# 1AC

The United States federal judiciary should restrict the war powers authority of the President of the United States to introduce nuclear armed forces into hostilities against a government for inadvertently releasing nuclear material used in an attack against the United States or its allies without Congressional approval.

**1AC Negligence Adv--- RU + Pak**

**Nuclear terror is inevitable**

**Jaspal 2012** (Zafar Nawaz Jaspal, Associate Professor at the School of Politics and International Relations, Quaid-i-Azam University, Islamabad, Pakistan “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, Vol. 19, Issue - 1, 2012, 91:111)

The **misperception, miscalculation and** above all **ignorance** of the ruling elite **about security puzzles are perilous for the national security of a state**. Indeed, **in an age of transnational terrorism and unprecedented dissemination of dualuse nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice**. The **incapability** of terrorist organizations **to engineer fissile material does not eliminate** completely **the possibility of nuclear terrorism**. At the same time, **the absence of an example** or precedent of a nuclear/ radiological terrorism **does not qualify the assertion that the** nuclear/radiological **terrorism ought to be remained a myth**. Farsighted rationality obligates that **one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear**, radiological, chemical and biological **material producing capabilities**. In addition, one could be sensible about the published information that **huge amount of nuclear material is spread around the globe**. According to estimate **it is enough to build more than 120,000 Hiroshima-sized nuclear bombs** (Fissile Material Working Group, 2010, April 1). The alarming fact is that **a few storage sites** of nuclear/radiological materials **are inadequately secured and continue to be accumulated in unstable regions** (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). **Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts**. Late Osama **bin Laden**, the founder of al Qaeda **stated that acquiring nuclear weapons was a“religious duty**” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with **Al Qaeda**, but his meeting with Osama establishes the fact that the terrorist organization **was in contact with nuclear scientists**. Second, **the terrorist group has sympathizers in the nuclear scientific bureaucracies**. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” **The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats** and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, **the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from** **nuclear**/radiological terrorist **attacks**. Daniel Whiteneck pointed out: “**Evidence suggests**, for example, **that al Qaeda** might not only use WMD simply to demonstrate the magnitude of its capability but that it **might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments** and societies in the Muslim world. **An adversary that prefers escalation regardless of the consequences cannot be deterred**” (Whiteneck, 2005, Summer: 187) Since taking office, President Obama has been reiterating that “nuclear weapons represent the ‘gravest threat’ to United States and international security.” While realizing that the US could not prevent nuclear/radiological terrorist attacks singlehandedly, he launched 47an international campaign to convince the international community about the increasing threat of nuclear/ radiological terrorism. He stated on April 5, 2009: “**Black market trade in nuclear secrets and nuclear materials abound**. The technology to build a bomb has spread. Terrorists are determined to buy, build or steal one. **Our efforts to contain these dangers are centered on a global non-proliferation regime, but as more** people and nations **break the rules, we could reach the point where the center cannot hold** (Remarks by President Barack Obama, 2009, April 5).” He added: “**One terrorist with one nuclear weapon could unleash massive destruction**. Al Qaeda has said it seeks a bomb and that it would have no problem with using it. And we know that there is unsecured nuclear material across the globe” (Remarks by President Barack Obama, 2009, April 5). In July 2009, at the G-8 Summit, President Obama announced the convening of a Nuclear Security Summit in 2010 to deliberate on the mechanism to “secure nuclear materials, combat nuclear smuggling, and prevent nuclear terrorism” (Luongo, 2009, November 10). President Obama’s nuclear/radiological threat perceptions were also accentuated by the United Nations Security Council (UNSC) Resolution 1887 (2009). The UNSC expressed its grave concern regarding ‘the threat of nuclear terrorism.” It also recognized the need for all States “to take effective measures to prevent nuclear material or technical assistance becoming available to terrorists.” The UNSC Resolution called “for universal adherence to the Convention on Physical Protection of Nuclear Materials and its 2005 Amendment, and the Convention for the Suppression of Acts of Nuclear Terrorism.” (UNSC Resolution, 2009) The United States Nuclear Posture Review (NPR) document revealed on April 6, 2010 declared that “**terrorism and proliferation are far greater threats to the United States and international stability**.” (Security of Defence, 2010, April 6: i). **The United States declared that it reserved the right to“hold fully accountable” any state or group “that supports or enables terrorist efforts to obtain** or use **weapons of mass destruction, whether by facilitating, financing, or providing expertise or safe haven for such efforts** (Nuclear Posture Review Report, 2010, April: 12)”. This declaration underscores the possibility that **terrorist groups could acquire fissile material from the rogue states.**

**Latest IAEA assessment concludes the risk is underestimated**

**Sturdee 2013** (Simon Sturdee, AFP reporter, July 1, 2013, “UN atomic agency sounds warning on 'nuclear terrorism',” Fox News, http://www.foxnews.com/world/2013/07/01/un-atomic-agency-sounds-warning-on-nuclear-terrorism/#ixzz2dsmqwOk3)

**The head of the UN atomic agency warned** Monday **against complacency in preventing "nuclear terrorism"**, saying progress in recent years should not lull the world into a false sense of security.¶ "Much has been achieved in the past decade," Yukiya Amano of the International Atomic Energy Agency told a gathering in Vienna of some 1,200 delegates from around 110 states including 35 ministers to review progress on the issue.¶ "Many countries have taken effective measures to prevent theft, sabotage, unauthorised access, illegal transfer, or other malicious acts involving nuclear or other radioactive material. Security has been improved at many facilities containing such material."¶ Partly as a result, he said, "**there has not been a terrorist attack involving nuclear or other radioactive material**."¶ "**But this must not lull us into a false sense of security.** If a 'dirty bomb' is detonated in a major city, or sabotage occurs at a nuclear facility, the consequences could be devastating.¶ **"Nuclear terrorism" comprises three main risks: an atomic bomb, a "dirty bomb"** -- conventional explosion spreading radioactive material -- **and an attack on a nuclear plant.¶** The first, using weapons-grade uranium or plutonium, is generally seen as "low probability, high consequence" -- very difficult to pull off but for a determined group of extremists, not impossible.¶ **There are hundreds of tonnes of weapons-usable plutonium and uranium** -- a grapefruit-sized amount is enough for a crude nuclear weapon that would fit in a van -- **around the world.¶ A "dirty bomb"** -- a "radiological dispersal device" or RDD -- **is much easier but would be hugely less lethal. But it might still cause mass panic.¶** "If the Boston marathon bombing (in April this year) had been an RDD, the trauma would be lasting a whole lot longer," Sharon Squassoni from the Center for Strategic and International Studies (CSIS) told AFP.¶ **Last year alone, the IAEA recorded 17 cases of illegal possession and attempts to sell nuclear materials and 24 incidents of theft or loss.** And **it says this is the "tip of the iceberg".¶ Many cases have involved former parts of the Soviet Union**, for example Chechnya, Georgia and Moldova -- where in 2011 several people were arrested trying to sell weapons-grade uranium -- but not only.¶ **Nuclear materials that could be used in a "dirty bomb" are also used in hospitals, factories and university campuses** and are therefore seen as easy to steal.¶ **Major international efforts have been made since the end of the Soviet Union in 1991 and the September 11, 2001 attacks** in the United States **to prevent nuclear material falling into the wrong hands.¶** US President Barack Obama hosted a summit in 2010 on the subject which was followed by another one in Seoul last year. A third is planned in The Hague in March.¶ A report issued in Vienna on Monday to coincide with the start of the meeting by the Arms Control Association and the Partnership for Global Security said **decent progress had been made but that "significant" work remained.¶** Ten countries have eliminated their entire stockpiles of weapons-grade uranium, many reactors producing nuclear medicines were using less risky materials and smuggling nuclear materials across borders, for example from Pakistan, is harder, it said.¶ But **some countries still do not have armed guards at nuclear power plants, security surrounding nuclear materials in civilian settings is often inadequate and there is a woeful lack of international cooperation and binding global rules.**¶ "**We are still a long way from having a unified regime**, a unified understanding of the threat and a way to address it," Michelle Cann, co-author of the report, told AFP.

**Undetected entry through ports is highly likely**

**Gilbert 2013** (Holly Gilbert, May 29, 2013, “Risk of Nuclear Materials Being Smuggled Through Ports Should Be Taken Seriously, Say Experts,” Security Management, http://www.securitymanagement.com/news/risk-nuclear-materials-being-smuggled-through-ports-should-be-taken-seriously-say-experts-00125)

**The threat of** harmful **nuclear material entering the United States through the nation’s ports is a very real one**, but international cooperation and technological solutions can help better secure our waterways against that threat. That was the subject of a panel discussion titled “Nuclear Terrorism: What’s at Stake?” hosted by the American Security Project in Washington, D.C. on Tuesday.¶ Dr. Stephen Flynn, a professor at Northeastern University and former president of the Center for National Policy, said that **smuggling through shipping containers is already happening on a daily basis, which demonstrates the possibility of a nuclear device, planted by terrorists, to go undetected. “You name the contraband, and it is [already] flowing through the system, whether it's knockoff products on the low end, to the movement of large sums of cash, to narcotics, to every form of weapons short of nuclear weapons**, in terms of what we’ve found there,” he said. “**The bottom line is the system remains highly vulnerable for folks to move things because it’s essentially an honor system, and it’s an honor system of enormous size.”¶** The enormity of that so-called “honor system” has only grown over the years. In 2003, the world's ports moved 300 million TDU’s, the metric unit used for weighing containerized cargo. In 2006, 400 million TDU’s were moved; last year, that number was 580 million TDU’s.¶ Because of the large number of containers that go through ports, the system is set up to allow companies to earn trusted status and have their containers go through on an expedited basis. Flynn said he was convinced that **if and when nuclear material enters the U.S. through a port, “it will come through a trusted shipper....” because those containers go through less scrutiny.**

**Detonation is easy**

**Bunn 2010** (Matthew Bunn, Professor of Practice at Harvard University's John F. Kennedy School of Government, April 2010, “Securing the Bomb 2010,” NTI, http://www.nti.org/media/pdfs/Securing\_The\_Bomb\_2010.pdf?\_=1317159794)

**Repeated assessments by the U.S. government** and other governments **have ¶ concluded that it is plausible that a sophisticated terrorist group could make ¶ a crude nuclear explosive—capable of ¶ destroying the heart of a major city**—if ¶ they got enough plutonium or HEU. **A ¶ “gun-type” bomb made from HEU**, in ¶ particular, **is basically a matter of slamming two pieces of HEU together at high ¶ speed.** An “implosion-type” bomb—in ¶ which precisely arranged explosives crush ¶ nuclear material to a much higher density, ¶ setting off the chain reaction—would be ¶ substantially more difficult for terrorists ¶ to accomplish, but is still plausible, particularly if they got knowledgeable help ¶ (as they have been actively attempting to ¶ do).12 **One study** by the now-defunct congressional Office of Technology Assessment ¶ **summarized the technical reality: “A small group of people, none of whom have ever had access to the classified literature, could possibly design and build a crude nuclear explosive device... Only modest machine-shop facilities that could be contracted for without arousing suspicion would be required.”**13 Indeed, even before ¶ the revelations from Afghanistan, **U.S. intelligence concluded that “fabrication of at ¶ least a ‘crude’ nuclear device was within ¶ al-Qa’ida’s capabilities**, if it could obtain ¶ fissile material.”14¶ It is important to understand that **making ¶ a crude, unsafe, unreliable bomb of uncertain yield that might be carried in the ¶ back of a large van is a dramatically simpler task than designing and building a ¶ safe, secure, reliable, and efficient weapon ¶ deliverable by a ballistic missile**, which ¶ a state might want to incorporate into its ¶ arsenal. Terrorists are highly unlikely to ¶ ever be able to make a sophisticated and ¶ efficient weapon, a task that requires a ¶ substantial nuclear weapons enterprise—¶ but they may well be able to make a crude ¶ one. **Their task would be easier if they ¶ managed to recruit experts with experience in key aspects of a national nuclear ¶ weapons program.¶** Nuclear weapons themselves generally ¶ have substantial security measures and would be more difficult to steal than nuclear materials. **If terrorists** nevertheless ¶ **managed to steal an assembled nuclear ¶ weapon** from a state, there is a significant ¶ risk that **they might figure out how to set ¶ it off**—though this, too, would in most ¶ cases be a difficult challenge for a terrorist ¶ group.15 Many modern U.S. and Russian ¶ nuclear weapons are equipped with sophisticated electronic locks, known in the ¶ United States as “permissive action links” ¶ or PALs, intended to make it difficult to ¶ detonate the weapon without inserting an ¶ authorized code, which terrorists might ¶ find very difficult to bypass. **Some weapons**, however, **are either not equipped ¶ with PALs or are equipped with older ¶ versions that lack some of the highestsecurity features** (such as “limited try” ¶ features that would permanently disable ¶ the weapon if the wrong code is inserted ¶ too many times or attempts are made to ¶ bypass the lock).16 Many nuclear weapons also have safety features designed to prevent the weapon from detonating unless it ¶ had gone through its expected flight to its ¶ target—such as intense acceleration followed by unpowered flight for a ballistic ¶ missile warhead—and these would also ¶ have to be bypassed, if they were present, ¶ for terrorists to be able to make use of an ¶ assembled nuclear weapon they acquired.¶ **If they could not figure out how to detonate a stolen weapon, terrorists might ¶ choose to remove its nuclear material ¶ and fashion a new bomb.** Some modern, ¶ highly efficient designs might not contain ¶ enough material for a crude, inefficient ¶ terrorist bomb; but **multistage thermonuclear weapons, with nuclear material in ¶ both the “primary”** (the fission bomb that ¶ sets off the fusion reaction) **and the “secondary”** (where the fusion takes place) ¶ probably **would provide sufficient material.** In any case, terrorists in possession ¶ of a stolen nuclear weapon would be in a ¶ position to make fearsome threats, for no ¶ one would know for sure whether they ¶ could set it off.

**Nuclear terrorism in and of itself does not pose an existential threat to survival**

**Wolfe 2009** (Kavan Wolfe, a Canadian author, IT consultant, June 25, 2009, “Imaginary Existential Threats”, http://thewaronbullshit.com/2009/06/25/exaggerated\_threats/)

Without venturing into the absurd, **the realistic worse case for terrorism is a single nuclear detonation in a major city. If optimally placed, this might kill hundreds of thousand or even a few million people. That would be bad. Extremely bad. However, it is not the end of humanity. Humanity would go on. Japan went on after Hiroshima and Nagasaki were bombed at the end of WWII.** The modern world would go on after the bombing of another major city.

**However, Obama will authorize nuclear retaliation against negligent states--- NPR explicitly says so**

**Beljac 2010** (Marko Beljac, PhD at Monash University, Teaches at LaTrobe University and the University of Melbourne, August 17, 2010, National Research Council Report on Nuclear Forensics Exposes the Soft Underbelly of Deterrence Policy, Nuclear Resonances, http://scisec.net/?p=435)

Before looking at this issue it would pay to have a look at the Obama administration's policy on the deterrence of nuclear terrorism. **The Obama policy, which essentially reaffirms Bush era policy, was articulated in the 2010 Nuclear Posture Review. The 2010 NPR states that the US will, ...hold fully accountable any state, terrorist group, or other non-state actor that supports or enables terrorist efforts to obtain or use weapons of mass destruction, whether by facilitating, financing, or providing expertise or safe haven for such efforts...**  The **use of nuclear weapons are not excluded**. In addition, contrary to the National Research Council report, the 2010 NPR states ...In addition, the United States and the international community have improving but currently insufficient capabilities to detect, interdict, and defeat efforts to covertly deliver nuclear materials or weapons—and if an attack occurs, to respond to minimize casualties and economic impact as well as to attribute the source of the attack and take strong action... The above statement encompasses nuclear forensics. The NPR recognises that nuclear forensics is “currently insufficient”, but nonetheless these capabilities are “improving.” That doesn't square with the National Research Council finding that “in some respects” forensic capabilities are “deteriorating.” Given current trends, furthermore, nuclear forensic capabilities will further “decline.” The US deterrence posture is robust, but the nuclear forensic capabilities needed to match declaratory policy are not sufficient and might well decline further, a point to which we return. It is not easy from the above to appreciate just how robust US nuclear deterrence policy is. It is not just that a deliberate transfer of nuclear materials by a state to a terrorist group is being deterred through the threat of nuclear attack. **The Bush-Obama policy adopts what is called a “negligence doctrine.” If a state is negligent in its oversight of nuclear materials, and should a terrorist group acquire nuclear materials due to such negligence, then a nuclear attack upon the negligent state falls within the ambit of the policy. This is what that seemingly innocuous word, “enables”, in the NPR deterrence policy refers to.** In the lexicon of US counter-terrorism policy “enables” has a pretty precise meaning. This meaning encompasses negligence. I will have more discussion of this in my book. **A negligence doctrine is pretty extreme. Such a policy leaves open any state to nuclear attack if the US decides that that state was negligent in its oversight over nuclear materials.**

**Causes nuclear war with Russia and collapses Pakistan**

**Knopf 2010** (Jeffrey Knopf, Ph.D., Political Science from Stanford University as well as an MA from Stanford and a BA from Harvard University, April 2010, “The Fourth Wave in Deterrence Research,” Contemporary Security Policy, Vol.31, No.1)

**Although many analysts want to hold accountable any state that becomes a source¶ of nuclear materials, deciding what type of retaliation to threaten** if a state’s materials¶ are employed by terrorists **has proven a thorny issue. There has been willingness to¶ contemplate a nuclear response**, but little support for mandating that retaliation must¶ be nuclear even in cases of intentional transfer. Many analysts simply note that the US¶ response could be either nuclear or non-nuclear without specifying any scenario in¶ which it should automatically be nuclear.110¶ The main reason for hesitation is that **there are good reasons not to threaten¶ nuclear strikes against certain states whose ﬁssile materials might not be completely¶ secure, including Russia and Pakistan. Russia could launch extensive nuclear¶ counter-strikes in response, while the United States has viewed Pakistan as an ally,¶ if an ambivalent one, and would not want to lose its cooperation in ﬁghting al Qaeda and the Taliban.** Even against states that are hostile to the United States and¶ unable to strike back in kind, **nuclear retaliation could be seen as excessive by the¶ international community and lead to a loss of support for the United States.** This¶ would especially be true if leakage were inadvertent rather than deliberate. For¶ these reasons, Corr advocates threatening weaker states with a conventional invasion¶ to impose regime change rather than nuclear retaliation.111 In contrast, Whiteneck¶ claims it makes sense to leave the nuclear option on the table because, after Iraq, US conventional capabilities are stretched thin and the threat to invade and occupy¶ another country might lack credibility.112¶ There are also situations in which even conventional military retaliation might be¶ counterproductive. For example, actors in Pakistan’s tribal regions unhappy with¶ government efforts to crack down on them might try to provoke US military¶ strikes on Pakistan that would help them topple the central government.113 Given¶ the wide range of scenarios that could lead to terrorists obtaining nuclear materials¶ and the political complications that would follow explicitly threatening countries¶ like Russia or Pakistan, the majority of analysts recommend a declaratory posture¶ of calculated ambiguity.114 Even Phillips, despite expressing doubt about whether¶ intentional WMD transfers can be deterred, advocates a ‘broadly scoped, operationally ambiguous declaratory policy’.115 By this, he means that all options, including¶ nuclear retaliation, should be on the table, but the exact nature of the military¶ response should not be speciﬁed in advance. This declaratory posture would also¶ leave open the precise level of proof the United States would require. Because of¶ the inherent uncertainties in attribution, Phillips and other analysts recommend that¶ the United States declare it will not necessarily require deﬁnitive attribution before¶ responding.116

**Russia nuke war causes extinction**

**Bostrum 2002** (Nick Bostrum, Professor of Philosophy at Yale, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards,” 2002, http://goo.gl/rmQyl)

A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. **An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal.** There was a real worry among those best acquainted with the information available at the time that a **nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals** that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that **a smaller nuclear exchange,** between India and Pakistan for instance, **is not an existential risk, since it would not destroy or thwart humankind’s potential permanently.** Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

**Pakistan collapse causes global nuclear war**

**Pitt 2009** (William Pitt, New York Times and internationally bestselling author of two books: "War on Iraq: What Team Bush Doesn't Want You to Know" and "The Greatest Sedition Is Silence.", May 8, 2009, “Unstable Pakistan Threatens the World,” http://www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183)

But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all. Pakistan is now trembling on the edge of violent chaos, and is doing so with nuclear weapons in its hip pocket, right in the middle of one of the most dangerous neighborhoods in the world. The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. **The fact that Pakistan,** and **India,** and **Russia, and China all possess nuclear weapons and share the same space means any** ongoing or escalating **violence** over there **has the real potential to crack open the** very **gates of Hell itself**. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and use d artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools. About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that **Pakistan could collapse under the mounting threat of Taliban forces** there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believed Pakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "**senior American officials** say they **are increasingly concerned about** new vulnerabilities for **Pakistan's nuclear arsenal,** including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spines of those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario. **If Pakistani militants ever succeed in toppling the government**, several very dangerous events could happen at once. **Nuclear-armed India could be galvanized into military action** of some kind, **as could** nuclear-armed **China or** nuclear-armed **Russia.** If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured, the specter (or reality) of **loose nukes** falling into the hands of terrorist organizations could **place the entire world on a collision course with unimaginable disaster**. We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner. The Obama administration appears to be gravely serious about addressing the situation. So should we all.

**Aff solves--- Congress won’t authorize nuclear retaliation--- failure to clarify authority now causes crisis of legitimacy whether we actually retaliate or not**

**Hemesath 2000** (Paul A. Hemesath, J.D./M.S.F.S. Georgetown University Law Center, School of Foreign Service, August 2000, “Who's Got the Button? Nuclear War Powers Uncertainty in the Post-Cold War Era,” Georgetown Law Journal, lexis)

Assuming a greater frequency and intensity of terrorist activity, the Executive may be faced with more opportunities to use force against increasingly tenacious and deadly opponents. 167 The present hypothetical, portraying a President who wishes to carry out a nuclear reprisal on terrorists in Afghanistan, represents a situation not altogether removed from the realities of the current state of the world. 168 As noted, **the use of nuclear arms to advance foreign policies has** [\*2497] **been contemplated and actually threatened in the past. 169** Although their use seems inconceivable in the near future, **the vicissitudes of world power struggles, the election of a rogue President, 170 or a reign of terrorism that infuriates the American public 171 are all factors that could plausibly lead to a threshold consideration of a U.S. nuclear offensive.** 172¶ Declining effectiveness of nuclear deterrence may also alter U.S. willingness to use nuclear weapons against its enemies. **The perceived need to strike with nuclear force is theoretically increased over time by the fact that deterrence effectiveness is diminished by its non-use as a punishment mechanism.** In this case, **the fact that the United States has abstained from using its nuclear arsenal over the last fifty years tends to decrease the perceived credibility of a U.S. promise to carry out a nuclear threat.** 173 Thus, as time goes on, **the temptation to bolster the credibility of a nuclear threat may increase**, if only slightly.**¶** Although these factors do not suggest the **certainty, or even the probability, of an offensive use of nuclear weapons on the part of the United States, the mere possession of such weapons and the unwillingness to renounce first-use, demands that responsible politicians, jurists, and academicians take serious notice of the constitutional limits applied to the use of nuclear weapons.¶ B.** ASSUMING A BIFURCATION OF LEADERSHIP¶ **Although congressional opposition to an executive decision to use nuclear weapons is not automatic, it reasonably can be anticipated** that a great number of congressmen would oppose such an action on a variety of grounds. Especially since the end of the Cold War, **the Executive has faced various levels of congressional opposition for actions far less fraught with international political** [\*2498] **implications, loss of life, and moral uncertainty.** 175 Thus, in the event that the Executive considers the use of a nuclear weapon, it is possible, if not likely, that Congress will wish to take part in the decision, utilizing the arguments described in Part I of this Note as a basis for its participation.**¶** Of course, should Congress approve the Executive's decision, actively or silently, to use the nuclear option, the crisis would go the way of so many other unchallenged presidential uses of force--as further evidence for the customary war power of the Executive. 176 However, **given the emotionally charged nature of nuclear issues and the congressional realization that such an approval would give the appearance of consent to an expanded grant of nuclear decisionmaking to the Executive, it is unlikely that Congress would approve such usage either actively or through silence.** 177 Rather, **an institutionally interested legislature would attempt to assert its power so as not to be completely subsumed by the powers of the Commander in Chief, the President. The resulting difference in opinion**, because of its probable seriousness and constitutional controversy, **may lead to a dangerous crisis.¶** C. CONSTITUTIONAL CRISIS?¶ In the event of a scenario where the nation is faced with a nuclear decision, **the absence of clear constitutional authority will ensure a crisis of constitutional dimensions.** 178 In the present hypothetical, **the Executive would be girded by the customary authority of some 200 non-congressionally approved uses of force**, the untested powers of the Commander in Chief, and the de facto power created by being the physical possessor of launch codes necessary for the final triggering of a nuclear attack. 179 **The Congress**, on the other hand, **would possess the authority provided by an uncertain constitutional interpretation of the War Powers Clause**, the ambiguous sui generis status of nuclear weapons, 180 and the changing nature of a post-Cold War geopolitical structure, as well as the moral arguments militating against the use of nuclear weapons. 181¶ Although these positions would make for fascinating oral argument before the Supreme Court in times of peace, **they constitute a harrowing threat to the legitimacy of the decision if conducted in the throes of a nuclear crisis.** One would predict that in such a scenario the Congress, for lack of an effective remedy, 182 would go to the courts to seek enforcement of an arguable, but well [\*2499] supported, constitutional prerogative. Under the status quo, the results of such a venture into the lower judiciary would be unpredictable and, based on the lack of controlling precedent or constitutional authority, subject to extreme controversy.¶ In the case of an offensive nuclear attack, **the importance of a coherent and legitimate decision cannot be overestimated.** Even with the force of a congressional declaration of war, Harry **Truman still faced critics that questioned the sagacity of his atomic decision in World War II.** 183 Although the wisdom of any nuclear use may always remain open to criticism, **the legality of such a decision should be beyond reproach.** As previously noted, the potentially "unlimited costs" of a nuclear war are extremely difficult to fathom, both physically and politically. 184 **A legitimate decision to utilize a nuclear weapon thus requires a high level of legality and consensus--two qualities that cannot be attained with a Congress plausibly asserting the nonexistence of the Executive's very constitutional authority to carry out the act.**

**Negligence doctrine incentivizes nuclear terror--- gives them political support for high magnitude attacks**

**Beljac 2008** (Marko Beljac, PhD at Monash University, February 8, 2008, “Pakistan and the prospects for nuclear terrorism,” Australian Policy Online, http://apo.org.au/commentary/pakistan-and-prospects-nuclear-terrorism)

**One disturbing option that has been** opened up by nuclear forensics and has been **seriously considered in the White House is the promulgation of a “negligence doctrine”** to deter nuclear terrorism. The idea here is that if a state were to lose control over fissile materials or nuclear weapons through “negligence,” and these materials were stolen and used in a nuclear explosive device by a terrorist group, then the United States would hold such a state “responsible” for the terrorist attack and strike back with nuclear weapons.¶ **The possibility of such a nuclear strike, it’s argued, would deter “negligence.”** But the concept makes “negligence” sound like a conscious choice made at the very highest policy levels, which it need not be. Sometimes at US nuclear weapons plants people have been caught sleeping on the job but surely the negligence doctrine would not apply if Bin Laden got his nuclear device because of a Homer Simpson.¶ **In reality, a “negligence doctrine” would make an act of nuclear terrorism more likely. Jihadi groups like Al Qaeda are revolutionary** - or, more accurately, counter-revolutionary - **vanguards who see their main strategic task as mobilising a dissatisfied but apathetic population.** In this sense they have been highly influenced by Lenin and the Bolsheviks. **It is not hard to see how a “negligence doctrine,” rather than deterring nuclear terrorism, would actually encourage Jihadi groups to attempt to get their hands on the necessary fissile materials for a nuclear device because the prospect of a US nuclear counter-strike on such obviously immoral grounds would enrage, and hopefully radicalise, the entire Islamic world.**

**Nuclear terrorists cannot be deterred**

**Van de Velde 2010** (James Van de Velde, Associate for the consulting firm, Booz Allen Hamilton, has over 20 years of experience in academia, intelligence collection and analysis, political, counter terrorism and proliferation analysis, and national security affairs. He is a former White House Appointee under President George H.W. Bush Sr., Yale University lecturer and residential college dean, State Department Foreign Service Officer and naval intelligence reserve officer, 2010, “The Impossible Challenge of Deterring ‘Nuclear Terrorism’ by Al Qaeda,” Studies in Conﬂict & Terrorism, 33:682–699, EBSCO; the more you know: http://www.nytimes.com/2013/06/05/nyregion/james-van-de-velde-from-pariah-back-to-pillar.html?\_r=0)

Conclusion¶ **Al Qaeda continues to represent a worldwide threat to the United States and its allies. It continues to plot terrorist acts against the West and aspires to acquire** or develop **w**eapons¶ of **m**ass **d**estruction, **which it very well might use against the West without hesitation. Despite much intellectual effort, there remain some inescapable truths regarding Al Qaeda’s interest in attacking the West with a nuclear weapon:** **• The United States cannot** likely **persuade** the irredeemable **jihadists that it is not at war with Islam. • Acquiring a WMD is not categorically forbidden by Islam. •** Ayman al-Zawahiri may have claimed on 2 March 2008, that the practical use of a¶ WMD would be to deter eWestern aggression, but **there is no discernable Al Qaeda WMD employment doctrine. The United States has no idea when, where, or why Al Qaeda might use an IND** (Improvised Nuclear Device). And a decision to use¶ such a weapon will be inﬂuenced by such factors as how and where the weapon¶ was acquired, by whom, who controls it, and the weapon type (IND vs. a stolen¶ state-weapon).¶ **The West ought, therefore, to characterize those irredeemably committed to acquiring a nuclear weapon as irrational, apocalyptic, and dangerous—ﬁrst and foremost because they are!** The “center of gravity” in the war with Al Qaeda is the worldwide ﬁght over Al Qaeda¶ ‘s legitimacy and Muslim perceptions of the West. The best and perhaps only means,¶ therefore, to deter Al Qaeda’s use of a nuclear weapon in particular is to treat it as an¶ insurgency and defeat the group by starving it of recruits. The goal must be to defeat and¶ end Al Qaeda legitimacy and recruitment, since an insurgency is defeated when no one (or¶ very few) join it.

### 1AC PQD Adv

#### The plan modifies the political question doctrine to recognize Congressional standing in WPR suits

Hemesath 2000 (Paul A. Hemesath, J.D./M.S.F.S. Georgetown University Law Center, School of Foreign Service, August 2000, “Who's Got the Button? Nuclear War Powers Uncertainty in the Post-Cold War Era,” Georgetown Law Journal, lexis)

The Campbell case was then considered by the United States Court of Appeals for the District of Columbia Circuit where the three judge panel wrote three conflicting concurrences, each explicating its own view of standing, justiciability, and the role of the courts in the war powers debate. 151 Judge Silberman authored the opinion for the court, with three separate concurrences filed by Judges Randolph, Tatel, and Silberman himself. The court's opinion rejected Campbell's claim based on a lack of standing. 152 Specifically, the court held that as long as the claim is susceptible to a political solution, the court would not intervene because the Congress's vote would not have been nullified per the Coleman exception. 153 Political solutions suggested by the court included [\*2495] a direct vote against military involvement, suspension of war funds, and impeachment of the President. 154 In his concurrence, Judge Silberman attempted to foreclose future congressional lawsuits regarding the war powers by applying political question doctrine and arguing that neither the War Powers Resolution nor the Constitution offer a judicially discoverable standard for judging the question of war. 155 Thus, according to Judge Silberman, the Congress is not able to rely on the judiciary as an arbiter of the war powers--regardless of the existence of standing in a future case.¶ Judge Silberman's concurrence was not persuasive to his brethren on the bench. Although Judge Randolph also rejected the Campbell claim based on standing, his concurrence suggestively hinted that a judicial determination of the war powers "must therefore be put off for still another day." 156 Randolph based his limited holding on the Coleman nullity standard. He observed that, since the Congress never actively voted against military involvement and the President had exercised only limited force, 157 the President's actions had not yet constituted a nullification, and thus Representative Campbell lacked standing based on the holdings of Raines and Coleman. 158 Randolph's concurrence would thus leave the door open for future congressional suits based on presidential acts that conflict with a majority vote forbidding further military action.¶ Judge Tatel, in his concurrence, agreed with Judge Silberman that Raines precluded standing in this case, but went on to disagree with Judge Silberman's analysis regarding the nonjusticiability of the war question. 159 According to Judge Tatel, the judiciary has enjoyed a long history of war powers determination. 160 His concurrence is dramatically punctuated with a reference to Marbury v. Madison, stating that "[it] is emphatically the province and duty of the judicial department to say what the law is." 161 With that, Judge Tatel's opinion strongly suggests that the war powers may find some way to judicial resolution, if not under the facts in Campbell. 162¶ The result of this fractured, and at times contentious, decision is yet more uncertainty for the war powers authority. In Campbell, the Congress was handed a mismatched pair of left-handed scissors to cut through a veritable Gordian knot of concurrences. Of particular concern is the absence of a clear standard regarding the Coleman nullity exception. Although Judge Silberman identified three legislative remedies that were not exhausted, the opinion itself and the dissonance of the concurrences leaves no indication whether all three of these [\*2496] legislative remedies--a majority vote against military action, an appropriations freeze, and impeachment--must be undermined before the court can decide the war powers issue on the merits. The difficulty of this proposition is revealed when applied to the facts of the present hypothetical, in which the Congress has already voted against military action and the stockpiled nuclear weapons in question require no additional appropriations for launch. 163 In such a scenario, two out of three of Judge Silberman's political remedies--an affirmative resolution against military action and an appropriations freeze 164 --would provide no relief. The final option of impeachment is all that would remain. 165 Whether the existence of this final option would be a sufficient political remedy to deny congressional standing is unclear from the decision. 166 As a result, the root of the war powers question, particularly in regard to the congressionally opposed launch of a stockpiled nuclear weapon, remains unresolved.¶ IV. CONSEQUENCES OF AMBIGUITY: CONSTITUTIONAL UNCERTAINTY AND ILLEGITIMACY¶ The uncertainty of a divided nuclear war powers regime may be more than an academic bogeyman invented for the amusement of professors and theoreticians. Indeed, assuming the likelihood of a conflict that confronts the Executive with a nuclear option, the ambiguity of the status quo has the potential to create a severe and untimely constitutional rift between the Congress and the President. Furthermore, if the Executive is able to act on its wishes to launch a nuclear weapon despite legal controversy, the uncertainty of its constitutional authority will haunt and delegitimize such a decision for generations to come.

#### Shifts to judicial dynamism--- makes room for judicial review when Congress is prevented from checking the prez by saying that’s NOT a political question

Roberts 2009 (Caprice L. Roberts, Associate Dean of Faculty Research & Development and Professor of Law, West Virginia University, Spring 2009, “ALTERNATIVE VISIONS OF THE JUDICIAL ROLE: Asymmetric World Jurisprudence,” Seattle University Law Review, Lexis)

The Supreme Court has not clarified whether the political question doctrine is a constitutional or a prudential restraint. 54 In its modern form, the political question doctrine is primarily prudential for two reasons. First, almost all of the judicially created political question factors have no constitutional grounding. Second, the motivations for all but one of the factors include prudential considerations such as judicial (i) competency, (ii) functionality and administration, (iii) legitimacy, (iv) reputation, and (v) comity toward the political branches. Such prudential concerns serve important justifications for jurisdiction-limiting devices of the federal judiciary. This Article maintains, however, that the political question limitation on jurisdiction, as primarily prudential, should not serve as an insurmountable barrier when the federal judiciary is needed to address an asymmetric threat to the balance of powers.¶ The modern political question doctrine does not clearly emanate from the Constitution. Article III sets forth the cases and controversies over which federal court jurisdiction is proper. The Article does not exclude political question matters. Article III does not utter the words "political question" or allude to such a prohibition. There is no laundry list of excluded matters in general or specific terms. For example, Article III does not state that the federal judiciary cannot exercise jurisdiction over Senate impeachment trial proceedings of a federal judge. 55 Further, the Court has not developed the political question doctrine as an interpretation of Article III's confinement of judicial power to "cases" and "controversies." Nevertheless, even where jurisdictional and other justiciability requirements are met, the Court has declined to review particular constitutional challenges to governmental action. The Court determines that the political branches, legislative and executive, should resolve these cases. Accordingly, the Court deems these cases nonjusticiable on the basis of the political question doctrine.¶ The political question doctrine exists as a conventional tool for the federal judiciary's limitations on jurisdiction. The limiting doctrines of justiciability include the prohibition on advisory opinions, standing, ripeness, mootness, and political question. 56 Most of these doctrines are not absolute conceptually. For example, ripeness represents the notion of [\*585] "not yet," the case is not ready for adjudication; mootness represents the notion of "too late," the controversy is no longer justiciable. 57 Even standing, which communicates "not you," implies that the Court would hear the action if brought by a proper plaintiff rather than that the Court will "never" hear the controversy. 58 The political question doctrine, however, if deemed applicable by the Court, means the Court will never hear the case. 59 The Court has found jurisdiction to be inappropriate pursuant to the political question doctrine in cases involving the following areas: foreign affairs, 60 the impeachment process, 61 the republican form of government clause, and the electoral process. 62¶ By not hearing constitutional challenges that the Court deems non-reviewable political questions, is the Court abdicating its duty? The answer depends on whether one views the political question doctrine as stemming from a constitutional command, prudential considerations, or both. Although Article III does not exclude political question cases from federal judicial power, another source for a constitutional constraint is the separation of powers. The structure of the Constitution divides power in a tripartite fashion between the legislative, executive, and judicial branches, and dictates that one branch not encroach upon another. Accordingly, if the matter is textually committed to a branch other than the judiciary, the Court must stay its hand. 63 Even granting that certain political question cases are nonreviewable as a separation-of-powers command, the Court has extended the political question doctrine well beyond the constitutional prohibition.¶ The expansion of the doctrine includes largely prudential concerns regarding judicial functionality and legitimacy. These concerns morph into judicially created, clunky factors. It is difficult to predict their application, but the purpose is apparently to give the Court an avenue to [\*586] defer to the political process as a matter of wise judicial administration and interbranch comity. The modern political question doctrine, as enunciated by the Supreme Court, includes additional factors--any one of which may result in the Court declining review:¶ . "lack of judicially discoverable and manageable standards for resolving it";¶ . "impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion";¶ . "impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government";¶ . "unusual need for unquestioning adherence to a political decision already made"; and¶ . "potentiality of embarrassment from multifarious pronouncements by various departments on one question." 64¶ In Marbury v. Madison, Chief Justice Marshall narrowly articulated non-reviewable political questions as cases centering on the Executive's exercise of discretion; he explicitly excluded political questions raising individual constitutional rights. 65 In its modern form, the political question doctrine extends far beyond Chief Justice Marshall's vision. The doctrine notably covers cases in which individuals raise concrete constitutional injury.¶ In 1993, for example, former federal Judge Walter Nixon raised a constitutional challenge to the Senate's impeachment proceedings against him. 66 He sought to challenge a Senate rule allowing a committee of Senators to hear evidence against an impeached individual and report to the full Senate. Nixon claimed the rule violated the Impeachment Trial Clause, Article I, Section 3, clause six, which authorizes the Senate to "try" all impeachments. 67 The Court found the challenge to be a nonjusticiable political question because the issue involved "a textually demonstrable constitutional commitment of the issue to a coordinate political department" and "a lack of judicially discoverable and manageable standards for resolving it." 68 Thus, the Court denied itself the power to hear the case.¶ [\*587] The Court's reasoning, however, is questionable. Viewing these two political question factors as linked, 69 the Court reasoned that the Constitution's text--"try" and "sole"--demonstrated the textual commitment of authority to the Senate and the word "try" lacked manageable standards for judicial resolution. 70 The latter issue evidences a prudential concern. The Court also found further prudential support, "counsel[ing] against justiciability," based on "the lack of finality and the difficulty of fashioning relief." 71 The only arguable constitutional basis for declining review is the notion that the Constitution's text commits the issue exclusively to the Senate and that review by the judicial branch therefore would violate the text and the separation of powers. The Court's constitutional interpretation that the text precludes judicial review, even if the Senate has the sole authority to try impeachments, does not show bullet-proof logic.¶ Justice White's concurring opinion poses a reasonable, persuasive interpretation of the constitutional text--Article I does not render "final responsibility for interpreting the scope and nature" of the impeachment power to the Senate. 72 Accordingly, although the Constitution authorizes the Senate "the power to try impeachments," neither the text nor the history negates judicial review authority. 73 On the merits, Justice White concluded that the Senate had met its constitutional obligation to try Nixon. 74 The Nixon case did not occur in asymmetric times and thus did not warrant federal judicial action in order to check joint action of the political branches as discussed below. Accordingly, prudential reasons such as proper judicial functioning and legitimacy may still have warranted the Court's finding of nonjusticiability. A finding of justiciability, coupled with Justice White's recommended substantive ruling, however, would not have disrespected the Senate or impermissibly encroached into its sphere of power.¶ Regardless of disagreements about the proper application of the political question doctrine in any given case, the doctrine maintains its resiliency as a limiting device. Scholarly and judicial support for the political question doctrine stems from a concern about the federal judiciary's delicate institutional legitimacy. 75 Federal court legitimacy [\*588] has evolved far from its fragile roots. Critics of the political question doctrine discredit this faulty assumption and maintain that any invocation of the political question doctrine threatens the federal judiciary's duty to exercise judicial review when it matters most. 76 This threat is arguably at its greatest when individuals claim concrete violations of constitutional rights based upon political branches exceeding their authority in concert. 77¶ Assuming the Court is not yet convinced or prepared to eliminate the political question doctrine, it should lean toward embracing, rather than avoiding, certain confrontations posed in asymmetric times. This shift should occur even for cases evidencing separation-of-powers tensions. In fact, the possibility of interbranch conflict may make judicial review all the more imperative. The following Part articulates a standard by which the Court may determine when judicial review matters most, when the Court should review even a political question.¶ V. A THEORY OF JUDICIAL NONABDICATION IN ASYMMETRICAL TIMES¶ In asymmetrical times, the Court should pay particularly close attention when the Executive exerts increased power and Congress acquiesces. Specifically, when the other two branches of government are in agreement, there may be a heightened need for judicial review to protect constitutional rights and ensure proper checks and balances. This more watchful eye would not focus, however, on every occasion when the President signs a federal bill into law. Instead, the need for the judiciary's higher vigilance arises when the political branches jointly exert power in the name of exigency borne of crisis.¶ Alexander Bickel's "passive virtues" conception empowers the Supreme Court. 78 It empowers the Court not to act. It encourages the Court to avoid jurisdiction and decline review in the name of prudence. Its underlying principles--discretion and prudence--support the prudential, rather than constitutional, conclusion of the political question doctrine. Further, the underlying principles condone avoidance, [\*589] especially if separation-of-powers tensions are fierce. I posit that, for a certain class of fierce cases, the Court should lean toward reviewing the case.¶ Regarding the Supreme Court's role, Justice Brandeis once commented, "The most important thing we do is not doing." 79 Justice Breyer echoed this principle to no avail in his impassioned dissent in Bush v. Gore when he urged that it was a mistake to take the case. 80 The validity of this bold endorsement of restraint may often be in the eye of the beholder--depending on one's satisfaction with the outcome in a given case. No doubt there are times when it is critical that the Court stay its hand, but at other grave times it may be critical that the Court act rather than abstain. The difficult issue is when.¶ Certain components of the Constitution are purposefully broad to allow the flexibility necessary for an evolving democracy. The parameters of the separation-of-powers boundaries, for example, are not explicitly described in the Constitution. As Justice Jackson suggested in his concurrence in Youngstown, 81 formalism and categorical imperatives tend not to serve consciously inserted constitutional ambiguities in the separation-of-powers structure. He aptly reasoned,¶ As to whether there is imperative necessity for such powers, it is relevant to note the gap that exists between the President's paper powers and his real powers. The Constitution does not disclose the measure of the actual controls wielded by the modern presidential office. That instrument must be understood as an Eighteenth-Century sketch of a government hoped for, not as a blueprint of the Government that is. Vast accretions of federal power, eroded from that reserved by the States, have magnified the scope of presidential activity. Subtle shifts take place in the centers of real power that do not show on the face of the Constitution. 82¶ Accordingly, the proper sphere of each branch is not fixed in Justice Jackson's conception; rather, each branch must retain flexibility to adapt to the posture taken by the other branches. 83¶ Justice Jackson's sentiments apply to the ongoing global war on terror. Although he maintained that the Executive power is greatest when the action receives express congressional approval and lowest [\*590] when the action is in contravention of legislative proscription, 84 he also understood that meaningful congressional oversight might not exist. 85 Specifically, Justice Jackson recognized that the President's powers include the ability of persuasion over those designed to serve as checks on executive power: "By his prestige as head of state and his influence upon public opinion he exerts a leverage upon those who are supposed to check and balance his power which often cancels their effectiveness." 86¶ Times of crisis stimulate expedited, significant political action. The intensity of the crisis may dilute the ability of one political branch to check the other. For example, Professor Amanda Frost examines former President George W. Bush's repeated utilization of the state secrets privilege as a means for dismissal of civil cases challenging the constitutionality of executive action, 87 and she recommends that where "Congress is unable or unwilling to take on [oversight], then the judiciary's role in checking executive power is paramount." 88 Notably, she further advises, "[c]ourts should be particularly hesitant to forgo jurisdiction when the executive is seeking an across-the-board dismissal of all cases challenging particular executive branch programs, because such claims implicate Congress's constitutional authority, as well as the courts'." 89 Although Professor Frost addresses only the executive assertion of state secrets privilege, her focal point shows a prime example of possible congressional acquiescence in executive action that should warrant a heightened judicial responsibility to review the action. I argue that acquiescence occurs when "Congress appears unwilling or unable to inquire into the legality of executive conduct." 90 The lack of political oversight in conjunction with the gravity and sweep of the Executive's stance (i.e., dismissal of all cases) warrants judicial oversight. In such circumstances, the Court should reserve the possibility of judicial review, even when, ordinarily, a doctrine of restraint might dictate otherwise.

#### This is key to avert executive groupthink

Marshall 2008 (William P. Marshall, Kenan Professor of Law, University of North Carolina, “ELEVEN REASONS WHY PRESIDENTIAL POWER INEVITABLY EXPANDS AND WHY IT MATTERS,” Boston University Law Review, http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)

The expansion of presidential power is also a product of executive branch ¶ lawyering. Because of justiciability limitations, many of the questions ¶ surrounding the scope of presidential power, such as war powers,38 never reach ¶ the courts.39 In these circumstances, the Department of Justice (DOJ) and its ¶ Office of Legal Counsel (OLC), the division that is charged with advising the ¶ President as to the scope of his or her powers, are the final legal authorities¶ opining on these issues.40¶ This means, in effect, that the executive branch is the final judge of its own ¶ authority. Not surprisingly, this dynamic leads to broad interpretations of executive power for a variety of reasons.41 To begin with, the President, ¶ simply by his power of appointment, can assure that his Attorney General ¶ views the primary duty of the office is to empower the administration and not ¶ to some abstract, dispassionate view of the law.42 President Kennedy selected ¶ his brother to be Attorney General, President Nixon his campaign manager. ¶ Neither appointment, I suspect, was based on the desire to have a recalcitrant¶ DOJ. Moreover, even when the President chooses a person renowned for her ¶ independence, the pressures to bend to the President’s will are considerable. ¶ Not only does the Attorney General act under the threat of removal, but she is ¶ likely to feel beholden to the President and bound, at least in part, by personal ¶ loyalty.43¶ Some might argue that even if the Attorney General may be overly ¶ susceptible to the influence of the President who appointed her, the same ¶ should not be true of the career legal staff of the DOJ, many of whom see their ¶ role as upholding the Constitution rather than implementing any President’s ¶ specific agenda. But the ability of the line lawyers at DOJ to effectively check ¶ executive branch power may be more illusory than real. First, the lawyers in ¶ the DOJ are likely to have some disposition in favor of the government if only ¶ because their clients are the President and the executive branch.44 Second, ¶ those DOJ lawyers who are hired for their ideological and political support of ¶ the President will likely have little inclination to oppose the President’s ¶ position in any case. Third, as a recent instance at DOJ demonstrates, the ¶ President’s political appointees can always remove or redeploy staff attorneys if they find them too independent.45 Fourth, even if some staff lawyers have ¶ initial resistance to the President’s position, the internal pressures created by ¶ so-called “group-think” may eventually take over.46 The ability of a staff ¶ attorney to withstand the pressures of her peers in adhering to legal principle in ¶ the face of arguments based on public safety or national security can often be ¶ tenuous, particularly when the result of nay-saying may lead the lawyer to ¶ exile in a less attractive assignment. ¶ To be sure, the DOJ has, at times, viewed itself as a truly independent voice. ¶ Attorney General Edward Bates, appointed by Lincoln reportedly stated that it ¶ was his duty “to uphold the Law and to resist all encroachments, from ¶ whatever quarter of mere will and power.”47 Robert H. Jackson, in contrast, ¶ looking back from the perch of a Supreme Court Justice, saw his role as the ¶ Attorney General during the Roosevelt Administration otherwise, describing in ¶ one case the opinion he offered as Attorney General as “partisan advocacy.”48¶ But whatever the views of those individuals holding the position of Attorney ¶ General, those views are, at best, only of secondary importance. Far more ¶ important are the views of the Presidents who appoint the Attorneys General,¶ and in this respect the positions of the occupants of the White House have been consistent. As one study states, “[t]he President expects his Attorney General . ¶ . . to be his advocate rather than an impartial arbiter, a judge of the legality of ¶ his action.”49 Under such a system, the pressure for DOJ to develop expansive ¶ interpretations of presidential power is inexorable.

#### Inevitable crises and black swans will test Obama--- sound policy responses key to prevent escalation

Indyk 2013 (Martin S. Indyk, president and director of the Foreign Policy Program, is currently on a leave of absence serving as the U.S. special envoy for the Israeli-Palestinian negotiations. During the Clinton administration Indyk served as U.S. ambassador to Israel, assistant secretary of state for Near East affairs, and as special assistant to the president and senior director for Near East and South Asia on the U.S. National Security Council, January 18, 2013, “Over the Horizon,” Brookings, http://www.brookings.edu/research/opinions/2013/01/18-five-global-crises-obama-indyk)

U.S. President Barack Obama begins his second term at a critical moment in world affairs -- al Qaeda raising its head in North Africa, President Bashar al-Assad possibly preparing to use chemical weapons in Syria, Iran moving toward the nuclear weapons threshold, and tensions rising in Asia. An unstable world promises to present the president with many challenges in the next four years, and his advisors are already grappling with how to confront them.¶ Some looming challenges -- like the America's debt or China's rise -- have been the focus of a good deal of attention. However, low-probability but high-impact "black-swan" events could also define Obama's second term, diverting the president from his intended foreign-policy agenda. These events would be so catastrophic that he needs to take steps now to minimize the risk that they might occur.¶ Here are some of the black swans that could upend the Obama administration's agenda over the next four years:¶ Confrontation over Korea¶ There is a serious risk of an acute U.S.-China confrontation over -- or even a direct military conflict on -- the Korean Peninsula. The North Korean regime is facing an existential internal crisis. Under such conditions, it is prone to lashing out at neighboring states or engaging in other forms of risky behavior. Although it seems strong, it is also dependent on China's support and vulnerable to quick-onset instability. If Washington and Beijing fail to coordinate and communicate before a collapse begins, we could face the possibility of a U.S.-China confrontation of almost unimaginable consequences.¶ The Obama administration has sought to sharpen Pyongyang's choices, pushing it to recognize that it can't have nuclear weapons and genuine national strength. To reduce the risks of a confrontation with China over the possibility of a North Korean collapse, the administration should pursue four objectives with Beijing. The countries should disclose information on the location, operation, and capabilities of each other's military forces that could soon intervene in North Korea; share intelligence on the known or suspected location of North Korea's weapons-of-mass-destruction assets; initiate planning for the evacuation of foreign citizens in South Korea; and discuss possible measures to avoid an acute humanitarian disaster among North Korean citizens seeking to flee.¶ Chaos in Kabul¶ As the 2014 transition to a radically diminished U.S. presence in Afghanistan approaches, the United States will leave behind a perilous security situation, a political system few Afghans see as legitimate, and a likely severe economic downturn. Obama has not yet specified how many U.S. troops will remain in Afghanistan after the transition, but he has made it very clear -- including during the recent visit by President Hamid Karzai -- that troop levels will be in the low thousands and that their functions will be restricted to very narrow counterterrorism and training missions. He also conditioned any continuing U.S. troop presence in Afghanistan on the signing of a status of forces agreement that grants immunity to U.S. soldiers, a condition that the Afghan government may find difficult to swallow.¶ Although a massive security deterioration, including the possibility of civil war, is far from inevitable, it is a real possibility. Such a meltdown would leave the administration with few policy options, severely compromising America's ability to protect its interests in the region.¶ A major security collapse in Afghanistan would, in all likelihood, initially resemble the early 1990s pattern of infighting between ethnic groups and local power brokers, rather than the late 1990s, when a Taliban line of control moved steadily north. The extent of violence and fragmentation would depend on whether the Afghan army and police force splintered.¶ Even then, the Afghan government may have enough strength to hold Kabul, major cities, and other parts of Afghanistan. The Taliban would easily control parts of the south and east, while fighting could break out elsewhere among members of a resurrected Northern Alliance or among Durrani Pashtun power brokers. But ethnic fighting could eventually explode even on the streets of Kabul, where Pashtuns harbor resentments about the post-2001 influx of Tajiks that changed land distribution in the capital. In the event of massive instability, a military coup is also a possibility, particularly if the 2014 presidential election is seen as illegitimate.¶ An unstable Afghanistan will be like an ulcer bleeding into Pakistan. It will further distract Pakistan's leaders from tackling their country's internal security, economic, energy, and social crises, and stemming the radicalization of Pakistani society. These trends, needless to say, will adversely affect U.S. interests.¶ Even though U.S. leverage in Afghanistan diminishes daily, decisions made in Washington still critically affect Afghanistan's future. The Obama administration can mitigate risks by withdrawing at a judicious pace -- one that doesn't put an unbearable strain on Afghanistan's security capacity. It should also continue to provide security assistance, define negotiations with the Taliban and Afghan government as a broader reconciliation process, and encourage good governance.¶ Camp David Collapse¶ Since the collapse of Hosni Mubarak's regime in Egypt, the United States has been resolutely focused on maintaining the Egypt-Israel peace treaty, which serves as a cornerstone of stability for the region, an anchor for U.S. influence in the Middle East, and a building block for efforts at Arab-Israeli coexistence. Happily, Egyptian President Mohamed Morsy has signaled his willingness to set aside the Muslim Brotherhood's ideological opposition and most Egyptians' hostility to Israel. Several factors, however, could still destabilize the situation, including terrorist attacks in Sinai or from Gaza, the collapse of the Palestinian Authority, and populist demands to break relations with Israel.¶ If Morsy were to ditch this peace treaty, it would represent a profound strategic defeat for the United States in the Middle East and could threaten a regional war. The United States should continue its policy of conditional engagement with Morsy's government and, in particular, deepen its security cooperation and coordination. It should also develop a new modus vivendi with Egyptian and Israeli partners through cooperation over common concerns in Sinai and Gaza that would advance the sustainability of the peace treaty.¶ Revolution in China¶ While China continues on its path of growth and seeming political confidence, a number of problems lie beneath the surface of its apparent success. A sense of political uncertainty -- as well as a fear of sociopolitical instability -- is on the rise. Many in the country worry about environmental degradation, health hazards, and all manner of public safety problems. These pitfalls could trigger any number of major crises: slowed economic growth, widespread social unrest, vicious political infighting among the elite, rampant official corruption, and heightened Chinese nationalism in the wake of territorial disputes. In this rapidly modernizing but still oligarchic one-party state, it is not hard to see how such a crisis could take the form of a domestic revolution or foreign war.

#### Without judicial checks groupthink makes all those go nuclear

Adler 2008 (David Gray Adler, professor of Political Science at Idaho State University, June 1, 2008, “The Judiciary and Presidential Power in Foreign Affairs: A Critique,” http://www.freerangethought.com/index.php?option=com\_content&task=blogsection&id=6&Itemid=41)

{1}The unmistakable trend toward executive domination of U.S. foreign affairs in the past sixty years represents a dramatic departure from the basic scheme of the Constitution.[1] The constitutional blueprint assigns to Congress senior status in a partnership with the President to conduct foreign policy. It also gives Congress the sole and exclusive authority over the ultimate foreign relations power: the authority to initiate war. The President is vested with modest authority in this realm and is clearly only of secondary importance. In light of this constitutional design, commentators have wondered at the causes and sources of this radical shift in foreign affairs powers from Congress to the President.[2]¶ {2}Although a satisfactory explanation for the radical shift in power is perhaps elusive, the growth of presidential power in foreign relations has fed considerably on judicial decisions that are doubtful and fragile. An exhaustive explanation, which has so far escaped the effort of others, is beyond the scope of this article. The aim of the first section is to examine the judiciary's contribution to executive hegemony in the area of foreign affairs as manifested in Supreme Court rulings regarding executive agreements, travel abroad, the war power, and treaty termination.¶ {3} In the second section of this article, I provide a brief explanation of the policy underlying the Constitutional Convention's allocation of foreign affairs powers and argue that those values are as relevant and compelling today as they were two centuries ago. In the third section, I contend that a wide gulf has developed in the past fifty years between constitutional theory and governmental practice in the conduct of foreign policy. The Court has greatly facilitated the growth of presidential power in foreign affairs in three interconnected but somewhat different ways by: (1) adhering to the sole-organ doctrine as propounded in the 1936 case of United States v. Curtiss-Wright Export Corp., (2) invoking the political question doctrine and other nonjusticiable grounds, and (3) inferring congressional approval of presidential action by virtue of congressional inaction or silence.[3] I then offer an explanation of the Court's willingness to increase presidential foreign affairs powers well beyond constitutional boundaries. For a variety of reasons, the Court views its role in this area as a support function for policies already established. In this regard the judiciary has become an arm of the executive branch. Finally, I conclude with the argument that to maintain the integrity of the Constitution, the Court must police constitutional boundaries to ensure that fundamental alterations in our governmental system will occur only through the process of constitutional amendment. The judicial branch may not abdicate its function "to say what the law is."[4]¶ The Constitution and the Conduct of Foreign Policy¶ {4} The Constitution envisions the conduct of foreign policy as a partnership between the President and Congress. Perhaps surprisingly, the Constitution assigns Congress the role of senior partner. This assignment reflects, first, the overwhelming preference of both the framers at the Constitutional Convention and the ratifiers in state conventions for collective decision-making in both foreign and domestic affairs. Second, this assignment of powers reflects their equally adamant opposition to unilateral executive control of U.S. foreign policy. This constitutional arrangement is evidenced by specific, unambiguous textual language, almost undisputed arguments by framers and ratifiers, and by logical-structural inferences from the doctrine of separation of powers.[5]¶ {5} The constitutional assignment of powers, moreover, is compelling and relevant for twentieth century America for at least three reasons. First, separation of powers issues are perennial, for they require consideration of the proper repository of power. Contemporary questions about the allocation of power between the President and Congress in foreign affairs are largely the same as those addressed two centuries ago. Second, the logic of collective decisionmaking in the realm of foreign relations is as sound today as it was in the founding period. Third, although the world and the role of the United States in international relations have changed considerably over the past 200 years, most questions of foreign affairs still involve routine policy formulation and do not place a premium on immediate responsive action.¶ {6} The preference for collective, rather than individual, decisionmaking runs throughout those provisions of the Constitution that govern the conduct of foreign policy. Congress, as a collective governing body, derives broad and exclusive powers from Article I to regulate foreign commerce and to initiate all hostilities on behalf of the United States, including war. As Article II indicates, the President shares with the Senate the treaty-making power and the power to appoint ambassadors. Only two powers in foreign relations are assigned exclusively to the President. First, he is commander-in-chief, but he acts in this capacity by and under the authority of Congress. As Alexander Hamilton and James Iredell argued, the President, in this capacity, is merely first admiral or general of the armed forces, after war has been authorized by Congress or in the event of a sudden attack against the United States.[6] Secondly, the President has the power to receive ambassadors. Hamilton, James Madison, and Thomas Jefferson agreed that this clerk-like function was purely ceremonial in character. Although this function has come to entail recognition of states at international law, which carries with it certain legal implications, this founding trio contended that the duty of recognizing states was more conveniently placed in the hands of the executive than in the legislature.[7] These two powers exhaust the textual grant of authority to the President regarding foreign affairs jurisdiction. The President's constitutional authority pales in comparison to the powers of Congress.¶ {7} This Constitutional preference for shared decisionmaking is emphasized again in the construction of the shared treaty power: "He shall have Power, by and with the Advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."[8] The compelling simplicity and clarity of the plain words of this clause leave no room to doubt its meaning.[9] There is no other clause that even intimates a presidential power to make agreements with foreign nations. Therefore, as Hamilton argued, the treaty power constitutes the principal vehicle for conducting U.S. foreign relations.[10] In fact, there was no hint at the Constitutional Convention of an exclusive Presidential power to make foreign policy. To the contrary, all the arguments of the framers and ratifiers were to the effect that the Senate and President, which Hamilton and Madison described as a "fourth branch of government" in their capacity as treaty maker,[11] are to manage concerns with foreign nations.[12] While a number of factors contributed to this decision,[13] the pervasive fear of unbridled executive power loomed largest.[14] Hamilton's statement fairly represents these sentiments:¶ The history of human conduct does not warrant that exalted opinion of human nature which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.[15]¶ {8} The widespread fear of executive power that precluded presidential control of foreign policy also greatly influenced the Convention's design of the War Clause. Article I, section 8, paragraph 11 states: "The Congress shall have Power . . . To declare War."[16] The plain meaning of the clause is buttressed by the unanimous agreement among both framers and ratifiers that Congress was granted the sole and exclusive authority to initiate war. The warmaking power, which was viewed as a legislative power by Madison and Wilson, among others, was specifically withheld from the President.[17] James Wilson, second only to Madison as an architect of the Constitution, summed up the values and concerns underlying the war clause for the Pennsylvania Ratifying Convention:¶ This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large. This declaration must be made with the concurrence of the House of Representatives; from this circumstance we may draw a certain conclusion that nothing but our national interest can draw us into war.[18]¶ No member of the Constitutional Convention and no member of any state ratifying convention ever attributed a different meaning to the War Clause.[19]¶ {9} This undisputed interpretation draws further support from early judicial decisions, the views of eminent treatise writers, and from nineteenth-century practice. I have discussed these factors elsewhere; here the barest review must suffice.[20] The meaning of the War Clause was put beyond doubt by several early judicial decisions. No court since has departed from this early view. In 1800, in Bas v. Tingy, the Supreme Court held that it is for Congress alone to declare either an "imperfect" (limited) war or a "perfect" (general) war.[21] In 1801, in Talbot v. Seeman, Chief Justice John Marshall, a member of the Virginia Ratifying Convention, stated that the "whole powers of war [are], by the Constitution of the United States, vested in [C]ongress. . . ."[22] In Little v. Barreme, decided in 1804, Marshall concluded that President John Adams' instructions to seize ships were in conflict with an act of Congress and were therefore illegal.[23] In 1806, in United States v. Smith, the question of whether the President may initiate hostilities was decided by Justice William Paterson, riding circuit, who wrote for himself and District Judge Tallmadge: "Does he [the President] possess the power of making war? That power is exclusively vested in Congress . . . It is the exclusive province of Congress to change a state of peace into a state of war."[24] In 1863, the Prize Cases presented the Court with its first opportunity to consider the power of the President to respond to sudden attacks.[25] Justice Robert C. Grier delivered the opinion of the Court:¶ By the Constitution, Congress alone has the power to declare a natural or foreign war . . . If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force, by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be "unilateral."[26]¶ These judicial decisions established the constitutional fact that it is for Congress alone to initiate hostilities, whether in the form of general or limited war; the President, in his capacity as commander-in-chief, is granted only the power to repel sudden attacks against the United States.[27]¶ {10} The Convention's attachment to collective judgment and its decision to create a structure of shared power in foreign affairs provided, in the words of Wilson, "a security to the people," for it was a cardinal tenet of republican ideology that the conjoined wisdom of many is superior to that of one.[28] The emphasis on group decisionmaking came, of course, at the expense of unilateral executive authority. This hardly posed a difficult choice, however; for the framers and ratifiers held a pervasive distrust of executive power, a deeply held suspicion that dated to colonial times.[29] As a result of this aversion to executive authority, the Convention placed control of foreign policy beyond the unilateral capacity of the President. Furthermore, as Madison said, the Convention "defined and confined" the authority of the President so that a power not granted could not be assumed.[30]¶ {11} The structure of shared powers in foreign relations serves to deter abuse of power, misguided policies, irrational action, and unaccountable behavior.[31] As a fundamental matter, emphasis on joint policymaking permits the airing of sundry political, social, and economic values and concerns. Such a structure wisely ensures that the ultimate policies will not merely reflect the private preferences or the short-term political interests of the President.[32]¶ {12} Of course, this arrangement has come under fire in the postwar period on a number of policy grounds. Some have argued, for example, that fundamental political and technological changes in the character of international relations and the position of the United States in the world have rendered obsolete an eighteenth century document designed for a peripheral, small state in the European system of diplomatic relations. Moreover, it has been asserted that quick action and a single, authoritative voice are necessary to deal with an increasingly complex, interdependent, and technologically linked world capable of almost instantaneous massive destruction. Extollers of presidential dominance also have contended that only the President has the qualitative information, the expertise, and the capacity to act with the necessary dispatch to conduct U.S. foreign policy.[33]¶ {13} These policy arguments have been reviewed, and discredited, elsewhere; space limitations here permit only a brief commentary.[34] Above all else, the implications of U.S. power and action in the twentieth century have brought about an even greater need for institutional accountability and collective judgment than existed two hundred years ago. The devastating, incomprehensible destruction of nuclear war and the possible extermination of the human race demonstrate the need for joint participation in any decision to initiate war. Moreover, most of the disputes at stake between the executive and legislative branches in foreign affairs have virtually nothing to do with the need for rapid response to crisis. Rather, they are concerned only with routine policy formulation and execution, a classic example of the authority exercised under the separation of powers doctrine.[35]¶ {14} Nevertheless, these joint functions have been fused by the executive branch and have become increasingly unilateral, secretive, insulated from public debate, and hence unaccountable.[36] In the wake of Vietnam, Watergate, and the Iran-contra scandal, unilateral executive behavior has become ever more difficult to defend. Scholarly appraisals have destroyed arguments about intrinsic executive expertise and wisdom in foreign affairs and the alleged superiority of information available to the President.[37] Moreover, the inattentiveness of presidents to important details and the effects of "groupthink" that have dramatized and exacerbated the relative inexperience of various presidents in international relations have also devalued the extollers' arguments. Finally, foreign policies, like domestic policies, are reflections of values. Against the strength of democratic principles, recent occupants of the White House have failed to demonstrate the superiority of their values in comparison to those of the American people and their representatives in Congress.¶ {15} The assumption of foreign affairs powers by recent presidents represents a fundamental alteration of the Constitution that is both imprudent and dangerous. We turn now to an examination of the judiciary's contribution to executive hegemony in foreign affairs.

#### Second term appointments leave Obama especially susceptible to groupthink

Ignatius 2013 (David Ignatius, February 22, 2013, “Out: Team of rivals. In: Obama’s guys.,” Washington Post, 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)

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.

#### Internal checks fail--- Syria proves

Moghaddam, prof of psychology at Gtown, 9/3 (Fathali M. Moghaddam, Ph.D., professor in the Department of Psychology and the director of the Conflict Resolution Program, Department of Government at Georgetown University, September 3, 2013, “Groupthink, Syria, and President Obama,” Psychology Today, http://www.psychologytoday.com/blog/the-psychology-dictatorship/201309/groupthink-syria-and-president-obama)

Irrespective of what your position is on the possible US strike against Syria, you have to admit the situation is ‘lose-lose’ for the US. So the dictator Assad has killed hundreds of his people using chemical weapons, and the US is going to punish Assad by killing more Syrians. The US strike will not be designed to change the regime, but only to ‘punish’. In the course of this punishment, more ordinary Syrians will be killed, many more will lose limbs and homes. Note to readers: limbs and homes are not replaced in this part of the world. Once lost, they are gone forever. There is no insurance or government support that serves as ‘back up’ to regain lost limbs and homes.¶ But what about the idea that Assad will be so weakened by the ‘punishment’, that he will fall and be replaced? Well, as things stand, thanks in part to the policies of Saudi Arabia and our other ‘dictator friends’ in the region, the replacement government in Syria will consist of Islamic fanatics who see the United States as their number one enemy. Yes, we can have Assad, who hates us, or Islamic Fanatics, who hate us. Which do you prefer?¶ How did President Obama, a highly intelligent person with degrees from the best universities in the world, come to this situation? I see President Obama and his advisers as very well intentioned. The major problem is that they, like all other educated politicians, have read about groupthink, a kind of thinking that takes place when the need for ‘getting along’ in a decision making group overcomes a critical and realistic assessment of the situation, but assume that they themselves are immune. Of course THEY are not subject to groupthink, so they assume - unfortunately for the world.¶ The Achilles Heel of politicians, even the smartest ones, is that they do not take the steps that are necessary to overcome groupthink – such as including critical outside voices in their discussions, especially the ones leading to historic decisions.¶ So, here we are in a lose-lose situation, again. President Obama can gain a political victory by getting Congressional approval and launching a ‘limited’ strike on Syria, but the larger war is not being won. Whoever is in the White House needs to do more to overcome groupthink, not just by being intelligent enough to read and discuss the research, but by being street-smart enough to take the practical steps needed to avoid lose-lose situations – like our current situation vis-à-vis Syria.

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#### Violence is decreasing now due to western reason and liberal democracy- spreading those ideals is key to solve conflict

Pinker 2011 Steven Pinker is Professor of psychology at Harvard University "Violence Vanquished" Sept 24 online.wsj.com/article/SB10001424053111904106704576583203589408180.html

 With all its wars, murder and genocide, history might suggest that the taste for blood is human nature. Not so, argues Harvard Prof. Steven Pinker. He talks to WSJ's Gary Rosen about the decline in violence in recent decades and his new book, "The Better Angels of Our Nature." But a better question may be, "How bad was the world in the past?" Believe it or not, the world of the past was much worse. Violence has been in decline for thousands of years, and today we may be living in the most peaceable era in the existence of our species. The decline, to be sure, has not been smooth. It has not brought violence down to zero, and it is not guaranteed to continue. But it is a persistent historical development, visible on scales from millennia to years, from the waging of wars to the spanking of children. This claim, I know, invites skepticism, incredulity, and sometimes anger. We tend to estimate the probability of an event from the ease with which we can recall examples, and scenes of carnage are more likely to be beamed into our homes and burned into our memories than footage of people dying of old age. There will always be enough violent deaths to fill the evening news, so people's impressions of violence will be disconnected from its actual likelihood. Evidence of our bloody history is not hard to find. Consider the genocides in the Old Testament and the crucifixions in the New, the gory mutilations in Shakespeare's tragedies and Grimm's fairy tales, the British monarchs who beheaded their relatives and the American founders who dueled with their rivals. Today the decline in these brutal practices can be quantified. A look at the numbers shows that over the course of our history, humankind has been blessed with six major declines of violence. The first was a process of pacification: the transition from the anarchy of the hunting, gathering and horticultural societies in which our species spent most of its evolutionary history to the first agricultural civilizations, with cities and governments, starting about 5,000 years ago. For centuries, social theorists like Hobbes and Rousseau speculated from their armchairs about what life was like in a "state of nature." Nowadays we can do better. Forensic archeology—a kind of "CSI: Paleolithic"—can estimate rates of violence from the proportion of skeletons in ancient sites with bashed-in skulls, decapitations or arrowheads embedded in bones. And ethnographers can tally the causes of death in tribal peoples that have recently lived outside of state control. These investigations show that, on average, about 15% of people in prestate eras died violently, compared to about 3% of the citizens of the earliest states. Tribal violence commonly subsides when a state or empire imposes control over a territory, leading to the various "paxes" (Romana, Islamica, Brittanica and so on) that are familiar to readers of history. It's not that the first kings had a benevolent interest in the welfare of their citizens. Just as a farmer tries to prevent his livestock from killing one another, so a ruler will try to keep his subjects from cycles of raiding and feuding. From his point of view, such squabbling is a dead loss—forgone opportunities to extract taxes, tributes, soldiers and slaves. The second decline of violence was a civilizing process that is best documented in Europe. Historical records show that between the late Middle Ages and the 20th century, European countries saw a 10- to 50-fold decline in their rates of homicide. The numbers are consistent with narrative histories of the brutality of life in the Middle Ages, when highwaymen made travel a risk to life and limb and dinners were commonly enlivened by dagger attacks. So many people had their noses cut off that medieval medical textbooks speculated about techniques for growing them back. Historians attribute this decline to the consolidation of a patchwork of feudal territories into large kingdoms with centralized authority and an infrastructure of commerce. Criminal justice was nationalized, and zero-sum plunder gave way to positive-sum trade. People increasingly controlled their impulses and sought to cooperate with their neighbors. The third transition, sometimes called the Humanitarian Revolution, took off with the Enlightenment. Governments and churches had long maintained order by punishing nonconformists with mutilation, torture and gruesome forms of execution, such as burning, breaking, disembowelment, impalement and sawing in half. The 18th century saw the widespread abolition of judicial torture, including the famous prohibition of "cruel and unusual punishment" in the eighth amendment of the U.S. Constitution. At the same time, many nations began to whittle down their list of capital crimes from the hundreds (including poaching, sodomy, witchcraft and counterfeiting) to just murder and treason. And a growing wave of countries abolished blood sports, dueling, witchhunts, religious persecution, absolute despotism and slavery. The fourth major transition is the respite from major interstate war that we have seen since the end of World War II. Historians sometimes refer to it as the Long Peace. Today we take it for granted that Italy and Austria will not come to blows, nor will Britain and Russia. But centuries ago, the great powers were almost always at war, and until quite recently, Western European countries tended to initiate two or three new wars every year. The cliché that the 20th century was "the most violent in history" ignores the second half of the century (and may not even be true of the first half, if one calculates violent deaths as a proportion of the world's population). Though it's tempting to attribute the Long Peace to nuclear deterrence, non-nuclear developed states have stopped fighting each other as well. Political scientists point instead to the growth of democracy, trade and international organizations—all of which, the statistical evidence shows, reduce the likelihood of conflict. They also credit the rising valuation of human life over national grandeur—a hard-won lesson of two world wars. The fifth trend, which I call the New Peace, involves war in the world as a whole, including developing nations. Since 1946, several organizations have tracked the number of armed conflicts and their human toll world-wide. The bad news is that for several decades, the decline of interstate wars was accompanied by a bulge of civil wars, as newly independent countries were led by inept governments, challenged by insurgencies and armed by the cold war superpowers. The less bad news is that civil wars tend to kill far fewer people than wars between states. And the best news is that, since the peak of the cold war in the 1970s and '80s, organized conflicts of all kinds—civil wars, genocides, repression by autocratic governments, terrorist attacks—have declined throughout the world, and their death tolls have declined even more precipitously. The rate of documented direct deaths from political violence (war, terrorism, genocide and warlord militias) in the past decade is an unprecedented few hundredths of a percentage point. Even if we multiplied that rate to account for unrecorded deaths and the victims of war-caused disease and famine, it would not exceed 1%. The most immediate cause of this New Peace was the demise of communism, which ended the proxy wars in the developing world stoked by the superpowers and also discredited genocidal ideologies that had justified the sacrifice of vast numbers of eggs to make a utopian omelet. Another contributor was the expansion of international peacekeeping forces, which really do keep the peace—not always, but far more often than when adversaries are left to fight to the bitter end. Finally, the postwar era has seen a cascade of "rights revolutions"—a growing revulsion against aggression on smaller scales. In the developed world, the civil rights movement obliterated lynchings and lethal pogroms, and the women's-rights movement has helped to shrink the incidence of rape and the beating and killing of wives and girlfriends. In recent decades, the movement for children's rights has significantly reduced rates of spanking, bullying, paddling in schools, and physical and sexual abuse. And the campaign for gay rights has forced governments in the developed world to repeal laws criminalizing homosexuality and has had some success in reducing hate crimes against gay people. \* \* \* \* Why has violence declined so dramatically for so long? Is it because violence has literally been bred out of us, leaving us more peaceful by nature? This seems unlikely. Evolution has a speed limit measured in generations, and many of these declines have unfolded over decades or even years. Toddlers continue to kick, bite and hit; little boys continue to play-fight; people of all ages continue to snipe and bicker, and most of them continue to harbor violent fantasies and to enjoy violent entertainment. It's more likely that human nature has always comprised inclinations toward violence and inclinations that counteract them—such as self-control, empathy, fairness and reason—what Abraham Lincoln called "the better angels of our nature." Violence has declined because historical circumstances have increasingly favored our better angels. The most obvious of these pacifying forces has been the state, with its monopoly on the legitimate use of force. A disinterested judiciary and police can defuse the temptation of exploitative attack, inhibit the impulse for revenge and circumvent the self-serving biases that make all parties to a dispute believe that they are on the side of the angels. We see evidence of the pacifying effects of government in the way that rates of killing declined following the expansion and consolidation of states in tribal societies and in medieval Europe. And we can watch the movie in reverse when violence erupts in zones of anarchy, such as the Wild West, failed states and neighborhoods controlled by mafias and street gangs, who can't call 911 or file a lawsuit to resolve their disputes but have to administer their own rough justice. Another pacifying force has been commerce, a game in which everybody can win. As technological progress allows the exchange of goods and ideas over longer distances and among larger groups of trading partners, other people become more valuable alive than dead. They switch from being targets of demonization and dehumanization to potential partners in reciprocal altruism. For example, though the relationship today between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff, and we owe them too much money. A third peacemaker has been cosmopolitanism—the expansion of people's parochial little worlds through literacy, mobility, education, science, history, journalism and mass media. These forms of virtual reality can prompt people to take the perspective of people unlike themselves and to expand their circle of sympathy to embrace them. These technologies have also powered an expansion of rationality and objectivity in human affairs. People are now less likely to privilege their own interests over those of others. They reflect more on the way they live and consider how they could be better off. Violence is often reframed as a problem to be solved rather than as a contest to be won. We devote ever more of our brainpower to guiding our better angels. It is probably no coincidence that the Humanitarian Revolution came on the heels of the Age of Reason and the Enlightenment, that the Long Peace and rights revolutions coincided with the electronic global village.