualification is designed only to provide adequate flexibility for small tactical missions that are not included in the exceptions of section 3(B). The list of exceptions in section 3(B) now contains a maximum number of days the exception can last. Rather than use the vague language in the WPCA (e.g. “limited”200), the cap on the number of days that each of the exceptions can last provides increased clarity. This alteration ensures that an action in defense of our nation cannot be turned into an extended offensive strike. This is important since it is critical to limit the number of methods by which the Executive can evade congressional authorization. The number of days is capped at 10 because that should be sufficient time for Congress to fully debate the issue at hand.201 Often times the debate over whether or not to go to war begins long before an action is commenced and, even if it is not, it is critical for decisions to be made quickly before policy options become more limited. The list of exceptions is also altered to no longer include limited acts of reprisal against states that sponsor terrorism. Attacks of reprisal on another state very well could lead to an increase in hostilities and, therefore, could be used as a backdoor around the section 4 requirement of congressional preapproval. Section 4 is the first section of the WPCA to be significantly altered. The WPPA would strengthen the reporting requirements, as compared to what appeared in section 4 of the WPCA. Namely, sections 4(A) and 4(B) of the WPCA explain that consultation with Congress is to occur before military engagement, and state what information is to be provided to the Joint Congressional Consultation Committee.202 The WPPA preserves the Executive’s right to begin military operations unilaterally when secrecy is required, but section 4(C) has been amended to ensure that the President reports immediately to the Committee under such circumstances. By accelerating the process of consultation, fewer policy options are foreclosed and the potential costs of the attack are limited. Section 4(F) is modified to provide greater clarity on what intelligence agencies are required to provide to the Committee’s staff. Information can be distorted in the process of writing and condensing reports; by explicitly requiring raw data to be turned over, the Committee can come to its own conclusions with **limited distortion** by the Executive branch.203 Section 5 is the most significantly changed aspect of the WPPA, requiring congressional pre-authorization of military action rather than a congressional vote after hostilities begin. This Congress-First approach is at the heart of the functionalist analysis discussed above. The outlined procedure is reminiscent of that delineated in the WPCA, in that it ensures a speedy decision, but the WPPA goes much further, as the process leads to a vote and deliberation with the entirety of Congress. Section 5(D) provides an avenue for the President to renew his request for congressional authorization; however, the President is required to wait fifteen days. This waiting period is required so that the Executive cannot badger Congress into submission. It also allows both for the Executive to collect more information, and for the circumstances of the conflict to change. While the waiting period may be disconcerting to some, given that certain situations can be urgent, there is a mechanism to temporarily bypass congressional authorization when necessary. In the interim, the President can engage in operations that do not qualify as significant military operations. In section 6, delayed congressional authorization is explained The free period is limited to fourteen days, which is significantly shorter than the sixty days written into the WPR204 and the twenty days written into John Hart Ely’s suggested act.205 Given that the longest deliberation on a declaration of war was seventeen days, and that it occurred in the early part of the nineteenth century,206 this should still provide ample opportunity for a full discussion of the issue. By requiring immediate production of information by the President, the Act will allow Congress to act faster, as Congress can begin processing the President’s proposal immediately. While a longer time period would permit greater deliberation, the policy options become more limited the longer the conflict rages on. If the resolution passes, the military engagement becomes an approved significant armed conflict and the other enumerated sections become binding. Alternatively, if the resolution fails to pass, the President is given ten days to withdraw troops from the area. While the War Powers Commission recommended tying Congress’s hands through House rules, the WPPA instead uses a modified version of the spending restrictions advocated by then-Senator Biden in his attempt to amend the WPR, the Use of Force Act.207 While some have questioned the constitutionality of this provision, it is unlikely the provision would be found unconstitutional, as the Court has already found a constitutional basis for this sort of a funding restriction. 208 Furthermore, there is little reason to believe that anyone would or could challenge the constitutionality of this act. CONCLUSION: THE REAL-WORLD POTENTIAL OF THE WPPA The distribution of war powers in America has “remain[ed] a dark continent of American jurisprudence”210 for too long. A consistent procedure by which it is effectuated must be established. The plan proposed in this Note attempts to codify a method backed by an in-depth analysis of the rational incentives of political actors. Every combat mission is unique and even the most justifiable wars can end in defeat. A war powers law cannot be evaluated based upon how it would function in any single conflict. Instead, it must be evaluated based on whether it creates adequate opportunities for discourse between the branches of government without overly hindering the ability of the government to wage effective warfare. Congress legislated a role for itself after Vietnam with the WPR, but Congress should now pass the WPPA to further clarify its role in one of our nation’s most important decisions.

#### Inclusion of point of order solves loopholes and vague AUMF applications

Mitchell 9 (Jonathan F., Assistant Professor of Law – George Mason University School of Law, “Legislating Clear-Statement Regimes in National-Security Law,” Georgia Law Review, Summer, 43 Ga. L. Rev. 1059, Lexis)

The proposals to add funding restrictions to FISA and the War Powers Resolution are equally vulnerable to expansive executive branch theories of implied repeal. Recall that the OLC Kosovo memo asserts that the 1999 Emergency Supplemental Appropriations Act implicitly repealed restrictions in the War Powers Resolution, even though the Appropriations Act never earmarked funds for military operations in Kosovo, nor specifically authorized military operations in Kosovo beyond the WPR’s sixtyday window. According to OLC, it was enough that some 178 members of Congress thought that the President might continue the Kosovo hostilities beyond sixty days and that the appropriations legislation did not expressly withhold funds for that purpose.179 In like manner, a future executive might claim that a generic Authorization to Use Military Force implicitly repeals Senator Specter’s proposed funding restrictions under the last-in-time rule, so long as it can concoct some argument that legislators are aware (or should be aware) that warrantless surveillance of the enemy is a “fundamental incident of the use of military force.” Or the 180 President might claim that annual appropriations bills for the intelligence agencies implicitly repeal the earlier-enacted funding restrictions if legislators are aware of the President’s warrantless surveillance activities but fail to expressly reaffirm FISA’s restrictions. Proposals that would add funding restrictions to the War Powers Resolution are similarly incapable of withstanding the executive-branch lawyers’ broad theories of implied repeal. Those funding restrictions, like § 8(a)(1) of the War Powers Resolution, would be brushed aside whenever implicit congressional “authorization” might be found in later-enacted statutory language. The challenge for these efforts to strengthen the War Powers Resolution and FISA is that any future ambiguous statute will provide rope for executive-branch lawyers to concoct congressional "authorization" for the President's actions, no matter what restrictions or interpretive instructions Congress provides in framework legislation. None of these proposed reforms will disable the executive from using its expansive theories of constitutional avoidance and implied repeal to provide a veneer of legality for the President's actions, and minimize the prospect of future criminal sanctions and political reprisals against executive-branch employees. b. point-of-order mechanisms Congress could establish more effective clear-statement regimes in national security law if it pre-committed itself against enacting vague or ambiguous statutory language that the executive might use to claim implicit congressional "authorization." One such precommitment strategy would be to include point-of-order mechanisms in the War Powers Resolution and FISA (and other national-security framework statutes). These would **empower any individual legislator** to object to any bill **that authorizes military force**,

or that funds the military or the intelligence agencies, and that fails to explicitly prohibit military hostilities beyond sixty days or warrantless electronic surveillance, unless Congress has specifically authorized such activities. Congress could further specify that if the point of order is sustained, the bill will be automatically amended to specifically prohibit or withhold funding for such activities. When a legislator raises a point of order, the chair must either sustain it and declare the legislation out of order, or overrule it. n181 Then a majority vote of the chamber can reverse the chair's ruling. Establishing point-of-order mechanisms in the War Powers Resolution and FISA **would strengthen the codified clear-statement requirements** in two ways. First, such mechanisms would impose a procedural roadblock to ambiguous statutory language that executive-branch lawyers might construe as implicitly authorizing extended military hostilities or warrantless electronic surveillance. Second, they would help deter future legislators from acquiescing to Presidential actions that Congress has not specifically authorized. Yet Congress has never established a point-of-order mechanism to [\*1105] enforce the clear-statement requirements in its national-security legislation, n182 even though it regularly employs this device to enforce precommitments in legislation that governs the federal budget process. If Congress had included such a point-of-order mechanism in the War Powers Resolution, any legislator could have objected to the 1999 Emergency Supplemental Appropriations Act when it reached the House or Senate floor. Any such objection would have required the chair to sustain the point of order **and amend the legislation**, because the bill appropriated money for the military yet failed to withhold funds for military hostilities that extend beyond sixty days. Then a majority vote of the entire chamber would have been necessary to overturn the chair's ruling and allow the 1999 Emergency Supplemental Appropriations Act to survive as written. And, if the chair had decided to overrule the point-of-order objection in violation of the chamber's rule, the objecting legislator could have appealed the chair's ruling to the full chamber, where a majority vote could overrule the chair's ruling and sustain the point of order. If FISA had included a point-of-order enforcement mechanism, any legislator could have raised a similar objection to the post-September 11th Authorization to Use Military Force, and the annual appropriations legislation to fund the intelligence agencies, unless those statutes were amended to specifically preclude electronic surveillance outside of FISA. Point-of-order mechanisms would not completely foreclose Congress from enacting ambiguous legislation such as the 1999 Emergency Supplemental Appropriations Act or the post-9/11 Authorization to Use Military Force. But they would impose significant procedural obstacles to legislation that executive-branch lawyers might use to claim implicit congressional authorization for extended military hostilities or electronic surveillance. Unless Congress specifically authorizes military hostilities beyond sixty days or warrantless electronic surveillance, appropriations statutes that fail to explicitly prohibit or withhold funding for such activities will survive only if: (1) Every single legislator in a chamber fails to raise a point-of-order objection; (2) A majority in that chamber votes to overrule a point-of-order objection; or (3) Congress repeals the point-of-order device before considering the bill.

## 2ac

#### Finishing Mitchell

Mitchell 9 (Jonathan F., Assistant Professor of Law – George Mason University School of Law, “Legislating Clear-Statement Regimes in National-Security Law,” Georgia Law Review, Summer, 43 Ga. L. Rev. 1059, Lexis)

or that funds the military or the intelligence agencies, and that fails to explicitly prohibit military hostilities beyond sixty days or warrantless electronic surveillance, unless Congress has specifically authorized such activities. Congress could further specify that if the point of order is sustained, the bill will be automatically amended to specifically prohibit or withhold funding for such activities. When a legislator raises a point of order, the chair must either sustain it and declare the legislation out of order, or overrule it. n181 Then a majority vote of the chamber can reverse the chair's ruling. Establishing point-of-order mechanisms in the War Powers Resolution and FISA **would strengthen the codified clear-statement requirements** in two ways. First, such mechanisms would impose a procedural roadblock to ambiguous statutory language that executive-branch lawyers might construe as implicitly authorizing extended military hostilities or warrantless electronic surveillance. Second, they would help deter future legislators from acquiescing to Presidential actions that Congress has not specifically authorized. Yet Congress has never established a point-of-order mechanism to [\*1105] enforce the clear-statement requirements in its national-security legislation, n182 even though it regularly employs this device to enforce precommitments in legislation that governs the federal budget process. If Congress had included such a point-of-order mechanism in the War Powers Resolution, any legislator could have objected to the 1999 Emergency Supplemental Appropriations Act when it reached the House or Senate floor. Any such objection would have required the chair to sustain the point of order **and amend the legislation**, because the bill appropriated money for the military yet failed to withhold funds for military hostilities that extend beyond sixty days. Then a majority vote of the entire chamber would have been necessary to overturn the chair's ruling and allow the 1999 Emergency Supplemental Appropriations Act to survive as written. And, if the chair had decided to overrule the point-of-order objection in violation of the chamber's rule, the objecting legislator could have appealed the chair's ruling to the full chamber, where a majority vote could overrule the chair's ruling and sustain the point of order. If FISA had included a point-of-order enforcement mechanism, any legislator could have raised a similar objection to the post-September 11th Authorization to Use Military Force, and the annual appropriations legislation to fund the intelligence agencies, unless those statutes were amended to specifically preclude electronic surveillance outside of FISA. Point-of-order mechanisms would not completely foreclose Congress from enacting ambiguous legislation such as the 1999 Emergency Supplemental Appropriations Act or the post-9/11 Authorization to Use Military Force. But they would impose significant procedural obstacles to legislation that executive-branch lawyers might use to claim implicit congressional authorization for extended military hostilities or electronic surveillance. Unless Congress specifically authorizes military hostilities beyond sixty days or warrantless electronic surveillance, appropriations statutes that fail to explicitly prohibit or withhold funding for such activities will survive only if: (1) Every single legislator in a chamber fails to raise a point-of-order objection; (2) A majority in that chamber votes to overrule a point-of-order objection; or (3) Congress repeals the point-of-order device before considering the bill.

### AT: No Groupthink 2ac

#### Yes groupthink – applies to Obama

Ignatius 13 David Ignatius (Armenian American journalism, associate editor and columnist for the New York Post). “Out: Team of rivals. In: Obama’s guys.” February 22, 2013. http://www.washingtonpost.com/opinions/david-ignatius-in-obamas-new-cabinet-rivals-out-loyalists-in/2013/02/22/13f2f27e-7c73-11e2-82e8-61a46c2cde3d\_story.html //Chappell

During President Obama’s first term, there was hidden friction between powerful Cabinet secretaries and a White House that wanted control over the foreign-policy process. Now Obama has assembled a new team that, for better or worse, seems more likely to follow the White House lead. The first term featured the famous “team of rivals,” people with heavyweight egos and ambitions who could buck the White House and get away with it. Hillary Clinton and Bob Gates were strong secretaries of state and defense, respectively, because of this independent power. Leon Panetta had similar stature as CIA director, as did David Petraeus, who became CIA director when Panetta moved to the Pentagon. The new team has prominent players, too, but they’re likely to defer more to the White House. Secretary of State John Kerry has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so. Chuck Hagel, who will probably be confirmed next week as defense secretary, is a feisty combat veteran with a sometimes sharp temper, but he has been damaged by the confirmation process and will need White House cover. John Brennan, the nominee for CIA director, made a reputation throughout his career as a loyal deputy. This was especially true these past four years, when he carried the dark burden of counterterrorism policy for Obama. It’s a Washington truism that every White House likes Cabinet consensus and hates dissent. But that’s especially so with Obama’s team, which has centralized national security policy to an unusual extent. This starts with national security adviser Tom Donilon, who runs what his fans and critics agree is a “tight process” at the National Security Council (NSC). Donilon was said to have been peeved, for example, when a chairman of the Joint Chiefs of Staff insisted on delivering a dissenting view to the president. This centralizing ethos will be bolstered by a White House team headed by Denis McDonough, the new chief of staff, who is close to Obama in age and temperament. Tony Blinken, who was Vice President Biden’s top aide, has replaced McDonough as NSC deputy director, and State Department wunderkind Jacob Sullivan, who was Clinton’s most influential adviser, is expected to replace Blinken. That’s lot of intellectual firepower for enforcing a top-down consensus. The real driver, obviously, will be Obama, and he has assembled a team with some common understandings. They share his commitment to ending the war in Afghanistan and avoiding new foreign military interventions, as well as his corresponding belief in diplomatic engagement. None has much experience managing large bureaucracies. They have independent views, to be sure, but they owe an abiding loyalty to Obama. In Obama’s nomination of people skeptical about military power, you can sense a sharp turn away from his December 2009 decision for a troop surge in Afghanistan. The White House felt jammed by the military’s pressure for more troops, backed by Gates and Clinton. Watching Obama’s lukewarm support for the war after 2009, one suspected he felt pushed into what he eventually concluded was a mistake. Clearly, he doesn’t intend to repeat that process. Obama’s choice for CIA director is also telling. The White House warily managed Petraeus, letting him run the CIA but keeping him away from the media. In choosing Brennan, the president opted for a member of his inner circle with whom he did some of the hardest work of his presidency. Brennan was not a popular choice at the CIA, where some view him as having been too supportive of the Saudi government when he was station chief in Riyadh in the 1990s; these critics argue that Brennan didn’t push the Saudis hard enough for intelligence about the rising threat of Osama bin Laden. But agency officials know, too, that the CIA prospers when its director is close to the president, which will certainly be the case with Brennan and Obama. Obama has some big problems coming at him in foreign policy, starting with Syria and Iran. Both will require a delicate mix of pressure and diplomacy. To get the balance right, Obama will need a creative policy debate where advisers “think outside the box,” to use the management cliche. Presidents always say that they want that kind of open debate, and Obama handles it better than most. But by assembling a team where all the top players are going in the same direction, he is perilously close to groupthink.

### AT: Restrictions Not Key

#### Legal restrictions solve group-think and boost overall decision-making

**Holmes, 9 -** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

[\*325] False certainties may be more common and more damaging during emergencies than during periods of relative normality. Generally valid decision-making rules have proved feasible and advisable because human decision making displays regularities across individuals and situations. One of the most important of these regularities is the common tendency of political decision makers to interpret ambivalent evidence in a way that makes new information seem to confirm previously held beliefs. Another near-constant in human behavior is a deep-seated aversion to self-critical thinking. In a crisis as in normal times, policymakers do not enjoy listening to people who strongly disagree with them or consulting experts who think that they, the policymakers, are on the wrong track. Although subjectively annoying to the wielders of power, obligatory consultations with independent officials can nevertheless benefit the community for whom the executive is ostensibly working. Shielding government incompetence from public view may damage national security by delaying the correction of potentially lethal mistakes. As mentioned, the enemy may benefit much more from false certainty and the misallocation of scarce resources than from the extraterritorial extension of some watered-down version of due process to foreign detainees. The point, after all, is to expand the executive's capacity for effective action. Whether the executive's capacity for effective action is increased by oversight and legal rules, or by unfettered and unmonitored discretion, is exactly what needs to be established. That the correct answer to this question can be dictated by executive fiat defies belief. Rules that provide incentives for decision makers to consider counter-evidence and counterarguments are liberating rather than constricting. Promoters of extralegal executive discretion, in other words, have made things easy for themselves by associating rules with rigidity and discretion with flexibility, ignoring the equal plausibility of the opposite alignment. Adversarial process can increase the flexibility of collective decision making, compensating for the psychological and ideological rigidity that individuals regularly display when making decisions behind closed doors and with the blinds drawn, that is to say, in the kind of unnatural isolation fostered by a near-hysterical fear of spies and leaks. Contrariwise, assigning all power to an unchecked executive risks exposing the collectivity to one man's, or one clique's, peculiar cognitive rigidities, emotional hang-ups, and behavioral obstinacies. Second-order rules, governing the way first-order rules as well as policies and ad hoc decisions are made, can facilitate self-correction. To return briefly to our medical example above, the second-order rule, "always get a second opinion," suggests that pragmatically designed decision-making procedures can be just as compulsory as first-order rules like "always wash your hands." Given observable regularities in human decision making, adversarial process can compel policymakers to focus on pitfalls and opportunities of which they had [\*326] been only vaguely aware. This is why choices governed by relatively-unchanging second-order rules can sometimes be more adaptive and sensitive to context than purely unregulated discretion. Hostile to checks and balances and devoted to unmonitored executive discretion, the Bush administration came to be known less for its flexibility than for its intransigence and extreme reluctance to shift gears. Its abhorrence of legislative and judicial oversight seems to have produced not pragmatism but dogmatism. In retrospect, this is not surprising. By stonewalling external critics and stifling internal dissenters, the Bush administration was able to prolong the natural life span of false certainties that are now widely believed, with the benefit of hindsight, to have seriously damaged national security. n52

### AT: Prohibition

#### We meet – the plan is a restriction on authority to introduce Armed Forces into hostilities

Keynes 10 – Edward Keynes, Professor of Political Science at Penn State University, Undeclared War: Twilight Zone of Constitutional Power, p. 163-164

Although the zones of exclusive legislative and executive authority cannot be defined precisely, the Federal judiciary has employed the Framers’ distinction between defensive and offensive war in differentiating presidential from congressional power to wage military hostilities. Article 1, Section 8 (Cl. Il) of the Constitution vests exclusive power in Congress to declare war or authorize undeclared war and mili tary hostilities. Only Congress has the constitutional authority to initiate war and military hostilities; only Congress can change the nation’s con dition from peace to war. Absent a declaration of war or other explicit authorizing legislation, the President has constitutional authority to defend the nation, its armed forces, and its citizens and their property against armed attack or when the threat of such an attack is imminent. Without congressional authorization. Article 2 does not confer independent constitutional authority on the President to initiate hostilities or to transform defensive military actions into offensive wars. Whether Congress declares war or authorize, limited military hostil ities, the legislature has ample constitutional authority to restrict presidential war making. Although one can question the wisdom or desirabil ity of restricting the President’. power to initiate military hostilities, Congress can employ its auxiliary war powers to limit presidential initiative. Congress can use its fiscal poweii (to tax and spend) to regulate the size and composition of the armed forces available to the President. Congress can control military organization and the command structure through its power to make rules for the government and regulation of the land and naval forces. Congress has the authority to limit the Presi dents power to dispatch U.S. troops abroad by enacting conscription laws that geographically restrict military service. Congress can employ its militia powers to limit the commander in chief’s authority to call up the National Guard for foreign military service. Since the Constitution confers the auxiliary war powers exclusively on Congress, only the legislature can decide the wisdom or propriety of limiting the President’s power to initiate war and military hostilities. In addition to exercising ils auxiliary war powers, some commentators suggest that Congress could employ the necessary-and-proper clause to restnct presidential warmaking. If Congress can delegate power to the executive to wage war, it can also deny such power through the neces sary-and-proper clause. By emphasizing the horizontal effect of the sweeping clause (Art 1, Sec. 8, Cl. 18) and by interpreting presidential power narrowly. as William Van Alstyne implies. Congress could employ its authority to limit the commander in chief. power to initiate military hostilities without congressional authorization. However attractive the necessary-arid -proper clause appears to advocates of congressional power, there s no conclusive evidence to suggest that the Framers in tended the sweeping clause as an unqualified grant of power that Con gress could manipulate to reduce the executive to a mere ministerial agenc)2 Once war begins. Congress has the constitutional authority to control the magnitude, i.e., scope, and duration of military hostilities. Congress can employ its auxiliary war powers to restrict or terminate military actions that exceed the President’s defensive authority During the Viet nam War for example, Congress enacted no less than ten major bills between 1969 and 1973 that restricted presidential power to conduct military hoetilities in Laos, Cambodia, and Vietnam. Indeed, Congress enacted legislation termrnating U.S. military action in Laos and Cam bodia on August 15, 1973.

#### Restrict doesn’t mean prohibit

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### WE meet authority - we limit presidential discretion in the area of the topic – the plan is a major revision

#### They overlimit – the plan is a stronger WPR

Jorritsma, 09 [THE WAR POWERS CONSULTATION ACT OF 2009 – A MEANS FOR CONGRESS TO CURB AN IMPERIAL PRESIDENT? by Remy Jorritsma,Faculty of Law, Maastricht University August 31, 2009,http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2248227]

5.1. Consultation and reporting under the WPR and the WPCA compared The problem with consultation under the WPR, **illustrated by the Mayaguez rescue**, is addressed in full in the WPCA. In contrast to the WPR, the WPCA defines the concept of “consultation” and gives an interpretation with whom the President must consult. 63 The WPCA states that consultation is to be understood as ‘[providing] an opportunity for the timely exchange of views regarding whether to engage in the significant armed conflict […] not merely [notifying]’. This exchange of views takes place between the President and a to be established JCCC. The membership of this Committee is defined in Section 3(C) WPCA and enables bipartisan consultation both with majority and minority leaders in Congress and with the key members of the four affected House and Senate Committees.

#### That’s clearly T

Scheffer, 99 [Copyright (c) 1999 Oklahoma City University Oklahoma City University Law Review Spring / Summer, 1999 24 Okla. City U.L. Rev. 233 LENGTH: 27979 words FRANCHISING LAW SYMPOSIUM: ARTICLE: Does Absolute Power Corrupt Absolutely? Part I. A Theoretical Review of Presidential War Powers NAME: Martin S. Sheffer \* BIO: \* Associate Professor (retired), Old Dominion University and Tuskegee University; A.B., A.M., Hunter College, CUNY; Ph.D., New School For Social Research, p. lexis]

 Earlier I suggested that the essence of the debate over the President's powers as commander-in-chief outside of declared wars is whether he has independent power to commit our military forces to combat. That question, notwithstanding Jackson's concurrence in Youngstown, n195 has not been answered by any definitive Supreme Court decision. Congress, however, has indicated its own answer in the War Powers Resolution (WPR) n196 and the National Emergencies Act (NEA). n197 The former was vetoed by President Nixon as an unconstitutional infringement of the President's powers as commander-in-chief. It was enacted over his veto. The WPR is a statutory restriction on the President's powers. It is also ambiguous. It limits the President's power to commit troops into hostilities to instances of (1) a declaration of war, (2) a specific statutory authorization, or (3) a national emergency created by an attack on the United States, its territories or possessions, or its armed forces. n198 The supposed prohibitions contained in the WPR, however, are more imagined than real. The Resolution does in fact recognize, according to Arthur S. Miller, that the President can unilaterally employ the armed forces of the United States whenever and wherever he wishes to do so. n199 In other words, despite the fire storm of emotion and rhetoric, very little, if anything, has changed.

### AT: Security K (2ac)

#### Rana’s claim is too sweeping, the alt is impossible

**Cole, 12 –** professor of law at Georgetown (David, “Confronting the Wizard of Oz: National Security,

Expertise, and Secrecy” 44 Conn. L. Rev. 1617-1625 (2012), <http://scholarship.law.georgetown.edu/facpub/1085>)

Rana is right to focus our attention on the assumptions that frame modern Americans’ conceptions about national security, but his assessment raises three initial questions. First, it seems far from clear that there ever was a “golden” era in which national security decisions were made by the common man, or “the people themselves,” as Larry Kramer might put it.8 Rana argues that neither Hobbes nor Locke would support a worldview in which certain individuals are vested with superior access to the truth, and that faith in the superior abilities of so-called “experts” is a phenomenon of the New Deal era.9 While an increased faith in scientific solutions to social problems may be a contributing factor in our current overreliance on experts,10 I doubt that national security matters were ever truly a matter of widespread democratic deliberation. Rana notes that in the early days of the republic, every able-bodied man had to serve in the militia, whereas today only a small (and largely disadvantaged) portion of society serves in the military.11 But serving in the militia and making decisions about national security are two different matters. The early days of the Republic were at least as dominated by “elites” as today. Rana points to no evidence that decisions about foreign affairs were any more democratic then than now. And, of course, the nation as a whole was far less democratic, as the majority of its inhabitants could not vote at all.12 Rather than moving away from a golden age of democratic decision-making, it seems more likely that we have simply replaced one group of elites (the aristocracy) with another (the experts). Second, to the extent that there has been an epistemological shift with respect to national security, it seems likely that it is at least in some measure a response to objective conditions, not just an ideological development. If so, it’s not clear that we can solve the problem merely by “thinking differently” about national security. The world has, in fact, become more interconnected and dangerous than it was when the Constitution was drafted. At our founding, the oceans were a significant buffer against attacks, weapons were primitive, and travel over long distances was extremely arduous and costly. The attacks of September 11, 2001, or anything like them, would have been inconceivable in the eighteenth or nineteenth centuries. Small groups of non-state actors can now inflict the kinds of attacks that once were the exclusive province of states. But because such actors do not have the governance responsibilities that states have, they are less susceptible to deterrence. The Internet makes information about dangerous weapons and civil vulnerabilities far more readily available, airplane travel dramatically increases the potential range of a hostile actor, and it is not impossible that terrorists could obtain and use nuclear, biological, or chemical weapons.13 The knowledge necessary to monitor nuclear weapons, respond to cyber warfare, develop technological defenses to technological threats, and gather intelligence is increasingly specialized. The problem is not just how we think about security threats; it is also at least in part objectively based.

#### Vote aff despite prior questions—impact timeframe means you gotta act on the best info available

Kratochwil, professor of international relations – European University Institute, 2008 (Friedrich, “The Puzzles of Politics,” pg. 200-213)

The lesson seems clear. Even at the danger of “fuzzy boundaries”, when we deal with “practice” ( just as with the “pragmatic turn”), we would be well advised to rely on the use of the term rather than on its reference (pointing to some property of the object under study), in order to draw the bounds of sense and understand the meaning of the concept. My argument for the fruitful character of a pragmatic approach in IR, therefore, does not depend on a comprehensive mapping of the varieties of research in this area, nor on an arbitrary appropriation or exegesis of any specific and self-absorbed theoretical orientation. For this reason, in what follows, I will not provide a rigidly specified definition, nor will I refer exclusively to some prepackaged theoretical approach. Instead, I will sketch out the reasons for which a pragmatic orientation in social analysis seems to hold particular promise. These reasons pertain both to the more general area of knowledge appropriate for praxis and to the more specific types of investigation in the field. The follow- ing ten points are – without a claim to completeness – intended to engender some critical reflection on both areas. Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” (prattein), thereby preventing some false starts. Since, **as historical beings placed in a** specific situations**, we do not have the luxury** of deferring decisions **until we have** found the “truth”, **we have to act and must do so always under time pressures and in the face of incomplete information.** Pre- cisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear ex ante, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situ- ation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter. To that extent, likening practical choices to simple “discoveries” of an already independently existing “reality” which discloses itself to an “observer” – or relying on optimal strategies – is somewhat heroic. These points have been made vividly by “realists” such as Clausewitz in his controversy with von Bülow, in which he criticised the latter’s obsession with a strategic “science” (Paret et al. 1986). While Clausewitz has become an icon for realists, only a few of them (usually dubbed “old” realists) have taken seriously his warnings against the misplaced belief in the reliability and use- fulness of a “scientific” study of strategy. Instead, most of them, especially “neorealists” of various stripes, have embraced the “theory”-building based on the epistemological project as the via regia to the creation of knowledge. A pragmatist orientation would most certainly not endorse such a position. Secondly, since acting in the social world often involves acting “for” someone, special responsibilities arise that aggravate both the incompleteness of knowledge as well as its generality problem. Since we owe special care to those entrusted to us, for example, as teachers, doctors or lawyers, we cannot just rely on what is generally true, but have to pay special attention to the particular case. Aside from avoiding the foreclosure of options, we cannot refuse to act on the basis of incomplete information or insufficient know- ledge, and the necessary diagnostic will involve typification and comparison, reasoning by analogy rather than generalization or deduction. Leaving out the particularities of a case, be it a legal or medical one, in a mistaken effort to become “scientific” would be a fatal flaw. Moreover, **there still remains the crucial element of “timing” –** of knowing when to act. Students of crises have always pointed out the importance of this factor but, in attempts at building a general “theory” of international politics analogously to the natural sci- ences, such elements are neglected on the basis of the “continuity of nature” and the “large number” assumptions. Besides, “timing” seems to be quite recalcitrant to analytical treatment.

#### One speech act doesn’t cause securitization – it’s an ongoing process

**Ghughunishvili 10**

Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

### AT: Judiciary CP

#### CP doesn’t send a clear signal, undermines SOP, and gets delayed – true even if they rule on SOP grounds

Entin, 12 [Jonathan L., Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University, "War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations," CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW, VOL.45, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1262.21.Article.Entin.pdf](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1262.21.Article.Entin.pdf-http%3A/law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1262.21.Article.Entin.pdf%29)]

III. THE BENEFITS OF POLITICAL RESOLUTION OF INTERBRANCH DISPUTES Whatever the merits of the decisions discussed in the previous section, those rulings should give pause to those who might rely on the judiciary as a check on what they regard as executive overreaching. When combined with the procedural and jurisdictional obstacles discussed in Part I, a more general lesson emerges: the judiciary cannot resolve all the questions that might arise in connection with war powers and foreign affairs. Nonetheless, the substantive and procedural limitations of judicial review provide an opportunity for greater civic and political engagement in decisions that can have profound consequences for our nation and the world. If the courts cannot resolve these matters, questions of war and diplomacy, it should come as no surprise that they are getting worked out largely through political accommodation and negotiation. These accommodations and negotiations necessarily reflect the differing constitutional views of the legislative and executive branches as well as of the persons and groups that engage on these issues. Although many lament the quality of current political discourse, excessive reliance on the judicial process has undesirable consequences. The Supreme Court has had difficulty rendering consistent or principled decisions about legislative-executive relationships.110 Sometimes the Court has taken a formalistic approach that emphasizes the need to maintain clear lines between the branches.111 At other times, the Court has used a functional approach that emphasizes the importance of checks and balances to prevent the accumulation of excessive power in any particular branch.112 In other words, judicial review does not always provide clear answers to complex questions. The complexity of those questions is particularly evident in the military and diplomatic arenas. Reliance on the political process recognizes the uncertainties and contingencies involved in many of these matters.113 Moreover, interbranch negotiation rather than litigation recognizes that an effective government requires a degree of Comity that is inconsistent with frequent reliance on the judiciary.114 Our system rests on a rich set of subtle understandings and an implicit sense of political limits.115 As a result, structural and institutional factors often dampen the inevitable conflicts that arise between Congress and the president. Excessive reliance on the judiciary tends to raise the stakes of conflict by clearly identifying winners and losers and by encouraging the assertion of extreme positions for short-term litigation advantage that might complicate the resolution of future disagreements.116 In addition, the litigation process takes time. Of course, the Pentagon Papers case was resolved in less than three weeks after the New York Times published its first article on the subject.117 Ordinarily, however, the judicial process proceeds at a much statelier pace. Consider another landmark case, albeit one that dealt with domestic issues. Cooper v. Aaron118 was decided approximately one year after President Eisenhower dispatched federal troops to enforce the desegregation of Little Rock Central High School in the face of massive resistance encouraged by Arkansas Governor Orval Faubus.119 Often, disputes over military and diplomatic matters are time sensitive. Expedited judicial review might help, but events on the ground might well frustrate orderly judicial disposition. \* \* \* \* \* Let me close with some points of clarification. Although I am skeptical about the value of judicial review of disputes about war powers and foreign affairs, I do not advocate that they be treated as political questions and therefore outside the purview of the courts. I offer no doctrinal bright lines for determining which cases should be resolved on the merits through litigation. Nor, in advocating lessreliance on lawsuits, do I exaggerate the quality of political discourse in the United States. But that is hardly a new concern. More than a century ago the legendary Chicago saloonkeeper, Mr. Dooley, observed that “politics ain’t beanbag.”120 Some things never change. I end as I began. We cannot count on the legal process to resolve the debate about war powers and foreign affairs. Many potential lawsuits will founder on the shoals of jurisdiction and procedure. And for those who believe that the executive has accumulated excessive power in these fields, the judicial record of modesty and deference militates against relying on the courts to rein in the president. In short, most of the time we must leave issues of war and foreign affairs largely to our politicians.

#### Perm – do both

#### Perm shields.

**Perine**, 6/12/**2008** (Katherine – staff at CQ politics, Congress unlikely to try to counter Supreme Court detainee ruling, CQ Politics, p. http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘The devil made me do it.’ ”

#### undermines legitimacy – takes out solvency.

**Bentley**, **2007** (Curt, Constrained by the liberal tradition, Brigham Young University Law Review, p. lexis)

This institutional limitation theory focuses primarily on the constraints imposed on the Court because of its relationship with the other branches of government. The Supreme Court is not wholly dependent upon other branches of government; the unique legitimacy given its interpretations of the Constitution by the American people provides it with real influence of its own. n116 However, the institutional limitation theory posits that since the Court possesses neither the purse nor the sword, n117 it relies upon its  [\*1745]  legitimacy in the eyes of the American people in order to pressure the legislative and executive branches to **enforce its decrees**: The Supreme Court ... possesses some bases of power of its own, the most important of which is the unique legitimacy attributed to its interpretations of the Constitution. This legitimacy the Court jeopardizes if it **flagrantly opposes the major policies** of the dominant alliance; such a course of action, as we have seen, is one in which the Court will not normally be tempted to engage. n118 **Without legitimacy** in the eyes of the public, both Congress and the President might feel justified in **resisting the ruling of the Court** either through jurisdiction-stripping n119 or by simply refusing to enforce its decrees. n120 **There is precedent for both in American history**. n121 The Court risks becoming substantially weakened, or even irrelevant, when the political branches ignore judicial decrees and where it nonetheless doggedly pursues the counter-majoritarian course. n122

### AT: Executive CP

#### Congress must be the first mover – key to broader leadership and enforcement

Hansen, 09 [Hansen and Friedman, professors of law at the New England School of Law, 2009 (Victor and Lawrence, The Case for Congress: Separation of Powers and the War on Terror, p.130]

The problem, of course, is that much of this congressional involvement has come much too late in the process and only after significant damage to our constitutional values had been inflicted by the Bush administration. If Congress only acts after being goaded by the courts, or only after high profile scandals have come to light, or only after the President’s policies have prolonged wars and made us at the same time less secure and less free, then we have reached a level of constitutional brinkmanship which can only be regarded as intolerable. Likewise, members of Congress would be sorely mistaken if they believed that these legislative initiatives have once and for all ended the possibility of executive assertions of dominance in these areas. Put simply, Congress cannot afford to wait for some crisis to act. As we have already discussed, the consequences are too dire. As many of the post-September 11 policy decisions of the Bush administration demonstrate, a President who acts without securing the benefits of the deliberative process established in the Constitution is likely to fail in making us more secure while maintaining basic liberties. Moreover, when Congress only engages in these issues after the fact, its relevance as an institution is undermined. Unless Congress is as proactive and assertive of its constitutionally appointed responsibilities as the executive is about its authority, the checks and balances of our system simply will not work**. Congress will be relegated to a second tier institution in the realm o**f national **security**, and it will be ever more difficult for Congress to stand up to an assertive and aggressive president.

#### Bold congressional assertion key to access the case

Schumer 7 [Charles E. Schumer, JD from Harvard Law School, AB in Politics from Harvard College, Senior United States Senator from New York, Youngest Representative in the History of New York State, “Under Attack: Congressional Power in the Twenty-First Century”, Harvard Law & Policy Review, 1(1), http://web.archive.org/web/20120625034444/http://www.hlpronline.com/Vol1No1/schumer.pdf]

Every basic civics text recites that our government is divided into three branches and that these three branches are co-equal partners. But as true as that once was, this system of exquisite checks and balances is at risk of being made anachronistic by recent legal and political developments. The traditional functions of Congress as lawmaker and a check on other branches have come under sustained and systematic assault from both the judicial and executive branches. The assault from the Executive began as a gradual diminution of congressional power after a post-Nixon-era zenith, but has accelerated most dramatically under President George W. Bush. The threat to Congress from the Judiciary comes in the form of rulings invalidating congressional enactments at an alarming pace over the past ªfteen years, largely in service of a cramped interpretation of congressional authority under both the Commerce Clause and Section 5 of the Fourteenth Amendment. Together, these twin trends have undermined Congress’s role as lawmaker and its role as a bulwark against overreaching by the other branches. Although the trends in the two other branches of American government have developed separately, they are born of the same philosophy. Commentators and political actors have traditionally focused on just one or the other trend, but in my view it is the unprecedented combination of these two threats that poses a real danger to our democracy. There is much more at stake here than institutional pride and the collective egos of 535 elected legislators. The costs of an anemic Congress over the long term are considerable. First, continued erosion of Congress’s lawmaking power undermines democracy. Preemption of the legislative function by the President increases the concentration of power and the risk of abuse. It also decreases the transparency that accompanies a legislative process marked by open debate and compromise. Preemption of the legislative function by the Judiciary similarly diminishes democracy. Second, in the absence of a prompt reassertion of Congress’s power, its powerlessness risks becoming institutionalized. Unflexed, congressional muscles atrophy. Handicaps created by the Executive may be difficult to dismantle. Federalism precedents espoused by the Judiciary may be impossible to undo. Even if one believes that the current President has not taken executive power too far (though I do), the next president, from whichever party, will likely continue the trend if unchecked. A compliant Congress risks permanently undermining its credibility and its relevance. When Congress needs to rein in a future president, it may find that it lacks the institutional capacity to do so. In sum, Congress does have a role equal to the other branches and must have this equal role. It is a role envisioned by the Framers, enshrined in the Constitution, and ennobled by the historical examples of our greatest legislators. A responsible and responsive Congress can solve many of the problems America confronts, improve respect for government by providing oversight and demanding accountability, and decrease partisan gridlock in Washington.1 Undoubtedly, Congress is at something of an institutional disadvantage against the Executive. It has no agencies and bureaucracy to rival the Secretary of Defense or the Attorney General. Rather, Congress consists of 535 individual lawmakers divided between two parties and dedicated to unique and varying agendas. However, members of both parties ought to agree that our representative system demands—and the American people deserve—a Congress that is not just a rubber stamp for the Executive, but an independent, co-equal, and assertive branch of government. A Congress grown weak and compliant imperils democracy.

#### The CP isn’t sufficient – binding restraints access signaling

Scheuerman, 12 [William E. Scheuerman, Professor of Political Science and West European Studies at Indiana University, “Review Essay: Emergencies, Executive Power, and the Uncertain Future of US Presidential Democracy”, Law and Social Inquiry, Summer, 37 Law & Soc. Inquiry 743, p. lexis]

Posner and Vermeule rely on two main claims. First, even if the president constitutes the dominant actor in a legally unchecked administrative state, he or she has to gain elite and public support to get things done and stand for election. So how can political actors decide whether or not the executive is performing well? Posner and Vermeule tend to hang their hats on "executive signaling": presidents can send signals to voters communicating that they are "well-motivated," and that in fact many voters might make the same (or at least similar) decisions if they possessed the information the president typically has. By communicating in a certain way (e.g., by appointing members of the opposing party to his or her cabinet, promising to accept the recommendations of an independent commission, or by making decisions as transparent as possible), presidents can gain credibility, and voters might thereby come to acknowledge the plausibility--if not necessarily the substantive Tightness--of what the executive is doing (2010, 137-53). However, as Schmitt aptly grasped, even formally free elections potentially become charades when the executive effectively exercises legally unconstrained power (e.g., in Peronist Argentina, or Putin's Russia). Posner and Vermeule never really provide enough evidence for us to dismiss this possibility. Since the president in our system is only subject on one occasion to reelection, it is unclear how their proposals might meaningfully check the executive, particularly during a second term. The fact that executive signaling represents a form of self-binding hardly seems reassuring, either (2010, 135). Nor does the book's highlighting of the possible dangers of different forms of executive signaling (e.g., too much transparency, or an excessive subservience to independent agencies) help very much on this score (2010, 142-46). Why should we expect to get presidents who know how to engage in executive signaling in just the right way? The familiar reason the executive needs elite and popular support, of course, is that it still relies on a popularly elected Congress and other institutional players to get things done: this is why describing such dependence as intrinsically political and "nonlegal" seems odd. For that matter, the relationship between what we traditionally have described as a normative theory of political legitimacy and executive signaling mechanisms--whereby the executive gains popular credibility--remains ambiguous. Is their theory of executive signaling and credibility meant to stand in for a normative theory of legitimacy? If so, one might worry. We can easily imagine an executive diligently doing many of the things prescribed here yet nonetheless pursuing policies deeply at odds with the common good, or at least with what a democratic community under more ideal conditions might determine to be in its best interests. Depending on one's normative preferences, some of the examples provided of executive signaling (e.g., FDR and Obama naming Republicans to their cabinets) might legitimately be taken as evidence for presidential Machiavellianism, rather than as solid proof that the presidents in question were well-motivated and thereby somehow politically acceptable. [\*758] Presidential "signaling" seems like a pale replacement for liberal legalism and the separation of powers.

### AT: Iran DA

#### No strike – institutional and political checks

**Keck, 13** - Zachary Keck is associate editor of The Diplomat (“Five Reasons Israel Won't Attack Iran”, The National Interest, 11/28, http://nationalinterest.org/commentary/five-reasons-israel-wont-attack-iran-9469

4. Israel’s Veto Players Although Netanyahu may be ready to attack Iran’s nuclear facilities, he operates within a democracy with a strong elite structure, particularly in the field of national security. It seems unlikely that he would have enough elite support for him to seriously consider such a daring and risky operation. For one thing, Israel has strong institutional checks on using military force. As then vice prime minister and current defense minister Moshe Yaalon explained last year: “In the State of Israel, any process of a military operation, and any military move, undergoes the approval of the security cabinet and in certain cases, the full cabinet… the decision is not made by two people, nor three, nor eight.” It’s far from clear Netanyahu, a fairly divisive figure in Israeli politics, could gain this support. In fact, Menachem Begin struggled to gain sufficient support for the 1981 attack on Iraq even though Baghdad presented a more clear and present danger to Israel than Iran does today. What is clearer is that Netanyahu lacks the support of much of Israel’s highly respected national security establishment. Many former top intelligence and military officials have spoken out publicly against Netanyahu’s hardline Iran policy, with at least one of them questioning whether Iran is actually seeking a nuclear weapon. Another former chief of staff of the Israeli Defense Forces told The Independent that, “It is quite clear that much if not all of the IDF [Israeli Defence Forces] leadership do not support military action at this point…. In the past the advice of the head of the IDF and the head of Mossad had led to military action being stopped.”

#### No one would intervene

**Poor 12** (Jeff, 2/16/12, http://dailycaller.com/2012/02/16/krauthammer-israeli-strike-on-iran-will-not-cause-a-world-war-video/,)

On Wednesday’s “Special Report Online” segment on FoxNews.com, syndicated columnist Charles Krauthammer said that if Israel decides to attack Iran in order to thwart its development of nuclear weapons, the collateral damage wouldn’t start a third world war.

Krauthammer based that hypothesis on Iran not having allies that would be willing to intervene significantly on a military level. (RELATED: More analysis from Charles Krauthammer)

“It could cause a regional war,” Krauthammer said. “It will not cause a world war by any means. It’s not August 1914, because Iran has no great power allies who will intervene militarily. Iran is going to be alone with its clients, Syria, Hezbollah and Hamas — all of whom are on their heels right now.”

He said it would require Iran acting out in an irrational way and luring the United States into engagement for any conflict to become more widespread.

“If Iran is smart, it will not attack the United States in retaliation because that would involve us,” he said. “It would retaliate against Israel and it could remain a limited engagement. Now of course, irrationality is possible and you cannot predict. If the Iranians either close the Strait of Hormuz or attack Americans at the naval facility in Bahrain, that would be suicide because that would occasion American intervention, almost like Wilson in the First World War in the sinking of the Lusitania. You don’t do that if you’re rational, but who knows. The Iranians haven’t always been rational.”

#### Doesn’t solve the case - plan is necessary and sufficient to solve, congressional restriction overwhelms the likelihood for Iran strikes

#### Reid blocks and it’s veto proof

**Ziaberi, 1/24/14** ­ - interview with Kaveh Afrasiabi, the author of several books on Iran’s foreign policy and a former advisor of Center for Strategic Research (Kourosh, “Congress New Sanctions Bill Scuttles the Geneva Deal” Iran Review, <http://www.iranreview.org/content/Documents/Congress-New-Sanctions-Bill-Scuttles-the-Geneva-Deal.htm>)

Iran Review conducted an interview with Prof. Afrasiabi regarding the proposed sanctions bill by the U.S. Senate, the implementation of the Joint Plan of Action and the difficulties ahead and President Rouhani’s difficult path for reaching a comprehensive agreement with the West over Iran’s nuclear program. What follows is the text of the interview. Q: The U.S. Senate majority leader Harry Reid (D., Nev) has announced that he will not permit a vote on new anti-Iran sanctions to come on the floor and so the efforts made by the 77 Senators who are said to be voting in favor of new sanctions would be killed. He has said that the Senate doesn’t have any plans to introduce a new round of sanctions; meanwhile, he has said that we will not allow Iran to produce nuclear weapons. Why do you think he has made it clear that he will not allow new sanctions to be imposed? Does it signify that even the Senators have realized the importance and significance of the Geneva deal and that it should be given a chance to take effect? A: I think the new sanctions bill is deeply problematic for the US since if passed. It not only scuttles the Geneva deal, it will also heighten tensions between U.S. and some of its key global trade partners, so it’s no surprise that the US Congress is putting the brakes on. On the other hand, the White House has been persuasive that at this point we must let the Geneva deal run its course without intrusion by Congress. Still, the mere threat of the pending bill as a coercive leverage vis-à-vis Iran, serves its own role, given the bumpy road ahead on negotiating a final deal.

#### TPA first

**Parnes, 1/21/14** (Arnie, “Obama: Give me fast track trade” The Hill,

<http://thehill.com/homenews/administration/195858-white-house-works-to-convince-dems-to-give-obama-fast-track-on-trade>

The White House is making a major push to convince Congress to give the president trade promotion authority (TPA), which would make it easier for President Obama to negotiate pacts with other countries. A flurry of meetings has taken place in recent days since legislation was introduced to give the president the authority, with U.S. Trade Representative Mike Froman meeting with approximately 70 lawmakers on both sides of the aisle in the House and Senate. White House chief of staff Denis McDonough has also been placing calls and meeting with top Democratic lawmakers in recent days to discuss trade and other issues. Republicans have noticed a change in the administration’s interest in the issue, which is expected to be a part of Obama’s State of the Union address in one week. While there was “a lack of engagement,” as one senior Republican aide put it, there is now a new energy from the White House since the bill dropped. The effort to get Congress to grant Obama trade promotion authority comes as the White House seeks to complete trade deals with the European Union, and a group of Asian and Latin American countries as part of the Trans-Pacific Partnership, or TPP. The authority would put time limits on congressional consideration of those deals and prevent the deals from being amended by Congress. That would give the administration more leverage with trading partners in its negotiations. The trade push dovetails with the administration’s efforts to raise the issue of income inequality ahead of the 2014 midterm elections. The White House is pressing Republicans to raise the minimum wage and extend federal unemployment benefits. The difference is, on the minimum wage hike and unemployment issue, Obama has willing partners in congressional Democrats and unions, who are more skeptical of free trade. Republicans are more the willing partner on backing trade promotion authority. Legislation introduced last week to give Obama trade promotion authority was sponsored by House Ways and Means Committee Chairman Dave Camp (R-Mich.) and Senate Finance Committee Chairman Max Baucus (D-Mont.), as well as Sen. Orrin Hatch (R-Utah), the ranking member on Finance. No House Democrats are co-sponsoring the bill, however, and Rep. Sandy Levin (D-Mich.), the Ways and Means Committee ranking member, and Rep. Charles Rangel (D-N.Y.), the panel’s former chairman, have both criticized it. They said the legislation doesn’t give enough leverage and power to Congress during trade negotiations. Getting TPA passed would be a major victory for the administration, and one that would please business groups, but the White House will first have to convince Democrats to go along with it. One senior administration official said the White House has been in dialogue with lawmakers on both sides of the aisle “with a real focus on Democrats” to explain TPA and take into account their concerns. “Any trade matter presents challenges,” the senior administration official said, adding that White House officials are “devoted” to working with members on the issue. The Democratic opposition makes it highly unlikely the trade promotion authority bill, in its current form at least, will go anywhere. One big problem is that it was negotiated by Baucus, who is about to leave the Senate to become ambassador to China. Baucus will be replaced by Sen. Ron Wyden (Ore.), who is said to disagree with the approach taken by his predecessor. Democratic aides predict the legislation, which Majority Leader Harry Reid (D-Nev.) called “controversial” last week, would have to be completely redone to gain traction among lawmakers in their party.

#### Deal fails

**Clyne, 1/23/14** – summary of interview conducted by Fareed Zakharia with Rouhani (Melissa, Newsmax, “CNN: Iranian President Says No Centrifuges Will Be Destroyed”

<http://www.newsmax.com/newsfront/iran-us-nuclear-program/2014/01/23/id/548667>

Iran's assurance that it would temporarily halt its nuclear program in exchange for the easing of international sanctions is a complete farce, according to a CNN interview with Iranian President Hassan Rouhani. CNN correspondent Fareed Zakaria, who recently interviewed Rouhani, said the agreement struck in Geneva late last year between Tehran and the United States, along with five other world powers, is a "train wreck.""This strikes me as a huge obstacle because the Iranian conception of what the deal is going to look like, and the American conception, now look like they are miles apart," said Zakaria, discussing the interview with Chris Cuomo, co-host of CNN's morning show "New Day." CNN released a portion of Zakaria's interview and will air it in full on Sunday morning, according to the network. Rouhani stated in no uncertain terms that his regime will not limit its centrifuges, adding that Iran is "not afraid of threats." When Zakaria asked whether there would be any destruction of centrifuges, Rouhani answered: "Not under any circumstances."

#### Unilateral action solves

**Tobin, 1/21/14** – editor of Commentary (Jonathan, “Will Obama Bypass Congress on Iran?” <http://www.commentarymagazine.com/2014/01/21/will-obama-bypass-congress-on-iran-sanctions/>)

But the current uphill struggle by a majority of the Senate to ensure that the end of the current talks doesn’t lead to a collapse of the sanctions may be only a sideshow to the real fight over Iran that lies ahead in 2014. As the Washington Free Beacon reports, the administration is thinking ahead to the next step in the debate over Iran and exploring the possibility of lifting sanctions without congressional approval. Congressional insiders say that the White House is worried Congress will exert oversight of the deal and demand tougher nuclear restrictions on Tehran in exchange for sanctions relief. Top White House aides have been “talking about ways to do that [lift sanctions] without Congress and we have no idea yet what that means,” said one senior congressional aide who works on sanctions. “They’re looking for a way to lift them by fiat, overrule U.S. law, drive over the sanctions, and declare that they are lifted.” Although only Congress has the power to revoke the sanctions it has enacted, this is not a far-fetched scenario. It is entirely possible that the president may wish to end sanctions on his own. That could come as the result of a nuclear deal that failed to satisfy those who rightly worry about the possibility of an agreement that left Iran with its nuclear infrastructure intact. Or it might be part of a further effort to appease Tehran by scaling back sanctions in order to entice it to sign a deal. And the president believes he can achieve these ends by executive action that would come dangerously close to unconstitutional behavior, but for which Congress might have no remedy. The key to any unilateral action by the president on sanctions is effective enforcement. It has long been understood by insiders that the U.S. government has only selectively enforced the existing sanctions on Iran. In 2010, the New York Times reported that more than 10,000 exemptions had already been granted by the Treasury Department to companies wishing to transact business with Iran. Since then there have been worries that the administration has been slow to open new cases by which suspicious economic activity with Iran could be proscribed. As the Washington Institute for Near East Policy noted in a paper published in November 2013, the president can legitimize a policy of non-enforcement by the granting of waivers that could effectively gut any and all sanctions enacted by Congress. The only effective check on such a decision would be the political firestorm that would inevitably follow a relaxation of the sanctions that would be accurately viewed as a craven offering to the ayatollahs and also an affront to both Congress and America’s Middle East allies such as Israel and Saudi Arabia that rightly fear a nuclear Iran. The administration has already made clear on other contentious issues, such as the application of immigration law, that it will only enforce laws with which it agrees. This is clearly unconstitutional, but as we have already seen with the president’s unilateral actions on immigration, Congress cannot prevent him from doing what he likes in these matters. The same might be true on Iran sanctions, especially if he is prepared to double down on inflammatory arguments falsely labeling sanctions proponents as warmongers. Having begun the process of loosening sanctions on Iran with the interim deal signed in November and seemingly intent on promoting a new détente with Tehran, it requires no great leap of imagination to envision the next step in this process. Unless the president produces a deal that truly ends the Iranian nuclear threat—something that would require the dismantling of Iran’s facilities and ensuring it could not possibly continue enriching uranium or building plutonium plants—a confrontation with Congress is likely. In that event, it appears probable that the president will choose to run roughshod over the will of Congress and the rule of law.

#### PC Fails

**Rogin, 1/11/14** - senior correspondent for national security and politics for Newsweek and The Daily Beast (Josh, “Inside the White House War on Dems” The Daily Beast, <http://www.thedailybeast.com/articles/2014/01/11/inside-the-white-house-war-on-dems.html>)

Regardless, both Democrats who support the administration and those who support Menendez told The Daily Beast that the White House’s tactic of going after their own party’s legislators is over-the-top and ineffective, alienating allies, creating bad will on Capitol Hill, and wasting political capital the administration may need on this issue down the road. “The White House has clearly overreached in calling Democratic supporters of the Menendez-Kirk bill warmongers,” one senior Democratic Congressional aide said. “These are Democrats, some who have been in public service for decades and have long supported increasing sanctions against Iran. It’s just not credible and not helpful for them to use such extreme language when it’s clearly not true.” Even those who support the administration’s overall position on Iran sanctions say the White House’s tactics are backfiring. Trita Parsi, the executive director of the National Iranian American Council, which opposes new sanctions legislation, said that the White House doesn’t appreciate that to oppose the Menendez-Kirk bill is a risky decision for Democrats because it puts them at odds with the pro-Israel lobby and many of their constituents. “The approach of the White House towards Congress, particularly towards allies, is not one that tends to build political capital and as long as they continue to use that approach, there is going to continue to be unnecessary resistance,” said Parsi. “The sense in Congress is that the White House is asking them for political cover but not giving them political cover. There’s a widespread perception that there’s no reciprocity.”

#### There won’t be a post-interim deal which makes sanctions inevitable

**Klapper, 1/24/14** – Associated Press (Bradley, “Final Iran deal could prove hard to come by for US” The Times of Israel, http://www.timesofisrael.com/final-iran-deal-could-prove-hard-to-come-by-for-us/)

But analysts say another short-term deal may be the only feasible outcome given the vast differences between Tehran and the international coalition. “I think it’s extremely unlikely that it will be possible to reach a comprehensive agreement

 in the next six months,” said Gary Samore, who until last year was Obama’s top arms control adviser. “We’re in for a rolling series of extensions.” The talks could also crumble completely if Iran violates the terms of the agreement or the parties make no progress in moving the negotiations forward. It’s not clear what the US and its coalition partners would do if a comprehensive agreement isn’t reached in six months. US officials are currently meeting with their counterparts in the so-called P5+1 to plot strategy for the February meetings. French Foreign Ministry spokesman Romain Nadal told The Associated Press on Thursday that the coalition’s priority is to reach a big deal and do so quickly. “We are not going to go through a succession of interim deals,” Nadal said. He added that the push in Congress for tougher sanctions against Iran “increases the pressure.” The White House has so far been able to hold off a Senate vote on a sanctions bill, arguing that it would violate the terms of the interim agreement with Iran and could disrupt diplomacy, even if Obama vetoes the bill. But congressional aides say even those who support Obama’s outreach to Iran could buckle if forced to accept another six-month deal. Backers of the congressional sanctions push say the crippling economic penalties are what’s drawn Iran to the negotiating table in the first place and should not be eased until the Islamic republic bends on all international demands. Many have been unmoved by Obama’s pleas to hold off on legislation. “It’s time to schedule a vote on the bill to give the American people the diplomatic insurance policy they deserve,” says Sen. Mark Kirk,a Republican and a leading sanctions advocate. The prospect of Iran using interim agreements as a delaying tactic has also stoked concern in the Middle East, particularly in Israel, which sees an Iranian nuclear program as a threat to its very existence. Senior Israeli officials say they’re concerned that even if Iran complies with the terms of interim agreements, the nature of those accords will allow the Islamic republic to keep key elements of its program intact. Yet pushing directly for a comprehensive pact is not without pitfalls. Negotiations are likely to be far thornier than in the months of discussions that went into producing the interim agreement. And any final pact, US officials have stressed, must settle once and for all any concerns that Iran may be trying to produce nuclear weapons. Iran has denied it is seeking a bomb and says it is pursuing nuclear capabilities for peaceful purposes. In a report released this week, David Albright, a former UN weapons inspector who regularly consults with the Obama administration, said Iran must remove some 15,000 of its estimated 20,000 centrifuges to make a final agreement palatable for the United States. Albright, whose report drew on discussions with senior US officials, also said Tehran would have to shut down an underground uranium enrichment site and significantly downgrade its heavy water reactor. Iran has never come close to accepting such conditions. They would eliminate the possibility of a plutonium-based weapon core, and extend by several months the timespan needed for Iran to “break out” through higher-grade uranium enrichment toward nuclear weapons development.

### AT: War Powers DA

#### ( ) No impact

Col. Dr. Frans Osinga, 2007; Royal Netherlands Air Force; “On Boyd, Bin Laden, and Fourth Generation Warfare as String Theory”, From John Olson, ed., On New Wars (Oslo, 2007, forthcoming). Reprinted with permission, 26 June 2007

Conceptually flawed Fourth, and related to the previous observation, conceptually the threat is addressed in a flawed manner. 4GW is guilty of trying to create too much coherence among disparate events, incidents, localized developments and factions. Most criminal, terrorist and insurgent groups actually are very local in their greed, grievances and activities and only use the ‘global insurgency’ as a veneer to gain local traction, wider attraction and legitimacy. Their strategic mobility and aspirations, and the expectation that such groups may all cohere against western states, may well be exaggerated. In addition, 4GW seems to lean heavily on case studies such as Vietnam, Iraq and the IDF-Palestian conflict and extrapolate from that to western states that are in fact not nearly so proximate to areas of instability and are also in contrast quite resilient. There is an obvious danger in that. What applies in Iraq – hardly a modern established stable state – may not apply in the US or Europe, nor is it immediately apparent what the equivalent actors – the terroristcriminal symbiosis of John Robb - are to the various Sunni and Shiite rogues perpetrating the daily atrocities in the streets of Baghdad or the to gangs in Columbia and Nigeria.

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#### Speed and flex arguments are wrong

Streichler, 08 [Stuart Streichler, Adjunct Faculty at Seattle University School of Law. Ph.D. at Johns Hopkins University; J.D. at the University of Michigan Law School; B.S. at Bowling Green State University, “Mad about Yoo, or Why Worry about the Next Unconstitutional War”, The Journal of Law & Politics, Winter, 24 J. L. & Politics 93, p. lexis]

When Yoo discusses the need for flexibility in the process for warmaking, he creates a false dilemma. He suggests that the president has discretionary power to start wars or that the president must secure prior authorization from Congress through a "fixed, legalistic process." n230 For Yoo, the latter would inevitably hamper the government's ability to respond to terrorist threats. n231 Yet even if Congress has the power to decide whether to go to war, the president retains substantial powers to respond quickly to defend the country. No lawmaker would insist on Congress deliberating while terrorists set off weapons of mass destruction in the United States. Americans who lived with the risk of nuclear attack during the Cold War accepted the president's authority to respond to the Soviet Union without waiting for the results of legislative debate. Additionally, Congress has demonstrated that it can move quickly to authorize the use of military force. Three days after September 11, the Senate voted 98-0 to authorize the president to use force in response to the attacks, n232 and the House approved the measure a few hours later (420-1). n233 Another four days passed before the president signed it. n234 The last time Congress declared war in response to an attack on the United States, it did not take lawmakers long to do so. The Senate (82-0) and the House (388-1) issued a declaration of war thirty-three minutes after President Franklin D. Roosevelt's "Day of Infamy" speech. n235 Furthermore, whatever their capacity for dynamic response, presidents do not always react to security threats with speed and energy. While Yoo cleverly aligns his position with flexibility, there is more to constructing an adaptive foreign policy than letting the president initiate military hostilities. Executive decisions on war that appear, in the short term, to reflect a flexible approach may limit policy options over the long run, constraining foreign policymakers and military planners. Yoo expresses no doubt that the president's capacity to make decisions in foreign affairs and defense - to "consider policy choices" and to "evaluate threats" - is "far superior" to Congress's. n236 That overstates the case. Despite the imperfections of the legislative process, it is hard to [\*124] reach such an unqualified conclusion. Seemingly for every example where executive decision-making works well, another can be cited exposing its deficiencies. President John F. Kennedy's management of the Cuban missile crisis, though not without its critics, is often cited as a classic model of decision-making in crisis. The same president's handling of the Bay of Pigs invasion has been roundly criticized. n237 As Yoo presents his argument on executive decision-making, it does not matter who occupies the office of the president. In fact, that can make a good deal of difference. With the presidency structured around one individual, the decision-making process is shaped by the chief executive's native abilities, judgment, and experience. n238 A whole range of personal qualities may affect the president's decision on whether to take the nation to war: how the president assesses risk (especially with the uncertain conditions that prevail in foreign affairs); whether he or she engages in wishful thinking; whether he or she is practical, flexible, and open-minded. n239 While every president consults with advisers, small group dynamics add another layer of difficulties in the executive decision-making process. Even talented White House staffers and independent-minded cabinet secretaries succumb to groupthink, as it has been called - the overt and subtle pressures driving group cohesiveness that can distort the decision-making process. n240 This effect can be pronounced in foreign policy, with stressful crises that often involve morally difficult choices. n241 Members of the president's team, not fully aware they are doing so, may overrate their own power or moral position, cut off the flow of information, downplay contrary views of outside experts, limit consideration of long-term consequences, underestimate the risks of a particular policy, or fail to develop contingency plans. n242 Once the group coalesces around a particular view, it becomes increasingly difficult for individual members to [\*125] press the group to reassess rejected alternatives. n243 The unique circumstances of working for the president can make matters worse. Members of the administration generally share the president's outlook, ideology, and policy preferences. Internal decision-making may get skewed because executive officials give advice based on what they think the president wants to hear. Even if the president's subordinates differ with the chief executive on particular questions, they can only go so far to challenge the president. n244 In short, there are more questions surrounding presidential decision-making on war than Yoo is willing to admit. Congress, with the president still involved, may be able to offset the structural disadvantages of a decision-making process taking place behind closed doors in the White House. While the executive branch tends to concentrate command authority in one person, power is dispersed on Capitol Hill. Not all members of Congress are equal, but no person has influence comparable to the president's power within the executive branch. In comparison with the select handful of advisers who have the most influence with the president, the number of elected legislators and their diverse ideologies, constituencies, and perspectives make them less susceptible to groupthink. Contrary to the president's decision-making process, insulated by executive privilege, the legislative process involves on-the-record votes and speeches by elected representatives and thus provides a forum for public deliberation. n245 To be sure, Congress is not an idealized debating society. Lawmakers have parochial concerns. They often bargain in private. Their public debates can be grounded in emotional appeals as much as reason. n246 Yet in his eagerness to rate the president far above Congress in deciding to go to war, Yoo overlooks the value in having a decision-making process conducted in relatively open view and the possibilities for lawmakers to engage in serious deliberations on vital questions of national security. n247

#### Prior involvement avoids mission interference after the fact

Barron, 08 [David J. Barron, Professor of Law at Harvard Law School and Martin S. Lederman, Visiting Professor of Law at the Georgetown University Law Center, “The Commander in Chief at the Lowest Ebb -- A Constitutional History”, Harvard Law Review, February, 121 Harv. L. Rev. 941, Lexis]

By the conclusion of the Clinton Administration, however, it appeared that something of a practical settlement between the political branches regarding this long-contested constitutional question had been reached. By that time, Presidents were in rough agreement that, whatever the Founding-era understandings might have been, extensive historical practice had established that the Commander in Chief was, [\*1057] to some not fully specified extent, "authorized to commit American forces in such a way as to seriously risk hostilities ... without prior congressional approval." n476 Some Presidents made even bolder claims; n477 but executive branch precedent and opinions from after 1951 generally indicated that any conflict of a scale directly comparable to Korea or Vietnam must be carried out with legislative approval. n478 Congress, for its part, seemed largely resigned to this executive branch approach to the initiation question, and has therefore recently focused its attention more on policing the duration and conduct of campaigns, rather than on challenging their legality at the outset. Meanwhile, the courts have not had much to say about the question of unilateral executive use of military force.

#### Congress solves casualty aversion

Samples, 11 [John Samples, Director of the Center for Representative Government at the Cato Institute, “Congress Surrenders the War Powers: Libya, the United Nations, and the Constitution”, Cato Policy Analysis, 10-27, http://www.cato.org/sites/cato.org/files/pubs/pdf/pa687.pdf]

Conclusion The practice of limited war in the years after the Cold War does not serve the nation well. Contrary to the Constitution, such wars are declared without congressional approval. The president begins such wars and yet is constrained politically by a strict need to avoid casualties; implicitly these wars are worth fighting if they are expected to be (and turn out to be) costless with regard to American deaths in combat. In war as in life, such undertakings may turn out to be worth their marginal cost, that is, nothing. If combat deaths are avoided, however, presidents may avoid responsibility for contravening public opinion about a limited war. Respecting the congressional power to authorize limited wars would improve the republican or representative character of American government. Congress has not distinguished itself regarding these limits to wars. Pushed to the side, Congress is often divided and incapable or unwilling to take up its constitutional responsibilities. Its investigations and criticisms can affect the conduct of a limited war but not its inception. The public generally becomes less supportive of limited wars over time, and majorities often doubt that such conflicts are worth their cost. The public’s desire for congressional authorization of such wars goes unfulfilled. Generally, these limited wars seem half-made, conflicts presidents feel are essential to fight and yet beyond constitutional propriety. It is hard to imagine that seeking approval for these wars from international institutions will solve these republican shortcomings at home. A congressional authorization of a limited war would have advantages beyond constitutional propriety. If such wars are worth fighting, they should attract sufficient support from Congress. After all, Congress has been at times more hawkish than the executive in the period surveyed here, and put to the choice and forced to meet its constitutional obligations, Congress might well have approved all of the limited wars examined here. If such wars are worth fighting, casualties might be inevitable, and congressional authorization would give such losses legitimacy. Of course, as we have seen in the survey data, the public might believe that limited wars are not worth fighting, and Congress might not authorize a future conflict. Perhaps that denial will pose risks for the nation. But those putative risks should be balanced against the known shortcomings of the current practice of limited wars, failures that vitiate both the Constitution and the republican character of our government.

#### Kills heg

Record, 2k [Jeffrey Record, Professor of International Security Studies at the Air War College, MA and Ph.D. from the Johns Hopkins School of Advanced International Studies, “Failed States and Casualty Phobia: Implications for Force Structure and Technology Choices”, Occasional Paper No. 18, September, http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA425499]

The strategic consequences of elite casualty phobia as well as its implications for the military ethic have been treated elsewhere. xvii Suffice to say here that they are averse and include: political vacillation in war-threatening crises, degraded military effectiveness, lowered deterrence, discouraged friends and allies, and a morally compromised professional military ethos—and above all politically inconclusive uses of force. In the short run it is always less risky to treat the symptoms of aggression rather than its political sources. Yet casualty phobia encourages strategically indecisive, even half-baked, uses of force. A refusal to take advantage of the opportunity of war to use the force necessary to topple the regimes of Saddam Hussein and Slobodan Milosevic, both of whom senior American policy makers publicly compared to Adolph Hitler, simply invited more war later. To be sure, in both the Gulf War and the War Over Kosovo, U.S. political objectives were limited, and did not include enemy regime overthrow. Yet, surely, the exclusion of regime change was driven mainly by fear of the anticipated risks and costs involved.

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### AT: Self D Too Broad

#### The plans linkage solves, explicit linkage

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

C. Status vs. Conduct: The Key Distinction between Responsive and Permissive Uses of Force It is the thesis of this article that the division between responsive and permissive use of force authority that forms the foundation for the SROE provides an effective and pragmatic “trigger” for war powers notification and consultation. When operating under self-defense ROE, U.S. forces are acting within the realm of authority inherently vested in the President as Commander in Chief and Chief Executive of the nation146. Accordingly, no notification to Congress is constitutionally required when military force is used pursuant to this authority. However, when acting beyond the scope of self defense ROE, the permissive use of force authority that must be granted to facilitate mission accomplishment exceeds this inherent constitutional power, and crosses into the realm of war powers shared between the President and Congress. Accordingly, the grant of such permissive authority serves as a viable triggering event for mandatory congressional notification mirroring the contours of the division of constitutional war powers. The quintessential example of such permissive authority granted pursuant to the SROE is a designation of an opponent as a “hostile force.” 147 This designation is a functional necessity to authorize U.S. forces to initiate hostilities against an enemy. For example, in March of 2003 the Iraqi army was the enemy or declared hostile forces. Declared hostile forces are defined in the SROE as “[A]ny civilian, paramilitary or military force or terrorist(s) that has been declared hostile by appropriate US authority.”148 Under the SROE, US forces may always engage a declared hostile force, irrespective of their manifested conduct149 (with the exception of conduct that clearly indicates such personnel are hors de combat150). It is their status as members of a declared hostile force which makes them subject to attack. It does not matter whether the declared hostile force is sleeping, taking a shower, eating a meal, or attacking US forces. In all cases, they may be attacked. This is not to say that once identified as a member of a hostile group, U.S. forces must attack151. Ultimately, other tactical considerations will dictate the nature of the U.S. reaction. For example, if a US soldier happens upon a sleeping Iraqi soldier, it may very well be tactically preferable to capture this enemy rather than kill him. But this merely illustrates that the authority granted by the SROE, which is in turn derived from the law of war principle of military objective, is just that – an authority, and not an obligation. It is the authority to engage an opponent as a measure of first resort irrespective of the actual threat manifested by that opponent that indicates a shift from responsive to permissive use of military power by the nation. 152 In contrast, when responding to a threat pursuant to self-defense authority, two SROE definitions are determinative: hostile act, and hostile intent.153 A hostile act is defined as “[A]n attack or other use of force against the United States, US forces or other designated persons or property. It also includes force used to preclude or impede the mission and/or duties of US force, including the recovery of US personnel or vital USG property.”154 This is the easier of the two principles to understand and apply. In the Iraq hypothetical, it is when the civilian shoots at US forces. By attacking US forces, he has committed a hostile act to which US forces may respond with proportionate force,155 including deadly force if necessary. Hostile intent is “[T]he threat or imminent use of force against the United States, US forces or other designated persons or property. It also includes the threat of force to preclude or impede the mission and/or duties of US force, including the recovery of US personnel or vital USG property.”156 Determining a “threat” or “imminent use of force” necessarily injects increased subjectivity into the analysis. Application of this principle is dictated by the actions prior to firing at US forces, such as when the prospective attacker establishes a firing position, raises his rifle or puts the US forces in his weapon sight. Once the prospective attacker’s intent is discernible and his capability evident, US forces may respond with proportionate force, including deadly force.157 Engagement authorization provided by the self-defense prong of the ROE, unlike use of force conducted pursuant to a designation of a hostile force, is fundamentally responsive. It is triggered only when hostility is “thrust upon” U.S. forces. At an operational level, it essentially extends traditional criminal self-defense and defense of others principles to the military environment. Hostile intent and hostile act serve as triggers for proportionate actions in self-defense or defense of others. But at both the strategic and operational levels, this is a true necessity based authority, permitting only that amount of responsive force necessary to terminate the threat, and extant for only so long as the threat exists. Because of the necessity basis for this authority, the SROE permits the use of force pursuant to this prong of authority at all times and during all missions.158 This authority never changes in relation to the nature of the operational mission and even applies when functioning under operational ROE different than those in the SROE, such as when U.S. forces operate under the command and control of a multinational force such as NATO.159 While the ROE principles for self-defense are constant, authorizations to initiate the use of force or use force in other proactive contexts will likely require mission specific ROE that provide authorizations to use force to accomplish the designated operational mission. If the military mission is to destroy, defeat, or neutralize a designated enemy force or organization, such as the Iraqi Army in 2003, personnel associated with that force will be declared hostile pursuant to the ROE160. The consequence of this designation is that once individuals are identified as a member of such a group or organization – a designation based on relevant criteria established through the intelligence preparation process – U.S. forces have the authority (but as noted above not necessarily the obligation) to immediately attack these “targets.” Thus, it is the “status” of being associated with the declared hostile organization that triggers the use of force authority: threat identification results in a group of individuals that as a result of their status, i.e. membership of a specific organization such as an army, may be attacked. As the SROE states, “Once a force is declared hostile by appropriate authority, US forces need not observe a hostile act or demonstrated hostile intent before engaging the declared hostile force.”161

### AT: Follow On

#### No follow on

Lemieux, 11 [Scott, assistant professor of political science at the College of Saint Rose, “Checks and Imbalances,” <http://prospect.org/article/checks-and-imbalances>]

Surprisingly, it's not that the president has systematically ignored or overridden Congress. In fact, the presidency has become the dominant war-making power precisely because this is how a majority of legislators want it. The president initiated major wars in Korea, Vietnam, and Iraq (twice), and in all of these cases -- sometimes before the fact, sometimes after -- Congress has passed the buck, delegating to the president the power to authorize force rather than declaring war itself. Senators and congressmen and women are similarly happy to pass on the blame when things go bad. Hillary Clinton's assertion that her vote for the 2002 authorization for President George W. Bush to use force in Iraq was not an authorization for the preemptive war Bush actually fought is an instructive illustration of how Congress tries to have it both ways. Even courts have found that Congress has abdicated its power to the executive. In his famous concurrence in Youngstown Sheet and Tube v. Sawyer, a case that involved President Harry Truman's seizure of steel mills during the Korean War, Justice Robert Jackson noted that the Court "may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers." Statutes passed by Congress matter only if Congress asserts its power in showdowns with the president. Generally, it hasn't. As Posner and Vermuele point out, Congress has occasionally reacted after the fact to presidential abuses of power. The post-Vietnam War Powers Resolution, for example, only authorizes the president to send troops abroad for up to 60 days without congressional approval. But these legislative exercises have been toothless, if not dead letters. Without any enforcement mechanism, the War Powers Resolution and other congressional acts are essentially symbolic. More recently, the reaction to the airstrikes against Libya is quite typical: Individual legislators may grumble, but there's no legislative action.

### CP

#### Plan’s way more credible

Pildes 12 [Richard H. Pildes, Sudler Family Professor of Constitutional Law at the NYU School of Law and Co-Director of the NYU Center on Law and Security, “Book Review: Law and the President”, Harvard Law Review, April, 125 Harv. L. Rev. 1381, Lexis]

That Posner and Vermeule miss the role of legal compliance as a powerful signal, perhaps the most powerful signal, in maintaining a President's critical credibility as a well-motivated user of discretionary power is all the more surprising in light of the central role executive self-binding constraints play in their theory. After asserting that "one of the greatest constraints on [presidential] aggrandizement" is "the president's own interest in maintaining his credibility" (p. 133), they define their project as seeking to discover the "social-scientific microfoundations" (p. 123) of presidential credibility: the ways in which presidents establish and maintain credibility. One of the most crucial and effective mechanisms, in their view, is executive self-binding, "whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors" (p. 137). As they also put it, "a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject" (p. 135). By complying with these constraints, presidents signal their good faith and accrue more trust to take further action. Most importantly from within Posner and Vermeule's theory, these constraints, many self-generated through executive self-binding, substitute for the constraints of law. Law does not, or cannot, or should not constrain presidents, in their view, but rational-actor presidents recognize that [\*1408] complying with constraints is in their own self-interest; presidents therefore substitute or accept other constraints. Thus, Posner and Vermeule recognize the importance of "enabling constraints" n78 in effective mobilization and maintenance of political power; that is, they recognize that what appear to be short-term constraints on the immediate preferences of actors like presidents might actually enable long-term marshaling of effective presidential power. Yet they somehow miss that law, too, can work as an enabling constraint; when it comes to law, Posner and Vermeule seem to see nothing but constraint. Indeed, this failing runs even deeper. For if presidents must signal submission to various constraints to maintain and enhance their credibility - as Posner and Vermeule insist they must - Posner and Vermeule miss the fact that the single most powerful signal of that willingness to be constrained, particularly in American political culture, is probably the President's willingness to comply with law.

### AT: Fettweis

#### Fettweis wrong

Beede, 11 [BENJAMIN R. BEEDE Rutgers, The State University of New JerseyFettweis, Christopher J. 2008. Losing Hurts Twice as Bad: The Four States to Moving Beyond Iraq. New York, NY: W.W. Norton & Company. 270 pages. ISBN-13: 978-0393067613, $25.95 hardcover, p. internet]

Fettweis’ book might easily be dismissed as an intriguing analysis, but one that has been superseded by the advent of the Obama Administration, and the changes in direction that the Obama team has advocated and that it may implement. Fettweis made a number of assumptions that have now been invalidated, moreover, including a continuation of prosperity. Despite its flaws, however, the book is a provocative contribution to the literature that criticizes the forcefulness of the U.S. foreign and military policy. Fettweis states that his objective is to analyze the “likely consequences of disaster in Iraq” (16), but he really has two purposes. One is to explain to people in the United States how they can adjust to the loss of the Iraq war. The second is to persuade readers that the United States can safely reduce its activity in international affairs. Although the author’s discussion of Iraq must be addressed, this review emphasizes Fettweis’ contention that the United States can safely be less assertive in world affairs because the world is not as dangerous a place as often claimed, and his closely related point that the public needs to develop a more discriminating approach to assessing threats from abroad, thereby enabling it to hold its government to higher levels of competency and accountability. Fettweis’ book title comes from a remark by sports figure Sparky Anderson that “losing hurts twice as bad as winning feels good” (13). He believes that this observation is valid, and he comes back to those words repeatedly. To support his contention concerning the significance of Anderson’s statement, Fettweis borrows from the literature of psychology to explain how people experience losses, ranging from having relatives or friends taken from them by death to having their favorite sports teams lose games. In competitive situations, the harmful psychological effects of losing are said to be intensified significantly when one adversary or opponent was “supposed” to win because of its strength. The number of instances where large countries have lost to guerrilla movements demonstrates that perceptions of the military advantages that the seemingly stronger side enjoys may well be outweighed by other factors, however (see Arreguin-Toft 2005; Record 2007). Fettweis recommends a rapid withdrawal of the U.S. forces from Iraq. He believes that the Iraq war has “been the worst kind of defeat for the United States: an unnecessary one, in a war that should never have been fought” (16, emphasis in the original). Not only was the war a huge error, Iraq is in such bad OCTOBER BOOK REVIEWS | 865 shape that the United States cannot do much to assist its reconstruction. A long-term occupation might eliminate many problems in Iraq, but he doubts the United States will stay long enough to affect major changes in that country. Little harm will come from the withdrawal, despite predictions by many that there would be civil war in Iraq and a security breakdown in the entire region. Fettweis is not a specialist in Middle Eastern affairs, and his interest is in the effects the Iraq war is having and will have on the United States, not so much in the Iraq situation. Thus, his book is not comparable to studies like that by O’Leary (2009). There are at least two schools of thought about the Iraq war, but Fettweis ignores this division of opinion. One school, which includes Fettweis, criticizes the Bush Administration for having rashly invaded Iraq and for having failed to plan and execute the operation properly. Fettweis writes that “[w]e were led into the Iraq morass not by evil people lying on behalf of oil companies but by poor strategists with a shallow, naive understanding of international politics” (29). Another school of interpretation views the Iraq (and Afghanistan) commitments simply as steps in a campaign undertaken to give the United States a lasting hegemony in the world. From the Bush Administration’s perspective, Iraq might even be considered a success. The executive branch demonstrated once again that it can wage war with few checks on its actions, and gave the United States a greater presence in the Middle East. The Obama Administration has altered Bush’s course to some extent, but so far, there has not been a radical shift. Indeed, there has been and remains the possibility of a greater commitment in the region, especially into Pakistan. Iraq and the United States have agreed to the removal of coalition forces by 2011, but the continued violence in Iraq and the construction of substantial military bases suggest that a U.S. military presence might continue past 2011. In February 2009, Secretary of Defense Gates reiterated the Obama Administration’s commitment to 2011, but in late May 2009, the army chief of staff, George Casey, declared that his service branch, at least, is planning for U.S. forces to remain in Iraq for another decade. In any event, there is little prospect for a full disengagement from southwest Asia any time soon. Given one of the purposes of his book, it is hardly surprising that Fettweis focuses almost entirely on Iraq. He ignores Afghanistan, except for repeatedly citing the Soviet persistence in trying to hold that country as an example of a great power making the error of invading a small country in the face of deep nationalism in the latter. He might have been well advised to view the entire area of southwestern Asia. Ahmed Rashid (2008) has described the U.S. involvement in the region that has extended well beyond Iraq and Afghanistan, and that suffers from the same kinds of misjudgments made in Iraq and Afghanistan, especially an overreliance on military measures and a reluctance to commit substantial resources to economic development. Fettweis uses Iraq to argue for a strategy of restraint based on his sanguine view that “we [the United States and, indeed, the entire world] are living in a golden age” (31, emphasis in the original), and that “[g]reat power conflict today is all but unthinkable; therefore, calculations surrounding the dangers posed by a united Eurasia should change, since the threats it once posed no longer exist” (208). With the end of the Cold War, the ability of the enemies of the United States to harm this country is quite limited. Hostile acts can be perpetrated, but such attacks cannot overthrow the United States (31). This strategy is hardly new. Years ago, it was summarized in these words, “Instead of preserving obsolete Cold War alliances and embarking on an expensive and dangerous campaign for global stability, the United States should view the collapse of Soviet power as an opportunity to adopt a less interventionist policy” (Carpenter 1992, 167). Despite the optimistic picture painted by some national security theorists, the world does contain some dangerous elements. David E. Sanger (2009), for example, presents a chilling picture of nuclear weapons in very possibly unsteady hands. Much is said in the book concerning national “credibility,” that is, the ability of a country to maintain its prestige and its reputation for decisive action based on its past performance. Fettweis argues that many governmental leaders, academic commentators, and journalists have been obsessed with this element of national power and have wanted the United States to deal with virtually any political crisis that occurs (161-75). Fettweis states that “[f]or some reason, U.S. policymakers seem to be especially prone to overestimate the threats they face” (116). There is no explanation of why this should be the case, nor is there any comparison with the propensity of leaders in other countries to make similar inaccurate projections. Numerous instances can be cited where governmental leaders and commentators have argued heatedly for “action” on the ground that “inaction” will damage the reputation of the United States. Early in the Carter Administration, for example, National Security Advisor Zbigniew Brzezinski dedicated himself for some time to instigating the dispatch of navy task force to the Horn of Africa during a period of tension between Ethiopia and Somalia. After failing to persuade the secretaries of state and defense that such action was necessary, Brzezinski waged a covert effort through the media to bring a decision in favor of his policy (Gardner 2008, 40-2). Two case histories cited in the book as examples of a disastrous insistence on maintaining credibility are the Spanish and British efforts to hold the Netherlands and the British colonies that became the United States, respectively. More recent instances that could have been cited are the controversies in the United States concerning the “loss” of China in the late 1940s and the establishment of a communist regime in Cuba in the late 1950s. Sensitivity concerning Cuba led in part to the intervention in the Dominican Republic in 1965, and other episodes where the United States committed itself to fighting insurgencies in Latin America. OCTOBER BOOK REVIEWS | 867 Concerns about the political impact of the “loss” of Vietnam played a significant role in decisions to support the Republic of Vietnam. These episodes are largely omitted, though. Fear is a potent political weapon, and foreign threats, whether real or imaginary, are highly useful within the domestic political arena. Claims of a “missile gap” helped John F. Kennedy win the presidency, for example. The armed services and the various intelligence agencies are rewarded because of fears of foreign threats. Although the armed forces may be cautious about entering a given conflict or making other violent moves, they are unlikely to stress the peaceful nature of the world if they want to retain their budgets and their prestige. Another element in strategy formulation in the United States has been its experience with long-term threats. White (1997) asserts that the long conflict with the Soviet Union fundamentally structured the discussion and resolution of public policy issues in the United States, and greatly strengthened the presidency at the expense of Congress and the political parties. Although his book was written before 9/11, his observation that political activists and the public have become accustomed to protracted battles with foreign enemies makes it easy to understand why they could readily accept a “long war” against terrorism. Somewhat along the same line, Sherry (1995) maintains that this country has been under emergency conditions from the Great Depression onward, perhaps even before, permeating the United States with “militarism” in its broadest sense. Going back even further, some writers have argued that United States’ assertiveness may be traced to the late nineteenth and especially the early twentieth century. Lears (2009) points critically to Theodore Roosevelt as a key player in this development, and Ninkovich (1999) offers a more favorable view of the “crisis internationalism” of Woodrow Wilson. Fettweis touches on this history, but he underestimates the extent to which the United States has been conditioned to react vigorously to a range of foreign policy issues, and overestimates the differences in foreign and military policy brought about by changes from one administration to another. Given this conditioning, changing the mind-sets of both elites and the public may be an extremely difficult task. To a degree, Fettweis’ arguments resemble those of the “American empire” theorists, such as Bacevich (2008), Johnson (2006), and Gardner and Young (2005). Critics of the “American empire” believe that the United States produces much of the unrest and the tension in the world through its unilateral actions and its emphasis on military power. Fettweis does not go that far, but his advocacy of “strategic restraint” is certainly compatible with such views. He agrees that the United States’ involvements—especially military commitments—abroad may unsettle conditions in countries as much as they may stabilize them, but his purpose is primarily to reassure the people of the United States that less assertive activity by their country will not result in world chaos. Thus he does not have much to say about the motivations of elite figures 868 | POLITICS & POLICY / October 2011 who advocate an active foreign policy. His argument seems to be that the United States is vastly overextended in its commitments as a result of a number of individual mistakes stemming from an overconcern with credibility rather than a flawed strategy. Despite his disclaimers, Fettweis’ words sometimes resemble the arguments of pre-World War II isolationists. Indeed, throughout the book, the word “internationalists,” which properly describes those concerned with international cooperation, is used to refer to those who should be termed “interventionists,” whether their motivations are power political, economic, or humanitarian, or a mixture of the three. Fettweis believes that there was little that the United States could have done to prevent the outbreak of World War II in Europe, moreover. On the contrary, firmer U.S. support of France and Great Britain might have encouraged those countries to force Germany to evacuate the newly reoccupied Rhineland and to render it much more cautious in its later actions. After he successfully implemented his plan to put troops into the Rhineland in 1936, Hitler told his confidants that a French demand for a withdrawal would have been successful owing to Germany’s military weakness. Fettweis even praises the United States because it “had the wisdom to remain neutral for more than two years” and thus “escaped the worst of the suffering” (206). This is surely wrong. An earlier involvement in the war would doubtless have reduced U.S. casualties and other costs because invasions of Europe would have been unnecessary if the French and British had held at least part of the continent, and because Germany might not have developed a cushion of occupied territories to protect it from land attacks and from air assaults for a time. Whether a public educated by books like this one would be able to make suitable threat assessments, and thereby be better able to exercise control over governmental actions abroad is another question. Fettweis’ work may be quite persuasive because he expresses his views clearly and avoids highly charged language. However, if elites agree about dangers from abroad, then popular opinion may have little effect on policy making and policy implementation. Fettweis’ thinking is significantly flawed by his assumption that “politics is, and always will be, the enemy of strategy,” and reiterates his point (26, 157). Fettweis adds that “it would be naive to suggest that it is possible to keep politics completely separate from strategy, nor would it be fully desirable to do so in a democracy” (26-7), but “for the sake of this book, we will attempt to clarify the national interest by keeping the two realms separate, to the extent possible” (27). Determining national strategy is necessarily a highly political act, and it cannot be established without considering the demands of major internal stakeholders. What he terms “politics” may often be differing opinions based on different data or interpretations of the same data. Political survival is critical for a political leader, and such leaders can understandably be hesitant in exercising restraint if they believe their opponents will attack them, perhaps decisively, for being “soft” on the enemies of the day. Fettweis is fond of the term “realist” to OCTOBER BOOK REVIEWS | 869 refer to some defense and foreign policy analysts, but describing someone as a “realist” may simply mean that the person agrees with the views of the individual applying that description. In certain instances, “realism” can mean being restrained, and, in other instances, being highly assertive. Appropriate policy decisions are likely to be made on the basis of accurate intelligence and careful assessments rather than adherence to a general outlook.

### AT: Biothreat

#### No bio-threat

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

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

### 1ar – deal fails

#### Deal collapse inevitable over centrifuges and Zarif isn’t seeking a deal

**Goldberg, 1/24/14 -** national correspondent for The Atlantic(Jeffrey, Bloomberg, “More Bad Omens for the Iran Nuclear Talks” <http://www.bloomberg.com/news/2014-01-24/more-bad-omens-for-the-iran-nuclear-talks.html>)

The velocity of bad sign-spotting is increasing as we get closer to the main negotiations over Iran's nuclear program. Bad Sign No. 1: I think it’s important to note that Iranian President Hassan Rouhani has just stated that under no circumstances would Iran agree to destroy any of its centrifuges. I would also like to note that this unequivocal statement, if sincere, means that there is no possibility of a nuclear deal between Iran and the six powers set to resume negotiating with it next month. In order to keep Iran perpetually 6 to 12 months away from developing a nuclear weapon -- an unacceptable period in the mind of Israeli Prime Minister Benjamin Netanyahu, but a time-frame that U.S. President Barack Obama could conceivably accept -- Iran would have to agree to dismantle 15,000 centrifuges; close an important uranium enrichment site; and accept 20 years of nuclear inspections, according to the Institute for Science and International Security, a well-respected (and centrist) think tank headed by the former United Nations weapons inspector David Albright. Here is what Rouhani -- who is described as a far more moderate a figure than the man who actually leads Iran, Supreme Leader Ayatollah Ali Khamenei -- said on CNN: “In the context of nuclear technology, particularly of research and development and peaceful nuclear technology, we will not accept any limitations. And in accordance with the parliament law, in the future, we’re going to need 20,000 megawatts of nuclear-produced electricity, and we’re determined to obtain the nuclear fuel for the nuclear installation at the hands of our Iranian scientists. And we are going to follow on this path." At which point, his interviewer, Fareed Zakaria, asks: “So there would be no destruction of centrifuges, of existing centrifuges?” To which Rouhani responds: “Not under any circumstances. Not under any circumstances.” I’m not sure how Rouhani and his chief negotiator, the suave, superficially Westernized foreign minister Mohammad Javad Zarif, back down from this maximalist position. And I’m not sure how Obama could possibly accept a deal that mothballs centrifuges while leaving them in place, rather than devising an agreement that guarantees their destruction. If the centrifuges are allowed to remain in Iran, but are disabled (or covered with bedsheets or wrapped in couch-plastic or locked in a very big room), it would possible for Iran to very quickly start spinning them again. First step: Kick out the inspectors. Second step: Break the locks. Third step: Enrich uranium to weapons-grade level in a short enough period that the West -- the lumbering, ambivalent, disputatious West -- has insufficient time to respond. This would be the moment, of course, at which Obama would have to carry out his promise to use whatever means necessary to stop Iran from going nuclear, and this is not a position Obama wants to create for himself -- which is why leaving the centrifuges in place would not be a wise move for him. Bad Sign No. 2: Zarif, the moderate’s moderate, might not be so moderate at all. Writing in the New Republic, Ali Alfoneh and Reuel Marc Gerecht plumb Zarif’s new memoir, “Mr. Ambassador: A Conversation with Mohammad-Javad Zarif, Iran’s Former Ambassador to the United Nations,” and find distressing signs of ideological fervor: "His discussion of the basic nature of the Islamic Republic and the West exposes Zarif’s ideological commitment and the regime’s revolutionary constancy.” They quote him: “ 'We have a fundamental problem with the West and especially with America,’ Zarif declares. ‘This is because we are claimants of a mission, which has a global dimension. It has nothing to do with the level of our strength, and is related to the source of our raison d’etre. How come Malaysia [an overwhelmingly Muslim country] doesn’t have similar problems? Because Malaysia is not trying to change the international order. It may seek independence and strength, but its definition of strength is the advancement of its national welfare.’ ” Alfoneh and Gerecht continue, “While Zarif considers national welfare one of the goals of the Islamic Republic, he stresses that ‘we have also defined a global vocation, both in the Constitution and in the ultimate objectives of the Islamic revolution.' He adds: ‘I believe that we do not exist without our revolutionary goals.’ ” In other words, U.S. negotiators facing Zarif might be facing someone who is more rigidly ideological than they are prepared to acknowledge.

#### New investment wrecks any chance of an Iran deal

**Tobin, 1/19/14** – editor of Commentary Magazine (Jeffrey, “Iran Biz Boom May Already Doom Talks”

<http://www.commentarymagazine.com/2014/01/19/iran-business-boom-may-already-doom-nuclear-talks-sanctions/>

But the problem with that argument, as the New York Times reported on Friday, is that Iran is open for international business now. While there have been signs indicating that Iran’s economy is already recovering from the impact of sanctions, the interim accord has led to a parade of European businessmen trooping to Tehran to lay the groundwork for what they see as the impending collapse of the restrictions on transactions with the Islamist regime. Indeed, according to the Times one of the busiest people in the Iranian capital is Hossein Sheikholeslami, the former terrorist (he was one of the “students” responsible for holding American diplomats hostage in 1979) assigned to fielding offers from nations including Germany, Italy, and Finland which, despite their nominal allegiance to the U.S.-led sanctions coalition, are champing at the bit to get their bids in now for contracts to do business in Iran. Seen in that light, we won’t have to wait until July to know whether the latest P5+1 with Iran talks will succeed. If the sanctions are coming apart at the seams today, then the interim accord has already failed. As critics of the interim accord signed in Geneva in November said at the time, the decision by the Obama administration to begin the process of loosening sanctions

just at the moment when they appeared most effective in their goal of forcing Iran to end its nuclear program was nothing short of a fatal mistake. Though the president has mocked the idea that the new sanctions being considered by the Senate would strengthen his hand in the talks, his decision to grant the Iranians significant relief from the earlier sanctions has already begun the process by which the entire edifice of economic restrictions is virtually in shambles. As the Times story illustrates, the actions of European nations that were unenthusiastic about sanctions from the start (which could also be said of the Obama administration since it opposed the current tough sanctions when Congress debated their adoption) are allowing the Iranians to claim that the sanctions regime is tottering. This will strengthen Tehran’s hand in negotiations since it may reasonably conclude the U.S. can’t count on international support for renewed sanctions if, as is more than likely, the Iranians refuse to dismantle or even substantially degrade their nuclear program in the coming talks. Nor is the interest in resuming business with the Islamist tyrants confined to a few outliers or even only Europeans: In the first two weeks of the year, Iran welcomed more delegations from Europe than in all of 2013. “The Europeans are waiting in line to come here,” said Mr. Sheikholeslami, the international affairs adviser to the head of Iran’s Parliament, Ali Larijani, who has been receiving many of the high-profile visitors. “They are coming to seek benefits and to get ahead of their international rivals.” Italy’s foreign minister, Emma Bonino, has been here, as has a former British foreign minister, Jack Straw, in his capacity as the head of the Iran-Britain Friendship Committee. The prime ministers of Italy and Poland have also scheduled visits. Trade delegations from Ireland, Italy and France are expected in coming weeks. American companies have shown some interest, of course. In September the head of President Hassan Rouhani’s office, the former director of the Iranian Chamber of Commerce, Mohammad Nahavandian, held a closed-door meeting with leading chief executives in New York. In March, an Iranian investment company is organizing a $15,000-a-ticket seminar in New York on business opportunities in Iran. President Obama and others who claim more sanctions can only mean war say the only path to peace runs through the diplomatic process and that it must be given more time to succeed. But the boomtown atmosphere in Tehran that has kept Sheikholeslami hopping is proof that the real choice is not between more sanctions and diplomacy. Without a law on the books that will mandate a complete economic embargo of Iran if the diplomats fail to produce a deal that ends the Iranian nuclear threat, Tehran can confidently assume it has nothing to lose from more delaying tactics and a refusal to give up its nuclear dreams.